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October 13, 2016

Springfield City Council and Lane County Board of Commissioners
c/o City of Springfield Planning Department
225 Fifth Street
Springfield, Oregon 97477

Re: Springfield 2030 Refinement Plan; UGB Expansion for Goal 9 Land; Seavey Loop Area

Dear City Councilors and County Commissioners:

We submit this letter and attachments on behalf of Johnson Crushers International (JCI) and the Willamette Water Company for submission into the record for the Springfield 2030 Refinement Plan Update and Proposed Expansion of the Urban Growth Boundary (UGB) proceedings. Both parties have actively participated in the City's efforts throughout the development of the proposal before you, as evidenced by the attached letters and the involvement in last year's Seavey Loop area stakeholder working group meetings.

This letter summarizes key points from those letters, and discusses evidence submitted during last month's joint hearing and issues raised during the course of the UGB expansion process. For your convenience attached hereto are: Attachment 1, Letter to Joint Governing Bodies, August 22, 2016; Attachment 2, Letter to Joint Governing Bodies, February 5, 2014; Attachment 3, Letter to Joint Planning Commissions, February 17, 2010; and Attachment 4, Springfield Community Enterprise Zone Map. The 2010 and 2014 letters contain their identified exhibits; the exhibits for the 2016 letter were submitted prior to the public hearing.

ORS 197.298 compels the City to include the Seavey Loop Area in the UGB expansion proposal.

As a review of the attached documents reveals, our main point throughout the UGB expansion process has been consistent and unwavering. Under the ORS 197.298 statutory priorities scheme for UGB expansion, any proposal for the City of Springfield to expand its UGB for employment land purposes that does not include the Seavey Loop area is unlikely to survive appellate review. The Seavey Loop area contains not only exception areas dedicated to employment uses, it contains more exception areas than any other area under consideration. Furthermore, agricultural lands within the study area contain soils of poorer quality, and thus higher priority, than the areas proposed for inclusion.

While the ORS 197.298 priority scheme often has not corresponded with local governments' preferences for how they wish to grow, time and time again LCDC and the Court of Appeals have held that the legislature has made its intention to protect resource land clear through the priority scheme and that governing bodies must respect that intention. Those appellate bodies have held that any effort to vary from that scheme, whether through the application of Goal 14 locational factors or exceptions to the priorities scheme provided under ORS 197.298(3), faces a very daunting task that will be subject to meticulous review. The cities of McMinnville, Bend, Woodburn, Newberg and Coburg, among others, have tried and failed to deviate substantially from the priority scheme. Springfield is setting a course that will have it joining that list.

Public facilities and services do not form a basis for excluding the Seavey Loop Area.

While the findings before you purport to not consider the cost of providing public facilities and services to the various areas, there is evidence in the record that the rough costs were evaluated, which begs the question of whether it has factored into the recommendation. As the Court of Appeals made clear in *1000 Friends of Oregon v. LCDC (McMinnville)*, 244 Or App 239, 275-76, 259 P3d 1021 (2011), the cost of providing public facilities and services such as transportation and water cannot form the basis upon which to exclude higher-priority lands under the ORS 197.298/Goal 14 framework. There are no physical barriers that prevent the provision of public facilities and services to the Seavey Loop area.

Another public facilities and services issue that came up early in the proceeding is the City's requirement that all facilities and services be City services. LCDC addressed that express issue in its review of the City of Bend's UGB expansion proposal. In that decision, attached to our 2014 submittal, LCDC concluded that Bend's requirement that an area by serviceable by water and sanitary services and that it be within the regional stormwater plan service area was appropriate, but that the requirement that those systems be "city" systems was not. As our 2010 letter explains, there are existing water facilities that provide water throughout the Seavey Loop area adequate to accommodate any UGB expansion. Those existing water facilities cannot be ignored in the UGB expansion analysis.

The joint governing bodies should reconsider including Goshen in the UGB expansion.

Early last year during the Seavey Loop stakeholders meetings, there was discussion of the possibility of including Goshen in the City's UGB expansion proposal. The stakeholders were informed that the governing bodies had considered that idea and concluded not to pursue it. We believe that the governing bodies should reconsider whether Goshen, in conjunction with Seavey Loop, offers the best solution for the City to accommodate its employment land needs in view of the statutory priorities.

As the county's efforts to develop and implement Goshen's G.R.E.A.T. plan demonstrate, Goshen is a valuable location to develop industrial uses of the type identified by the City of Springfield. Additionally, Goshen is already part of the Springfield Community Enterprise Zone. See attached Attachment 4. Not only does the Seavey Loop Area connect to both the existing UGB on the north and Goshen to the south, Goshen consists of exception areas that, like

most of the Seavey Loop area, are the highest priority for UGB expansion under the statutory priority scheme. Last, while there is some concern about the linear expansion of the UGB along I-5, prior decisions discussed in the attached letters have concluded that the form of urban growth is an insufficient reason to deviate from the priority scheme.

The governing bodies should reconsider their prior decision and consider including Goshen in the UGB expansion decision.

The governing bodies should instruct staff to revisit the vacant lands inventory.

The September 12, 2016 letter submitted to the governing bodies from 1000 Friends of Oregon raises a significant number of issues related to the *Commercial and Industrial Buildable Lands Inventory* (CIBL) and *Economic Opportunities Analysis* (EOA). While we disagree in general with 1000 Friends about the amount of land and number of sites the City needs to meet its employment land needs, we are concerned by 1000 Friends' allegations that the City's analysis did not include consideration of specific sites.

LCDC remanded the City of Newberg UGB decision, in part, because the city failed to explain why identified vacant sites were not included in the buildable lands inventory. While we have not verified whether 1000 Friends' contentions that the BLI does not include the identified sites is accurate, their credibility as an organization justifies taking their claims seriously. We note that, given the unfortunate length of time required by the UGB expansion planning process, the site specific analysis contained in the BLI may be grossly out-of-date. It may well be that sites that were developed and in use at the time of the study are now vacant, and vice versa.

The joint governing bodies may wish to consider instructing staff to update the BLI.

Conclusion

We understand that this has been a long and challenging process for both the City of Springfield and its County partner. However, we feel compelled to urge the governing bodies to reconsider the proposal as it now stands and to send it back to staff to make the recommendation consistent with the ORS 197.298 statutory priority scheme as it has been interpreted and applied by LCDC and the Court of Appeals.

On behalf of our clients, we hereby request notice and a copy of the decision.

Thank you for your consideration.

Sincerely,

Bill Kloos

Bill Kloos

Cc: Jeff Schwartz, Johnson Crushers International

Willamette Water Company
Mary Bridget Smith, Springfield City Attorney (via e-mail)
Andy Clark, Lane County Legal Counsel (via e-mail)

Attachments

Attachment 1, Letter to Joint Governing Bodies, August 22, 2016
Attachment 2, Letter to Joint Governing Bodies, February 5, 2014, with exhibits
Attachment 3, Letter to Joint Planning Commissions, February 17, 2010, with exhibits
Attachment 4, Springfield Community Enterprise Zone Map

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August 22, 2016

Springfield City Council and Lane County Board of Commissioners
c/o Lane County Land Management Division
3050 North Delta Hwy
Eugene, OR 97408

Re: Springfield Urban Growth Boundary, Comprehensive Plan and Zoning Changes, & Lane County Rural Comprehensive Plan Updates

Dear City Councilors and County Commissioners:

We submit this letter and attached exhibits on behalf of Johnson Crushers International (JCI) for submission into the record for the Springfield 2030 Refinement Plan Update and Proposed Expansion of the Urban Growth Boundary (UGB) proceedings. JCI, with the support of other landowners in the Seavey Loop area, have participated in the UGB expansion proceedings for several years. Unfortunately, it troubles us to have to repeat much of what we told the joint decision-making bodies back in 2014 – the proposal before you and the findings in support of that proposal are flawed. You should not approve the proposed ordinances and, instead, should instruct the planning staff to make a decision that is consistent with the priority scheme set forth in ORS 197.298 as it has been interpreted and applied by LCDC, the Court of Appeals and, most recently, LUBA.

While we fundamentally agree with the analysis to-date concerning the amount of employment land the City of Springfield will need in the coming years, as well as the appropriateness of looking at promoting "Traded Sector" employment opportunities, we disagree with the current UGB expansion proposal before you, which does not include the Seavey Loop area in the lands proposed to be included in the UGB for employment purposes.

We again encourage the Springfield City Council and Lane County Board to revisit the state statute and the Statewide Planning Goal 14 that will be the touchstones for review of any decision to expand the City of Springfield's UGB. Now is the time for you to examine, on your own, the requirements of ORS 197.298 and to evaluate the proposal before you through that lens. We are confident that following such consideration, you will recognize the necessity of including the Seavey Loop area as one of the areas for inclusion into the City of Springfield's UGB.

The evidence in the record supports inclusion of the Seavey Loop area.

Upon review of the joint hearing materials, we were at first shocked that the Seavey Loop area was not included as part of the UGB employment lands expansion proposal and then appalled at

the analysis included in the findings that resulted in that conclusion. Simply put, the findings do not comport with the evidence in the record and the recommended decision is contrary to the priority scheme set forth under ORS 197.298.

The evidence in the record supports a conclusion that the Seavey Loop Area can and will help the City of Springfield satisfy a significant portion of its demonstrated employment land needs consistent with the statutory priority scheme. Conclusions otherwise are contrary to the evidence in the record.

ORS 197.298 sets out both the priority scheme and the permitted exceptions for including lands within an urban growth boundary.[1] While appellate interpretations of the meaning and application of ORS 197.298 will be addressed under separate heading below, as will specific errors regarding the Seavey Loop area analysis in the proposed findings, suffice it to say that the priority scheme set forth under ORS 197.298 is strictly applied on appellate review.

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[1] ORS 197.298 **Priority of land to be included within urban growth boundary** provides:

> "(1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:
> "(a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.
> "(b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.
> "(c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247 (1991 Edition).
> "(d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both.
> "(2) Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.
> "(3) Land of lower priority under subsection (1) of this section may be included in an urban growth boundary if land of higher priority is found to be inadequate to accommodate the amount of land estimated in subsection (1) of this section for one or more of the following reasons:
> "(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."

Because the City of Springfield has no urban reserves, exception areas constitute the land of highest priority for inclusion into the city's UGB. ORS 197.298(1)(b). As we explained in our February 2014 letter to the joint decision-makers:

> "Of the areas under consideration for UGB expansion, the Seavey Loop area is the **only** area that already includes exception land planned for employment uses, and it is the area that has the highest concentration of exception lands of all types." Letter, February 2014, page 3.

Attached as Exhibit 1 is a map showing the Seavey Loop area (also called College View during some planning stages) that shows the Seavey Loop area under consideration throughout the land use proceedings. It appears from the graphics in the proposed findings that the present Seavey Loop area may include a slightly different configuration of parcels, to include the entirety of the JCI parcel to the east of S. Franklin Boulevard; but overall the Seavey Loop area considered for inclusion into Springfield's UGB to meet the city's employment land needs is very similar to that shown on Exhibit 1.

Compare that area to Exhibit 2, which shows the county zoning and plan designations for the Seavey Loop area. The vast majority of those parcels are exception lands, which are the highest priority lands for inclusion under ORS 197.298(1). Some of the land is EFU land, but as will be discussed momentarily, that land too is of higher priority than the EFU lands for areas the proposal recommends for inclusion into the UGB.

The above points are reinforced by the attached Exhibit 3, which shows all of the exception areas around the City of Springfield. Note that the exception areas within Area 9, Seavey Loop, are more extensive and more diverse than other exception areas. Further note that the two areas recommended by staff for inclusion into the UGB, the North Gateway area and the Mill Race area, contain no exception lands.

Because the Springfield area has no significant marginal lands that can meet employment land needs, the next consideration under the priority scheme is to include resource land, either agricultural, forestry or both. ORS 197.298(1)(d). However, ORS 197.298(2) explicitly provides that higher priority is to be given to land with lower soil capabilities as measured by either the capability classification system (for agricultural lands) or by cubic foot site class (for forestry lands).

Again, the evidence in the record demonstrates that the resource lands within the Seavey Loop area contains lands of lower soil capabilities than do those of the Mill Race area and the northern portion of the North Gateway area. This is plainly demonstrated in the attached Exhibit 4, which shows soils classifications by shades of brown. The darker the color, the better the soil and the lower priority. Exhibit 4 is annotated with yellow clouds around three key areas. It is plainly evident that the Seavey Loop area includes light to medium shades of brown compared to the medium to dark shades of brown for the areas staff recommend for inclusion into the UGB. That

means the agricultural lands for Seavey Loop have a higher priority for inclusion in the UGB expansion than the other two areas. No amount of finagled finding is going to persuade an appellate review body to disregard what their eyes plainly show them from the Soil Capability and Constraints map.

Last, and perhaps most significant, is Exhibit 5, the July 2014 UGB Expansion Area map for Seavey Loop/College View. That map shows, even with the BPA easement and steep-slope areas excluded, multiple vacant or near vacant parcels of between 4 and 14 acres, as well as at least one parcel over 30 acres in size. Note that the findings include the entirety of TL 306, the JCI parcel to the east of S. Franklin Boulevard, as being 20 acres, whereas Exhibit 5 only includes an 8.8-acre portion of that parcel. With the full JCI parcel, that would make two individual parcels of at least 20 acres in size available in Seavey Loop. Each of the above parcels, either individually or collectively for adjacent vacant parcels, can help the City meet its employment land needs and reduce the pressure to bring farmland with even higher value soils into the UGB.

The City's employment land needs have been identified as the need for 4 parcels between 4 and 20 acres totaling 37 acres, and three parcels greater than 20 acres totaling 186 acres. See Staff Report, p. 102. The evidence in the record demonstrates that the available land within the Seavey Loop area can easily help the city meet a substantial portion of its medium parcel size needs and one to two of its large parcel needs.

Findings cannot be used to explain those facts away. And given that the Seavey Loop area consists of exception land and lower soils quality/higher priority lands than the other areas recommended for inclusion into the UGB, the City and County must first include Seavey Loop before it can look to those other areas to help meet the City's demonstrated employment land needs. That is what the statutory priority scheme set forth in ORS 197.298(1) requires.

While the Seavey Loop area cannot meet the entirety of the City's demonstrated employment land needs, the City cannot leap frog over Seavey Loop simply because it alone cannot meet all of the city's needs. ORS 197.298 prohibits the City and the County from doing that.

Recent case law has only reinforced the focus on the statutory priority scheme for UGB expansion decision making.

Our February 2014 letter to the joint bodies discussed at length the legal framework for UGB expansions as well as relevant interpretations of those requirements conducted by LCDC and the Oregon Court of Appeals. They included an LCDC order to the City of Bend and Deschutes County, and the Court of Appeals decisions in *1000 Friends of Oregon v. LCDC (McMinnville)*, 244 Or App 239, 259 P3d 1021 (2011), and *1000 Friends of Oregon v. LCDC (Woodburn II)*, 260 Or App 444, 317 P3d 927 (2014). None turned out well for the local jurisdictions.

Recently, LUBA revisited the framework the Court of Appeals presented in the *McMinnville* case when ruling on Coburg's efforts to expand its urban growth boundary. See attached Exhibit

6, *Land Watch of Lane County v. Lane County*, __ Or LUBA __ (Luba Nos. 2016-003/004, August 1, 2016). While this UGB decision will be reviewed by LCDC instead of LUBA, it is worth noting that the Board's interpretation and application of ORS 197.298 is just as demanding as LCDC's and the Court of Appeals'.

LUBA's explanation of the UGB expansion process and the court's interpretation of it in *McMinnville* covers 6 pages. See, Exhibit 6, Slip Op at 17-23. However, the Board begins its explanation with the following summary:

> "ORS 197.175(1) requires cities and counties to exercise their planning and zoning responsibilities in accordance with state land use statutes and the Statewide Planning Goals. ORS 197.298 requires that urbanization of rural lands occur by expanding the UGB based on a priority scheme. Although the statute partially supplants the requirements of Goal 14, the Goal continues to operate in a manner that supplements the statutory priority scheme." Exhibit 6, Slip Op at 17 (footnote omitted).

In remanding under the second assignment of error, LUBA rejected thirteen different reasons under Goal 14, its administrative rules, and ORS 197.298(3) the City of Coburg gave for deviating from the ORS 197.298(1) statutory priority scheme.

Because LUBA directly and succinctly addressed just how difficult it is for a local government to justify deviating from the statutory priority scheme in its conclusion for the second assignment of error, it is worth quoting from that decision here. LUBA explained:

> "To the extent our discussion above has not made this point clearly enough, respondents appear to view Goal 14, Boundary Location Factor 3 "[c]omparative environmental, energy, economic and social consequences" and Goal 14 Boundary Location Factor 4 "[c]ompatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest lands outside the UGB" and ORS 197.298(3) as a [*sic.*] more available vehicles for not following the ORS 197.298(1) priorities for including better agricultural lands than is actually the case. In applying the Goal 14 Boundary Location Factors, respondents must do more than identify possible environmental, energy, economic or social consequences, and possibly incompatibilities with agricultural activities if exception lands or poorer quality agricultural soils are included according to the ORS 197.298(1) priorities. *Respondents must establish that such considerations justify deviating from the statutory priorities, notwithstanding the legislature's expressed preference for those priorities. Respondents should not underestimate the difficulty of making such a demonstration. A similar caution is appropriate for attempts to use ORS 197.298(3) to avoid the ORS 197.298(1) priority scheme*." Exhibit 6, *Land Watch of Lane County v. Lane County*, Slip-Op at 46-47 (*emphasis* supplied).

All three appellate bodies have basically said that overcoming the ORS 197.298(1) priority scheme is much more than simply jumping a hurdle, it means successfully completing a pole-vault. The proposed decision and findings before you fail to even come close to that bar.

As the City Council and County Board consider the proposal before it, you must be cognizant of the priority requirements spelled out under ORS 197.298 and Goal 14, as interpreted by these appellate bodies, as well as the need to fully justify your rationale if you wish to make a decision that will pass muster in Salem. The priority scheme does not readily allow local governments to skip higher priority lands to include lower priority lands instead. Consequently, if any area is brought into the City of Springfield to meet the identified employment land need, it must include land in the Seavey Loop area before turning to other areas to bring in the remaining amount of land needed.

The proposed findings contain fatal flaws in its analysis of the Seavey Loop Area.

The proposed findings make numerous factual, legal and analytic errors, several of which are discussed below. The City Council and Board of Commissioners should reject the proposed findings and request that staff present a decision and findings that can withstand review by LCDC.

<u>The findings substantially misrepresent the footprint of the Seavey Loop area under consideration</u>.

Attached Exhibits 1 and 5 show the footprint of the Seavey Loop area under consideration to accommodate the City of Springfield's employment land needs with only minor potential variation. At least twice the findings make statements that are correct only if the "Seavey Loop area" is an area substantially greater than what has actually been proposed for inclusion into the UGB.

At page 336 the findings state that "the largest blocks of predominantly Class I and II soils outside of the Springfield UGB are located * * * south of the Willamette River, south of the Springfield UGB and east of Interstate Highway 5 (Seavey Loop area)." As one can readily see from attached Exhibit 4 (Soils Map) there are **<u>no</u>** blocks of predominantly Class I and II soils in the Seavey Loop area actually considered.

The error at page 336 is perhaps clarified by the error at page 342, which states that the largest contiguous areas of Class I and Class II high value farmland soils include "Seavey Loop area east of Mt. Pisgah and along Highway 58."

From that statement everything is plainly evident – both Class I and II soils references are to areas east of the Seavey Loop area that is actually considered for inclusion into the UGB. To be clear, <u>never</u> in the several years of this ongoing land use process has the City of Springfield or any party involved ever requested or even considered that the land in the floodway immediately

east of the Seavey Loop area shown at Exhibits 1 and 5, or the agricultural lands even further east that approach Mt. Pisgah were part of the "Seavey Loop area" proposed for UGB expansion.

Any findings or analysis that considers those areas as being part of the Seavey Loop area is flat out wrong, as are other factual errors contained in the findings.

<u>The findings so focus on the trees that it misses the forest, perhaps intentionally so</u>.

One cannot accuse the findings of brevity, not at 517 pages. But while the statute and goal require a degree of attention to detail, it does not permit losing the big picture. Compliance with ORS 197.298(1) is not determined by the number of words contained in a set of findings. Furthermore, the statute – goal interaction in the UGB expansion process, while somewhat complex, is much simpler than that employed by the proposed findings as the Court of Appeals explained in *McMinnville*, and LUBA summarized in the recent Coburg decision.

The degree of detail engaged by the findings here raises serious questions as to whether such efforts are an intentional effort to craft the analysis to reach a desired outcome, not to follow the direction provided by the statute and goal to determine the lands they indicate should be brought into the UGB.

A couple of examples are worth noting. Why is it that, when examining the exception areas within Seavey Loop, the analysis breaks the area down into 6, if not 7 different smaller segments identified as Seavey Loop A through F and Seavey Loop/Goshen? Why are no other areas similarly broken down? Does that breaking the study area into smaller segments help or hurt the analysis?

The above begs the question why the analysis failed to recognize that there is one industrially zoned parcel and three adjacent rural residential parcels that are each greater than 6 acres in size and are minimally developed? Each is suitable for meeting the City's demonstrated employment land needs. The analysis concluded none of them were developable for that purpose.

Furthermore, those three rural residential parcels, totaling 21 acres are adjacent to JCI's property – either 8.8 or 20 acres in size depending upon whether one includes part of or the entirety of the property – represent a substantial opportunity of providing a 30-to-40-acre site to attract the types of traded sector employers the city seeks. Why does the analysis hide that condition instead of revealing it? Furthermore, one of the smaller parcels abuts the 31-acre Straub Family Revocable Trust property, which could lead to a 60-70-acre site for possible industrial development.

Instead of understanding the opportunity that the Seavey Loop area affords the City of Springfield to meet its demonstrated economic land needs, the analysis dissects the area so finely as to make the area unrecognizable as a whole. Reviewing bodies on appeal will not make the same mistake.

The findings misapply ORS 197.298(1)(d) and ORS 197.298(2).

This issue is discussed briefly above in the section on why the evidence supports inclusion of the Seavey Loop area, however additional analysis is warranted.

ORS 197.298(2) is explicit that a higher priority should be given to land of "lower capability as measured by the capability classification system." That system classifies soils as Class I through VIII, with Class I soils being of better quality (i.e. more productive) and Class VIII being of poor quality.

However, throughout much of the findings, the analysis uses descriptions such as "high value farmland" and "low value soils", which refer to groupings of soils classifications used for other statutory reasons. What the analysis does is it gives the appearance that different areas under consideration have similar soils when they in fact do not merely because the two areas consist of different soils type that are considered soils that support a high value farmland classification. But those soils are not the same, at least not for purposes of UGB expansion analysis. One look at the soils map included hereto as Exhibit 5 can show you that. Both Seavey Loop and the Mill Race area consist predominantly of high value farmland, Seavey Loop consists mostly of Class IV soils and is therefore lighter in color than the Mill Race area which consists predominantly of Class II soils. To the ORS 197.298 statutory priority scheme, this difference is significant and requires one area (Seavey Loop) to be brought into the UGB before the other area (Mill Race) if additional land is needed to meet the City's employment land needs after examination of higher priority lands. The findings do not make this distinction clear.

The proposed findings misapply ORS 197.298(2) and ORS 197.298(1)(d) in failing to prioritize the available agricultural land at Seavey Loop above lower priority lands in the Mill Race area and the North Gateway area.

The findings misapply the ORS 197.298(3) exceptions to the statutory priority scheme.

As LUBA made clear in its decision for the City of Coburg, the exceptions to the statutory priority scheme provided under ORS 197.298(3) are precisely defined and are difficult to meet. The findings misapply at least two of these exceptions – subsections (a) and (b).

ORS 197.298(3)(a) permit an exception to the statutory priority scheme for instances when "specific types of identified land needs cannot be reasonably accommodated on higher priority lands." The findings seek to invoke various provisions of OAR 660 division 09 and division 24, pertaining to economic development and urban growth boundaries, to define what is meant by "reasonably accommodated." See Findings, p. 206 *et. seq.* However, the findings attempt to use those regulations to lower the statutory bar to make it easier to deviate from the priority scheme. Appellate bodies time and time again have concluded that such approaches constitute error.

As LCDC told the City of Bend and Deschutes County, the bar for bypassing higher priority lands altogether in favor of lower priority lands is extremely high. So, for example, as LUBA

explained in its recent decision, the parcelization of land is no excuse to conclude that certain land types cannot be reasonably accommodated on higher priority lands because, by their very nature, exception lands will always be more parcelized than non-exception land. The findings' efforts to use administrative rules to lower the standard for when the "cannot be reasonably accommodated" exception is met constitutes error that LCDC will not overlook.

Similarly, the findings' application of ORS 197.298(3)(b) and its exception to deviate from the priority scheme because "future urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints" provided express circumstances for when that exception is available. Those circumstances are not met for the Seavey Loop area. While the findings expressly state that "cost of service was not estimated or evaluated at this time" (Findings p. 236) and the analysis tables includes statements such as, "Lands cannot reasonably be provided with urban services due to physical constraints of distance and topography that preclude reasonable extension of [services]" (See Findings p. 251) those statements only pay lip service to the requirements of the exception, at least in the instance of Seavey Loop.

The findings use the right words, but when one reviews the analysis itself, one sees that water is already provided to the area, wastewater requires only the addition of a couple of pump stations along with line extensions (not an unreasonable engineering effort), storm water services can be "made with little or no impact on existing storm water systems" requiring only the coordination with several other regulatory agencies; and that traffic services are feasible despite expected challenges at certain locations. See, *e.g.*, Findings, pages 248-51, (Public Facilities and Services Analysis for Seavey Loop Exception B, C and E). Each is simply a cost or coordination factor. Likewise, distance of the length involved for Seavey Loop is not a physical constraint, it simply increases the cost of the utility improvements, something appellate bodies have concluded is not a permissible consideration. There are no "topographic" constraints described in the analysis despite the statement that there are.

Such faulty analysis is erroneously applied repeatedly to the Seavey Loop area throughout the findings and the application of the ORS 197.298(3) exception criteria. Reviewing bodies will not permit the weakening of the exception criteria as the findings attempt and the reviewing bodies will remand a decision that adopts the proposed findings.

The above are but a few of the analytical, legal and factual flaws contained in the proposed findings. The City Council and the County Board of Commissioners should reject the analysis now and instruct staff to revisit the findings and to apply the priority scheme and exceptions in the manner set forth in their plain language and as applied upon appellate review.

Conclusion

We urge the joint decision-making bodies to reject the proposal before you and to direct the planning staff to develop a proposal and draft supporting findings that are consistent with ORS 197.298 and Goal 14. LCDC, the Court of Appeals, and now LUBA have plainly stated that the

legislature meant what it said in establishing the statutory priority scheme and that any UGB expansion decision that is not consistent with that statute will be remanded back to the local governments.

We believe that there can be no defensible decision to expand the City of Springfield's urban growth boundary for employment land purposes that does not include the Seavey Loop area as part of the proposal. It is in everyone's best interest to get this right the first time around.

Thank you for your consideration.

Sincerely,

Bill Kloos

Bill Kloos

Cc: Jeff Schwartz, Johnson Crushers International
Mary Bridget Smith, Springfield City Attorney
Andy Clark, Lane County Legal Counsel

Exhibits included:

Exhibit 1 College View Proposed UGB Expansion Area Map, December 2014
Exhibit 2 Seavey Loop Area Plan and Zone Designation Map Excerpts
Exhibit 3 Map 6: Priority 1 Lands for UGB Expansion, ECO Northwest, June 2009
Exhibit 4 Soil Capability and Constraints Map (Annotated), March 2016
Exhibit 5 Proposed UGB Expansion Areas – College View Industrial, July 2014
Exhibit 6 *Land Watch of Lane County v. Lane County*, __ Or LUBA __ (Luba Nos. 2016-003/004, August 1, 2016)

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February 5, 2014

Springfield City Council and Lane County Board of Commissioners
c/o City of Springfield Planning Department
225 Fifth Street
Springfield, Oregon 97477

Re: Springfield 2030 Refinement Plan; UGB Expansion for Goal 9 Land; Seavey Loop Area

Dear City Councilors and County Commissioners:

We submit this letter and attached exhibits on behalf of Johnson Crushers International (JCI) for submission into the record for the Springfield 2030 Refinement Plan Update and Proposed Expansion of the Urban Growth Boundary (UGB) proceedings. JCI also has the support of other existing landowners in the Seavey Loop area, including owners of existing industrial uses that would like to expand and add jobs, but are presently hamstrung by being outside the UGB.

While we fundamentally agree with the analysis to date concerning the amount of employment land the City of Springfield will need in the coming years, as well as the appropriateness of looking at promoting "Traded Sector" employment opportunities, we disagree with the current UGB expansion proposal before you, which does not include the Seavey Loop area in the lands proposed to be included in the UGB for employment purposes. (See Exhibit A, 7/22/2013 Memorandum to Gino Grimaldi).

We encourage the Springfield City Council and Lane County Board to revisit the state statute and the Statewide Planning Goal that will be the touchstone for review of any decision to expand the City of Springfield's UGB. While the Springfield 2030 Refinement Plan and UGB expansion process has been long, thoughtful and exhaustive, we believe that the emphasis staff placed on adhering to the statute and the Goal in early presentations to the Commercial and Industrial Buildable Lands (CIBL) Stakeholders and to the Planning Commissions has not been carried forward to the current recommendations to the City Council and the County Board. Consequently, now is the time for you to factor ORS 197.298 and Goal 14 into your deliberations about which areas must and which areas should be brought into the Springfield UGB. We are confident that following such consideration, you will include the Seavey Loop area as one of the areas for inclusion into the City of Springfield's UGB.

The remainder of this letter provides background information as to why the controlling statute and Goal 14 factors, as interpreted by LCDC and the Oregon Court of Appeals, compel including the Seavey Loop area into the Springfield UGB if the UGB is expanded to include land to promote economic development.

Legal Framework

Early in the Springfield 2030 Refinement Plan proceedings, city planning staff and the consultants hired by the city did an excellent job of summarizing the legal framework that regulates the process and decision-making required for a city to expand its urban growth boundary. Staff noted that the Oregon Revised Statues and Goal 14 prescribe a precise hierarchy regarding the priority of land types that can be included within a proposal to expand an urban growth boundary. That priority, with rare exceptions, controls which lands must be brought into a UGB, and, if higher priority lands are insufficient to meet the established land need, identifies the process and standards by which local governments should identify which land of equal priority should be included to address the unmet need.

ORS 197.298 sets out both the priority and the permitted exceptions for including lands within an urban growth boundary.[1] Staff summarized the statutory priorities as:

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[1] ORS 197.298 **Priority of land to be included within urban growth boundary** provides:

> "(1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:
> "(a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.
> "(b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.
> "(c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247 (1991 Edition).
> "(d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both.
> "(2) Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.
> "(3) Land of lower priority under subsection (1) of this section may be included in an urban growth boundary if land of higher priority is found to be inadequate to accommodate the amount of land estimated in subsection (1) of this section for one or more of the following reasons:
> "(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."

1. Urban reserve areas (Springfield does not have urban reserves)
2. Exception areas
3. Marginal Lands (Lane County is a marginal land county)
4. Resource lands.

(See Exhibit B CIBL Stakeholders September 25, 2008 Presentation).

City staff also clearly articulated the Goal 14 factors that weigh into consideration when determining which particular lands are to be included into a UGB. The Goal 14 locational 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
4. Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB (See Exhibit B).

Some of the Goal 14 locational factors can be applied at the same time as the ORS 197.298 priority factors, while others of the locational factors are to be applied at later stages of the process to determine which lands are ultimately to be brought into a UGB. As discussed in more detail below, the proper application of ORS 197.298 and Goal 14 has been the focus of Land Conservation and Development Commission (LCDC) and Court of Appeal reviews of local UGB expansion decisions.

Considering the statutory priorities in light of the deliberations currently before you, since the City of Springfield has no urban reserve land, the city must move to the next highest priority land as prescribed by ORS 197.298(1)(b) – land adjacent to the UGB that is acknowledged as an exception area or as nonresource land. Of the areas under consideration for UGB expansion, the Seavey Loop area is the **only** area that already includes exception land planned for employment uses, and it is the area that has the highest concentration of exception lands of all types.

The Seavey Loop area also includes nonresource lands that are of equal priority to exception areas. The Oregon Administrative Rules provides definitions for "Resource Land" and "Nonresource Land." OAR 660-004-0005 Definitions provides:

> "(2) "Resource Land" is land subject to one or more of the statewide goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d).
>
> "(3) "Nonresource Land" is land not subject to any of the statewide goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d). Nothing in these definitions is meant to imply that other goals, particularly Goal 5, do not apply to nonresource land." (See also OAR 660-021-0010(2) and (3), providing identical definition).

The statewide goals identified in the above definitions listed in OAR 660-004-0010 include:

> "(a) Goal 3 "Agricultural Lands" . . . .
> "(b) Goal 4 "Forest Lands" . . . .
> ". . . .
> "(e) Goal 16 "Estuarine Resources" . . . .
> "(f) Goal 17 "Coastal Shorelands" . . . .
> "(g) Goal 18 "Beaches and Dunes" . . . . "

Consequently, the only "resource lands" in the Springfield UGB area are agricultural and forest lands. Lands that fall under the other Statewide Planning Goals are deemed to be "nonresource" lands.

Attached as Exhibit C are map excerpts showing the plan and zone designations for the Seavey Loop area. These maps show that the Seavey Loop properties immediately abutting the Springfield UGB are plan designated P – Parks, and they have a zoning of SG – Sand, Gravel and Rock Products – Controlled Processing District. (See also Exhibit D Ordinance PA 1283, proposing Lane County plan and zone designations for properties no longer within the Metro Plan Area as a consequence of Ordinance PA 1281, which shrunk the Metro Plan boundary to the UGB on the Springfield side of the Metro Plan.) These are Goal 5 plan and zone designations and are consequently "nonresource" lands under the OAR definitions above.

In addition to the extensive lands adjacent to the UGB that have Sand and Gravel zoning, there is also a strip of "committed land" connecting the UGB to the Seavey loop area. This property is identified as Assessor's Map 18-03-11 Tax Lot 700. The zoning history of Tax Lot 700, which is 2.34 acres in size, is documented extensively in Exhibit M hereto, which is a January 29, 2014 memorandum from Lanfear Consulting LLC, which includes 14 supporting exhibits. It is largely developed with the railroad. The Lanfear Memorandum explains that TL 700 was zoned C-2 by County Ordinance No. 223 in 1966. It also explains why the property remains zoned C-2 at this time. In summary, TL 700 creates a physical connection between the existing UGB and the Seavey Loop area. Whether considered alone or in conjunction with the "nonresource" Sand and Gravel lands discussed above, it is exception land and is a basis for first priority treatment for the Seavey Loop area.

In summary, this combination of exception and nonresource lands adjacent to the existing UGB places major portions of the Seavey Loop area in the highest priority of any land under consideration for inclusion into the UGB.

The Seavey Loop area, like each of the other areas under consideration, also contains some resource lands, which are of a lower priority under the statute. However, unlike those other areas, the Seavey Loop area has nonresource lands of a higher priority, and the application of the Goal 14 locational factors weighs towards including the Seavey Loop area resource lands under consideration in addition to the nonresource lands for efficiency purposes.

To summarize this straightforward application of the statute and Goal 14: If any area is brought into the City of Springfield to meet the identified employment land need, it must include land in the Seavey Loop area. While ORS 197.298(3)(c) allows for a city to include land of lower priority in conjunction with land of higher priority, for the purposes of maximizing land use efficiency, the statute does not readily allow a city to skip higher priority lands to include lower priority lands instead.

The above application of the statute and Goal is mirrored in the Urban Growth Boundary Alternatives Analysis presented on June 22, 2009 at the Planning Commission Joint Work Session. Materials for that work session are attached hereto as Exhibit E. In discussing the development of the UGB concepts, the consultant, ECONorthwest, stated:

> "The concepts recognize the statutory priority scheme for inclusion of lands in the UGB[.]" See page 4, ECONorthwest DRAFT UGB Concepts, Exhibit E.

The report goes on to state:

> "All of the areas consider the statutory priority scheme for inclusion of lands in the UGB. All of the concepts include exception lands that are in Areas 4, 5, 7, and 9. Priority 1 lands are shown on Map 6[.]"

Map 6 from that exhibit shows that the only commercial and industrial exception lands under consideration are located in the Seavey Loop area. See Exhibit E. Consequently, the Seavey Loop area is included in each of the scenarios that involve expanding the UGB to include additional employment land. ECONorthwest understood the necessity of including the Seavey Loop exception lands under the legal framework for UGB expansion. Any discretion that may be involved concerning the Seavey Loop area centers only on how much of the resource land there should also be included as part of the area added to the UGB.

Relevant Interpretations

In recent years the LCDC and the Oregon Court of Appeals have issued rulings involving the application of ORS 197.298 and Goal 14 in the UGB expansion process. Two points are readily apparent from these decisions. First, the reviewing bodies are rigidly applying the requirements set forth in both the statute and the goal. For a local government to simply go through the motions of the process but not make decisions that conform to the statutory and goal requirements does not satisfy the requirements. Second, these reviewing bodies are rigidly adhering to the fundamental principle under Oregon's land use framework that urban growth should not come at the expense of resource land unless absolutely necessary. As a result, local governments must justify why it is **necessary** to expand onto resource land instead of onto available nonresource land, and that justification will be closely scrutinized. Time and time again, decisions that elect to bring in resource lands instead of exception areas are being sent back to the local government for further justification and/or modification.

In 2010, LCDC issued an order to the City of Bend and Deschutes County regarding a proposed UGB expansion for the city. See attached Exhibit F. That order explained that, while the statute and Goal provide some room for flexibility in the selection of lands to be brought into the UGB, the LCDC concluded that the methodology and approach used by the City of Bend improperly excluded a substantial amount of land planned and zoned as exception lands in favor of including large amounts of lower priority lands. Exhibit F, page 115 of 156. As the LCDC order for Bend demonstrates, the hurdle for bypassing higher priority lands altogether in favor of lower priority lands is extremely high.

Perhaps the most comprehensive explanation of the UGB expansion process in recent years is presented in the Court of Appeals decision *1000 Friends of Oregon v. LCDC (McMinnville)*, 244 Or App 239, 259 P3d 1021 (2011). See Exhibit G. Although the Court of Appeals was applying the old version of Goal 14 in that case, the decision is still relevant in that the sequencing of activity and the relationships between ORS 197.298 and Goal 14 provisions that remain in the new version of the Goal is the same. In that decision, the Court of Appeals described a three-step process for UGB expansion. Step one is to determine the land need (if any) for UGB expansion. 244 Or App at 255-57. Step two is to determine the adequacy of candidate lands under ORS 197.298(1) and (3), and Goal 14 factors that do not have more restrictive counterparts under the statute. *Id.* at 257-65. Step three is for the local government to determine which candidate lands are to be included under Goal 14. *Id.* at 265-66.

Under the scheme outlined by the Court of Appeals, land under a higher priority must be included in the lands to be annexed into a UGB unless the local government can affirmatively demonstrate under the statute and applicable Goal 14 criteria that the higher priority land is "inadequate to accommodate the amount of land needed." *Id.* at 261. Once land is identified that could be added to the UGB, Goal 14 "works in two ways – both to make choices among land in the lowest rung of the priority scheme and to justify the inclusion of the entire set of lands selected under ORS 197.298. *Id.* at 265.

In the end, the Court of Appeals in *1000 Friends of Oregon v LCDC (McMinnville)* remanded on several grounds generally pertaining to the improper application of Goal 14 locational criteria (such as the cost of transportation or water services) to exclude higher priority lands under the statute, and for failure to adequately explain why certain higher priority lands were excluded in favor of lower priority lands or to explain the selection between equal priority lands. *Id.* at 287-88.

Also, in a decision issued just this year, the Court of Appeals reversed and remanded, for the second time, an LCDC order pertaining to the City of Woodburn. See Exhibit H, *1000 Friends of Oregon v. LCDC (Woodburn II)*, __ Or App __, __ P3d __ (No. A148592, Jan. 2, 2014). In this most recent opinion, the Court of Appeals never even reached the issue raised by petitioners about whether the City improperly included lowest priority, high value farmland over higher priority nonresource and marginal lands. Rather, the court simply concluded that LCDC did not adequately explain why the city's expansion of its UGB to include additional land for industrial

use was consistent with pertinent law. That is, the analysis of how much additional land the city needed to include in the UGB was insufficient for review. *Id.* Slip op at 2. Until the city justified how much land it needed, the court could not even review whether the lands selected to fill the stated "need" were appropriate. Again, each decision that is made in the UGB expansion process will be subject to close scrutiny by reviewing bodies.

As the City Council and County Board move forward on the matter of which lands to include within an expanded UGB, you should be cognizant of the priority requirements spelled out under ORS 197.298 and Goal 14 and the need to fully justify your rationale, if you wish to make a decision that will pass muster in Salem.

Facts Before the City and County

As one can see from the discussion above, the process to expand a UGB operates under severe constraints, and local decision-makers are limited in the discretion they can exercise. The City of Springfield's consultant, ECONorthwest, described the application of ORS 198.298 and Goal 14 in a 2008 memorandum to the Springfield City Council and Planning Commission thusly:

> "These factors provide direction on selection of lands within the priority scheme and also outline some reasons why lower priority lands may be part of an expansion area if they may better address these factors than lands in higher priority categories. The ORS 197.298 priority scheme is relatively rigid, but the Goal 14 factors allow some flexibility. ORS 197.298 and Goal 14 allow some exceptions to the priority scheme based on "special" needs. For example, if a city identifies a need for lower cost housing that can only be developed on flat land, then that may be a reason to include *some* resource lands before, or together with, exceptions lands. *Such an exception would require additional justification and must be supported by solid technical analysis*." Exhibit I, December 30, 2008 Memorandum from ECONorthwest to Springfield City Council and Planning Commission, at p. 1-10. (*Emphasis added.*)

As noted above, the Seavey Loop area includes the **only** exception area land committed to employment uses of all the study areas. It is, in short, the only area under consideration that has the highest statutory priority. See Exhibit E, Map 6. Seavey Loop is also an area that the Commercial and Industrial Buildable Lands Stakeholder Committee prioritized as a high priority employment opportunity area. Exhibit J Meeting Minutes, UGB/ Commercial Industrial Buildable Lands (CIBL) Stakeholder Committee, January 22, 2009, page 3.

Given that the parcel sizes in the Seavey Loop area meet those required for "Traded Sector" employment opportunities, that the proximity of the site to I-5 satisfies requirements for that employment sector, and that Seavey Loop has the second highest acreage outside of the floodplain of all of the areas under consideration, it is difficult to see how one could defend an analysis that concludes the Seavey Loop area is inadequate to accommodate the proposed economic use. (See Exhibit A, Attachment 3, pages 4, 7 and 10 of 33). Certainly the Seavey

Loop area does not have sufficient acreage to fulfill **all** of the city's employment needs, but the issue for deliberation should boil down to how much extra acreage is needed **after** inclusion of the Seavey Loop area and which of the other sites is best suited to address that extra need.

As the Court of Appeals made clear, if the Seavey Loop area is not included in the UGB expansion, the city will have to explain not only why the Seavey Loop area is not included, but also explain how **each** of the other sites is sufficiently better than the Seavey Loop area as to warrant the inclusion of lower priority high value farmland over areas that have already received an exception to the resource goals and its adjacent farmlands. That alone would be a hard case to make. But when some of those alternative areas lie substantially within the flood plain (Exhibit E, Map 3: Study Area Constraints, Attachment 2-3), are located in well protection areas (Exhibit K, Lane County Ordinance PA 1290, Map), and were lower ranked employment opportunity sites by the CIBL Stakeholders Committee (Exhibit J, page 3), it is difficult to see how the Economic, Social, Environmental and Energy (ESEE) analysis and other analyses could support a conclusion that those sites are so much better than the Seavey Loop Site as to justify non-inclusion of the Seavey Loop area into the UGB.

The City Council and County Board should also be wary of other issues that have crept into the UGB expansion background materials and deliberations. For example, while the cost of providing public facilities and services may be an appropriate criterion for distinguishing between and ultimately selecting which lower-priority areas to bring into the UGB, as the Court of Appeals made clear in *1000 Friends of Oregon v. LCDC (McMinnville)*, the costs of providing services such as transportation and water cannot form the basis upon which to exclude higher-priority lands under the ORS 197.298/ Goal 14 framework. 244 Or App 275-76. Likewise, the services provided to areas under consideration cannot be limited to "city" provided services. In the Bend proceeding discussed above, the city established review criteria that required lots to be serviceable by "city" water and sanitary services and that lie within the regional stormwater plan service area. In sending the decision back to the city, DLCD commented that the serviceable criteriion was permissible "except for the limitation to *city* facilities" for the sanitary systems. See Exhibit F, page 118, Table 3. A notation referring to the analysis for the sanitary facilities was made for the water and stormwater facilities.

Similarly, while Goal 14 allows for an examination of the compatibility of the proposed urban uses with adjacent properties, the examination is limited to agricultural and forest activities occurring on farm and forest land located outside the UGB. (See Exhibit L – Goal 14: Urbanization, Boundary Location Factor 4). Again we see the statewide land use scheme's intended protection of resource uses and lands for resource uses. Neither the Goal nor the statute provides that similar consideration be given to residential or other nonresource uses outside the UGB.

One final example is worth pointing out. The staff report discusses considerations related to the City's "natural and cultural heritage." The statute and Goals do not allow for exclusion of higher priority land in the UGB expansion process for those and other unnamed reasons.

Conclusion

As the Springfield City Council and Lane County Board of Commissioners move forward on the City of Springfield UGB expansion, you should be conscious of the standards under which the decision must be made, attentive to the facts in the record, and wary of arguments and considerations that ask you to deviate from the facts and standards. Such deviations are a recipe for delays at LCDC and, potentially, at the Court of Appeals. When land use planners and attorneys discuss troubles with the state scheme for expanding UGBs, they often list, in a single sentence, the troubles in "McMinnville, Bend and Woodburn." Springfield should learn from the missteps of these other cities, get it right the first time, and not become the fourth in the shorthand list of bad dream UGB experiences.

The Seavey Loop Area includes exception and nonresource land that is the highest priority under consideration and must be brought into the UGB. The area also includes lower priority land that the Goal 14 efficiency and economic provision of services locational criteria provide justification for including along with the exception area to meet economic growth needs. Still, even if the maximum suitable acreage within the Seavey Loop area is part of the UGB expansion proposal, other sites will be required to meet the city's demonstrated need for additional industrial land. The City Councilors and Board of Commissioners should carefully apply the Goal 14 standards to determine which other sites best help the city meet its employment land needs.

Thank you for your consideration.

Sincerely,

Bill Kloos

Bill Kloos

Cc: Jeff Elliott, Johnson Crushers International
Mary Bridget Smith, Springfield City Attorney
Andy Clark, Lane County Legal Counsel
Linda Pauley, City of Springfield

Exhibits included:

Exhibit A	7/22/2013 Memorandum to Gino Grimaldi
Exhibit B	CIBL Stakeholders September 25, 2008 Presentation
Exhibit C	Seavey Loop area plan and zone designation maps.
Exhibit D	Lane County Ordinance PA 1283
Exhibit E	June 22, 2009 Planning Commission Joint Work Session Materials
Exhibit F	DLCD Order 001775 – Report on Bend and Deschutes County's Amendment to the Bend Urban Growth Boundary (cover only, full copy provided to staff)
Exhibit G	*1000 Friends of Oregon v. LCDC (McMinnville)*, 244 Or App 239, 259 P3d 1021 (2011).
Exhibit H	*1000 Friends of Oregon v. LCDC (Woodburn II)*, __ Or App __, __ P3d __ (No. A148592, Jan. 2, 2014)
Exhibit I	December 30, 2008 Memorandum from ECONorthwest to Springfield City Council and Planning Commission
Exhibit J	Meeting Minutes, UGB/ Commercial Industrial Buildable Lands (CIBL), January 22, 2009
Exhibit K	Lane County Ordinance PA 1290
Exhibit L	Goal 14: Urbanization, 2006 (New)
Exhibit M	Lttr from Lanfear Consulting LLC (Jan. 29, 2014)(re Map 18-03-11 TL 700)

Springfield UGB Planning: Stakeholder Committee Meeting #5 Preliminary Results: EOA and BLI

Presented by:

ECONorthwest

September 25, 2008

Exhibit B

Where are we in the Project Tasks?

- Draft technical products:
  - EOA
  - CIBL
  - Economic Development Strategy
- Next steps
  - Review draft products with Steering Committee and decision-makers
  - Finalize draft products
  - Begin alternatives analysis

Purpose of Tonights's Meeting

- Get comments and input on draft products
  - Now, but we will take comments until Oct 3
- Discuss key assumptions that impact land need:
  - Constraint assumptions
  - Redevelopment assumptions

Commercial and Industrial Buildable Lands Inventory

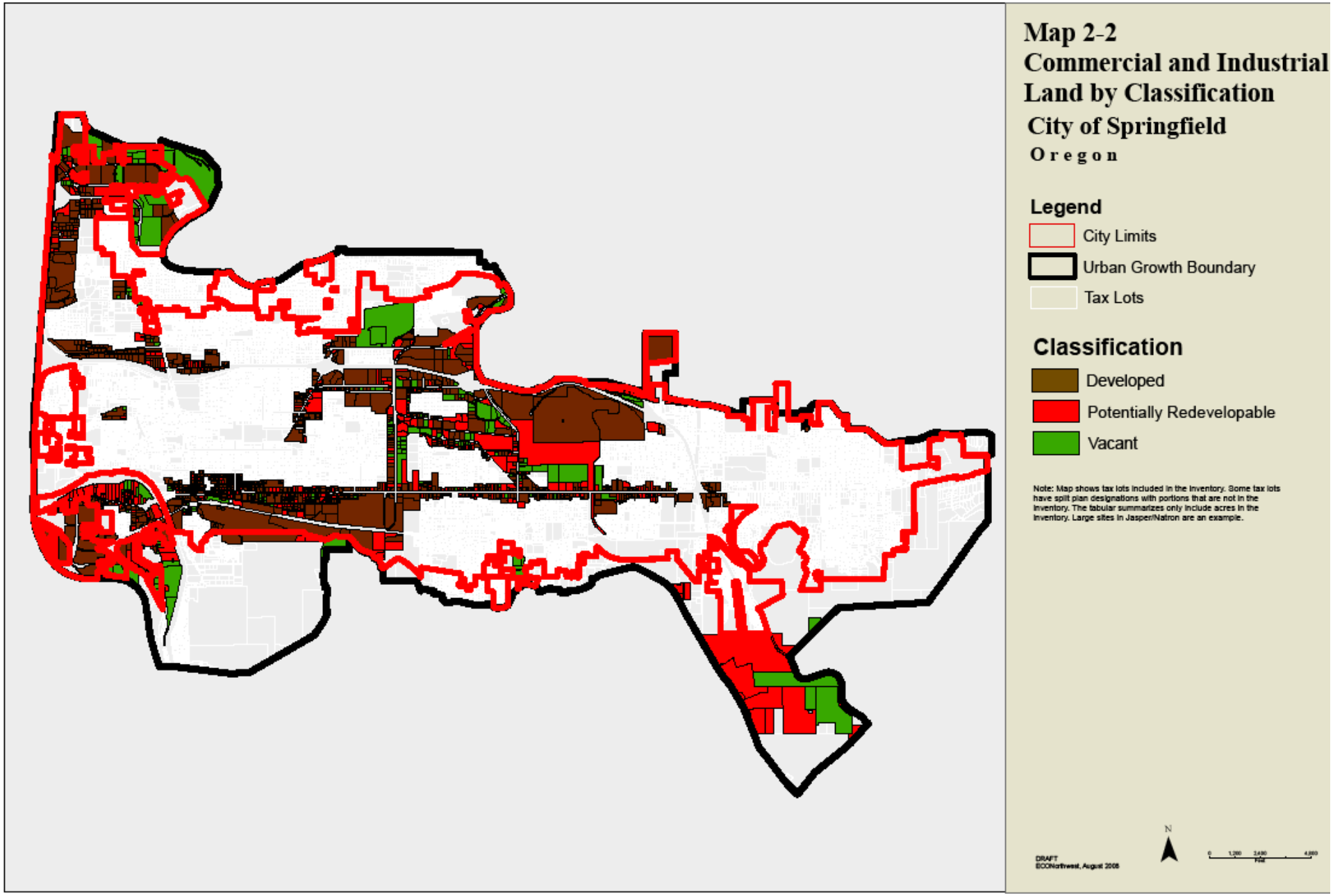
How did we determine what is both developable and buildable?

- Establish a land base: All commercial and industrial land in Springfield's UGB
- Classify all land
  - Developed
  - Vacant or partially vacant
  - Redevelopable
- Determine constraints and remove constrained vacant land

Status of Employment Land

- 3,407 acres in tax lots
  - 56% developed
  - 24% redevelopable
  - 20% vacant
- 25% Constrained
- 75% Unconstrained

Classification	Tax Lots	Acres in Tax Lots	Constrained Acres	Unconstrained Acres
Developed	1,251	1,931.4	390.0	1,541.4
Redevelopable	579	807.3	173.9	633.4
Vacant	274	668.8	273.7	395.1
Total	**2,104**	**3,407.5**	**837.6**	**2,569.9**


Map 2-2
Commercial and Industrial
Land by Classification
City of Springfield
Oregon
Legend
City Limits
Urban Growth Boundary
Tax Lots
Classification
Developed
Potentially Redevelopable
Vacant
Note: Map shows tax lots included in the inventory. Some tax lots have split plan designations with portions that are not in the inventory. The tabular summarizes only include acres in the inventory. Large sites in Jasper/Natron are an example.
DRAFT
ECONorthwest, August 2008
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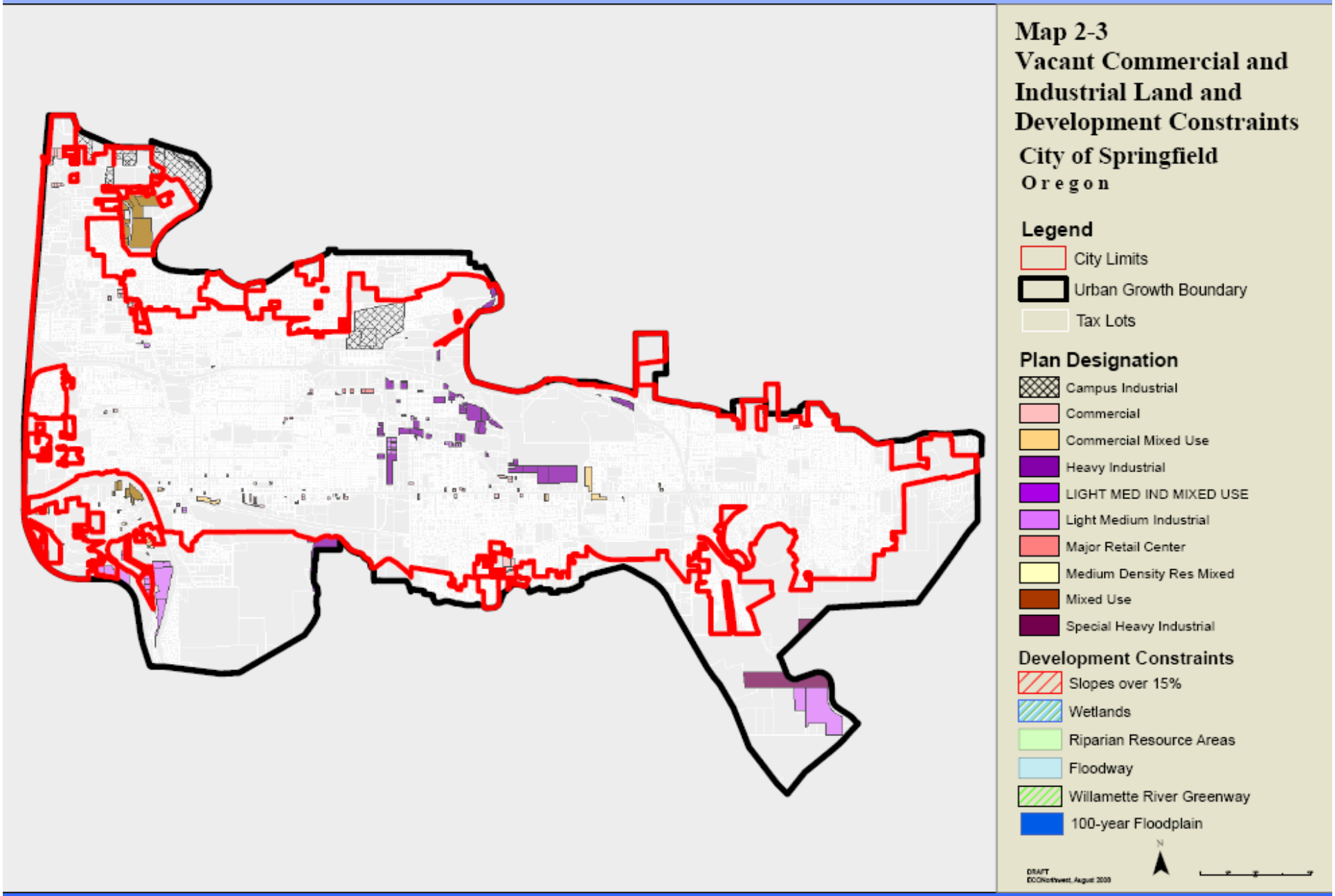
Vacant and Potentially Redevelopable Land

	Tax Lots	Acres in Tax Lots	Constrained Acres	Unconstrained Acres
VACANT LAND				
Industrial	136	510.0	252.3	257.7
Commercial	70	46.9	3.9	43.0
Mixed Use	57	111.9	17.5	94.4
Subtotal	**263**	**668.8**	**273.7**	**395.1**
POTENTIALLY REDEVELOPABLE LAND				
Industrial	208	568.6	140.1	428.5
Commercial	170	133.9	8.3	125.5
Mixed Use	171	104.8	25.4	79.4
Subtotal	**549**	**807.3**	**173.9**	**633.4**


Map 2-3
Vacant Commercial and Industrial Land and Development Constraints
City of Springfield
Oregon
Legend
City Limits
Urban Growth Boundary
Tax Lots
Plan Designation
Campus Industrial
Commercial
Commercial Mixed Use
Heavy Industrial
LIGHT MED IND MIXED USE
Light Medium Industrial
Major Retail Center
Medium Density Res Mixed
Mixed Use
Special Heavy Industrial
Development Constraints
Slopes over 15%
Wetlands
Riparian Resource Areas
Floodway
Willamette River Greenway
100-year Floodplain
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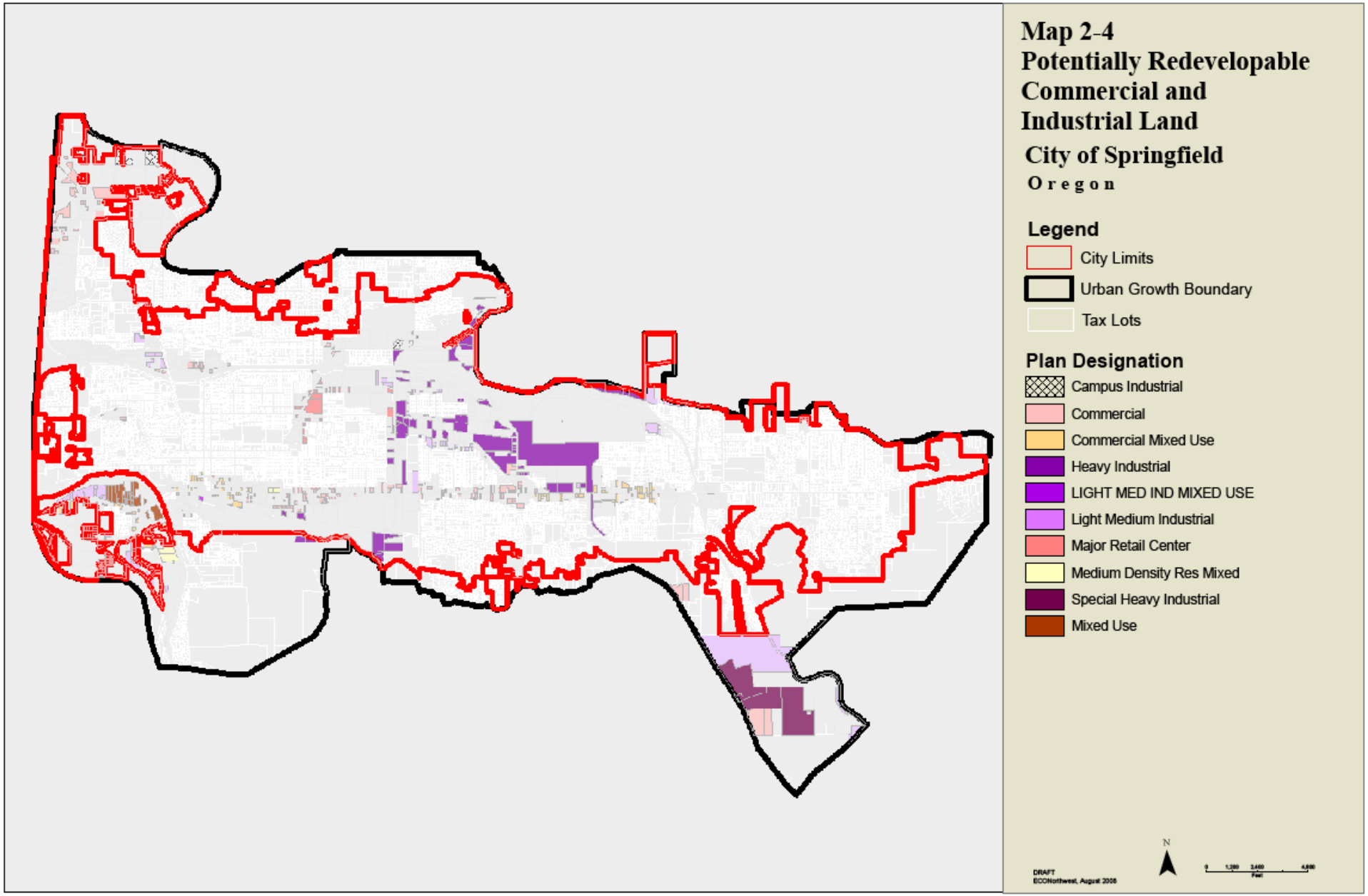
ECONorthwest, August 2009


Map 2-4
Potentially Redevelopable Commercial and Industrial Land
City of Springfield
Oregon
Legend
City Limits
Urban Growth Boundary
Tax Lots
Plan Designation
Campus Industrial
Commercial
Commercial Mixed Use
Heavy Industrial
LIGHT MED IND MIXED USE
Light Medium Industrial
Major Retail Center
Medium Density Res Mixed
Special Heavy Industrial
Mixed Use
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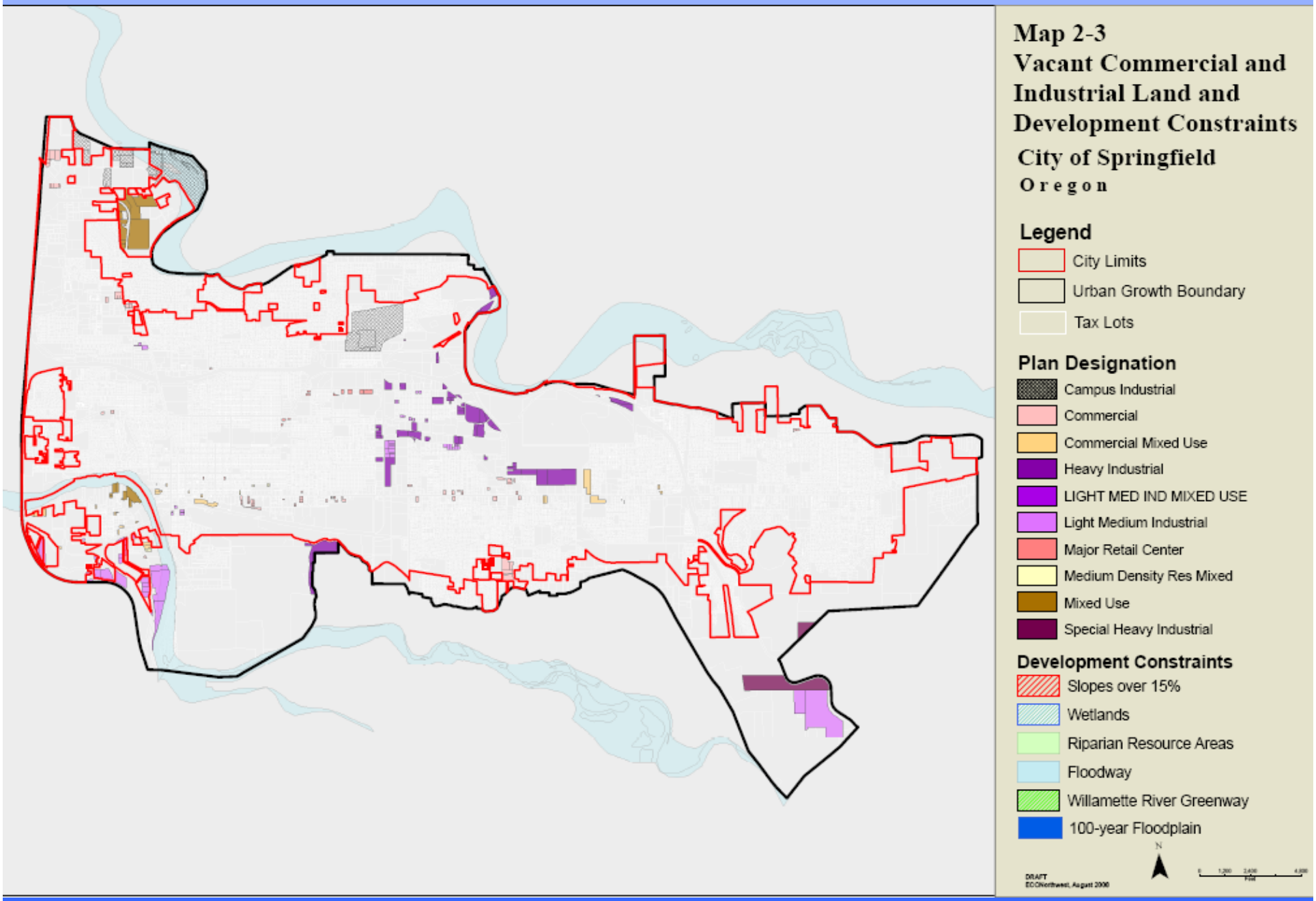
ECONorthwest, August 2005

Development Constraints

- Absolute or partial?
- Constraints
  - Floodway
  - Floodplain
  - Wetlands
  - Riparian corridors
  - Slopes
  - Willamette River Greenway
  - BPA easements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Development Constraints
Slopes over 15%
Wetlands
Riparian Resource Areas
Floodway
Willamette River Greenway
100-year Floodplain
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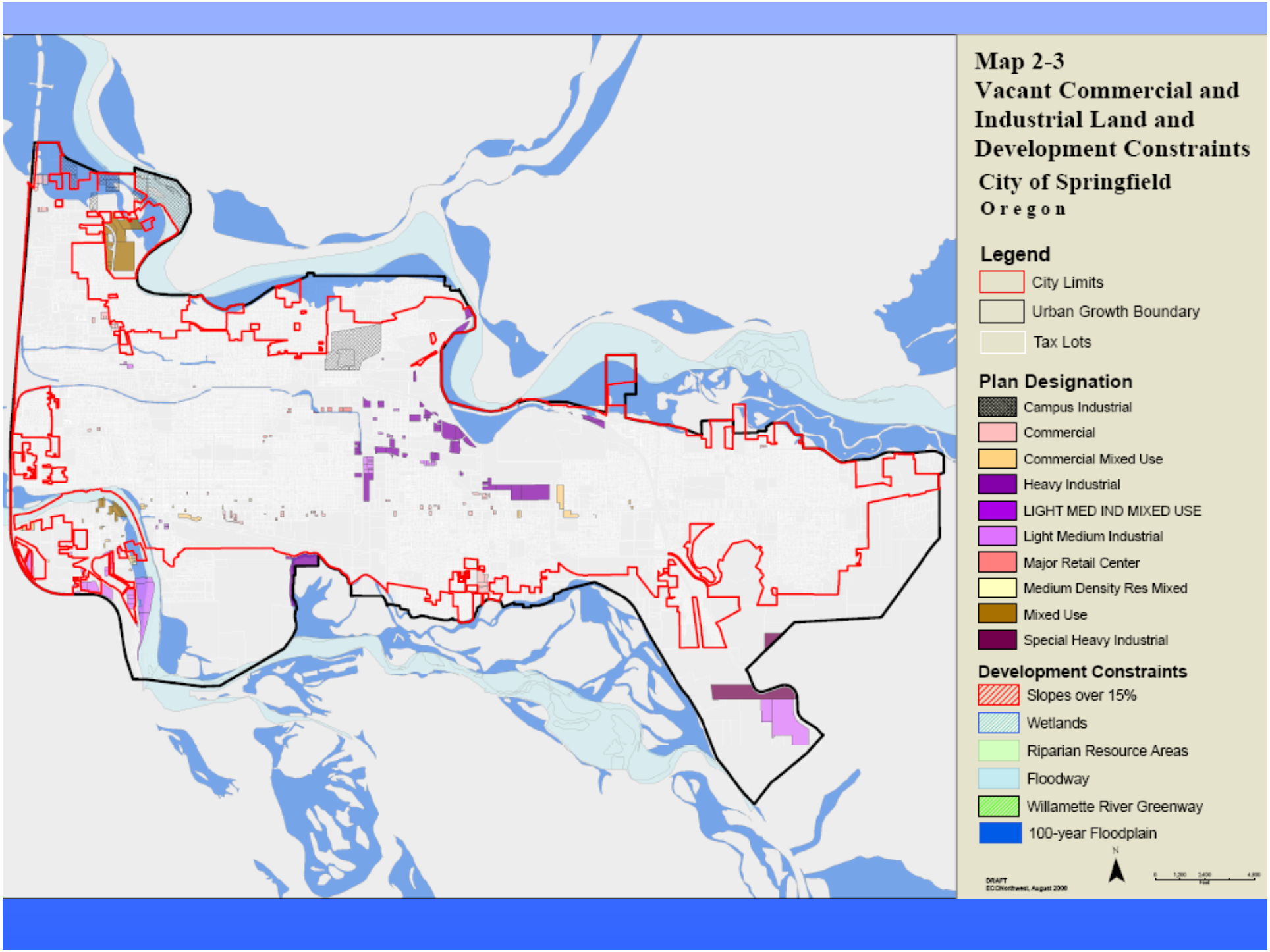
ECONorthwest, August 2000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City of Springfield
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City Limits
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Tax Lots
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Campus Industrial
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Light Medium Industrial
Major Retail Center
Medium Density Res Mixed
Mixed Use
Special Heavy Industrial
Development Constraints
Slopes over 15%
Wetlands
Riparian Resource Areas
Floodway
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100-year Floodplain
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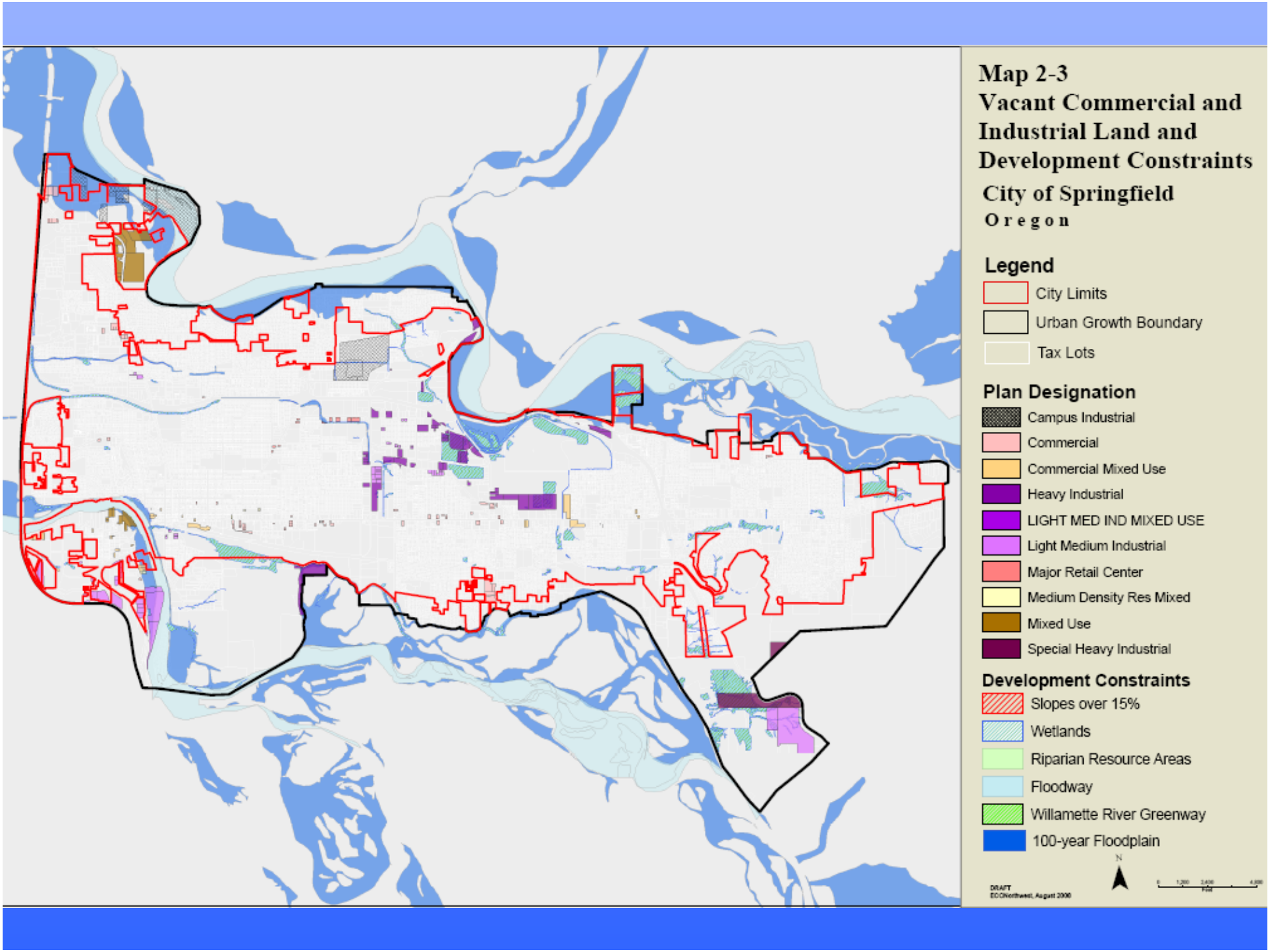
ECONorthwest, August 2000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Vacant Commercial and Industrial Land and Development Constraints
City of Springfield
Oregon
Legend
City Limits
Urban Growth Boundary
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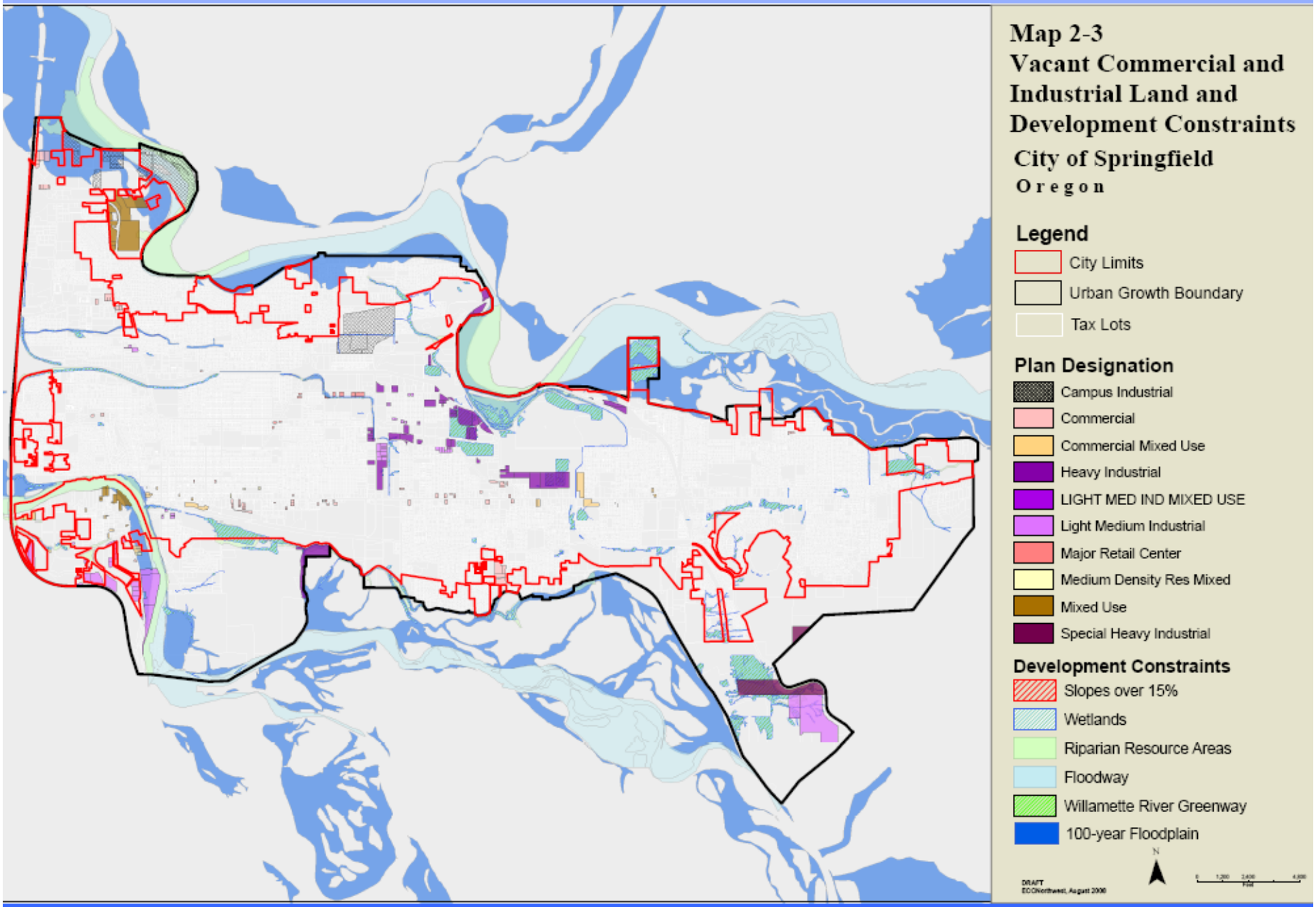
EC Northwest, August 2000


Map 2-3
Vacant Commercial and Industrial Land and Development Constraints
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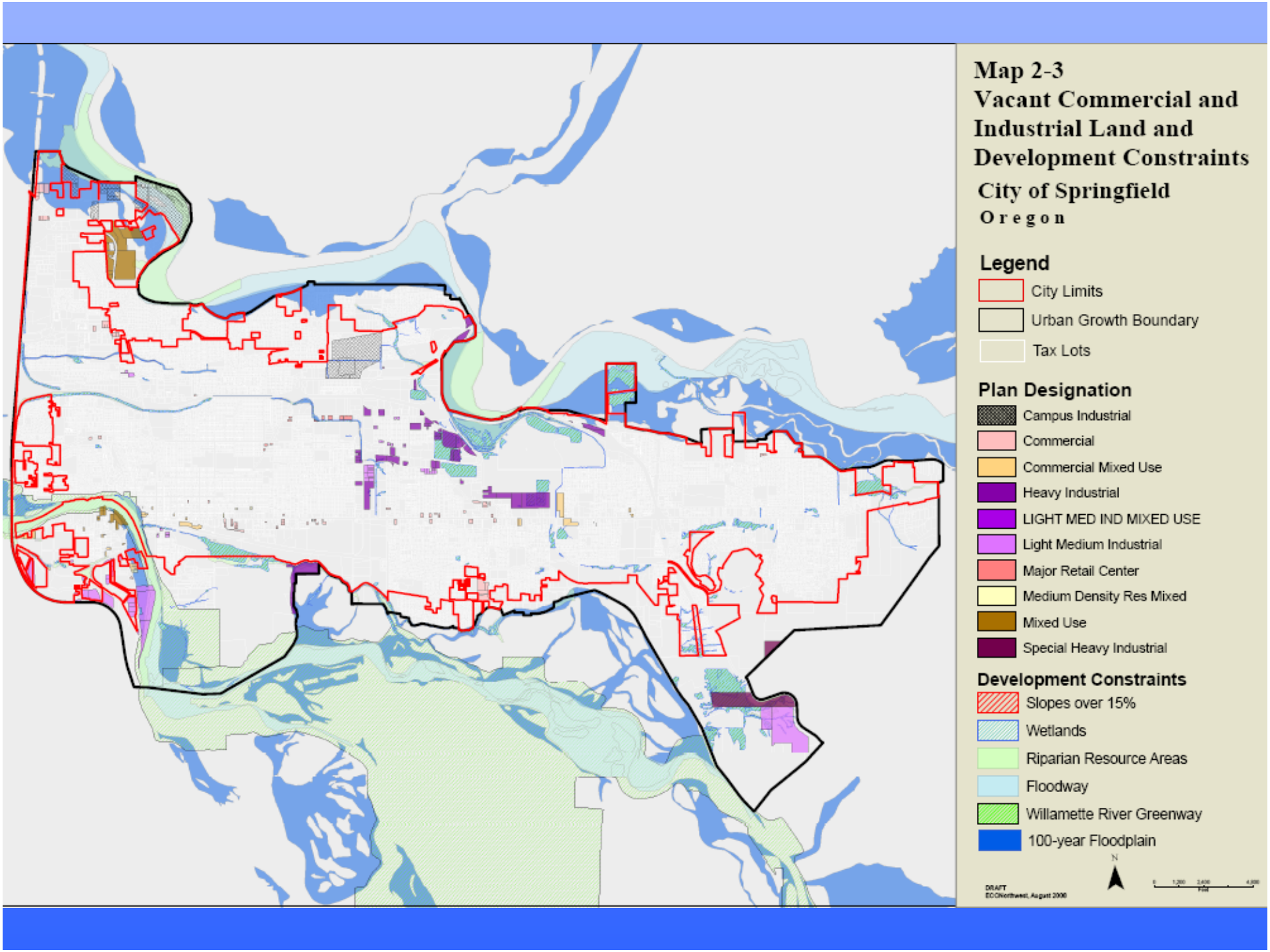
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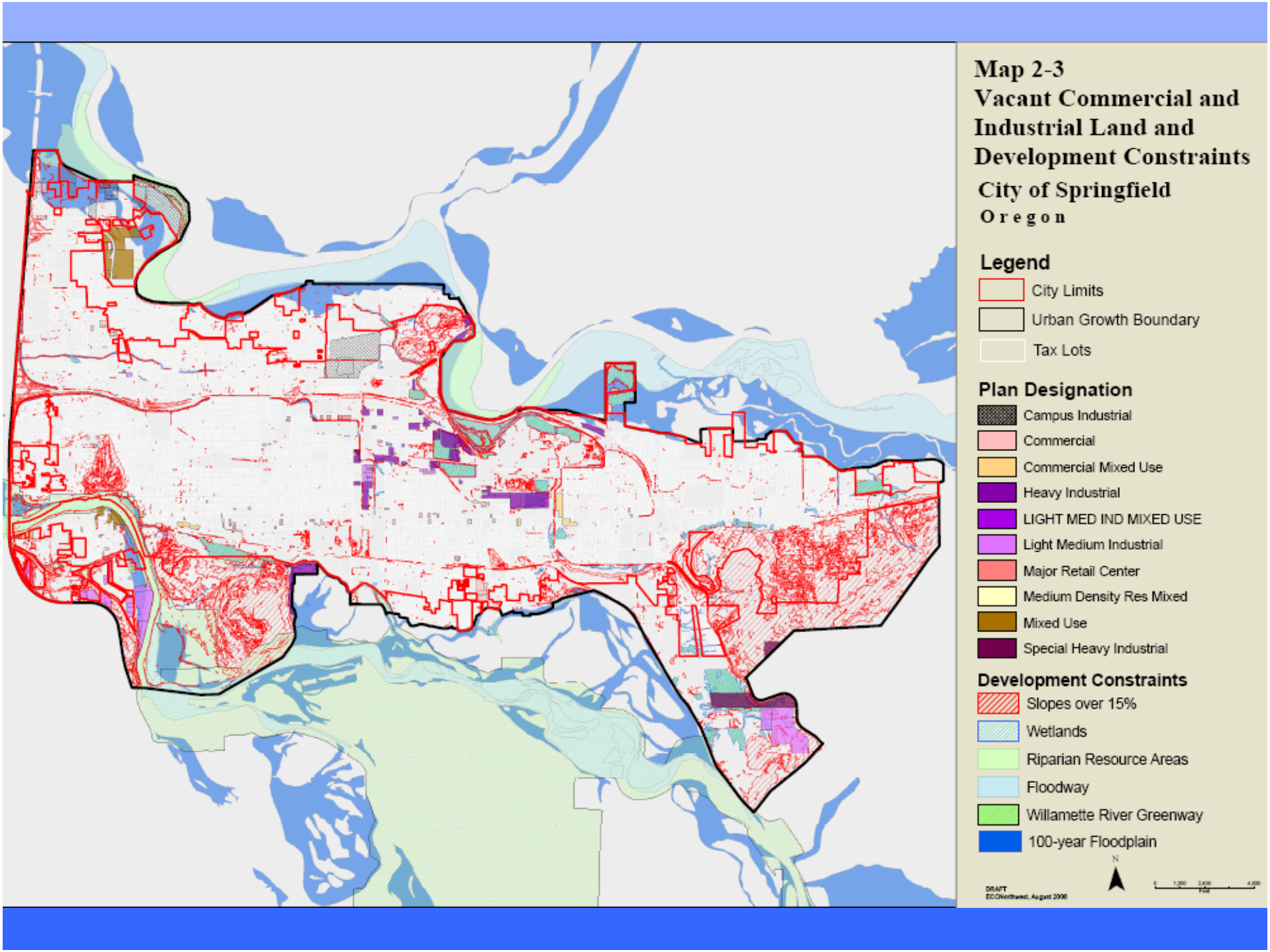
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ECONorthwest, August 2000

TAC Recommendations about Constraints

- Make these assumptions about the effect of constraints:
  - Absolute constraints that are removed from the inventory: floodway, riparian corridors, most wetlands, and most slopes over 15%
  - Partial constraints that make development more complicated: floodplain, Willamette River Greenway, and BPA easements

Economic Opportunities Analysis

Key Employment Trends Affecting Employment Growth

- Changes in Lane County employment between 1980 and 2007
  - Services increased from 23% to 42%
  - Retail decrease from 21% to 13%
  - Manufacturing decrease from 20% to 13%
  - Government decrease from 20% to 16%

Employment Growth Opportunities

- Medical services
- High-tech
- “Green” businesses
- Small scale manufacturing
- Professional and technical services
- Specialty food processing
- Tourism
- Call centers
- Back-Office functions
- Corporate headquarters
- Services for residents and seniors
- Government and public services

Employment Growth 2010-2030

- Nearly 13,500 new employees

Building Type	2010 Employment	2010 % of Total	2030 Employment	2030 % of Total	Change 2010 to 2030
Industrial					
Warehousing & Distribution	2,954	7.0%	3,343	6.0%	389
General Industrial	6,457	15.3%	7,523	13.5%	1,066
Commercial					
Office	12,561	29.7%	17,274	31.0%	4,713
Retail	7,709	18.2%	9,752	17.5%	2,043
Medical & Government	12,603	29.8%	17,831	32.0%	5,228
Total	**42,284**	**100.0%**	**55,723**	**100.0%**	**13,439**

Assumptions about Employment Infill

- Some new jobs will not need employment land
- New jobs that will locate on non-employment land
  - 1,918 new jobs
  - 14% of new jobs
- New jobs that will locate in existing built space
  - 1,344 new jobs
  - 10% of new jobs
- 3,626 or 24% of new employment will <u>not</u> require buildable land
- 10,177 new jobs will require employment land

Long-term Site Needs

- Based on current distribution of firm and site size

	Site Size (acres)						
	Less than 1	**1 to 2**	**2 to 5**	**5 to 20**	**20 to 50**	**Greater than 50**	**Total**
Total Employment	2,170	1,148	1,153	1,979	1,454	2,273	10,177
Average Employees per Firm	12	30	39	101	594	1,432	
Needed Sites based on historic employment patterns	181	38	30	20	2	2	273
Range of needed sites	**180 to 250**	**40 to 70**	**30 to 60**	**20 to 45**	**3 to 6**	**2 to 4**	**295 to 435**

Long-term Site Needs

- Majority of sites smaller than 5 acres
- 8 sites larger than 20 acres

	Site Size (acres)						
Building Type	**Less than 1**	**1 to 2**	**2 to 5**	**5 to 20**	**20 to 50**	**Greater than 50**	**Total Sites**
Warehousing & Distribution			3	5	1		9
General Industrial	5	7	10	11	3	3	39
Office	100	20	20	5	1		146
Retail	70	15	10	4			99
Medical & Government	50	18	5	5			78
Total	**225**	**60**	**48**	**30**	**5**	**3**	**371**

But how much land does Springfield need?

We can't yet provide a definitive answer…

- It depends on assumptions about land capacity from:
  - Infill
  - Redevelopment
- However, it appears the City has a deficit of larger sites

TAC Recommendations for Assumptions about Land Capacity

- Infill Assumptions
  - Assume that 14% of new jobs will locate on non-employment land
  - Assume that 10% of new jobs will locate in existing built space
- Use the proposed redevelopment assumptions with the following changes
  - Discount redevelopment potential along Highway 126 outside of downtown because of ODOT's requirements for development

Comments Received to Date

Comments on the EOA

1. Potential for employment in call centers: region may accommodate up to 3,000 more jobs
2. Need for large mfg sites: Lost 10 opportunities in 2008 because of lack of sites 50-200 acres
3. Need for land-use buffers with industrial sites: Problems with existing industrial uses and compatibility

Comments on the EOA

4. Redevelopment assumptions: Some sites may be redevelopable but have artificially low land value
5. CIBL Committee's contribution to EOA: Not clear how Committee's work has influenced EOA.

Next Steps

OAR 660-024-0050(4)

"If the inventory demonstrates that the development capacity of land inside the UGB is inadequate to accommodate the estimated 20-year needs… the local government must amend the plan to satisfy the need deficiency, either by increasing the development capacity of land already inside the city or by expanding the UGB, or both, and in accordance with ORS 197.296 where applicable. Prior to expanding the UGB, a local government must demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB. Changes to the UGB must be determined by evaluating alternative boundary locations consistent with OAR 660-024-0060."

Alternatives Analysis

- Must evaluate alternatives, including land efficiency measures and alternative boundary locations
- Must start with highest priority and work down (e.g., consider exceptions areas first)
- Application of Goal 14 criteria
- Can consider land that is not adjacent
- Can consider site requirements
- Must include a map of alternatives considered
- Can consider costs, advantages and disadvantages of public services

Boundary Location

- The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the [Goal 14] factors.
- Implication: All land adjacent to the UGB must be considered in the alternatives analysis

ORS 197.298

UGB expansion priorities:

1. Urban reserve areas (Springfield does not have urban reserves)
2. Exceptions areas
3. Marginal lands (Lane County is a marginal land county)
4. Resource lands

Goal 14 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
4. Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB

Process Steps

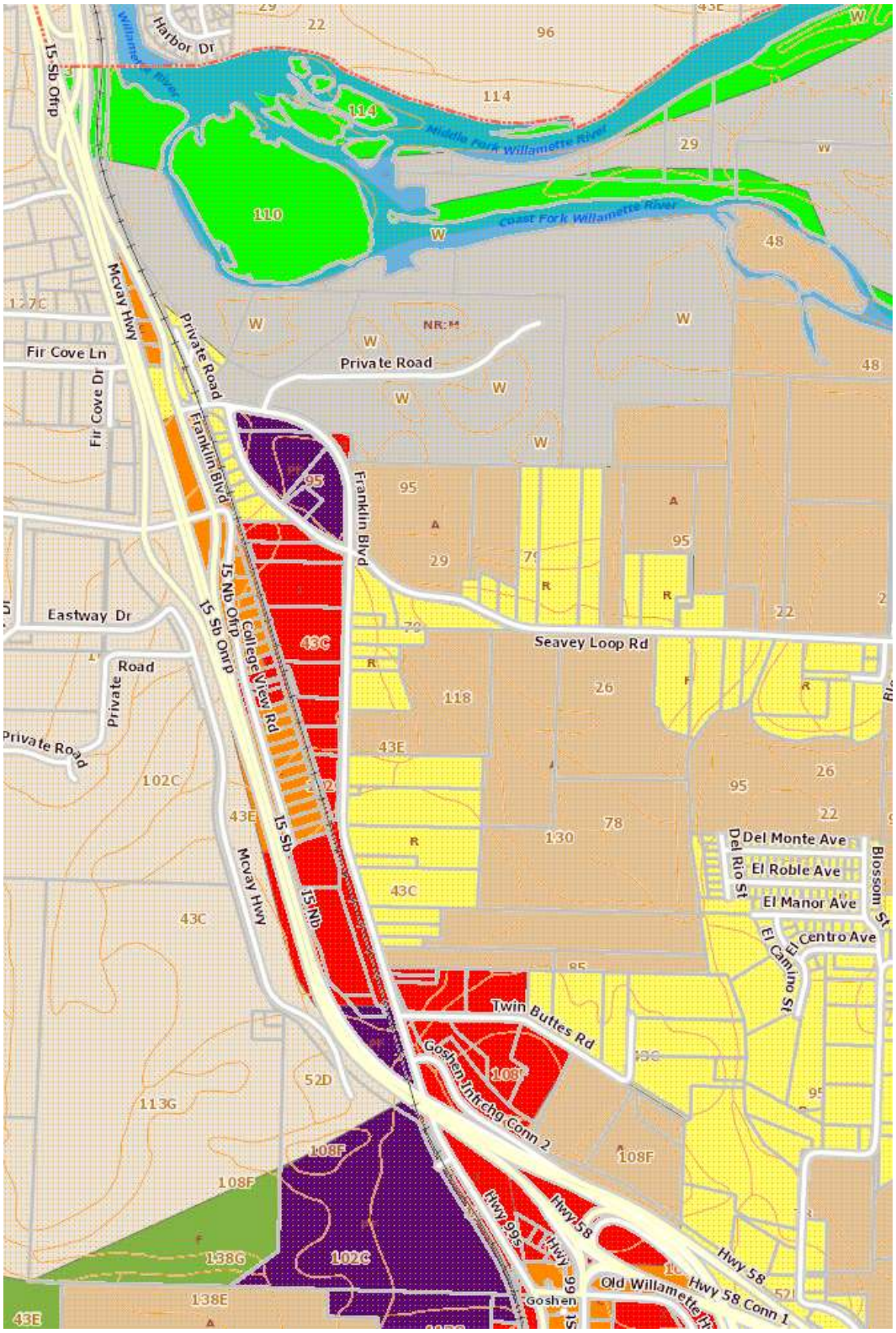
- Finalize EOA and land need estimates
- Identify UGB expansion study areas (including all areas adjacent to UGB, except Eugene UGB)
- Solicit requests for inclusion from property owners
- Use ORS 197.298 and Goal 14 factors to conduct “first cut” elimination

Process Steps (cont.)

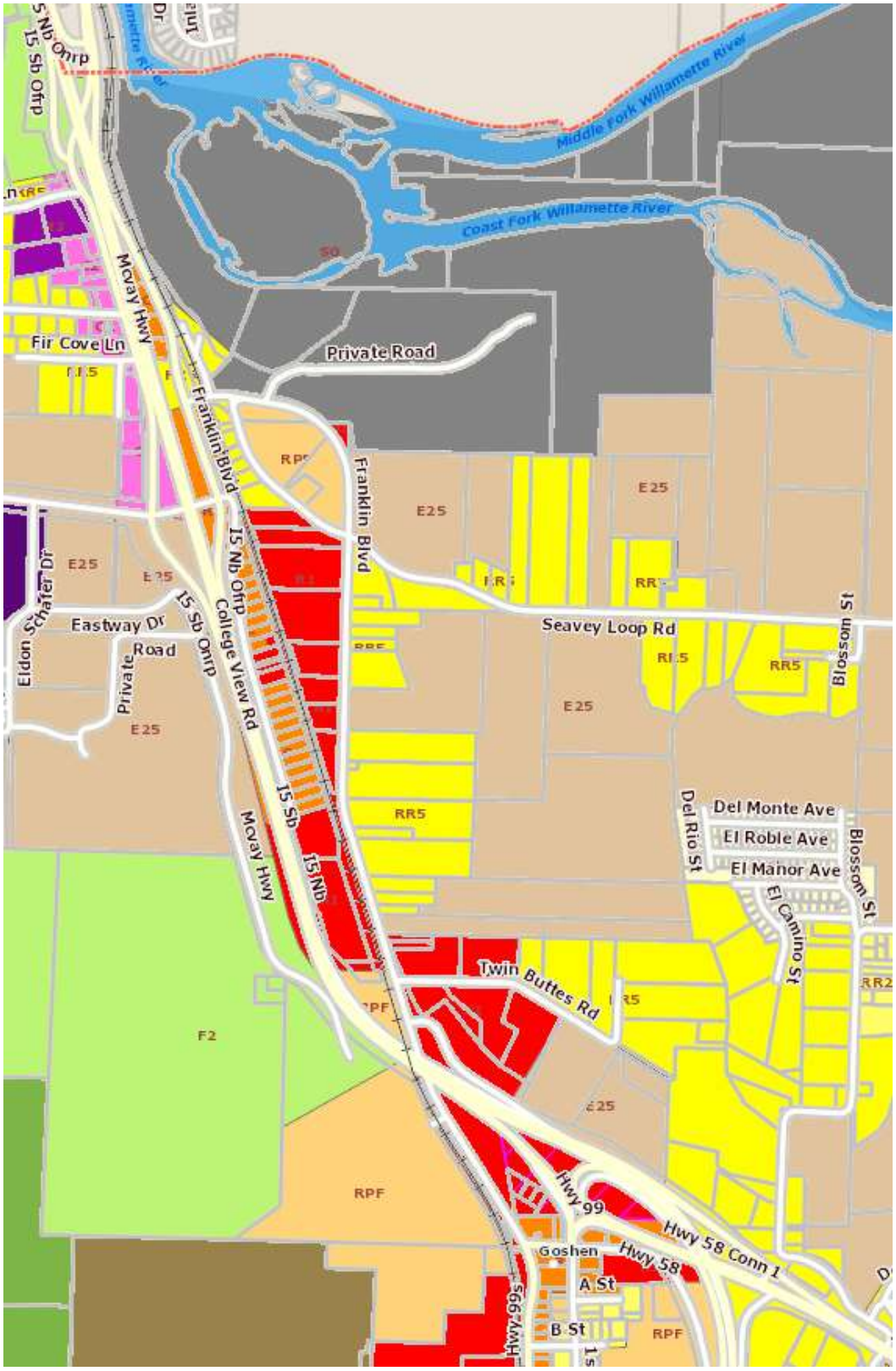
- Apply any “special” site needs criteria
- Conduct more detailed evaluation of Goal 14 criteria
- Select preferred alternative

Seavey Loop Area Plan and Zone Designation Map Excerpts

County Plan Designations and Soils Information



County Zone Designations



IN THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDINANCE NO. PA 1283	IN THE MATTER OF AMENDING THE LANE COUNTY RURAL COMPREHENSIVE PLAN BY APPLYING PLAN DESIGNATIONS TO LANDS REMOVED FROM THE METRO PLAN PURSUANT TO ORDINANCE NO. PA 1281; ADOPTING THE CITY OF SPRINGFIELD PARCEL SPECIFIC UGB BOUNDARY ON OFFICIAL LANE COUNTY RURAL COMPREHENSIVE PLAN MAPS TO COMPLY WITH OAR 660-024-0020(2); AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES.

WHEREAS, through Ordinance No. PA 1281, the partners of the Eugene-Springfield Metropolitan Area General Plan (Metro Plan) have jointly modified the boundaries of the Metro Plan; and

WHEREAS, it is now necessary to amend the Lane County Rural Comprehensive Plan (RCP) to apply RCP plan designations to lands removed from the Metro Plan pursuant to ordinance no. PA 1281; and

WHEREAS, it is also necessary to adopt the City of Springfield's parcel specific Urban Growth Boundary location on official Lane County RCP plan and zone maps to comply with OAR 660-024-0020(2); and

WHEREAS, the proposal was reviewed at a hearing of Lane County Planning Commission on July 19, 2011, and August 16, 2011; and

WHEREAS, the proposal was also reviewed at hearing of the Lane County Board of Commissioners on March 13, 2012; and

WHEREAS, evidence exists in the record indicating that the proposal meets the requirements of the RCP, Lane Code and applicable state law; and

WHEREAS, the Board of County Commissioners is now ready to take action.

NOW, THEREFORE, the Board of County Commissioners of Lane County ordains as follows:

Section 1. The Official Lane County Rural Comprehensive Plan (RCP) - plan maps # 1701, 1702, 1703, 1802 and 1803, which are included as Exhibits A-E to this ordinance are hereby repealed and replaced with the amended RCP plan maps # 1701, 1702, 1703, 1802 and 1803 included as Exhibits F-J attached and incorporated herein by this reference.

Section 2. The Official RCP – zone maps # 1702, 1703, 1802 and 1803, which are included as Exhibits K-N to this ordinance are hereby repealed and replaced with the amended RCP zone maps # 1702, 1703, 1802 and 1803 included as Exhibits O-R attached and incorporated herein by this reference.

Section 3. The prior policies, plan and zone diagram designations repealed or changed by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

Section 4. If any section, subsection, sentence, clause phrase of portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such section shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

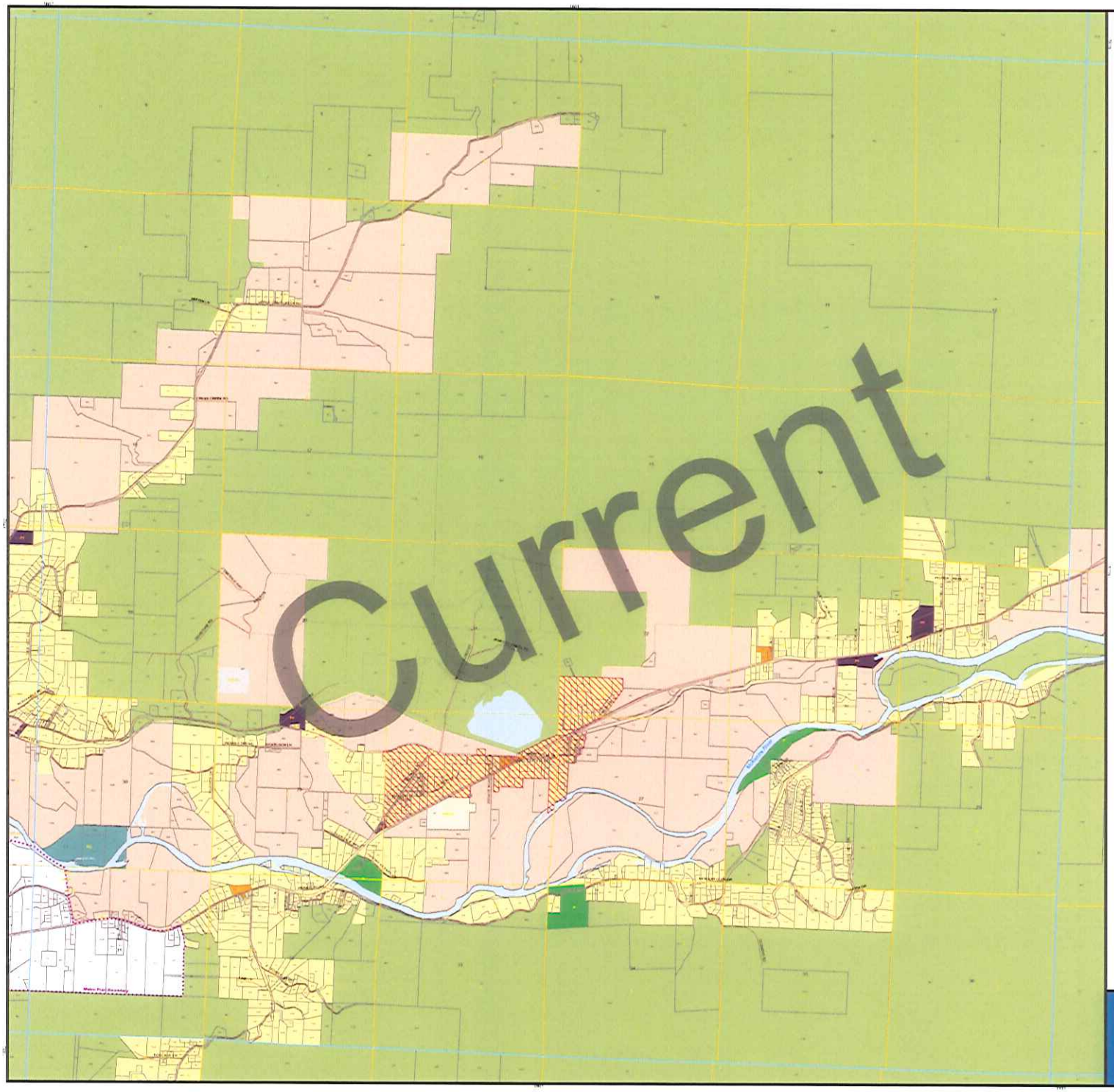
FURTHER, although not part of this Ordinance, the Board of County Commissioners adopts findings and conclusions in support of this action as set forth in Exhibit "E" to Ordinance No. PA 1281, incorporated here by this reference.

ENACTED this 4th day of June, 2013

Sid Leiken, Chair
Lane County Board of Commissioners

Recording Secretary for this Board Meeting

APPROVED AS TO FORM
Date 2/18/12 Lane County
OFFICE OF LEGAL COUNSEL



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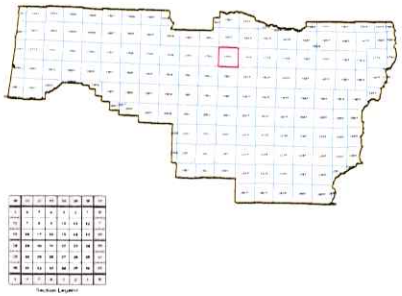

RCP Plan Designations

- F - Forest
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UGB | Township Range | Parcels
City Limits | Sections | Roads
Communities: Rural, Urban | Metro Plan Boundary | Surface Water

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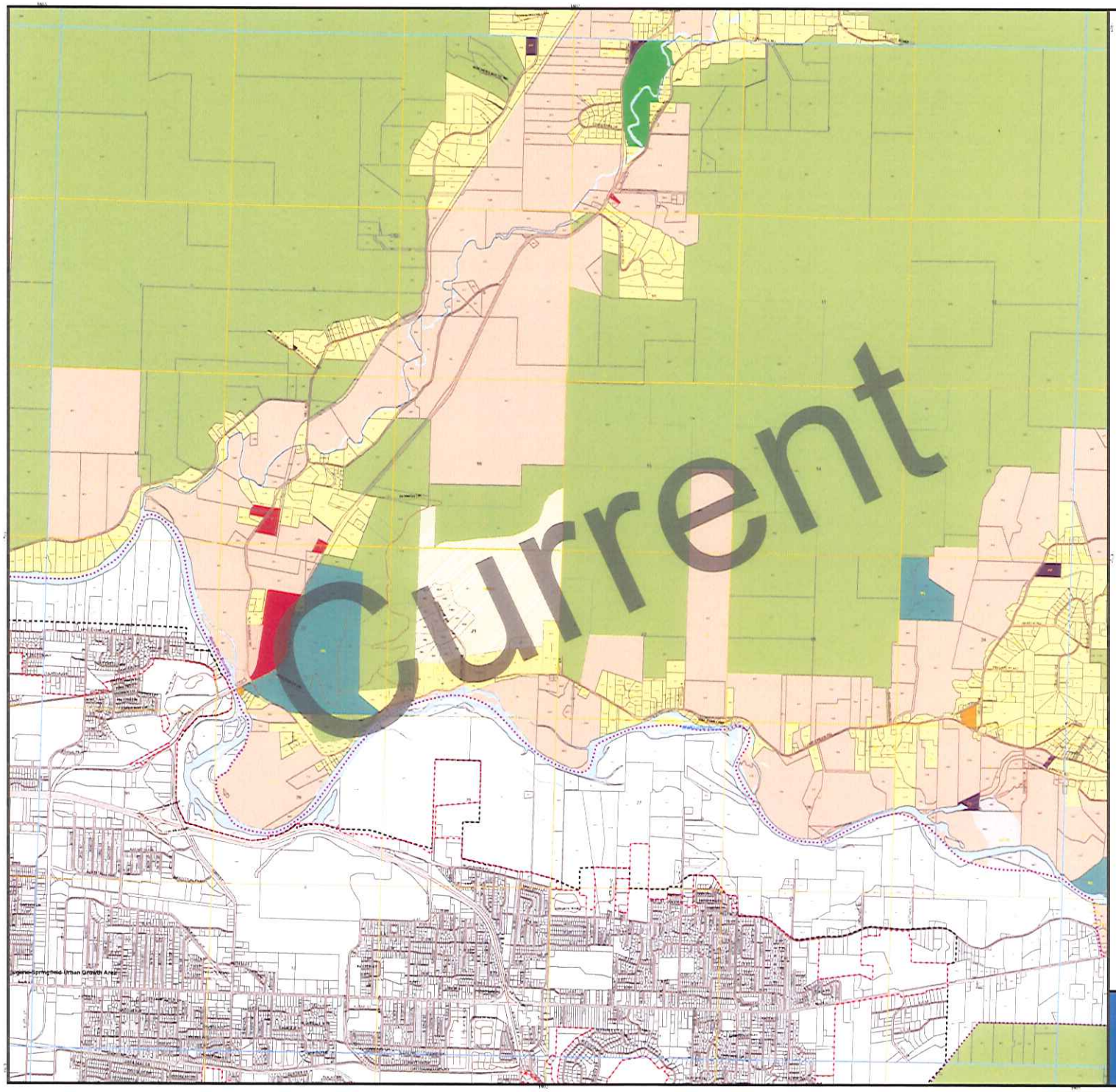
Official Lane County Plan Map



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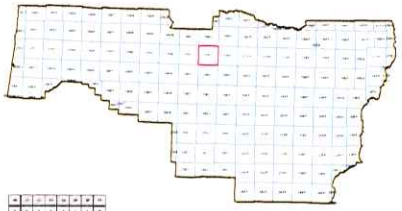

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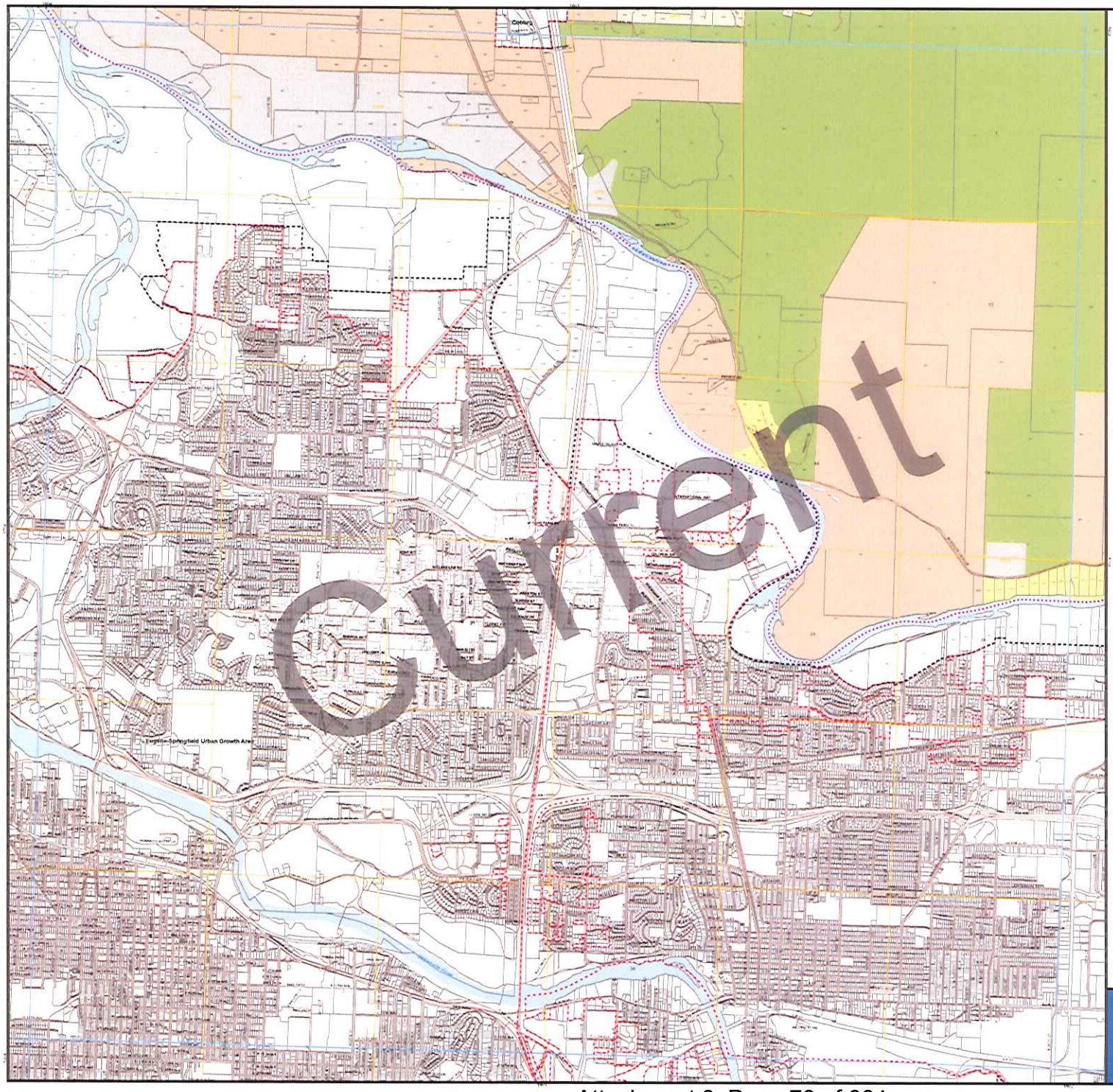

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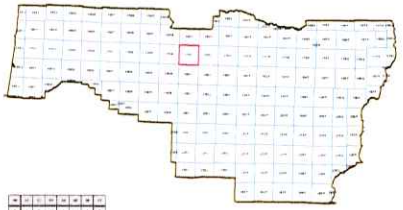

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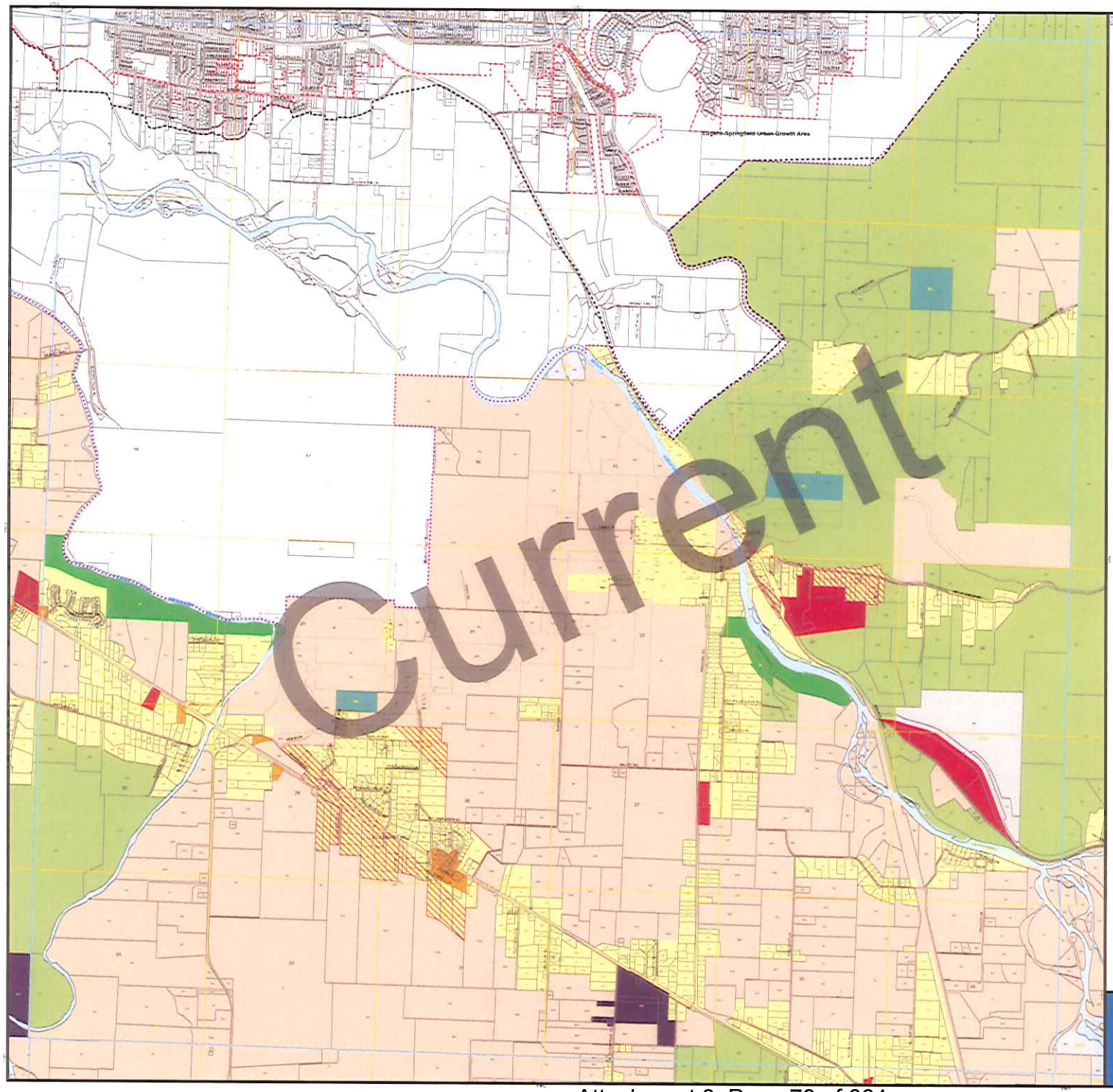

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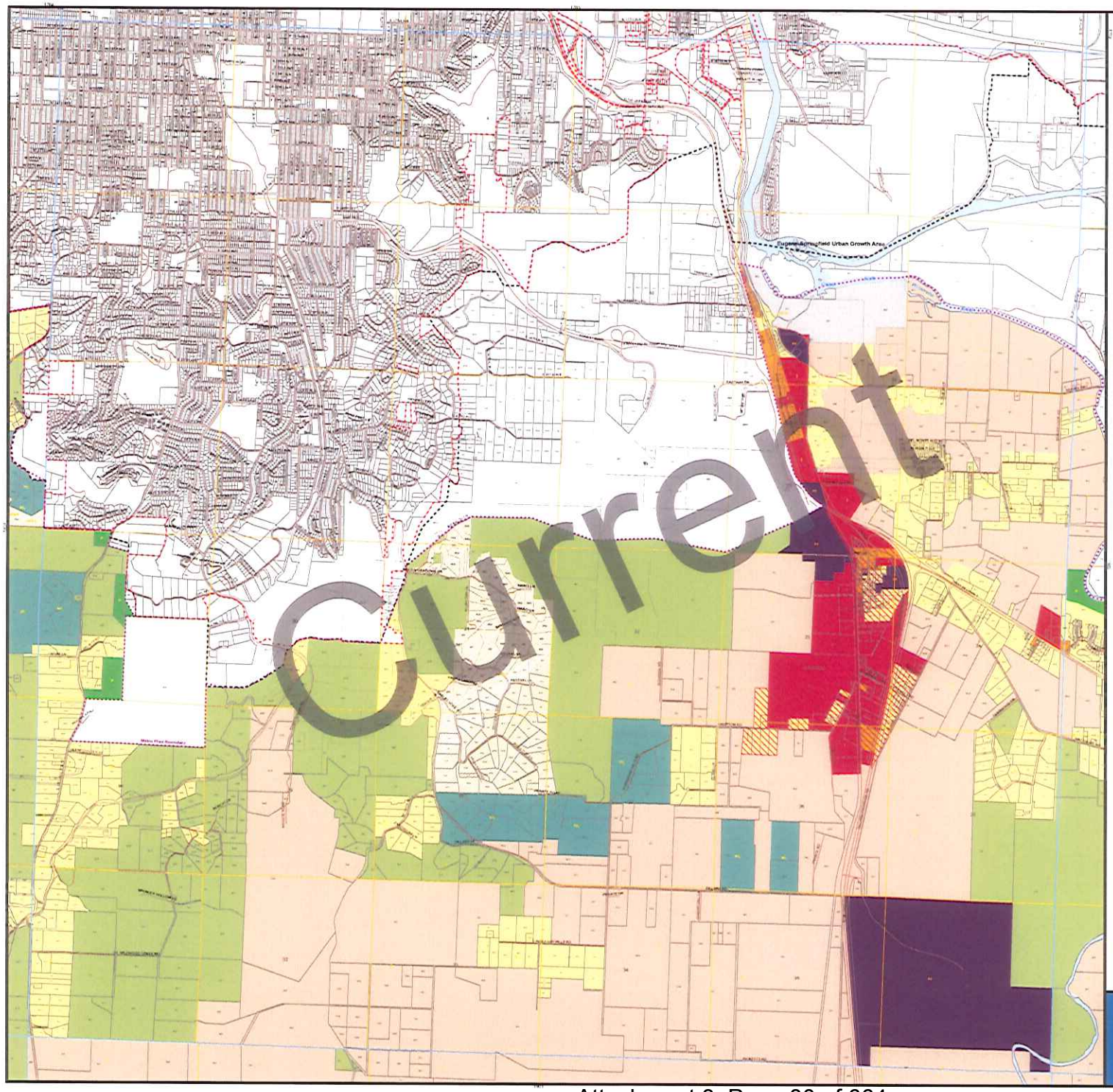

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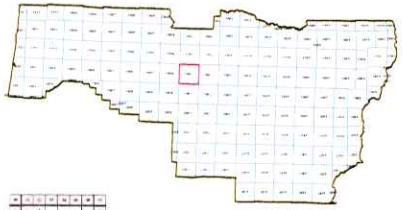

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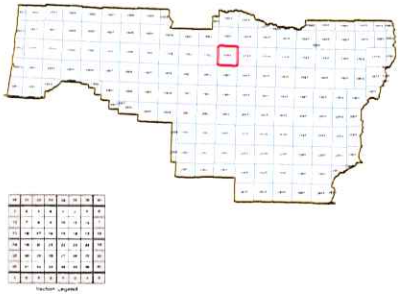

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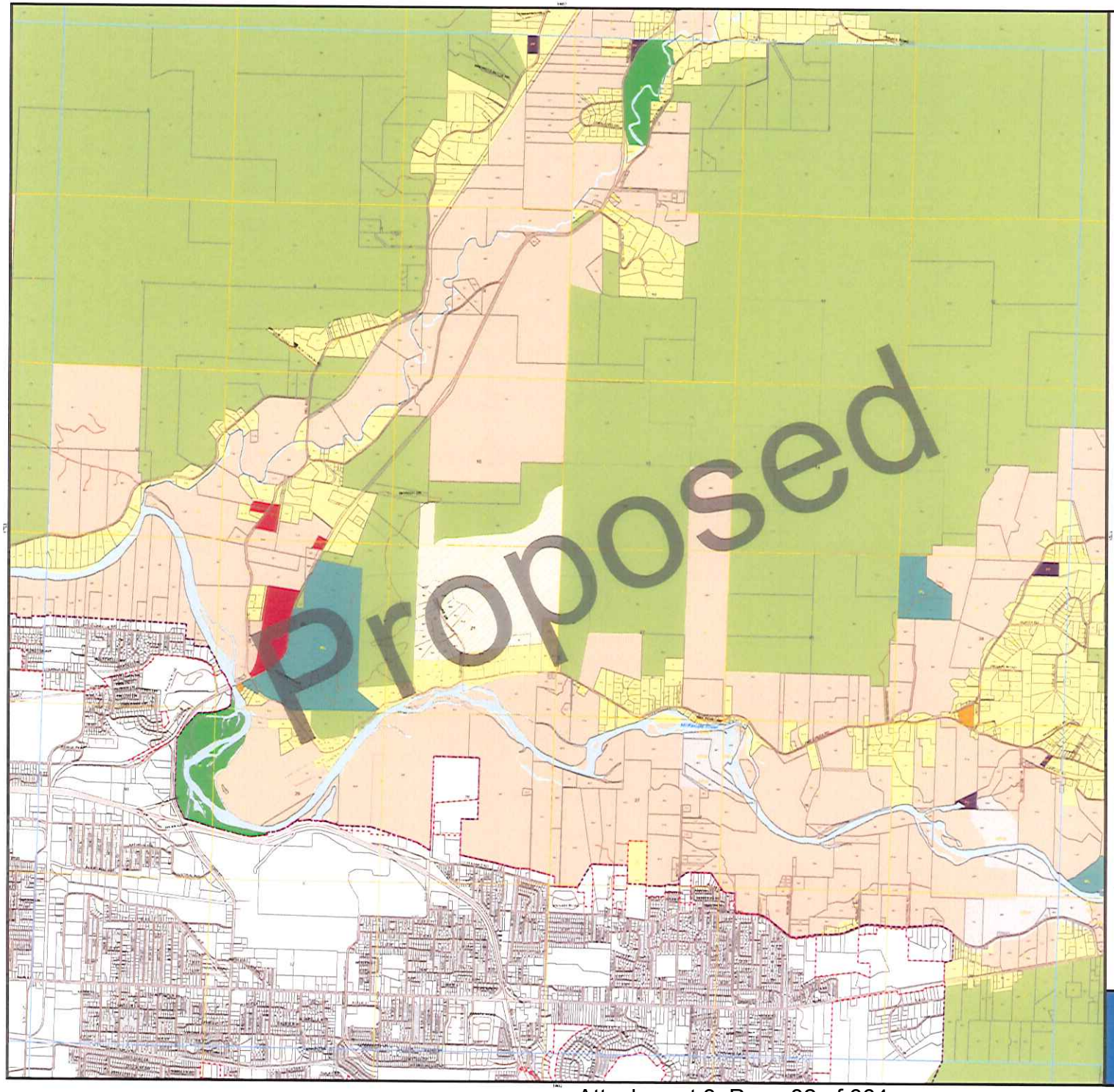

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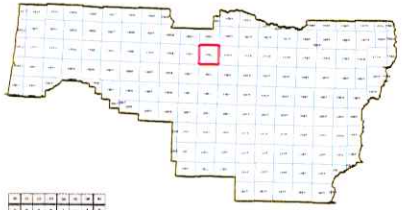

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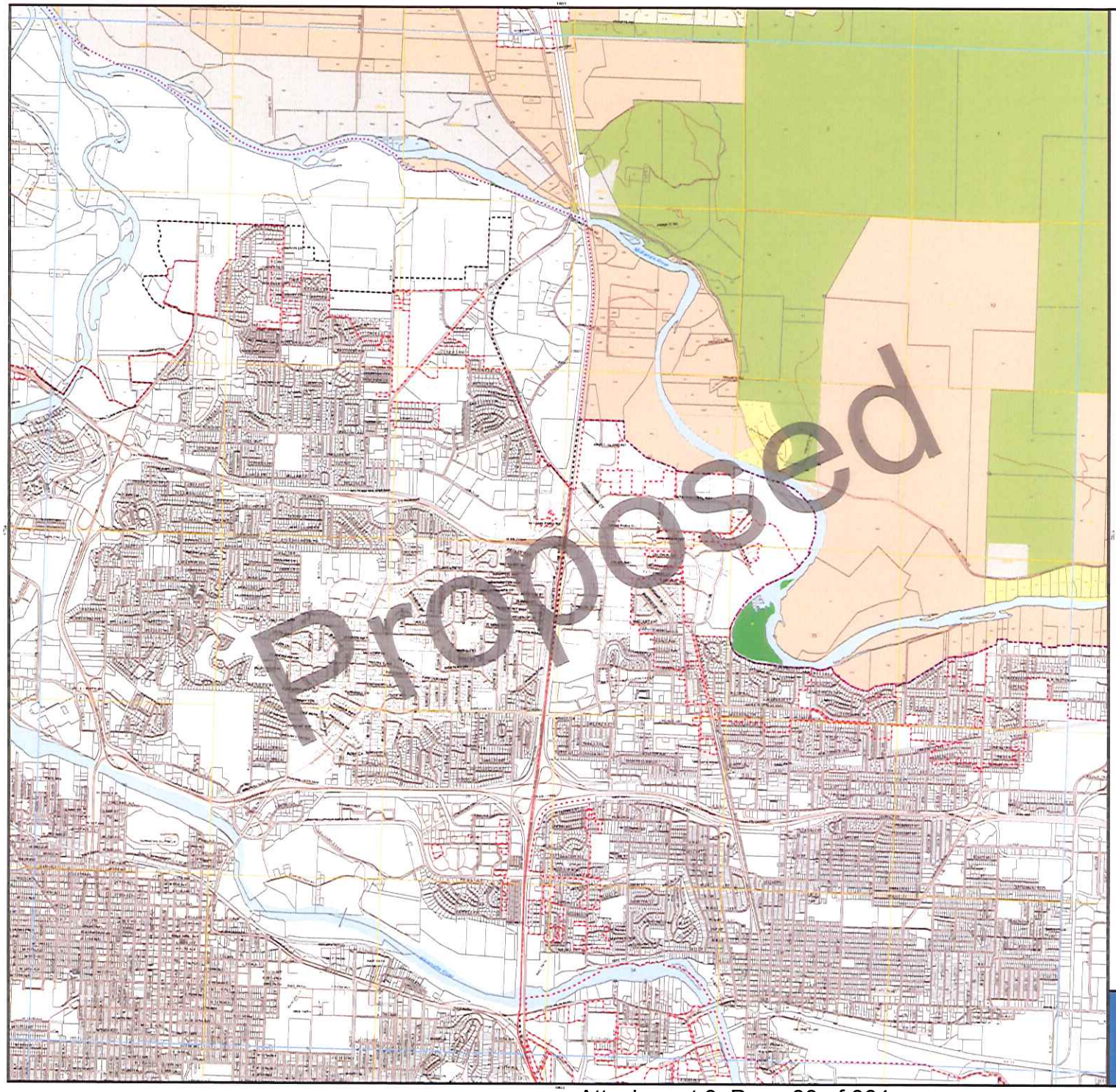

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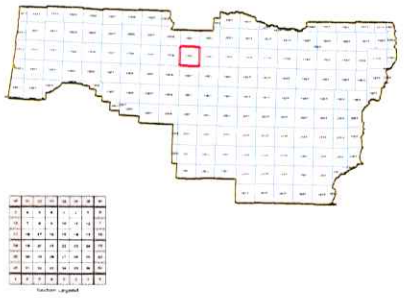

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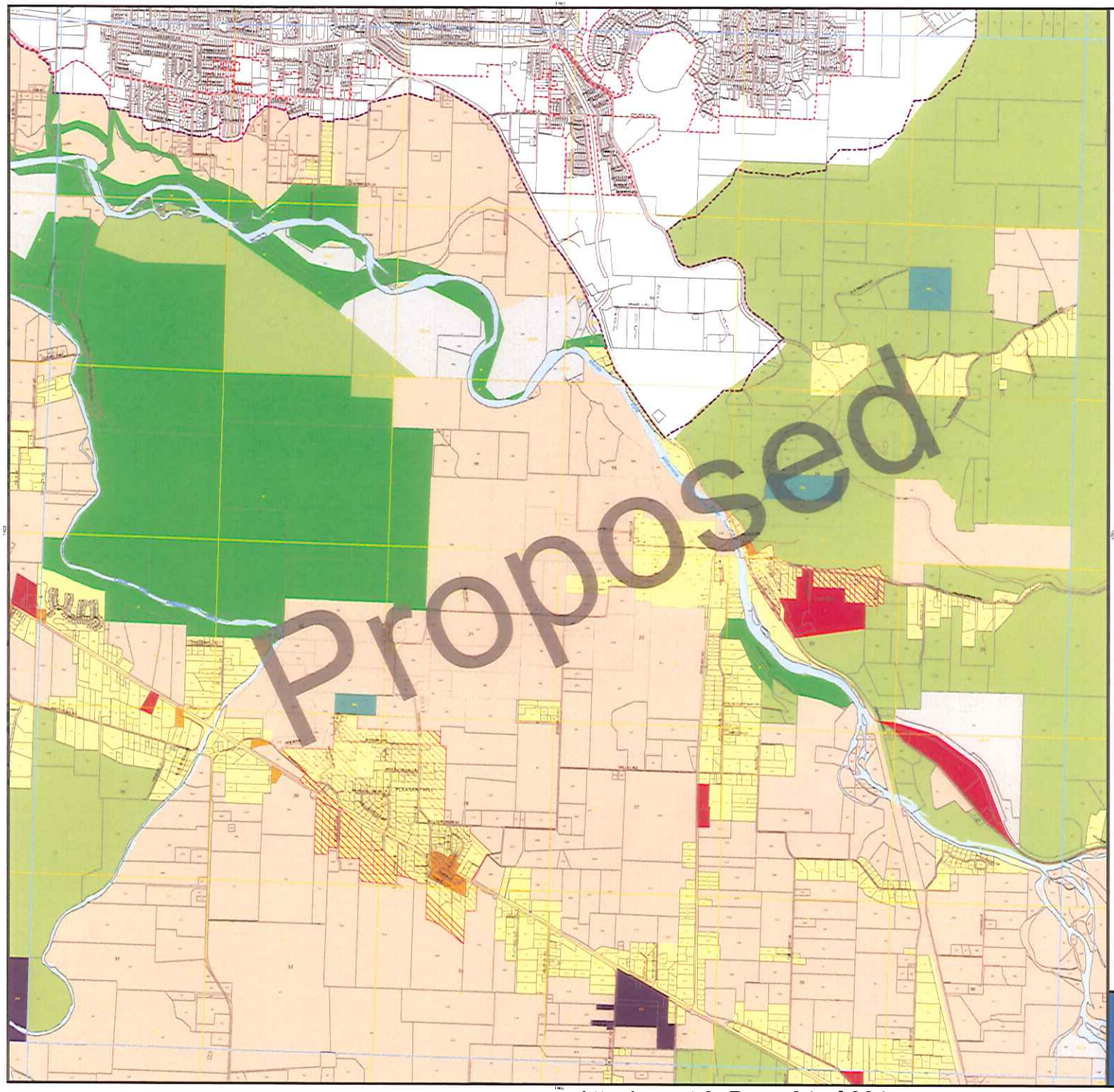

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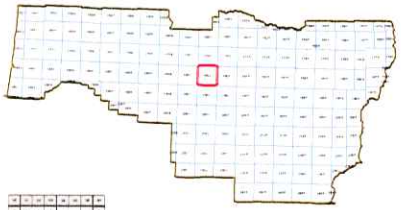

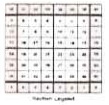

RCP Plan Designations

- F - Forest
- A - Agricultural
- ML - Marginal
- C - Commercial
- I - Industrial
- R - Residential
- NRES - Non Resource
- P - Parks
- AIR - Airport
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UGB	Township Range	Parcels
City Limits	Sections	Roads
Communities: Rural, Urban	Metro Plan Boundary	Surface Water

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Revision	Ordinance or Order Number	Date Effective	Planning Action Number	Revision Description
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2	NA	Oct 10, 2008	NA	[illegible]
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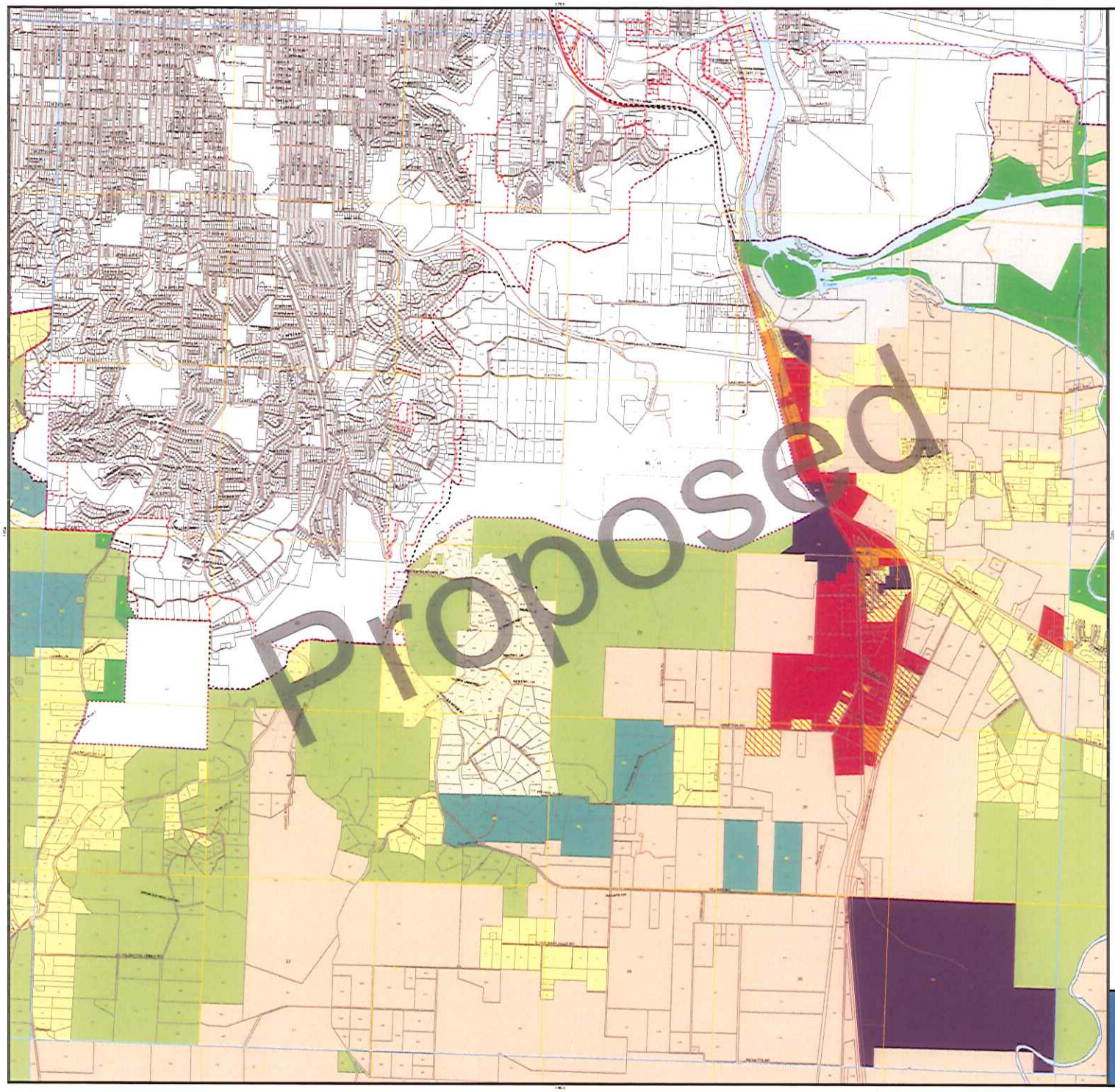
Official Lane County Plan Map



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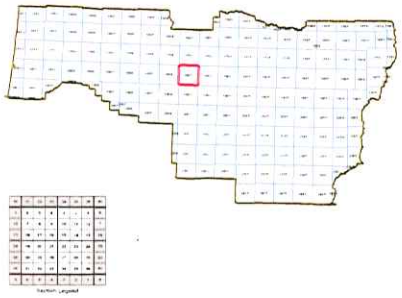

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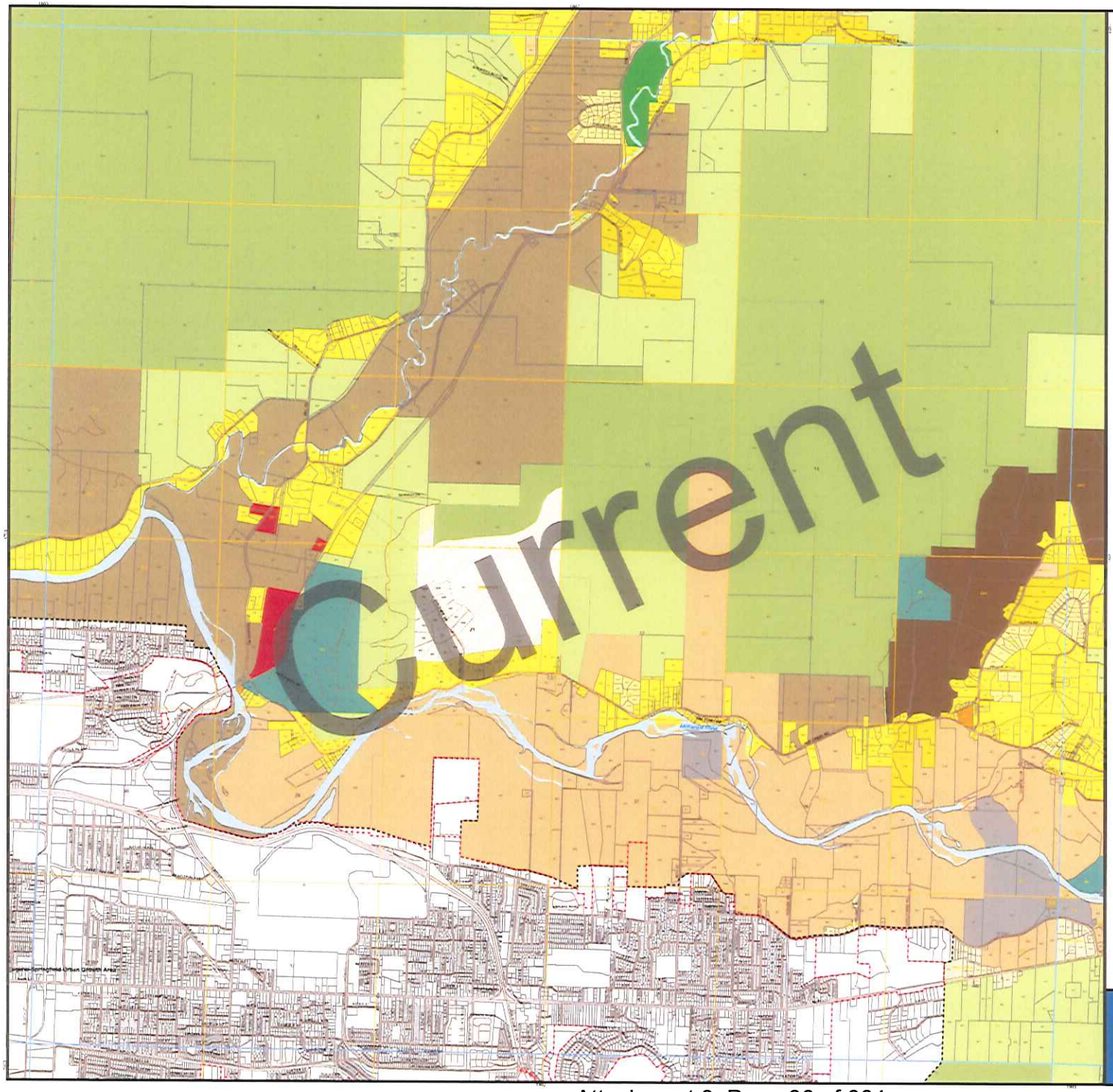

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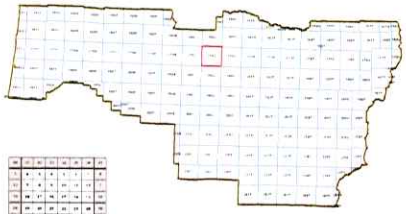

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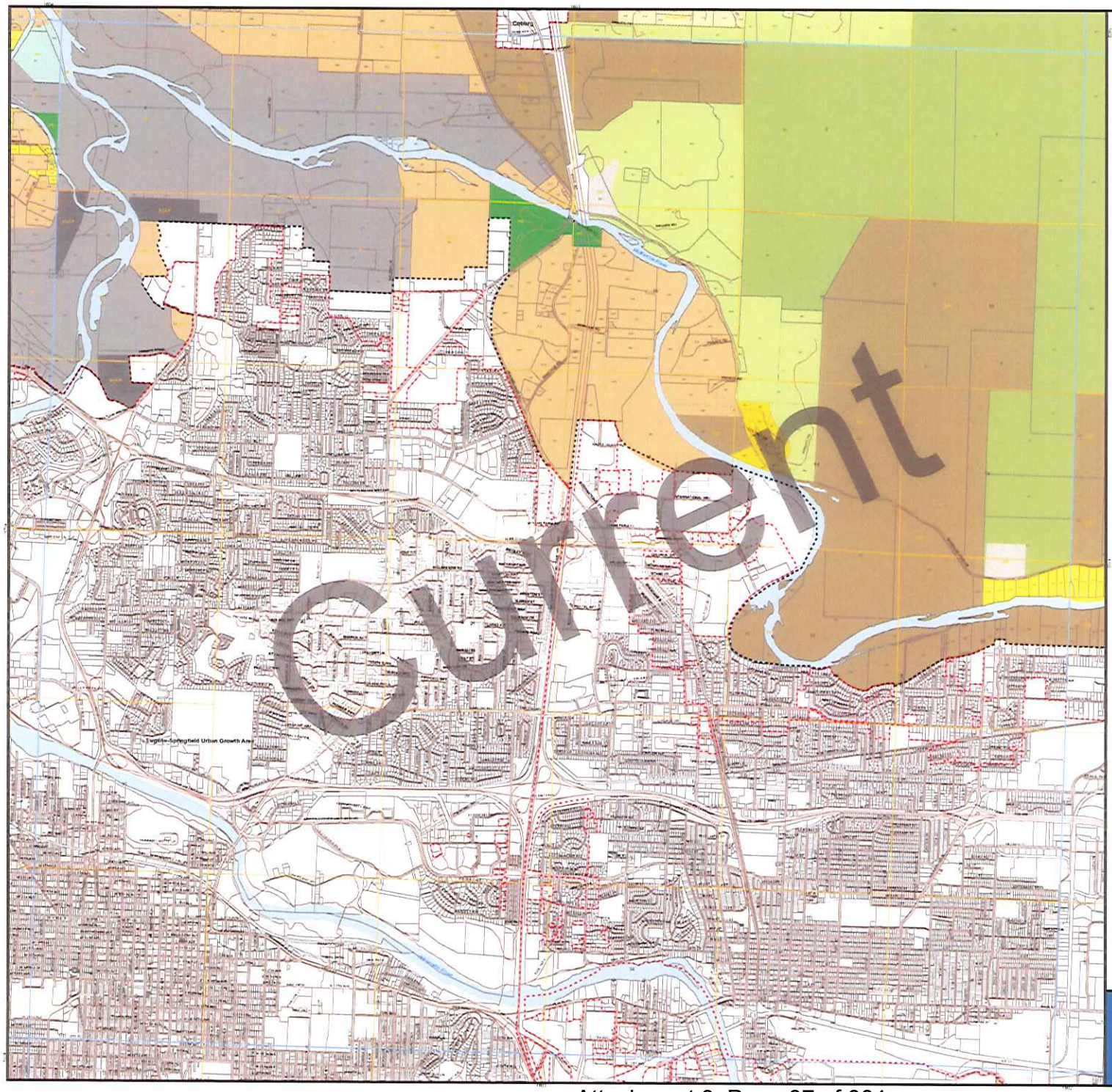

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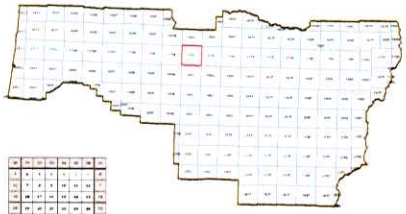

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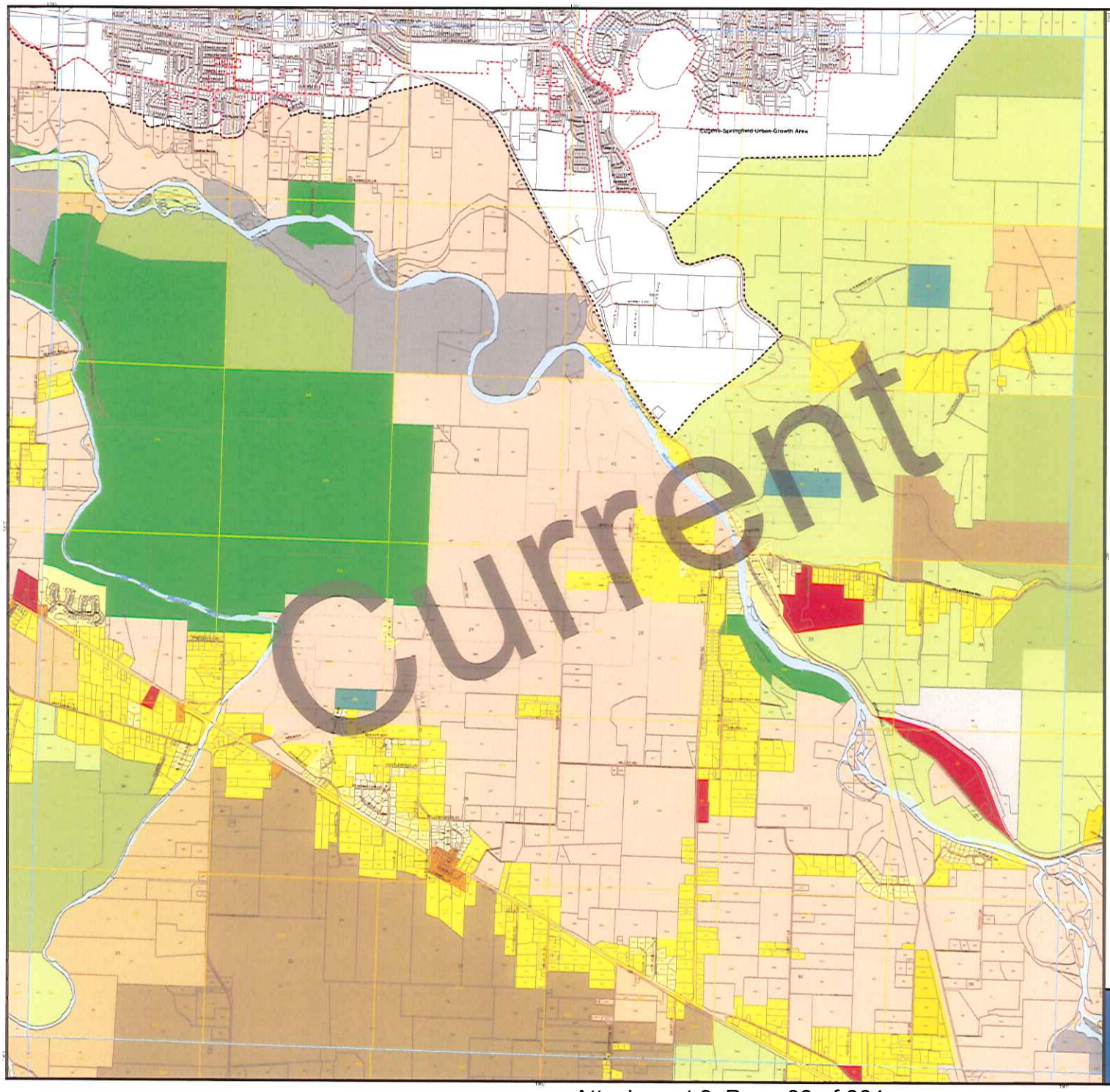

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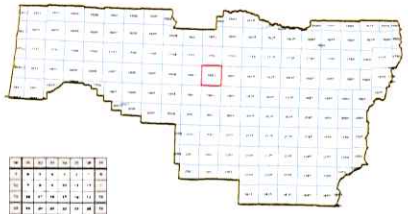

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UGB | Township Range | Parcels | Surface Water
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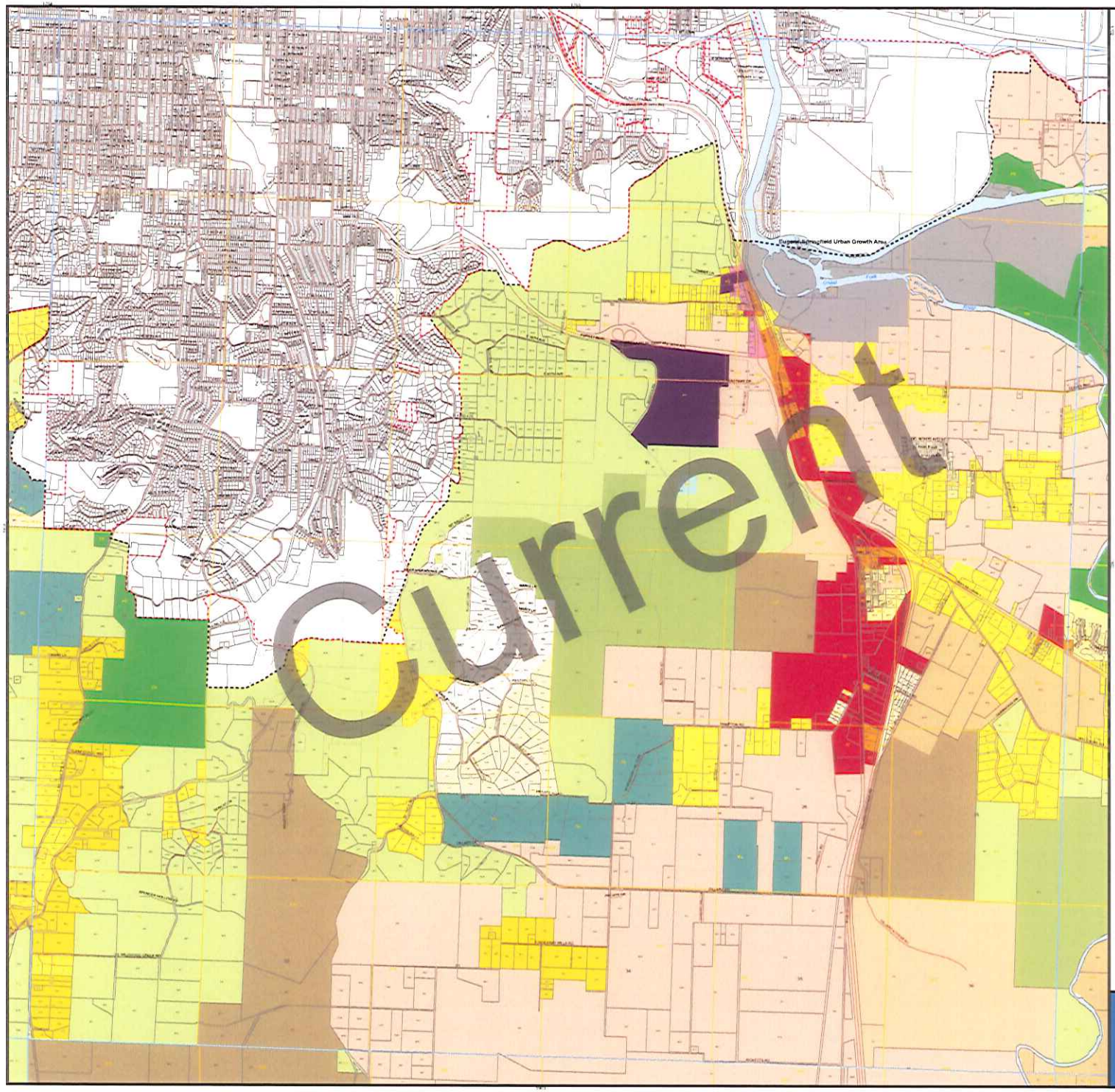

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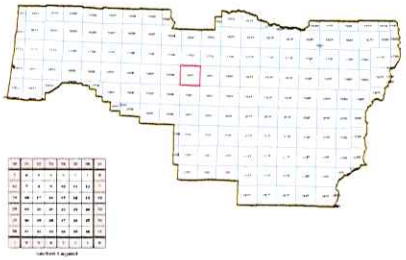

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UGB | Township Range | Parcels | Surface Water
City Limits | Sections | Roads

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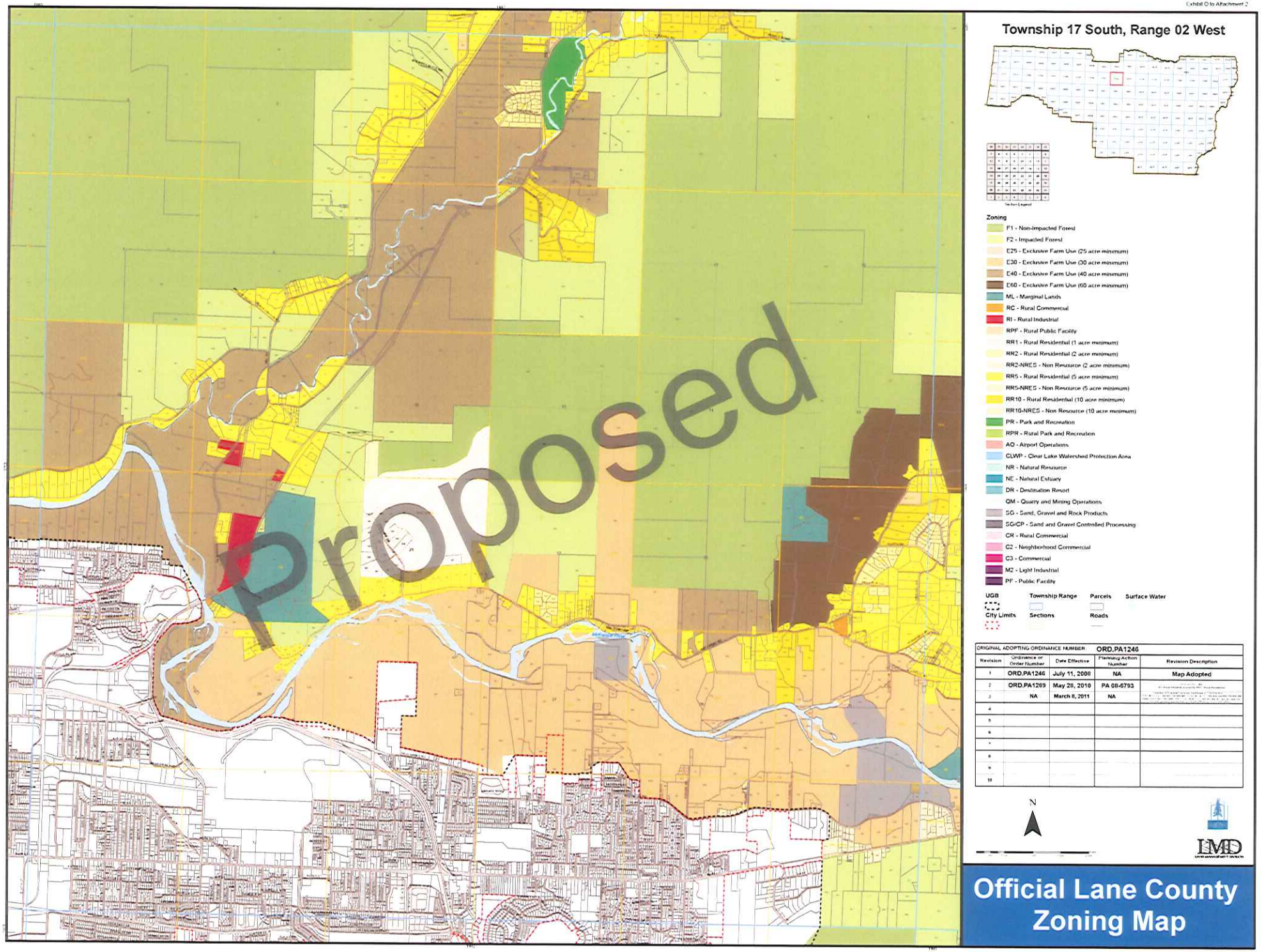
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2 | ORD.PA1269 | May 28, 2010 | PA 08-6793
3 | NA | March 8, 2011 | NA
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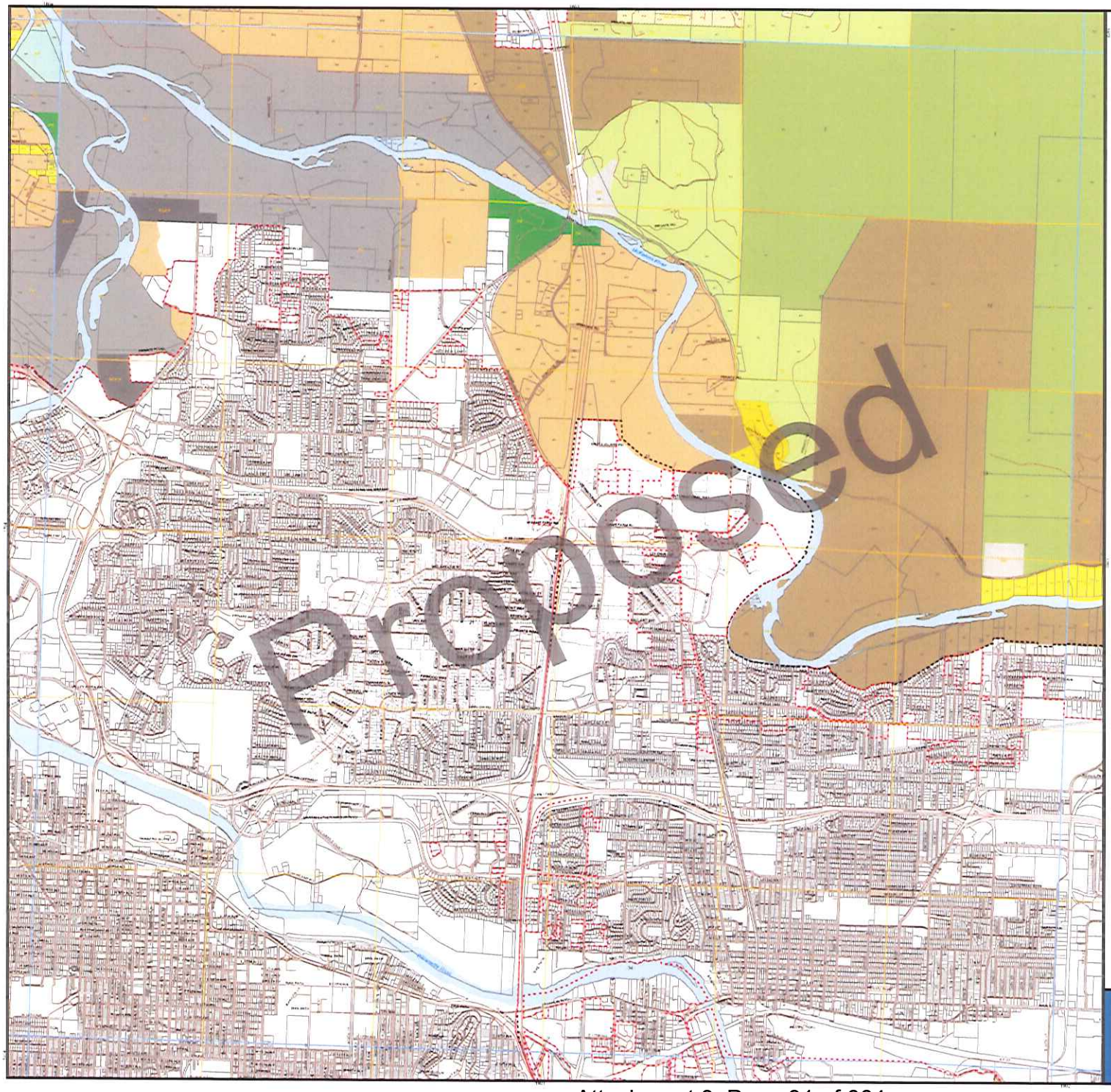
Official Lane County Zoning Map
Proposed



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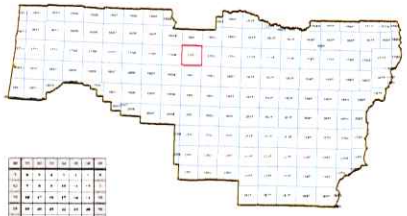

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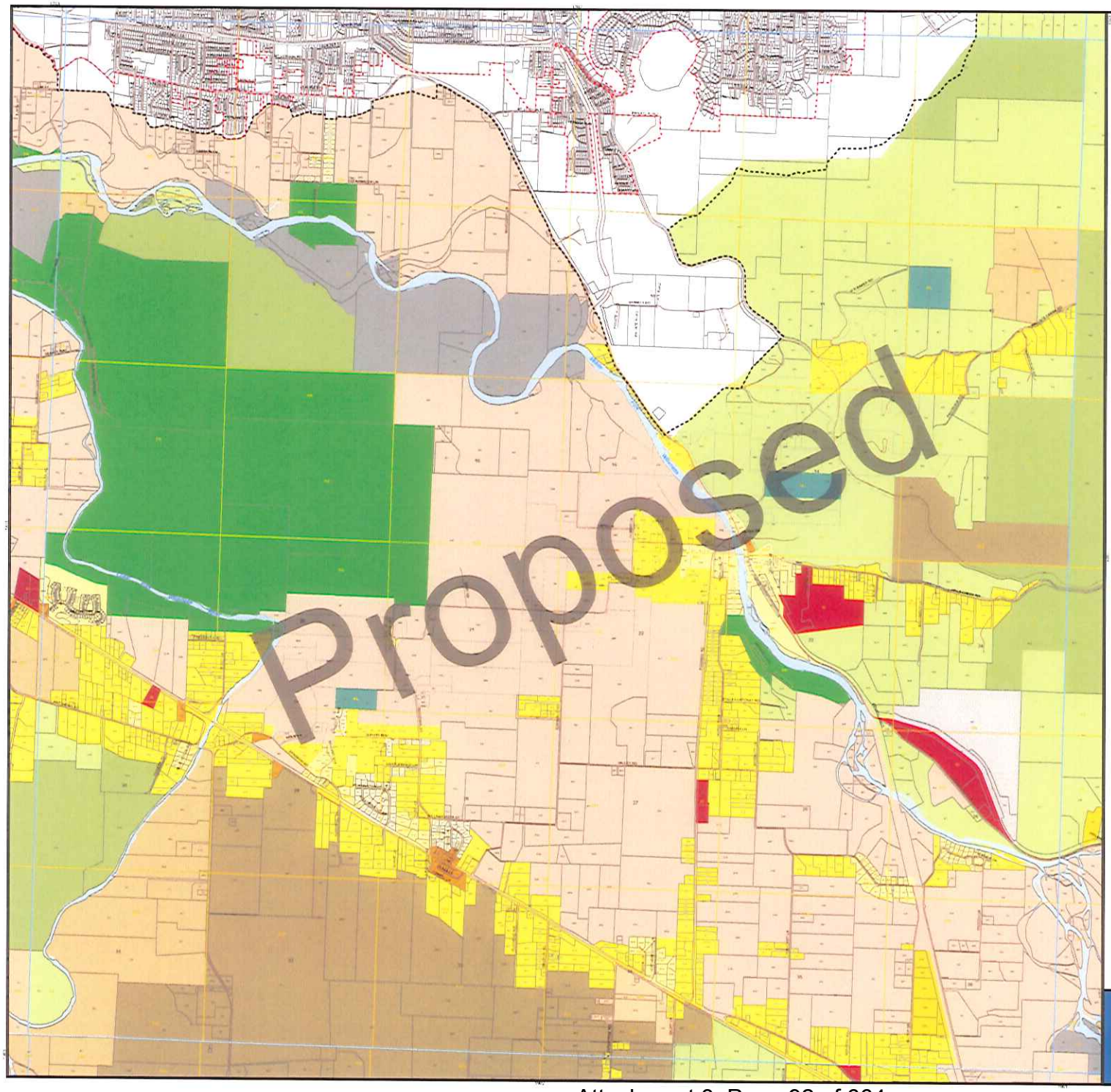

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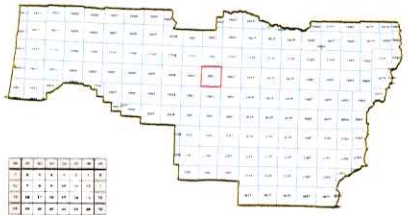

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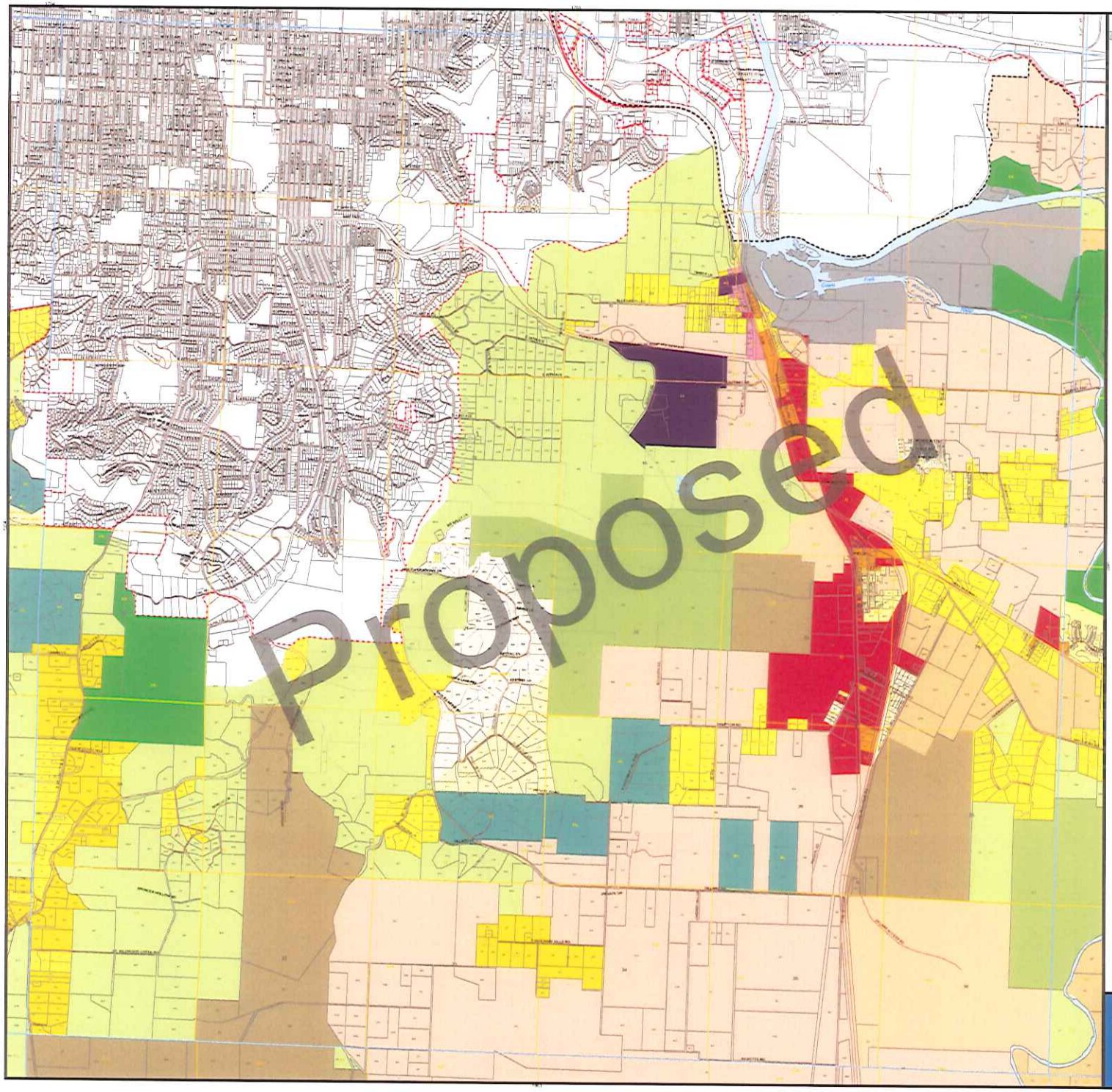

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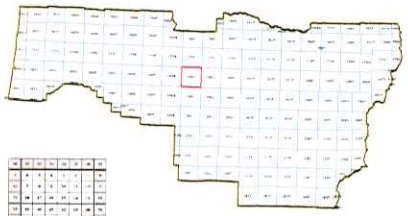

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AGENDA ITEM SUMMARY	**Meeting Date:**	June 22, 2009
	Meeting Type:	Work Session
	Department:	Development Services
	Staff Contact:	Linda Pauly
S P R I N G F I E L D	**Staff Phone No:**	(541) 726-4608
C I T Y C O U N C I L	**Estimated Time:**	1 hour

ITEM TITLE:	URBAN GROWTH BOUNDARY ALTERNATIVES ANALYSIS
ACTION REQUESTED:	Conduct a joint work session with the Planning Commission regarding the Alternatives Analysis phase of Springfield's land supply and urban growth boundary (UGB) study. Staff and the City's consultant (ECONorthwest) are asking the Council and Planning Commission to be aware that three draft concepts for potential urban growth boundary expansion are ready to be circulated for public review and comment.
ISSUE STATEMENT:	ECONorthwest is preparing a land use Alternatives Analysis for the City of Springfield. It includes an analysis and justification for urban growth boundary expansion as necessary to meet documented shortfalls of commercial, industrial and residential land. The study area for potential Springfield growth is land adjacent to the Springfield portion of the Metropolitan UGB. ECONorthwest will 1) provide an overview of opportunity areas for employment, residential, and public/semi-public uses; 2) present three draft land use concepts that will address identified land use deficiencies; and 3) provide background information on the requirements for the Alternatives Analysis. The attached memorandum (Attachment 1) explains the Alternatives Analysis in detail. City Attorney Bill Van Vactor will provide an overview of the urban growth boundary expansion process. Staff will provide an updated UGB Policy Package Public Review and Adoption Schedule (Attachment 4) and discuss next steps. The three concepts and supporting documents will be displayed at two public open houses in July and August, presented to a variety of community groups and other interested parties for comments over the summer months, and at the subject of a public hearing before the joint City and Lane County planning commissions on September 15, 2009.
ATTACHMENTS:	1. Memorandum (ECONorthwest): Requirements for UGB Alternatives Analysis 2. Maps: Study Area Existing Conditions and Constraints 3. Maps: Three Preliminary UGB Expansion Concepts 4. UGB Policy Package Public Review and Adoption Schedule
DISCUSSION/ FINANCIAL IMPACT:	The draft economic opportunities and housing needs analyses both conclude that Springfield will need to expand its UGB to accommodate growth forecast for the 2010-2030 period. The exact acreage of the expansion is not yet known; however, general figures are available. The City needs about 640 suitable acres for employment and about 400 buildable acres for housing and other needs. The final acreage figures will depend on the types of land use efficiency measures the City adopts, as well as the specific areas into which urban growth is to occur. Staff is working with the Planning Commission to develop Plan and Code Amendments that will implement additional efficiency measures. At its work session on June 2, 2009 the Planning Commission and a residential lands focus group endorsed several concepts: 1) increasing density in Glenwood, Downtown, Gateway, in nodes, along transit corridors and possibly as an adjunct to future employment centers in the expansion areas; and 2) establishing a low-medium density plan designation and zoning district (8 to 15 units per net acre) that could allow a mixing of small lot, detached single family homes and slightly higher density row houses and duplexes to encourage development of a wider range of housing choice and price ranges.

ECONorthwest
ECONOMICS • FINANCE • PLANNING

Phone • (541) 687-0051
FAX • (541) 344-0562
info@eugene.econw.com

Suite 400
99 W. 10th Avenue
Eugene, Oregon 97401-3001

Other Offices
Portland • (503) 222-6060
Seattle • (206) 622-2403

10 June 2009

TO: **Springfield City Council**
CC: **Bill Grile, Greg Mott, Linda Pauly**
FROM: **Bob Parker**
SUBJECT: **REQUIREMENTS FOR UGB ALTERNATIVES ANALYSIS AND PRELIMINARY LAND USE CONCEPTS**

This memorandum presents a brief description of state planning requirements for the modifications of Urban Growth Boundaries (UGBs). It also includes maps of lands outside the UGB, with a specific focus on 10 employment opportunity areas.

The objectives of this memorandum (and our June 22nd meeting) are to provide the City Council and Planning Commission with:

- An overview of opportunity areas for employment, residential, and public/semi-public uses
- Three draft land use concepts that will address identified land use deficiencies
- Background information on the requirements for the Alternatives Analysis

PRELIMINARY EVALUATION OF LANDS OUTSIDE THE SPRINGFIELD UGB

The draft economic opportunities and housing needs analyses both conclude that Springfield will need to expand its UGB to accommodate growth forecast for the 2010-2030 period. The exact acreage of the expansion is not yet known; however, general figures are available. The City needs about 640 suitable acres for employment and about 400 buildable acres for housing and other needs. **The final acreage figures will depend on the types of land use efficiency measures the City adopts, as well as the specific areas that it chooses to expand into.**

As a first step in the Alternatives Analysis, ECONorthwest worked with City staff to develop a series of maps showing characteristics of lands adjacent to the existing Springfield portion of the Metropolitan UGB.[1] The primary study area lands adjacent to the Springfield portion of the Metropolitan UGB. The following maps support this memorandum:

- Map 1: Aerial photo of study areas

[1] The evaluation does not consider lands inside the Eugene portion of the Metropolitan UGB, or lands west of Interstate 5.

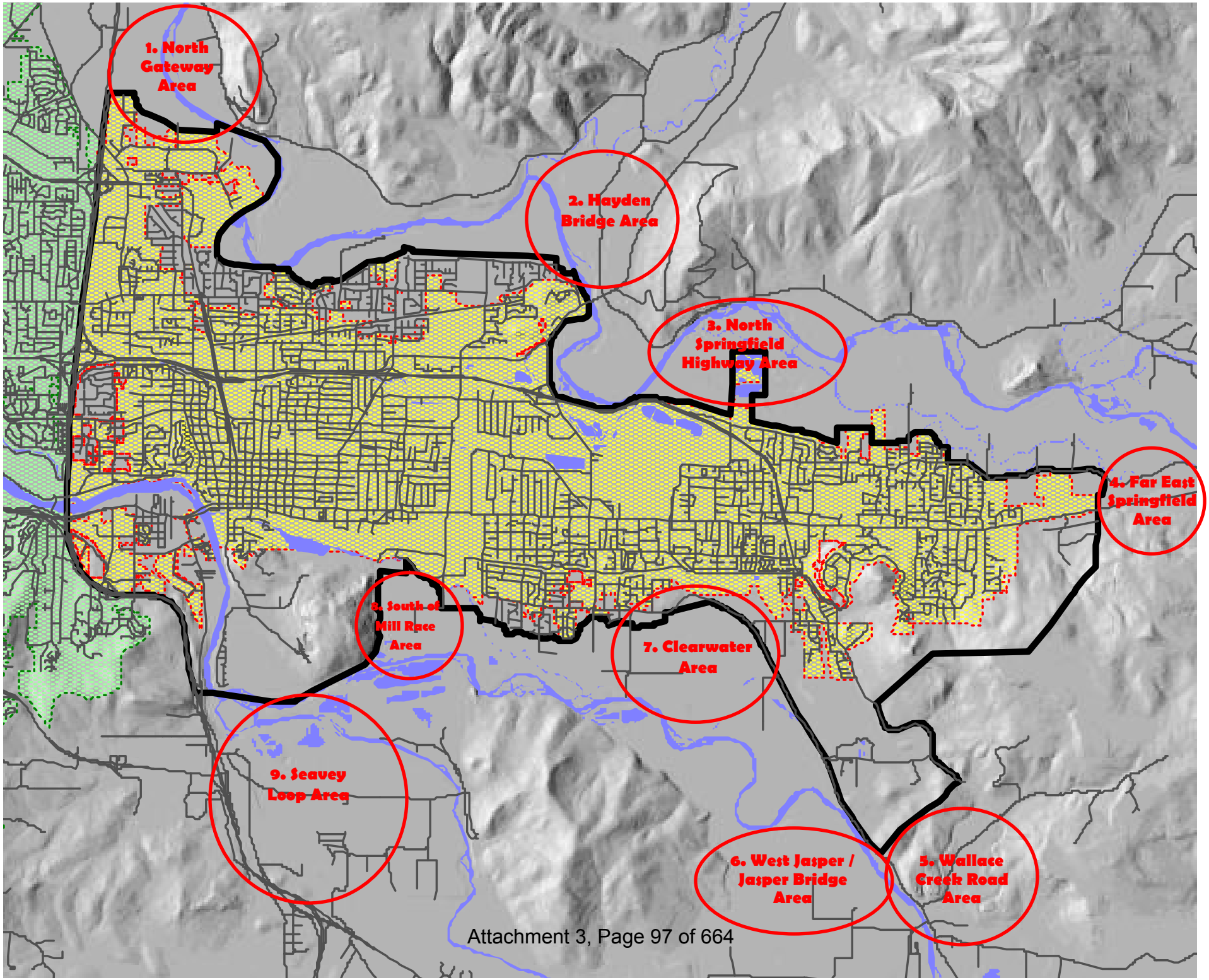
- Map 2: Study area zoning (exceptions, marginal land, resource land)
- Map 3: Study area constraints
- Map 4: Study area soil class
- Map 5: Study area national wetlands inventory and hydric soils
- Map 6: Priority 1 lands
- Maps 7/8: UGB concept 1
- Maps 9/10: UGB concept 2
- Maps 11/12: UGB concept 3

UGB EXPANSION STUDY AREAS

The Commercial and Industrial Buildable Lands Stakeholder Committee identified nine potential UGB expansion areas. These areas were identified by review of physical constraints, topography, access, and other land attributions. The nine study areas include:

1. North Gateway Area
2. Hayden Bridge Area
3. North Springfield Highway Area
4. Far East Springfield Area
5. Wallis Creek Road Area
6. West Jasper/Jasper Bridge Area
7. Clearwater Area
8. South of Mill Race Area
9. Seavey Loop Area

The map on the following page shows the approximate location of the UGB study areas.


1. North Gateway Area
2. Hayden Bridge Area
3. North Springfield Highway Area
4. Far East Springfield Area
5. Wallace Creek Road Area
6. West Jasper / Jasper Bridge Area
7. Clearwater Area
8. South of Mill Race Area
9. Seavey Loop Area

DEVELOPMENT OF DRAFT UGB CONCEPTS

The draft land use concepts presented in this memorandum are based on identified residential, employment and other land needs. The concepts recognize the statutory priority scheme for inclusion of lands in the UGB, and build from input received from the CIBL stakeholder committee, Planning Commission, and City Council.

Table 1 summarizes the three land use concepts. Each concept includes 640 suitable acres of employment land and 400 suitable acres of residential land. Suitable acres are acres free from physical constraints. The suitability analysis used the same deductions as used in the buildable land inventory—floodways, wetlands, steep slopes, riparian setbacks, and powerline easements are all considered unsuitable for development. The total acres column includes both suitable and constrained lands. The concepts were built from tax lot boundaries; in some of the areas, the City would reduce the total acres by not include constrained lands (particularly lands within the floodway).

Table 1. Summary of land use concepts

[redacted]

The concepts vary in how land was allocated to each study area. The area numbers in the table correspond to the areas on the map on the previous page. Areas 2 and 6 were not included in the draft concepts because both would require the City to cross major waterways (Area 2 would require crossing the McKenzie and Area 6 would require crossing the Willamette). These crossings, combined with the physical features of the areas, make them more difficult to service.

All of the areas consider the statutory priority scheme for inclusion of lands in the UGB. All of the concepts include exceptions lands that are in Areas 4, 5, 7, and 9. Priority 1 lands are shown on Map 6. Maps 7 through 12 show the concepts; for each concept we present a generalized map and a map of the concept overlaid on an aerial photo.

A final note on the concepts: the residential component incorporates land use efficiencies that are required to meet the needed mix and density. If the City chooses to adopt additional land use efficiency measures, the needed residential acreage figure would be reduced.

NEXT STEPS

The next step in the process is to identify a preferred land use concept and to finalize the land use efficiency measures. Once these steps are complete, ECO will conduct further study and prepare an alternatives analysis report that will serve as the basis for the amended Springfield UGB.

APPENDIX A: POLICY CONTEXT FOR ALTERNATIVES ANALYSIS

This section provides a brief overview of statewide planning goal 14 (Urbanization) and related statutes and administrative rules that govern UGB expansions. These include Goal 14, ORS 197.298, and OAR 660-024. .

Goal 14: Urbanization

The purpose of goal 14 is:

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

The goal requires that incorporated cities establish UGBs. Moreover, any UGB amendments must be a collaborative process that involves cities and counties and must be adopted by both the city and the county.

Goal 14 requires change of urban growth boundaries be based on the following:

(1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and

(2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories.

Goal 14 includes two other need provisions that are relevant: (1) "in determining need, local governments may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need"; and (2) "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." In summary, needs can include land characteristics and cities must consider whether needs can be met within the existing UGB before expanding the UGB.

This is germane to the first steps in the Alternatives Analysis. For example, the City could choose to identify certain areas such as lands with steep slopes or lands in federal ownership as not meeting identified needs.

Priority of lands

ORS 197.298 establishes a priority of lands for consideration in UGB expansions:

> (a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan. (Springfield does not have urban reserve areas; therefore, this does not apply).
>
> (b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land.

> Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.
>
> (c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247. (Lane County is a marginal land county; therefore, this applies to Springfield).
>
> (d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both.

In short, there are three priorities that apply to Springfield. First priority is exception areas or non-resource lands, and may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland. Second priority is marginal land. Third priority is resource land.

Goal 14 provides some additional guidance on boundary locations 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.

These factors provide direction on selection of lands within the priority scheme and also outline some reasons why lower priority lands may be part of an expansion area if they may better address these factors than lands in higher priority categories. The ORS 197.298 priority scheme is relatively rigid, but the Goal 14 factors allow some flexibility. ORS 197.298 and Goal 14 allow some exceptions to the priority scheme based on "special" needs. For example, if a city identifies a need for lower cost housing that can only be developed on flat land, then that may be a reason to include some resource lands before, or together with, exceptions lands. Such an exception would require additional justification and must be supported by solid technical analysis.

Division 24: The Urbanization Rule

In 2006, the Land Development and Conservation Commission adopted amendments to the Urbanization Rule (OAR 660-024) that were intended to clarify the process of amending UGBs. We have referred to this rule, and some of the safe harbors it establishes, in work on the housing and economic elements.

Subsection 0050 clarifies the procedures for land inventories and local government response to land deficiencies. OAR 660-024-0050(4) requires cities to amend UGBs in response to land deficiencies:

> "If the inventory demonstrates that the development capacity of land inside the UGB is inadequate to accommodate the estimated 20-year needs… the local

> government must amend the plan to satisfy the need deficiency, either by increasing the development capacity of land already inside the city or by expanding the UGB, or both, and in accordance with ORS 197.296 where applicable. Prior to expanding the UGB, a local government must demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB. Changes to the UGB must be determined by evaluating alternative boundary locations consistent with OAR 660-024-0060."

Based on the Economic Opportunities Analysis and Residential Lands Study, preliminary land needs have been identified. The findings of the buildable lands inventory and land needs analysis are that some of the need will be met within the UGB, but that additional buildable land will be needed.

Boundary Location Alternatives Analysis

OAR 660-024-0060 requires cities conduct an "Alternatives Analysis" when considering a UGB amendment. The alternatives analysis (the part of the UGB review process that we are now moving into) requires all lands adjacent to and around the existing UGB be reviewed. Relevant sections of OAR 660-024-0060 specify the following:

> (1) When considering a UGB amendment, a local government must determine which land to add by evaluating alternative boundary locations. This determination must be consistent with the priority of land specified in ORS 197.298 and the boundary location factors of Goal 14, as follows:
>
> > (a) Beginning with the highest priority of land available, a local government must determine which land in that priority is suitable to accommodate the need deficiency determined under 660-024-0050.
> >
> > (b) If the amount of suitable land in the first priority category exceeds the amount necessary to satisfy the need deficiency, a local government must apply the location factors of Goal 14 to choose which land in that priority to include in the UGB.
> >
> > (c) If the amount of suitable land in the first priority category is not adequate to satisfy the identified need deficiency, a local government must determine which land in the next priority is suitable to accommodate the remaining need, and proceed using the same method specified in subsections (a) and (b) of this section until the land need is accommodated.
> >
> > (d) Notwithstanding subsection (a) through (c) of this section, a local government may consider land of lower priority as specified in ORS 197.298(3).
> >
> > (e) For purposes of this rule, the determination of suitable land to accommodate land needs must include consideration of any suitability characteristics specified under section (5) of this rule, as well as other provisions of law applicable in determining whether land is buildable or suitable.
>
> …

(3) 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.

(4) In determining alternative land for evaluation under ORS 197.298, "land adjacent to the UGB" is not limited to those lots or parcels that abut the UGB, but also includes land in the vicinity of the UGB that has a reasonable potential to satisfy the identified need deficiency.

(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.

(6) The adopted findings for UGB adoption or amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis. If the analysis involves more than one parcel or area within a particular priority category in ORS 197.298 for which circumstances are the same, these parcels or areas may be considered and evaluated as a single group.

(7) For purposes of Goal 14 Boundary Location Factor 2, "public facilities and services" means water, sanitary sewer, storm water management, and transportation facilities.

(8) The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:

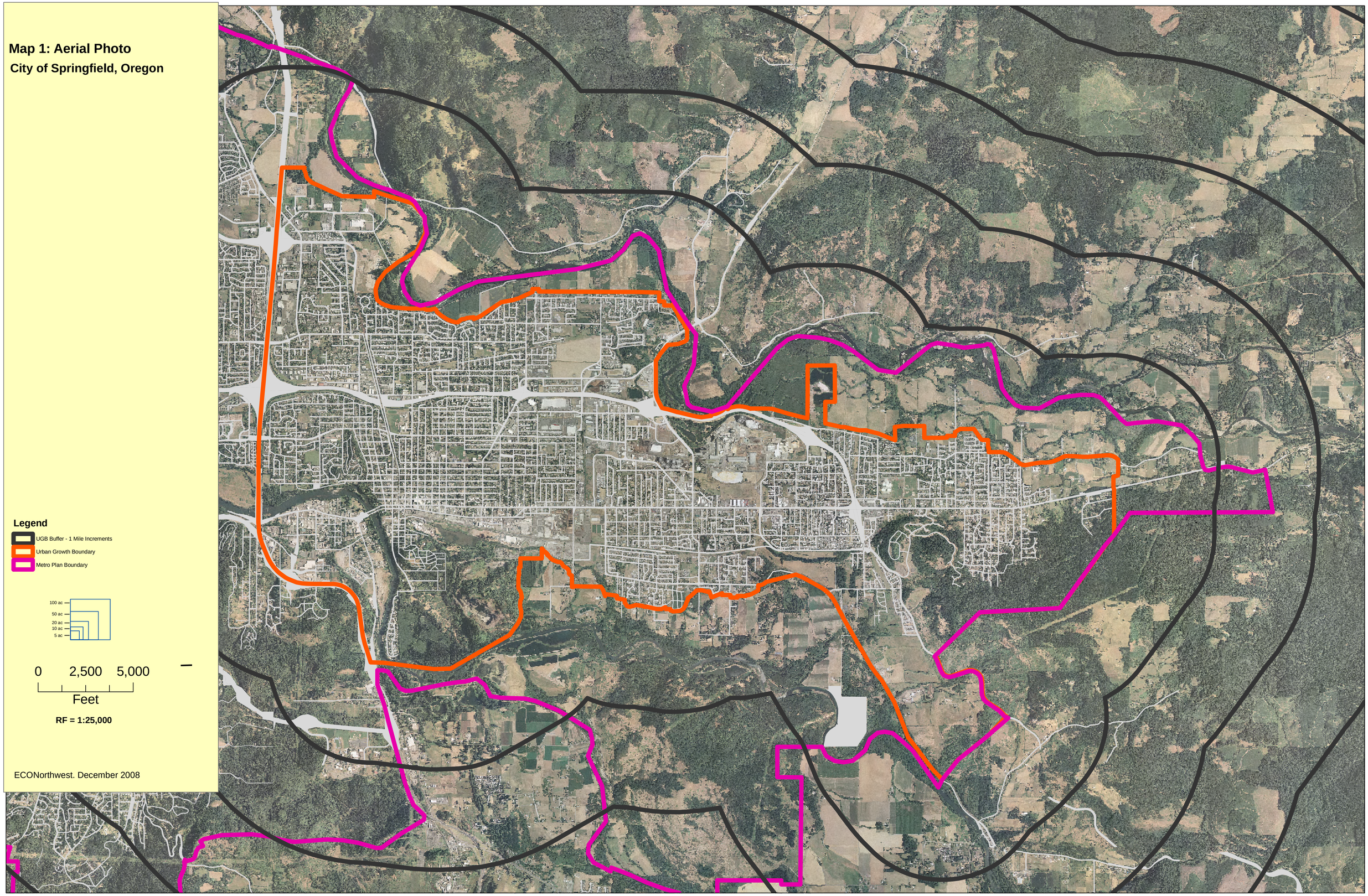
(a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the UGB;

(b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the UGB; and

(c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

Map 1: Aerial Photo

City of Springfield, Oregon

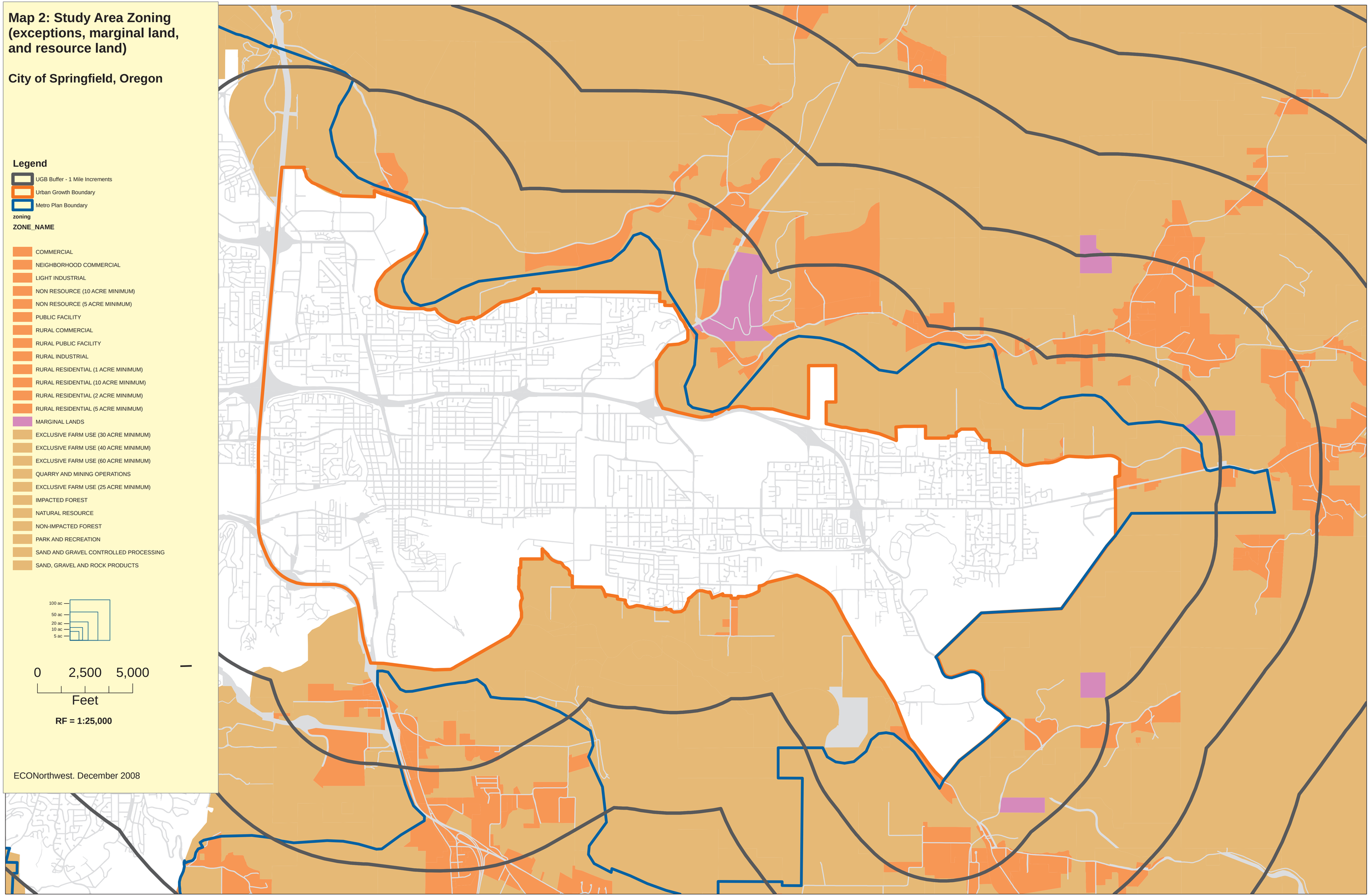


ECONorthwest. December 2008

ATTACHMENT 2-1

Map 2: Study Area Zoning (exceptions, marginal land, and resource land)

City of Springfield, Oregon

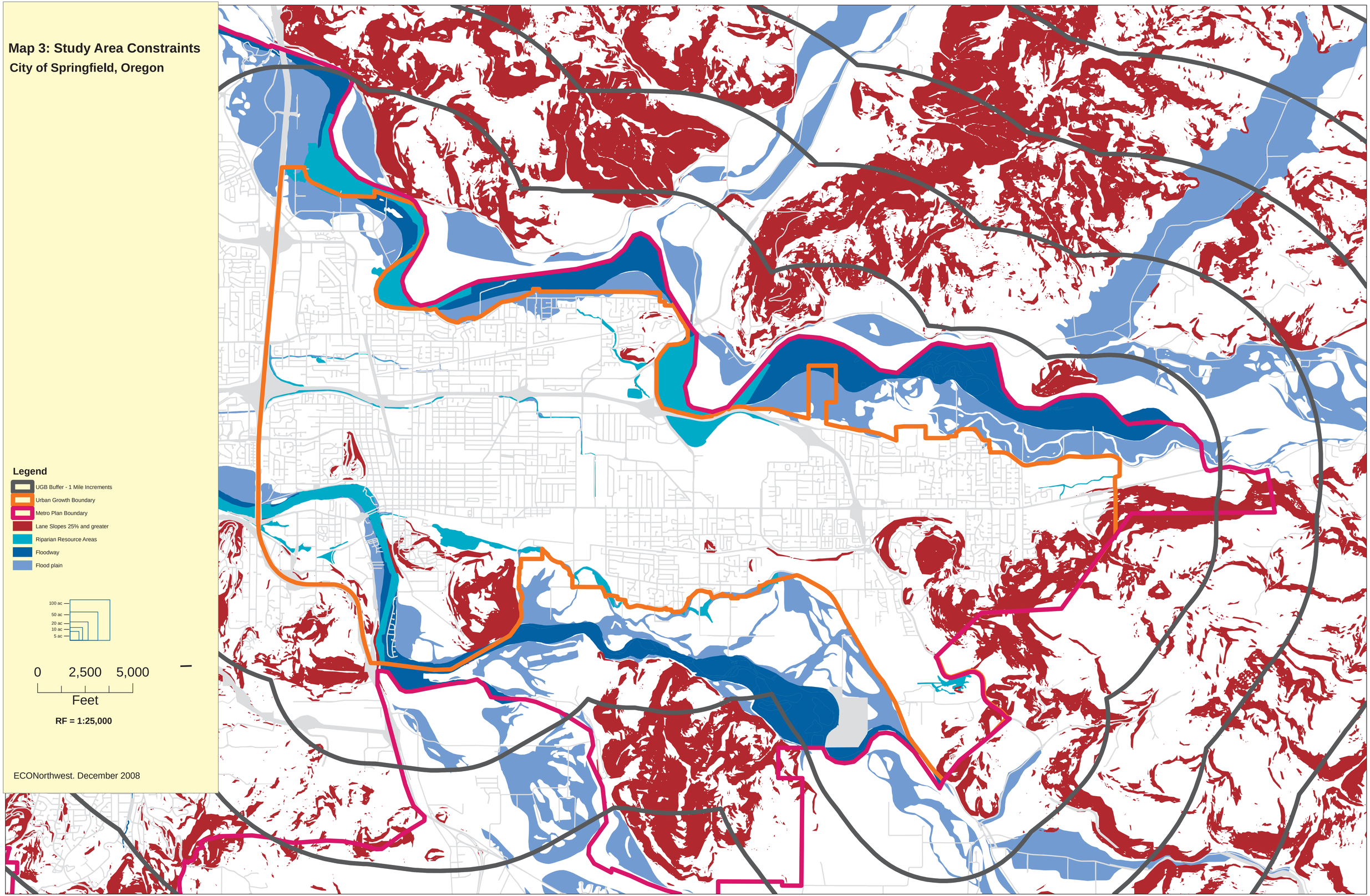


ECONorthwest. December 2008

ATTACHMENT 2-2

Map 3: Study Area Constraints

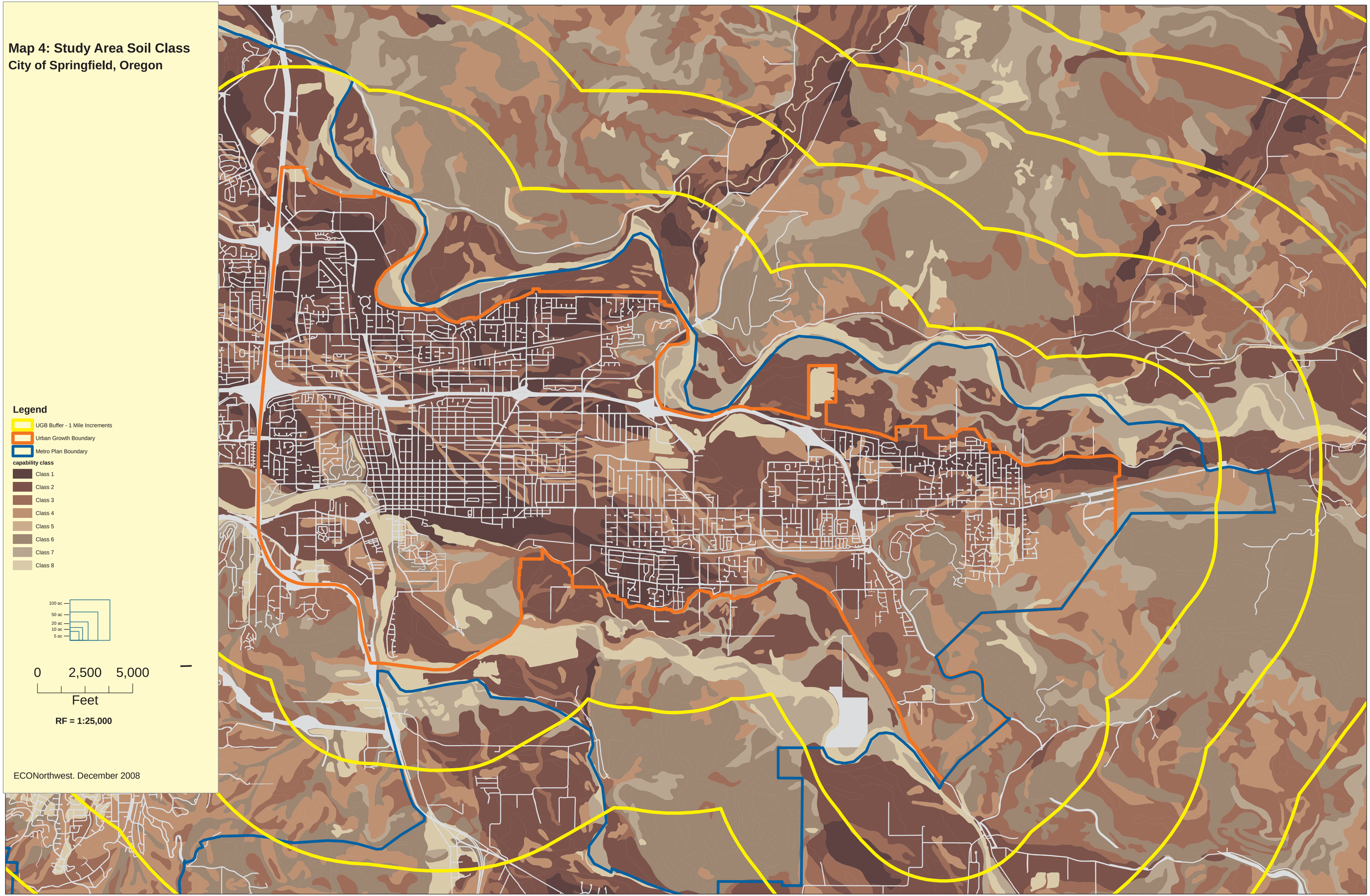
City of Springfield, Oregon



ECONorthwest. December 2008

ATTACHMENT 2-3

Map 4: Study Area Soil Class
City of Springfield, Oregon

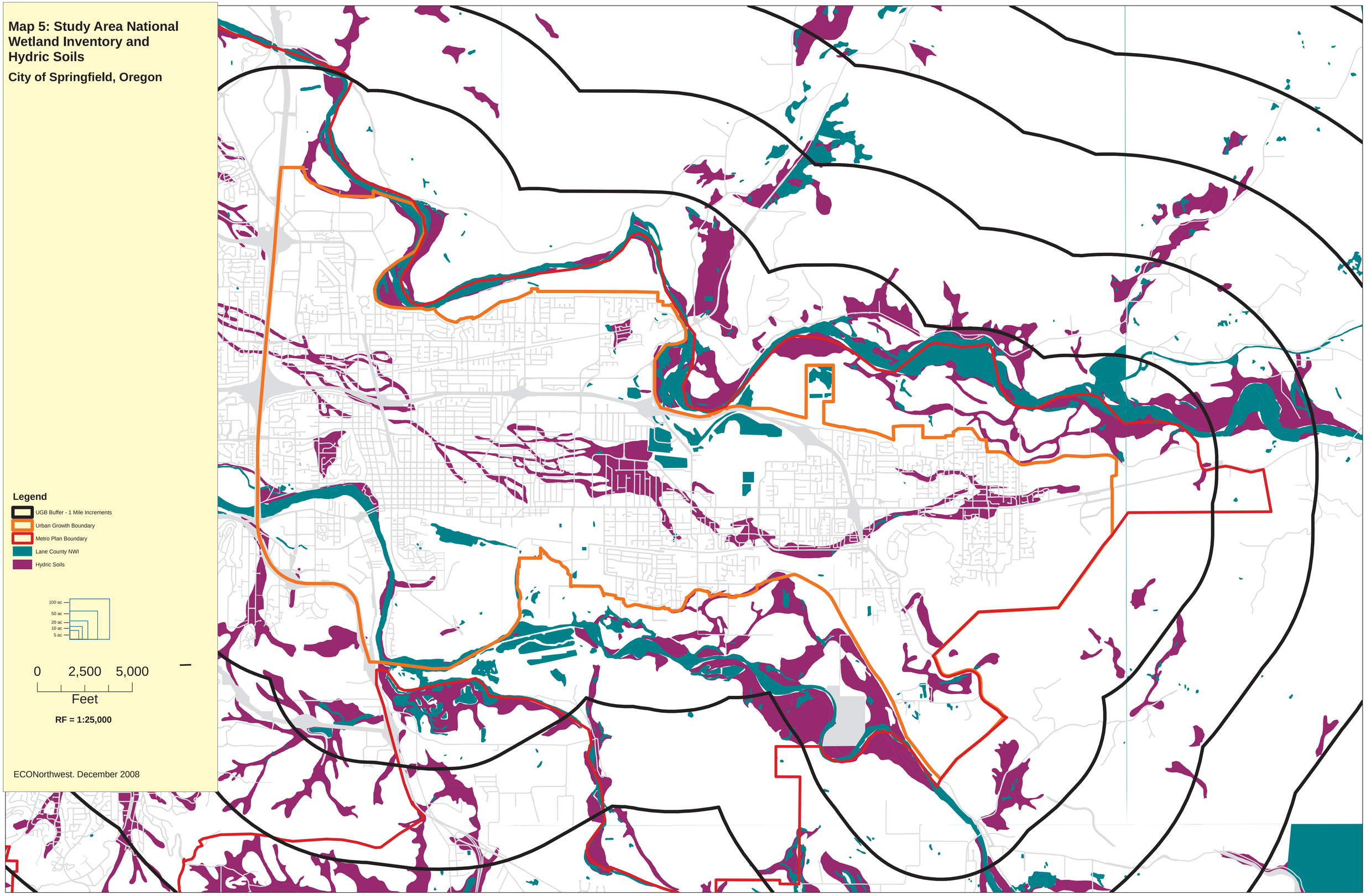


ECONorthwest. December 2008

ATTACHMENT 2-4

Map 5: Study Area National Wetland Inventory and Hydric Soils

City of Springfield, Oregon



ECONorthwest. December 2008

ATTACHMENT 2-5

Map 6. Priority 1 Lands for UGB Expansion

City of Springfield, Oregon

Zoning

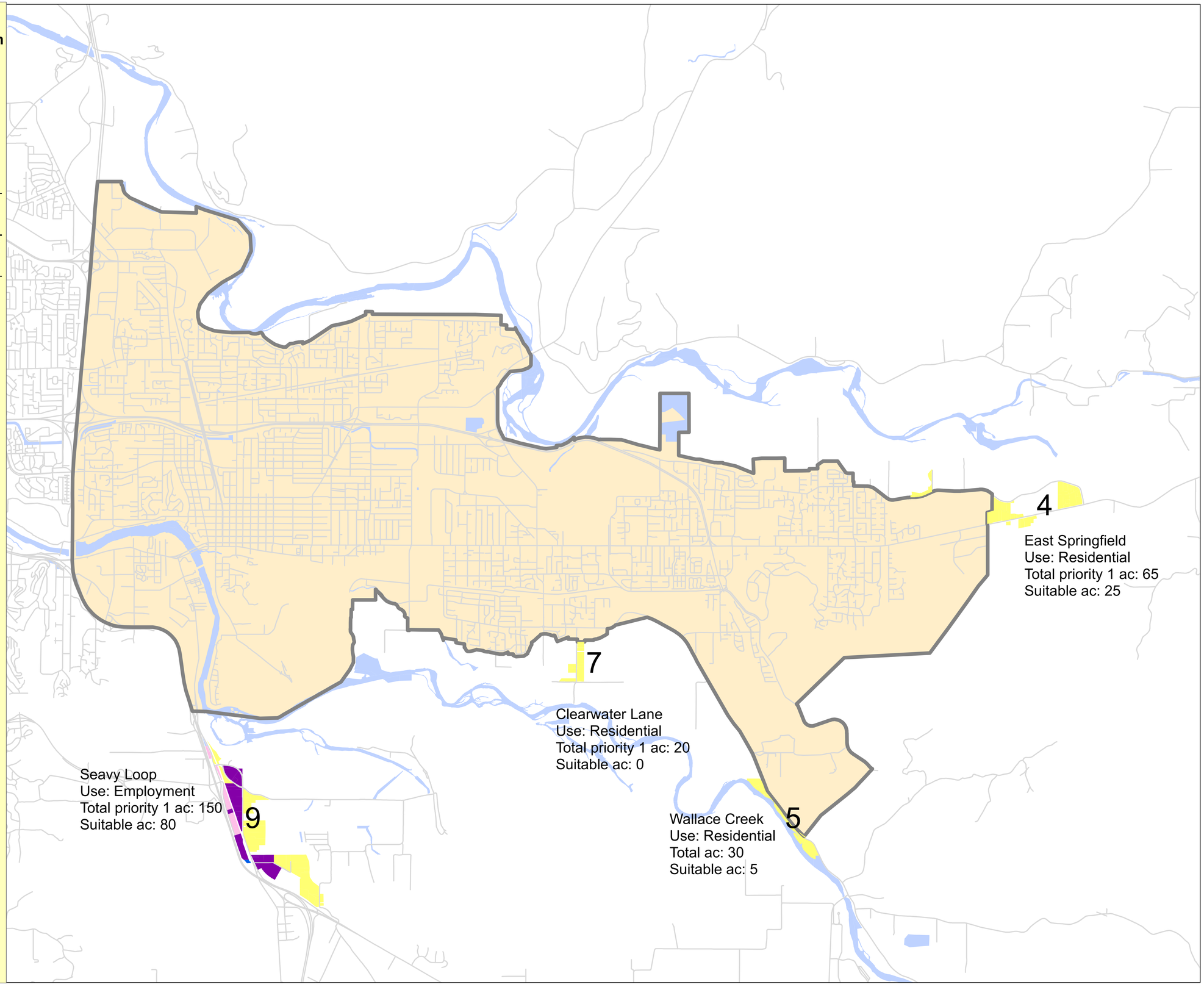
- Rural Residential
- Rural Commercial
- Rural Industrial
- Rural Public Facility

	Zoning				
Area	Rural Residential	Rural Commercial	Rural Industrial	Rural Public Facility	Total
4. East Springfield	65	0	0	0	65
5. Wallace Creek	30	0	0	0	30
7. Clearwater Lane	20	0	0	0	20
9. Seavey Loop	94	15	40	1	150

Note: This is an urban growth boundary (UGB) expansion concept map. The boundary locations and acreages are approximate. The maps are subject to change. The inclusion of any properties in study areas shown on this map does not imply a future policy choice by the City of Springfield to include that land in the UGB.

ECONorthwest. June 2009

N



ATTACHMENT 3-1

Map 7. Springfield Land Use Concept 1

City of Springfield, Oregon

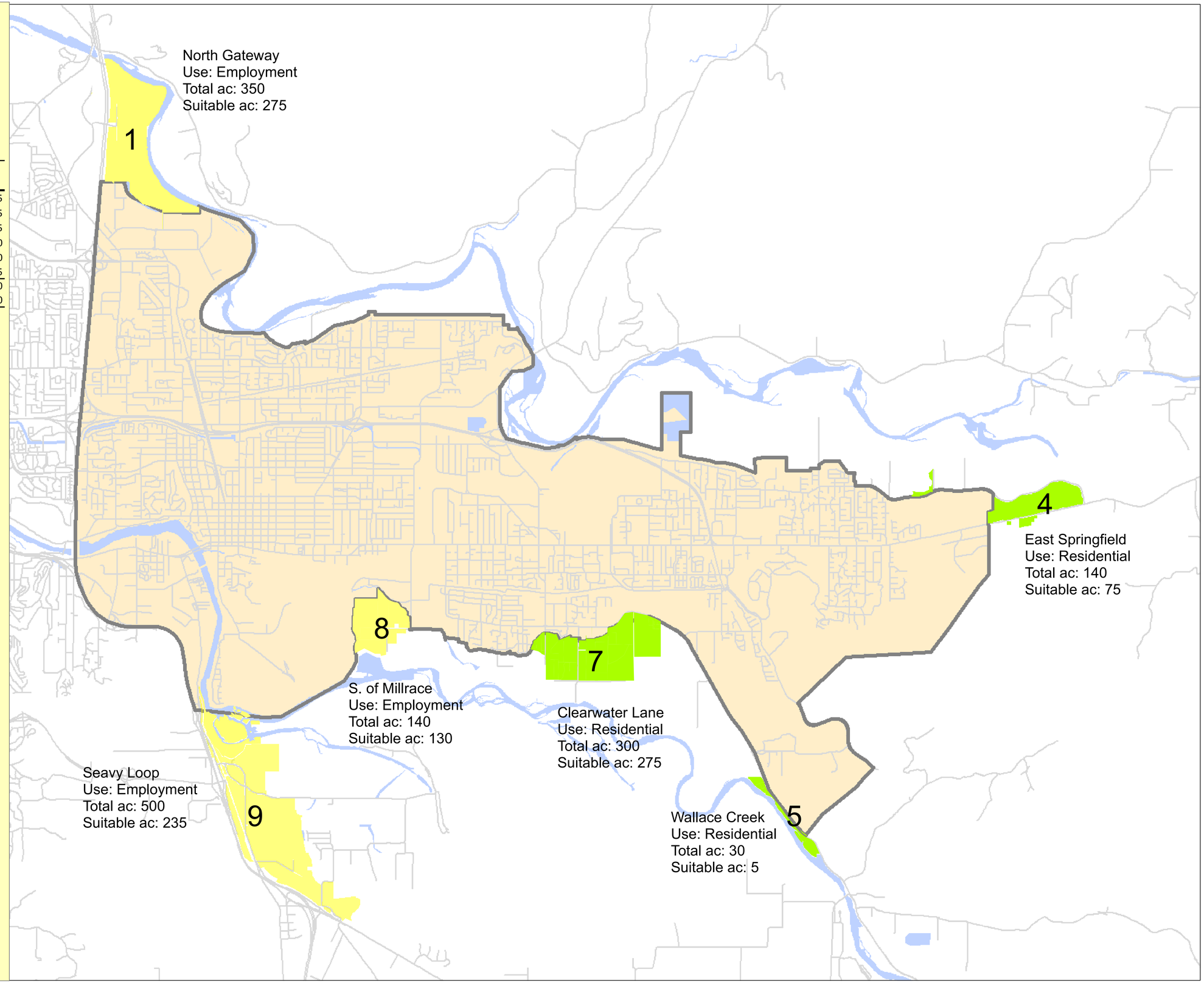
Legend

- Residential Areas
- Employment Areas

Area	Use	Total Acres	Suitable Acres
1. North Gateway	Employment	350	275
4. East Springfield	Residential	140	75
5. Wallace Creek	Residential	30	5
7. Clearwater Lane	Residential	250	320
8. S. of Millrace	Employment	140	130
9. Seavey Loop	Employment	420	235
Total Employment		910	640
Total Residential		420	400

Note: This is an urban growth boundary (UGB) expansion concept map. The boundary locations and acreages are approximate. The maps are subject to change. The inclusion of any properties in study areas shown on this map does not imply a future policy choice by the City of Springfield to include that land in the UGB.

ECONorthwest. June 2009



ATTACHMENT 3-2

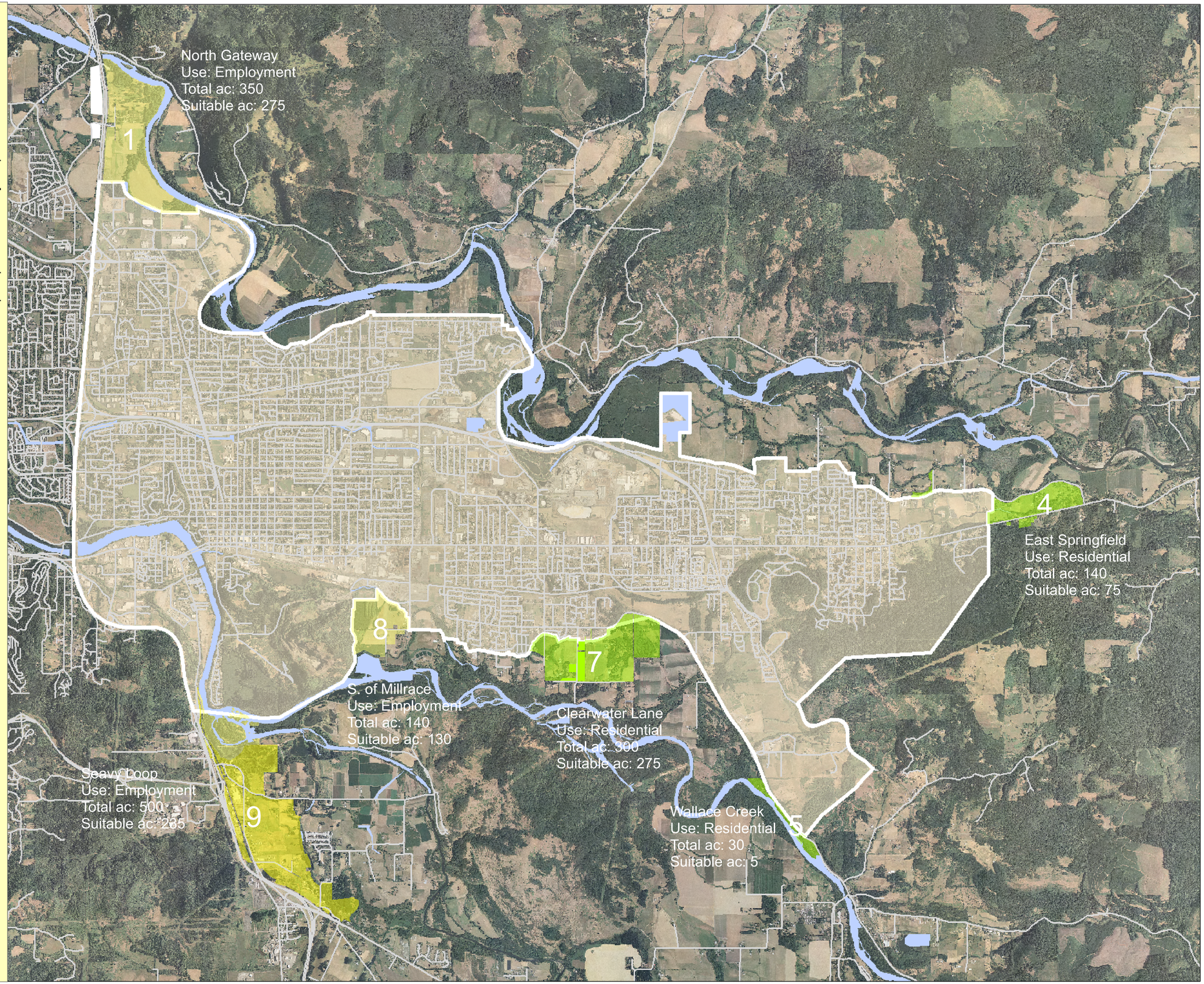
Map 8. Springfield Land Use Concept 1

City of Springfield, Oregon

Legend

- Residential Areas
- Employment Areas

Area	Use	Total Acres	Suitable Acres
3. N. of 52nd Ave.	Employment	540	300
4. East Springfield	Residential	60	35
5. Wallace Creek	Residential	30	5
7. Clearwater Lane	Residential	390	360
8. S. of Millrace	Employment	350	250
9. Seavey Loop	Employment	260	90
Total Employment		1150	640
Total Residential		480	400



Note: This is an urban growth boundary (UGB) expansion concept map. The boundary locations and acreages are approximate. The maps are subject to change. The inclusion of any properties in study areas shown on this map does not imply a future policy choice by the City of Springfield to include that land in the UGB.

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ATTACHMENT 3-3

Map 9. Springfield Land Use Concept 2

City of Springfield, Oregon

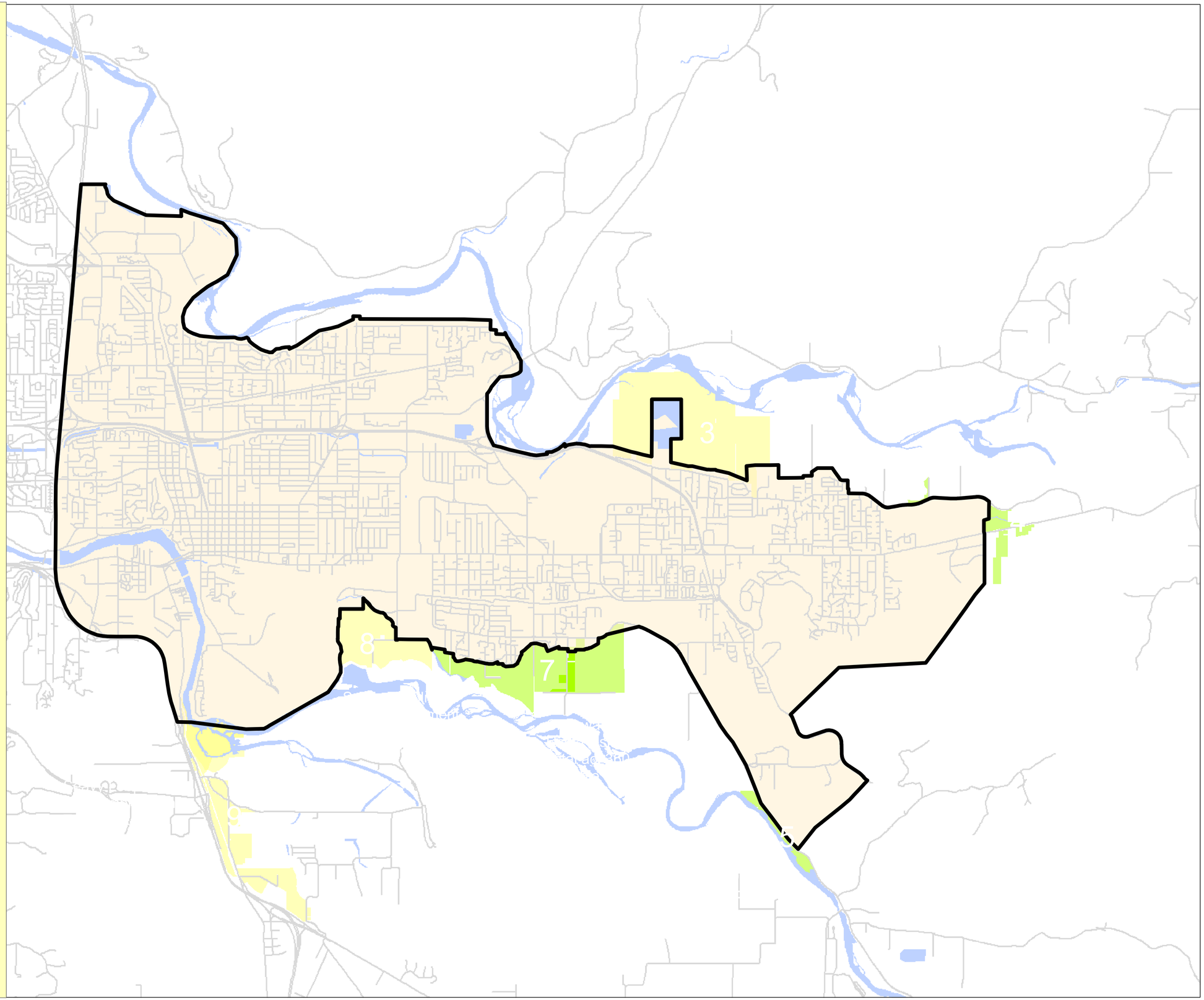
Legend

- Residential Areas
- Employment Areas

Area	Use	Total Acres	Suitable Acres
3. N. of 52nd Ave.	Employment	540	300
4. East Springfield	Residential	60	35
5. Wallace Creek	Residential	30	5
7. Clearwater Lane	Residential	390	360
8. S. of Millrace	Employment	350	250
9. Seavey Loop	Employment	260	90
Total Employment		1150	640
Total Residential		480	400

Note: This is an urban growth boundary (UGB) expansion concept map. The boundary locations and acreages are approximate. The maps are subject to change. The inclusion of any properties in study areas shown on this map does not imply a future policy choice by the City of Springfield to include that land in the UGB.

ECONorthwest. June 2009



ATTACHMENT 3-4

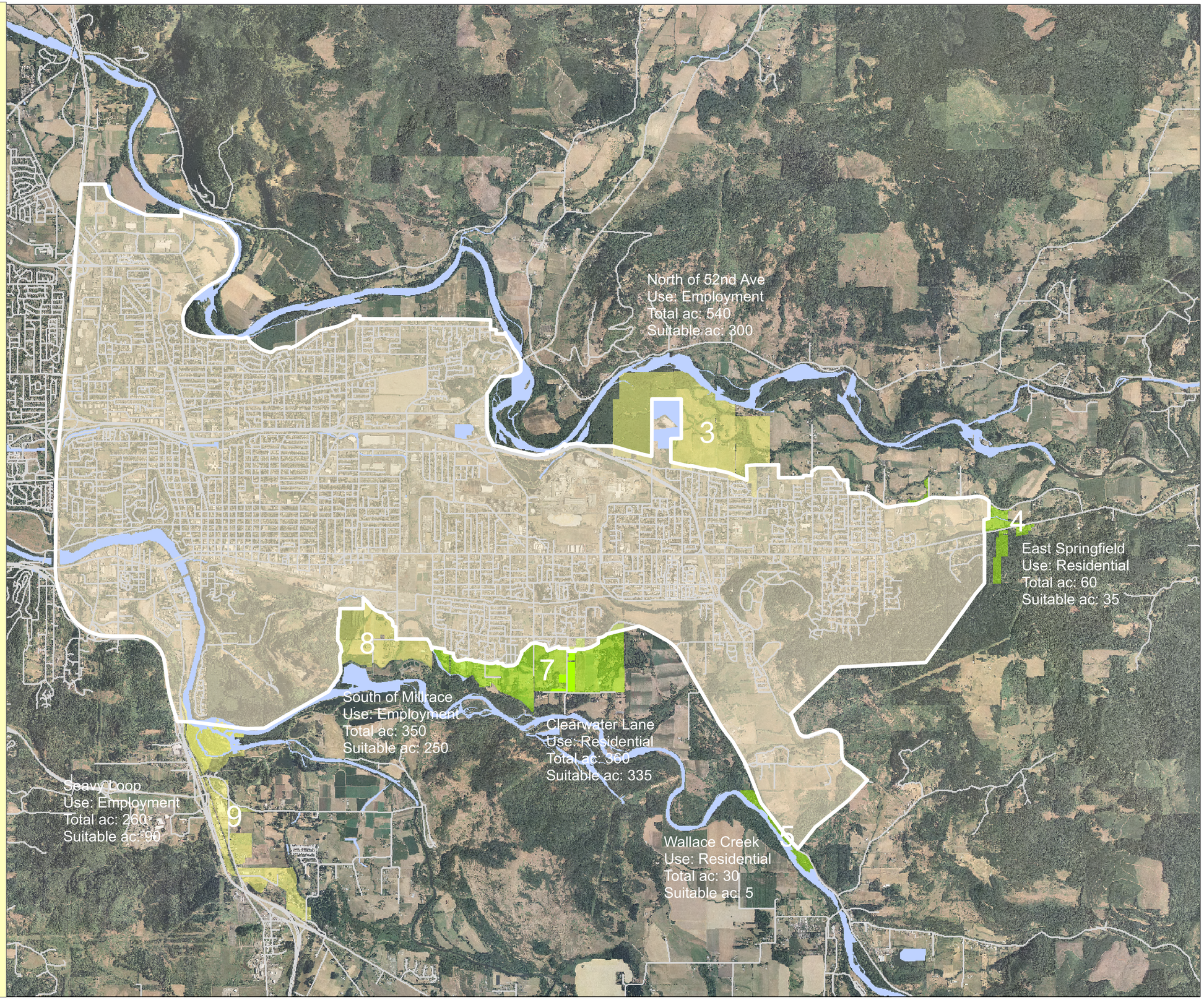
Map 10. Springfield Land Use Concept 2

City of Springfield, Oregon

Legend

- Residential Areas
- Employment Areas

Area	Use	Total Acres	Suitable Acres
3. N. of 52nd Ave.	Employment	540	300
4. East Springfield	Residential	60	35
5. Wallace Creek	Residential	30	5
7. Clearwater Lane	Residential	390	360
8. S. of Millrace	Employment	350	250
9. Seavey Loop	Employment	260	90
Total Employment		1150	640
Total Residential		480	400



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ECONorthwest. June 2009

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Map 11. Springfield Land Use Concept 3

City of Springfield, Oregon

Legend

- Residential Areas
- Employment Areas

Area	Use	Total Acres	Suitable Acres
1. North Gateway	Employment	350	275
3. N. of 52nd Ave.	Employment	500	275
4. East Springfield	Residential	60	35
5. Wallace Creek	Residential	310	250
7. Clearwater Lane	Residential	140	115
9. Seavey Loop	Employment	260	90
Total Employment		1110	640
Total Residential		510	400

Note: This is an urban growth boundary (UGB) expansion concept map. The boundary locations and acreages are approximate. The maps are subject to change. The inclusion of any properties in study areas shown on this map does not imply a future policy choice by the City of Springfield to include that land in the UGB.

ECONorthwest. June 2009

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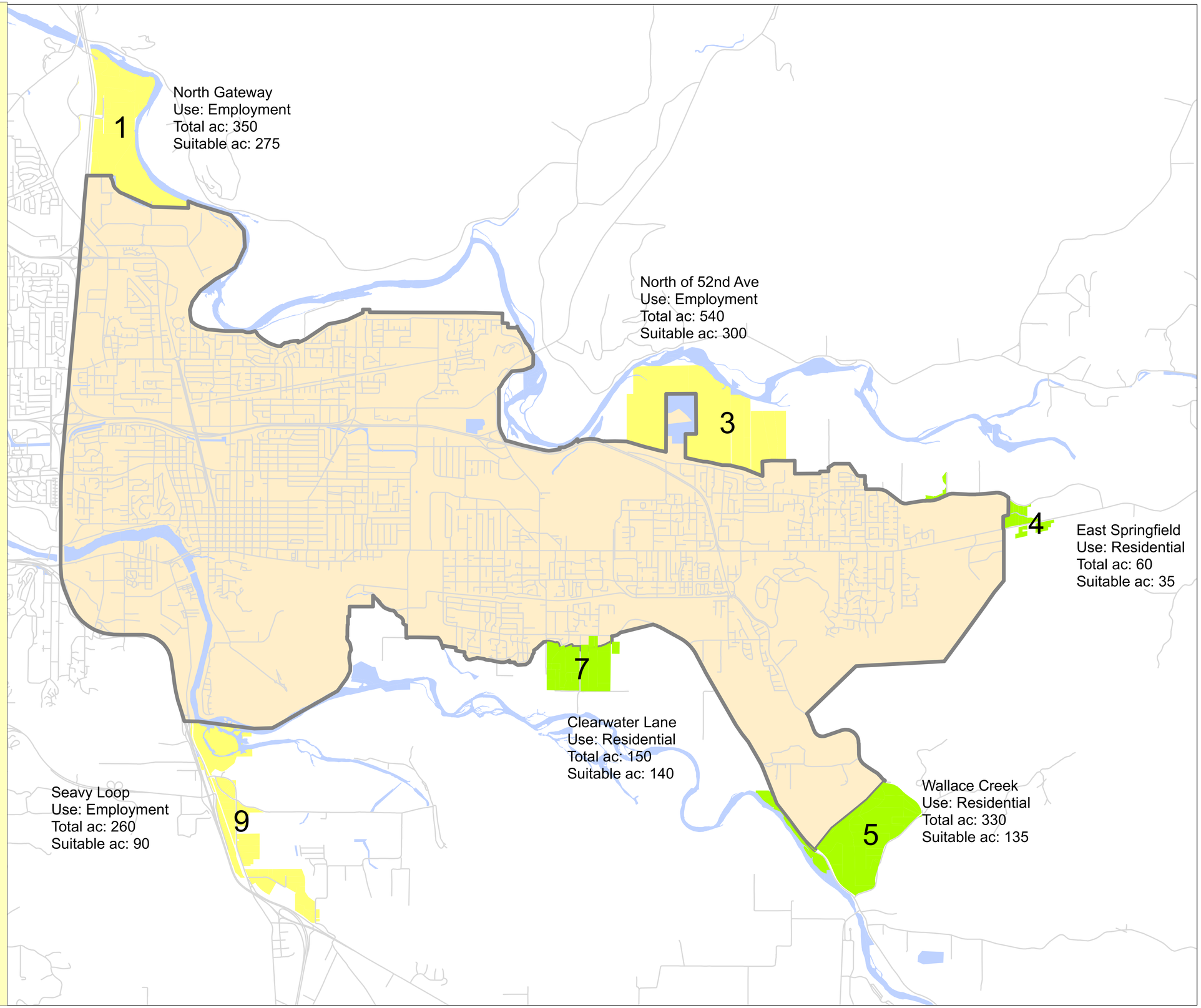


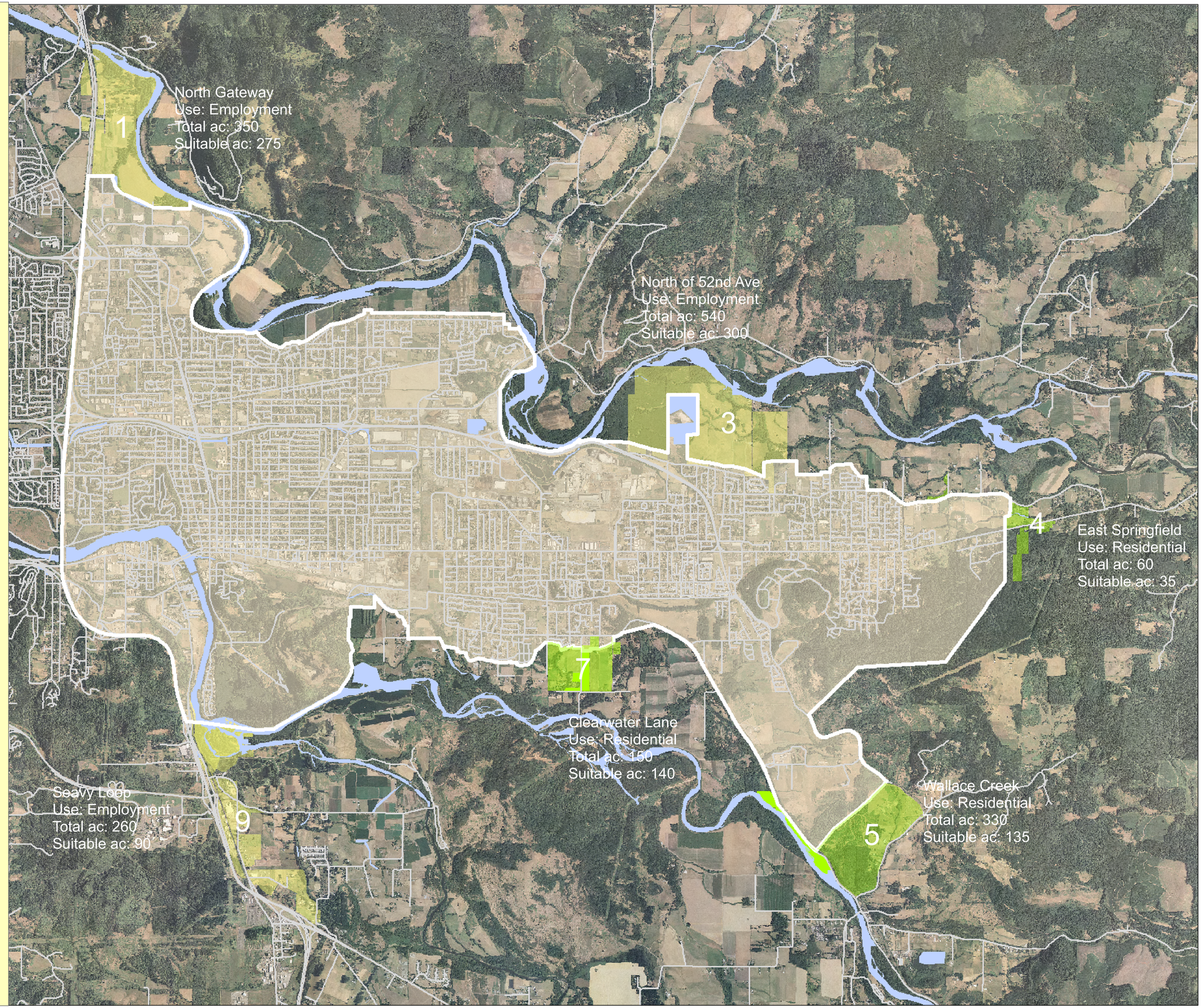
Map 12. Springfield Land Use Concept 3

City of Springfield, Oregon

Legend

- Residential Areas
- Employment Areas

Area	Use	Total Acres	Suitable Acres
1. North Gateway	Employment	350	275
3. N. of 52nd Ave.	Employment	500	275
4. East Springfield	Residential	60	35
5. Wallace Creek	Residential	310	250
7. Clearwater Lane	Residential	140	115
9. Seavey Loop	Employment	260	90
Total Employment		1110	640
Total Residential		510	400



Note: This is an urban growth boundary (UGB) expansion concept map. The boundary locations and acreages are approximate. The maps are subject to change. The inclusion of any properties in study areas shown on this map does not imply a future policy choice by the City of Springfield to include that land in the UGB.

ECONorthwest. June 2009

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CIBL/RLS/UGB Public Review and Adoption Process

The dates shown are subject to change. Please contact Planning Division staff Linda Pauly at 726-4608 to confirm dates prior to these meetings.

Public Open House: Land Use Efficiency Measures
April 2, 2009

Planning Commission Work Session
with CIBL Stakeholder Committee
Commercial & Industrial Land Needs & Alternatives (ECONorthwest)
April 16, 2009

City Council Work Session
Residential Lands Study Update & Land Use Efficiency Measures (ECONorthwest)
April 13, 2009

Public Open Houses:
Buildable Land Inventories and Alternatives Analysis
May 14 & 20, 2009

Planning Commission Work Session
with RLS Stakeholder Committee
June 2, 2009

CIBL Stakeholder Committee Meeting
June 11, 2009

Planning Commission / City Council Work Session
Present recommended UGB land use concepts based on all input collected throughout the project. Three UGB alternatives will be presented. (ECO Northwest)
June 22, 2009

Public Open Houses:
UGB Alternatives
July - August 2009

Planning Commission Work Session(s)
Land Use Efficiency Measures
Review Draft Code Amendments
July 21, 2009

Joint Planning Commissions Public Hearings: CIBL, RLS & UGB
September 15 *(ECONorthwest)*
- October 2009

Joint Elected Officials Public Hearing(s)
December 7, 2009 *(ECONorthwest)*

Adoption Hearing(s)
January 18, 2010

Exhibit F

DEPARTMENT OF LAND CONSERVATION & DEVELOPMENT

REPORT ON BEND AND DESCHUTES COUNTY'S AMENDMENT TO THE BEND URBAN GROWTH BOUNDARY

DLCD ORDER 001775

January 8, 2010

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EXHIBIT B: April 14, 2005 staff report to LCDC regarding UGB location factors

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I. EXECUTIVE SUMMARY

The City of Bend is nationally recognized as a high-quality, desirable place to live and work. Bend is the seventh largest city in Oregon, and is one of the fastest growing communities in the state. Over the next twenty years, close to forty thousand new residents are expected in the city. Planning for the homes and jobs that current and future citizens will need is an important responsibility, and the decisions made now will have long-term consequences for the city and region.

The city and Deschutes County have made a substantial effort to plan for the future of the area in their decisions on the Bend urban growth boundary (UGB). The UGB establishes where the city will grow over the next twenty years. Setting this boundary and planning for the lands inside of it directly influences what types of housing are likely to be built, what employment opportunities the city is prepared for, and the future costs of public facilities. It also has important long-term consequences for where people live and work in the region, and the extent to which they need to drive to get from homes to jobs to shopping and other destinations.

This is a decision by the Director of the Oregon Department of Land Conservation and Development about whether the City of Bend and Deschutes County's UGB expansion complies with state land use laws. The decision is to remand the UGB expansion (along with a related amendment to the city's public facilities plan) back to the city and county for revisions needed for the decisions to conform with state requirements.

The director agrees with the city and county that a UGB expansion is needed, but the size of the expansion is over four square miles larger than the amount of land the local governments determined is needed. The director also agrees with the city and county that they have appropriately shown a need for land for a new university site and for a large-site general industrial area. However, the local governments need to complete technical work to document that lands for these important future uses can't be found within the existing city limits.

The director also determines that the city has not done an adequate job of planning for needed housing for current and future residents of Bend and the region. The city has documented a real need for more affordable housing, and for housing for people who work in Bend – to reverse the trend of workers leaving the city to find affordable housing. However, the city's planning for future residential development does not lay the groundwork for these types of housing to be developed in Bend.

State land use laws require cities to work to encourage growth to occur on vacant and underutilized lands within urban areas before expanding into rural areas. Bend has taken tentative steps in this direction, but its indefinite plans do not demonstrate that the city will meet its housing needs over the next twenty years.

Finally, the city and county decisions regarding where to expand the Bend UGB fail to explain (adequately) why certain lands are included, while others are not. An important aspect of this decision is the location of future sewer system investments, and the Director agrees that the planning for those system improvements is an important consideration in deciding where to locate the boundary. However, the findings and technical work supporting the decision are conflicting in some aspects, and do not appear to provide decision-makers with an adequate basis for making decisions about the long-term cost implications of expanding the boundary in particular locations.

The Department of Land Conservation and Development has committed a substantial amount of staff time and funding to working with the city and county to plan for the community's future. This decision is designed to help move that effort forward, and the department will continue to offer its assistance as Bend plans for its future.

II. BACKGROUND AND DESCRIPTION OF UGB PROPOSAL

The City of Bend adopted an 8,462-acre UGB expansion and supporting plan and code amendments on January 5, 2009. (See Figure 1, UGB Map, on the following page.) Deschutes County co-adopted the same UGB expansion along with its own supporting plan and code amendments on February 11, 2009. The city and county decisions were submitted to the department for review on April 16, 2009. In its submittal to the department, the city summarized its proposal as follows:

> The adopted UGB amendment is substantially different from previous submittals dated June 11, 2007 and October 8, 2008. Lands proposed to be included to the west and north are exception lands. Lands proposed to be included to the northeast and due east are a combination of exception and resource lands; lands to the south and southeast are exception lands. [Notice of Adoption of an UGB Amendment form dated April 16, 2009]

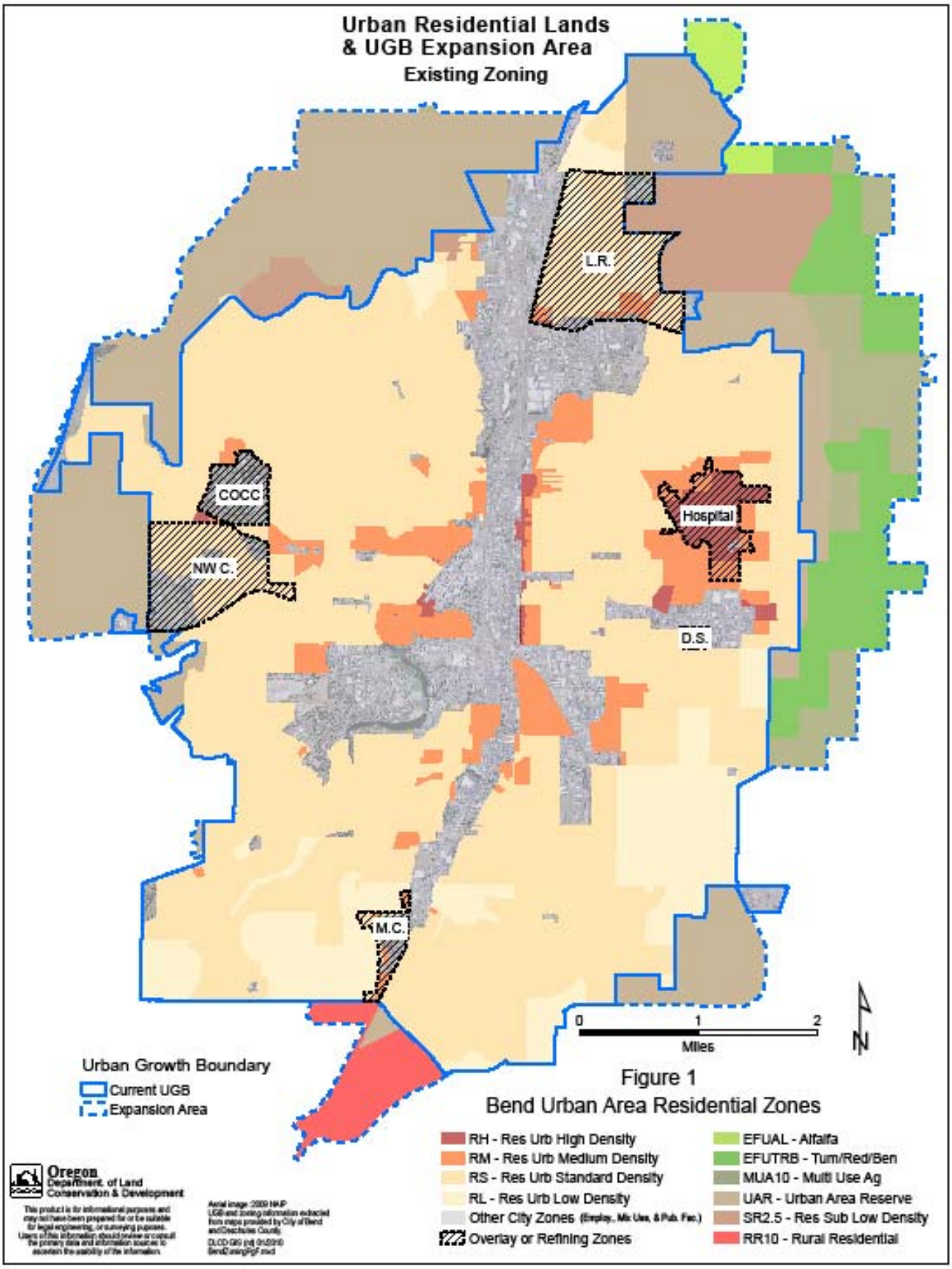
A. Background

The city began review of its need for additional land for housing in 2004, and later added an evaluation of its employment land needs as part of its UGB review. On June 11, 2007, the city submitted a notice of a proposed 4,884-acre UGB expansion to the department through a 45-day post-acknowledgement plan amendment notice. The notice also included a 14,775-acre urban reserve proposal, which was withdrawn from further consideration shortly thereafter. Following joint public hearings by the city and county planning commissions, it was decided locally that further work was needed on the UGB expansion proposal.

On October 8, 2008, the city submitted notice of a revised UGB expansion proposal that included 8,943 acres, 83 percent larger than the June 11, 2007 proposal. A joint planning commission hearing occurred on October 27, 2008, followed the next day by an adoption recommendation by the Bend Planning Commission. The Bend City Council and Deschutes County Board of Commissioners held a joint public hearing on the proposal on November 24, 2008 and considered certain changes to it. The written public hearing record remained open until December 1, 2008. After deliberation during December, 2008, the city council adopted the proposal on January 5, 2009.[1]

The Deschutes County Planning Commission forwarded its recommendation on November 13, 2008 and Board of Commissioners co-adopted the UGB expansion and

[1] The Bend City Council approved Ordinance NS-2111 related to amendments to sewer and water public facility plans involved with the UGB proposal, Ordinance NS-2112 related to justification of the UGB expansion and amendments to the Bend Area General Plan, and Ordinance NS-2113 concerning UGB-related amendments to the Bend Development Code.


Urban Residential Lands
& UGB Expansion Area
Existing Zoning
L.R.
COCC
NW C.
Hospital
D.S.
M.C.
0
1
2
Miles
N
Urban Growth Boundary
Current UGB
Expansion Area
Figure 1
Bend Urban Area Residential Zones
RH - Res Urb High Density
RM - Res Urb Medium Density
RS - Res Urb Standard Density
RL - Res Urb Low Density
Other City Zones (Employ., Mix Uses, & Pub. Fac.)
Overlay or Refining Zones
EFUAL - Alfalfa
EFUTRB - Turn/Red/Ben
MUA10 - Multi Use Ag
UAR - Urban Area Reserve
SR2.5 - Res Sub Low Density
RR10 - Rural Residential
Oregon
Department of Land
Conservation & Development

related amendments to the county comprehensive plan and county zoning code on February 11, 2009.[2]

The city provided notice and submittal of the UGB expansion to the department on April 16, 2009. The submittal contained an approximately 14,000-page record, including the adopted ordinances NS-2112 and NS-2113. The submittal did not include Ordinance NS-2111, which adopted an amended public facility plan, although a copy of Ordinance NS-2111 was included in the April 16, 2009 submittal materials.

The 21-day objection period for the April 16, 2009 submittal ended on May 7, 2009, with 27 parties filing objections. Also on May 7, 2009, the department sent the city notice that the submittal was incomplete. The city responded to the department's notice on June 5, 2009.

On June 12, 2009, the city provided notice and submittal of its adoption of the public facility plans related to the UGB expansion, including the notice of adoption for Ordinance NS-2111. This submittal started a second 21-day objection period. This second objection period ended on July 6, 2009 with nine objecting parties, including some who had objected during the objection period for the UGB submittal.

The department determined that the city's submittals were complete on August 28, 2009, and consolidated the record for review in the manner of periodic review. This began the department's 120-day review period to prepare a decision on the consolidated submittal. The 120-day review period was extended to January 8, 2010 by agreement of the city, in response to a request from the department on December 15, 2009.

B. Summary of the UGB expansion

The UGB expansion adds 8,462 acres to the existing 21,247-acre Bend UGB, an approximately 40 percent increase. The expansion includes 2,866 acres for housing needs and related uses and 2,090 acres for employment needs and related uses, for a total land need of 4,956 acres. [R. at 1054, 1057-1058] The amendment includes 5,475 acres considered "suitable" and available for development, leaving a theoretical "surplus" of 519 acres. [R. at 1054] In addition to the 519-acres, the UGB amendment includes 2,987 acres considered unsuitable for satisfying housing and employment land needs.

Of the 5,475 acres considered "suitable" and available for development, 4,069 acres are exception lands, which (under state law) are the highest priority lands for UGB expansions. ORS.197.298. The remaining 1,407 acres are resource (farm) lands, which are the lowest priority lands for UGB expansions. [R. at 1058] The findings do not indicate the land priority of the 3,506 acres of land that have been included in the UGB expansion, but that are either unsuitable for housing and employment land, or are

[2] The Deschutes County Board of Commissioners approved Ordinance No. 2009-01, related to co-adoption of the proposed Bend UGB and associate comprehensive plan policies and Ordinance No. 2009-02, related to the county zoning map and zoning ordinance text for areas within the Bend UGB.

"surplus" according to the findings. These 3,506 acres represent 41.4 percent of the UGB expansion area.

In 2008, the population living within the prior UGB was reported to be 76,551. The city's 2028 planning year population is projected to be 115,063. [R. at 1302]

The city's housing needs analysis identifies a need for 16,681 new dwelling units over the 20-year planning period, of which 11,159 dwelling units would be accommodated in the prior UGB. [R. at 1070-1071, 1083] According to the decision, this leaves the need for 5,522 new dwelling units to expand on 941 net acres of expanded UGB area.[3] [R. at 1080, 1082]

The city projects that non-shift employment in 2028 will include 60,607 jobs citywide, of which 29,602 will be new employees. [R. at 1108, 1140] 2,090 acres of land were included in the UGB expansion to provide the sites necessary for this expanded employment base.

[3] Second homes and vacant homes are not included in these housing needs numbers.

III. OBJECTIONS AND ANALYSIS

A. Organization of Review

Due to the size of the submittals included in this proceeding, the large number of objections provided by objectors and the range of issues subject to objections, the department has consolidated its review of objections by major compliance topics. This review starts in section III.E.

Sections III.B and C address the status of the objectors, determining whether they meet the legal requirements for objections, and whether their objections meet the requirements for valid objections. Section III.D addresses objections to Department of Land Conservation and Development's jurisdiction to review a portion of the submittal – the City of Bend's adoption of Ordinance NS-2111, adopting amended public facilities plans that relate to and are used as one basis for the city and county decisions on the Bend UGB.

Starting with Section III.E, review of each consolidated compliance topic includes (a) a summary of the applicable legal requirements relating to that set aspect of the decisions, (b) a summary of the local government actions, (c) a summary of relevant objections and previous department comments, and (d) the director's analysis and conclusions. The analysis and conclusions in each section are collected together and repeated in the report's final section, which contains the director's conclusions and decision. In the event of any conflict between the conclusions in Section III. and the conclusions in Section IV, those in Section IV will control.

B. Objectors and Status

Persons who participated at the local level orally or in writing during the local process leading to the final decision may file an objection to the local government's UGB expansion with the department, which then must review the expansion decision or refer it to the Land Conservation and Development Commission (LCDC) for review. Pursuant to OAR 660-025-0140(2), to be valid, objections must:

(a) Be in writing and filed with the department's Salem office no later than 21 days from the date the notice of the submittal to the department was mailed by the local government;
(b) Clearly identify an alleged deficiency in the UGB expansion, 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.

On May 7, 2009, the 21-day objection period for the city's April 16, 2009 submittal ended with the following 26 parties filing timely objections with the department. The

parties listed all participated at the local level according to materials submitted to the department, with the exception of Mr. and Mrs. Harold Simpson, as set forth in more detail in the next subsection. This list presents objectors in roughly the same order that they were received by the department.

1. Swalley Irrigation District
2. Tony Aceti
3. Terry L. Anderson
4. Toby Bayard
5. Bend-La Pine School District
6. Bend Metro Park and Recreation District
7. Brooks Resources Corporation
8. Richard and Jelinda Carpenter, Jack McGilvary (trustee)
9. Central Oregon LandWatch
10. Cindy Shonka
11. Edward J. Elkins, Doris E. Elkins
12. Fred and Katy Boos
13. Hillary Garrett
14. E. M. Holiday
15. Mark Anderson
16. Barbara I. McAusland
17. Tony and Cyllene King
18. Miller Tree Farm, LLC (Charlie Miller)
19. Newland Communities
20. Oregon Department of State Lands
21. Paul J. Shonka
22. Rose and Associates, LLP
23. Shevlin Sand and Gravel, Inc.
24. Mr. and Mrs. Harold Simpson
25. Keith Spencer
26. Tumalo Creek Development, LLC

On July 6, 2009, the 21-day objection period for the city's June 12, 2009 submittal ended with the following nine parties filing timely objections with the department. The parties listed all participated at the local level according to materials submitted to the department. This list presents objectors in roughly the same order that they were received by the department.

1. Toby Bayard
2. Hunnel United Neighbors
3. Newland Communities
4. Swalley Irrigation District
5. Anderson Ranch
6. Central Oregon LandWatch
7. J. L. Ward Company
8. Rose and Associates, LLC

9. Tumalo Creek Development

C. Validity of Objections

Objections must satisfy the requirements of OAR 660-025-0140(2) in order to be valid and considered by the director. This rule states:

> Persons who participated at the local level orally or in writing during the local process leading to the final decision may object to the local government's work task submittal. To be valid, objections must:
> (a) Be in writing and filed with the department's Salem office no later than 21 days from the date the notice was mailed by the local government;
> (b) Clearly identify an alleged deficiency in the work task 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.

Some objectors have provided numerous or multiple objections covering a range of compliance issues, while others focus on a single objection. All of the objectors listed in section III.B filed their objection(s) in a timely matter, satisfying the requirements of OAR 660-025-0140(2)(a).

The objection of Mr. and Mrs. Harold W. Simpson (dated May 1, 2009) does not establish a clearly identified deficiency in the submittal as required by OAR 660-025-0140(2)(b). The objector attached a letter dated December 15, 2008, which apparently was originally sent by another party to the city, but after the City of Bend closed the public record on the matter on December 1, 2008. The objectors have not demonstrated that they participated orally or in writing at the local level as required by OAR 660-025-0140(2)(d). The Simpsons' objections are not valid.

The objection of Keith Spencer (dated April 23, 2009) does not establish a clearly identified deficiency in the submittal, as required by OAR 660-025-0140(2)(b). As a result, Mr. Spencer's objections are not valid.

The remaining objectors provided one or more valid objections. However, as set forth in more detail in the director's analysis section later in this report, specific objections may be found to be invalid based on criteria in OAR 660-025-0140(2)(b) or OAR 660-025-0140(2)(c).

Objections not addressed in the analysis sections of this report are denied.

D. DLCD Jurisdiction

Objector Swalley Irrigation District (Swalley) contends that the Land Use Board of Appeals (LUBA or the Board), and not this department has jurisdiction over the city's submittal. Swalley rests the objection upon (1) the "tardiness" of the city's submittal, and (2) the contention that the submittals are not and do not arise from UGB amendments within the department's jurisdiction under ORS 197.825(2)(c)(A). Swalley objects that in order to invoke the exception to LUBA jurisdiction under ORS 197.825(2)(c)(A), a local government submittal to the department must occur closer to the time of adoption than occurred in this matter. Swalley objects that the city's submittal is not timely for purposes of ORS 197.825(2)(c)(A) because it occurred after the time for filing a LUBA appeal or intervention. Objector Swalley contends this is because transfers to LUBA can only occur within certain statutory limits, citing ORS 197.830(9). Objector Swalley expounds that under ORS 197.825(2)(c)(A), the director can only transfer a matter to LUBA within the 21-day period in which a notice of intent to appeal a land use decision may be filed under ORS 197.830(9). Swalley argues "DLCD director's transfer authority is only exercisable and thus necessarily must occur in the LUBA 21 day appeal period." [Swalley Objection 1, at 14]

a. Legal Standard

Under ORS 197.825, LUBA has exclusive jurisdiction to review any land use decision of a local government with specific statutory exceptions.[4] One exception to the exclusive jurisdiction of the board is for certain matters submitted to the department. ORS 197.825(2) provides in part:

> The jurisdiction of the board:
> * * * * * *
> (c) Does not include a local government decision that is:
> (A) Submitted to the Department of Land Conservation and Development for acknowledgment under ORS 197.251, 197.626 or 197.628 to 197.650 or a matter arising out of a local government decision submitted to the department for acknowledgment, unless the Director of the Department of Land Conservation and Development, in the director's sole discretion, transfers the matter to the board[.]"

ORS 197.825(2)(c)(A) excludes submittals pursuant to ORS 197.626, which provides:

[4] ORS 197.825(1) provides:

> Except as provided in ORS 197.320 and subsections (2) and (3) of this section, the Land Use Board of Appeals shall have exclusive jurisdiction to review any land use decision or limited land use decision of a local government, special district or a state agency in the manner provided in ORS 197.830 to 197.845.

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

The commission adopted OAR 660-025-0040[5] to implement its exclusive jurisdiction under the statute and OAR 660-025-0250[6] to provide for transfers of matters to LUBA.

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[5] OAR 660-025-0040 provides:

> (1) The commission, pursuant to ORS 197.644(2), has exclusive jurisdiction to review the evaluation, work program, and all work tasks for compliance with the statewide planning goals and applicable statutes and administrative rules. Pursuant to ORS 197.626, the commission has exclusive jurisdiction to review the following land use decisions for compliance with the statewide planning goals:
> (a) If made by a city with a population of 2,500 or more inside its urban growth boundary, amendments to an urban growth boundary to include more than 50 acres;
> (b) If made by a metropolitan service district, amendments to an urban growth boundary to include more than 100 acres;
> (c) plan and land use regulations that designate urban reserve areas.
> (2) The director may transfer one or more matters arising from review of a work task, urban growth boundary amendment or designation or amendment of an urban reserve area to the Land Use Board of Appeals pursuant to ORS 197.825(2)(c)(A) and OAR 660-025-0250.

[6] OAR 660-025-0250 provides:

> (1) When the department receives an appeal of a director's decision pursuant to OAR 660-025-0150(4), the director may elect to transfer a matter raised in the appeal to the Land Use Board of Appeals (board) under ORS 197.825(2)(c)(A).
> (2) Matters raised in an appeal may be transferred by the director to the board when:
> (a) The matter is an urban growth boundary expansion approved by the local government based on a quasi-judicial land use application and does not require an interpretation of first impression of statewide planning Goal 14, ORS 197.296 or 197.298; or
> (b)(A) The matter alleges the work task submittal violates a provision of law not directly related to compliance with a statewide planning goal;
> (B) The appeal clearly identifies the provision of the task submittal that is alleged to violate a provision of law and clearly identifies the provision of law that is alleged to have been violated; and
> (C) The matter is sufficiently well-defined that it can be separated from other allegations in the appeal.
> (3) When the director elects to transfer a matter to the board, notice of the decision must be sent to the local jurisdiction, the appellant, objectors, and the board within 60 days of the date the appeal was filed with the department. The notice shall include identification of the matter to be transferred and explanation of the procedures and deadline for appeal of the matter to the board.
> (4) The director's decision under this rule is final and may not be appealed.

b. Summary of Local Actions

The city submitted notice of the city's and county's adoption of four ordinances to the department on April 16, 2009. Those four ordinances were the city's ordinances adopting the amended UGB and amending the city's development code in certain respects (Ordinances Nos. NS-2112 and NS-2113), and the county's ordinances co-adopting the amended UGB and making certain amendments to the county's comprehensive plan map and text for the lands within the UGB expansion area. [R. at 1050-1051 (city ordinance NS 2112 - UGB); R. at 1836-1844 (city ordinance NS 2113 – development code); [county ordinance 2009-1 – UGB map and DCC and TSP map]; [county ordinance 2009-2 – zoning map and certain DCC amendments]. The city did *not* submit ordinance NS 2111, amending the city's Public Facilities Plan element of its General Plan, to the department on April 16, 2009 (although the city included a copy of this ordinance, which the city adopted immediately before the UGB amendment ordinance, in the record for the submittal of the UGB ordinance (NS 2112), and the city submitted a separate notice of adoption of the Public Facilities Plan on January 9, 2009). However, on June 12, 2009, following LUBA's decision in *Swalley Irrigation District v. City of Bend,* __ Or LUBA __ (LUBA Nos. 2009-012, 2009-013, 2009-31 and 2009-032 , May 8, 2009) and order in *Swalley Irrigation District v. City of Bend,* __ Or LUBA __ (LUBA Nos. 2009-010, 2009-011, and 2009-020, May 8, 2009) the city separately submitted ordinance NS 2111 to the department, and provided notice to the objectors, as required by OAR 660-025-0175(3) and (4) and OAR 660-025-0130 and -0140.

c. Analysis

The director concludes that this objection is not well-taken. Nothing in ORS 197.830(9) addresses department transfers to LUBA. Nothing in ORS 197.825(2)(c)(A) or its statutory context prescribes a time frame in which the director must act to transfer some or all of a local government submittal to LUBA. In construing ORS 197.825(2)(c)(A), the department may not insert what the legislature has omitted – in this circumstance a 21-day time frame that constrains the director's statutory authority to otherwise transfer a matter to LUBA. ORS 174.010. Nor can the director read ORS 197.830(9) as context in such a manner as to give no effect to ORS 197.825(2)(c)(A) in the circumstances presented here. *Id*.

The director notes that LUBA had not issued its orders on the jurisdictional issues at the time of Swalley's objections. Swalley Objection 1, at 4. LUBA has subsequently ruled on substantively the same jurisdictional arguments presented in this objection. The Board held, "ORS 197.825(2)(c)(A) and ORS 197.626, and the implementing rules adopted by DLCD make clear that after the City of Bend submitted NS-2112 and NS-2113 to DLCD for review under the statutes governing periodic review, LUBA ceased to have jurisdiction over those submitted decisions or over matters arising out of those submitted decisions unless the director of DLCD transfers matters to LUBA pursuant to OAR 661-025-0250(2)." *Swalley Irrigation District,* __ Or LUBA __ (LUBA Nos. 2009-012, 2009-013, 2009-31 and 2009-032 , May 8, 2009) (Slip op at 8). The Board also has dismissed challenges to County Ordinances 2009-01 and 2009-02 submitted to the department on

April 16, 2009. *Swalley Irrigation District v. City of Bend*, __ Or LUBA __ (LUBA Nos. 2009-33 and 2009-034, July 1, 2009).

Swalley also asserts that the City of Bend's ordinance NS-2111, adopting the city's water public facilities plans and the sewer public facilities plans as amendments to the city's comprehensive plan, is not itself an amendment of the city's UGB or "a matter arising out of" the city's UGB amendment. ORS 197.825(2)(c)(A). The director does not agree. The decision concerning where to expand its UGB relies heavily on the amendments to the public facilities plans as a factor in determining where to expand the UGB. See, e.g., R. at 1192 (Collection System Master Plan, and exclusion of exception lands to the southwest due to the feasibility of providing sewer service during the planning period). The city's 45-day notice also identified amendments to its Public Facilities Plan as being a part of its proposed adoption of an amended UGB. As a result, the director finds that Ordinance NS-2111 "arises out of" the city's UGB amendment, declines to transfer jurisdiction for review to LUBA, and determines that the director has jurisdiction to review the ordinance.

d. Conclusion

The director denies this objection. Consistent with LUBA's decisions and orders regarding jurisdiction over the city and county submittals, unless and until the matters are transferred to LUBA pursuant to OAR 661-025-0250(2), jurisdiction lies with the department.

E. Residential and Related Land Need

The City of Bend is the seventh largest city in Oregon, and from 2000 to 2005 the city grew rapidly—more rapidly than projected by the city at the last major update of its comprehensive plan (in 1998). [R. at 2116, 1059] Deschutes County completed a coordinated 20-year population forecast for the cities of Bend, Redmond and Sisters and the remainder of the county in 2004. [R. at 1981] That forecast projects the population of Bend to grow from 52,800 in 2000 to 109,389 in 2025. [R. at 1981] As the first step in its analysis of the capacity of its urban growth boundary (UGB), the city extrapolated the county's population forecast to 2028 (in order to have a 20-year forecast for its review of its UGB). The forecast includes a 2028 population for Bend of 115,063. [R. at 1067, 1301] [ORS 195.034(1)] The city initiated a process for formal analysis of its UGB capacity and the consideration of a potential UGB amendment on June 11, 2007 by mailing notice of its initial evidentiary hearing to the department. [R. at 1053] The city adopted an amendment to the UGB and supporting analysis and related comprehensive plan amendments on (January 5, 2009).

This section of the directors report and decision addresses whether the UGB amendment complies with applicable state laws that guide local governments in determining: (1) the amount of land needed inside a UGB over the 20-year period for housing and other land uses (except for employment-related land need, which is addressed in section III.F of this report), (2) how much of this land need could be provided on land already inside the UGB, and (3) how much of this land need can be met only through expansion of the current UGB. The final subsection addresses the relation between the city's UGB amendment and existing policies in the acknowledged Bend General Plan concerning needed housing.

The director's analysis and decisions are based on his evaluation of the city and county decisions and the objections to those decisions, as well as the information and findings provided in the submittal.

1. The Quantity of Land Required for Needed Housing

a. Legal standards

ORS 197.295–197.314, 197.475–197.492 and 197.660–197.670, Statewide Land Use Planning Goals 10 and 14, and OAR 660, divisions 8 and 24 are the applicable state laws.[1]

The fundamental requirement of these state laws is that cities over 25,000 in population must periodically demonstrate that their comprehensive plans provide for sufficient buildable lands within their urban growth boundary to accommodate needed housing for 20 years. A city meets this requirement by:

1. Forecasting what the population within the UGB will be in 20 years, usually relying on a coordinated population forecast adopted by the county; [ORS 195.036; 195.034; OAR 660-024-0030(3) and (4)]

2. Inventorying the supply of "buildable lands"[7] within the existing UGB and determining the capacity of those lands for additional residential development over the 20-year period under current zoning [ORS 197.296(3)(a)];

3. Determining what is "needed housing" (ORS 197.303[8] and OAR 660-024-0010(3)[9]) for the community by "housing type"[10] and density, and determining the number of

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[7] Under Statewide Land Use Planning Goal 10, the term "buildable lands – refers to lands in urban and urbanizable [lands within a UGB that still have rural zoning] areas that are suitable, available and necessary for residential use." See also, ORS 197.295(1) (same). The term is further defined by LCDC rule as:

> residentially designated land within the urban growth boundary, 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, 15, 16, 17, or 18;
>
> (c) Has slopes of 25 percent or greater;
>
> (d) Is within the 100-year floodplain; or
>
> (e) Cannot be provided with public facilities.

[OAR 660-008-0005(2); OAR 660-024-0010 (definitions for UGB management)]

[8] ORS 197.303 provides:

> (1) As used in ORS 197.307 * * * "needed housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. * * * "[N]eeded housing" also means:
>
> (a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy;
>
> (b) Government assisted housing;
>
> (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and
>
> (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions. * * * *

The housing types listed in the statute, namely "attached single family housing," "detached single family housing," and "multiple family housing" also are defined by LCDC rule. OAR 660-008-0005.

[9] OAR 660-024-0010(3) provides that:

> (3) "Housing need" or "housing need analysis" refers to a local determination as to the needed amount, types and densities of housing that will be:
>
> (a) Commensurate with the financial capabilities of present and future area residents of all income levels during the 20-year planning period;
>
> (b) Consistent with any adopted regional housing standards, state statutes regarding housing need and with Goal 10 and rules interpreting that goal; and

housing units needed and the amount of land needed for each needed housing type for the 20-year period; [ORS 197.296(3)(b)]

4. If a city determines that its housing need (third step) exceeds its UGB's capacity (second step), the city must first determine whether land inside the UGB can be rezoned to accommodate the additional need. If so, the city must also amend its land use regulations to add new measures that demonstrably increase the likelihood that lands within the existing UGB will accommodate the remaining need. If the city determines it must add lands to its UGB to meet some or all of its projected housing needs, it may do so only after demonstrating that those needs cannot reasonably be accommodated on land already inside the UGB. Statewide Land Use Planning Goal 14.[11]

5. As part of step 4, a city must determine the density and mix of needed housing types that must occur to meet projected overall housing needs for the 20-year planning period. If that planned density is greater than the actual density of development that has occurred within the UGB since the last periodic review (1998 in the case of Bend), the city must adopt measures to demonstrably increase the likelihood that future residential development in the UGB will occur at the density required to meet the projected housing needs. Similarly, if the overall mix of needed housing types during the 20-years planning period is different from the actual mix that has occurred within the UGB since the last periodic review (1998 for Bend [R. at 1074]), the city must adopt measures to demonstrably increase the likelihood that future residential development will occur in a manner that meets projected housing needs. [ORS 197.296(7)-(9)]

6. If the city determines that some or all of its additional need cannot be met by rezoning and other efficiency measures inside the current UGB (steps 4 and 5), the city must add land to its UGB to accommodate the remaining need. [See ORS 197.296(6)]

The needed housing statutes at ORS 197.295 to 197.314 and Statewide Land Use Planning Goal 10 require cities to *plan* for an adequate supply of land for needed housing. For the most part, they do not directly require cities to *ensure* that needed housing will be developed; that will depend on the market and other programs such as public and non-profit housing programs, tax incentives, and government subsidies.

(c) Consistent with Goal 14 requirements.

[10] The housing types that must be analyzed include, but are not limited to, owner and renter occupied: attached single-family housing, detached single-family housing, and multiple family housing, along with the other three housing types listed in ORS 197.303(1)((b)-(d)) (in footnote 2, above).

[11] Statewide Land Use Planning Goal 14 provides, in pertinent part, that: "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."

Two other important aspects of Goal 10 and the needed housing statutes and rules bear emphasis in this regard. They are: (a) that the Goal 10 rule requires cities and counties to consider the needs of the relevant *region* in arriving at a fair allocation of housing types within the UGB [OAR 660-008-0030]—in other words, the planning requirements of these laws apply regionally to some degree; and (b) ORS 197.296(7) not only requires planning—it requires "measures that demonstrably increase the likelihood that residential development will occur [at particular density levels, and in particular forms or types]." [ORS 197.296(7)] Such measures may include land use planning actions, but may also include financial incentives, density bonus incentives, redevelopment and infill strategies (such as urban renewal), authorization of new housing types, etc. [ORS 197.297(9)]

b. Summary of Local Actions

On January 5, 2009, the City of Bend adopted three ordinances. The first ordinance (Ordinance NS-2111) amended the city's Public Facilities Master Plan. [R. at 35]. The second ordinance (Ordinance NS-2112) amended the city's comprehensive plan map, including its map of its UGB, along with certain provisions of the urban area comprehensive plan text. [R. at 1050-1051] The third ordinance amends the city's development code in certain respects to implement ordinance NS-2112 (the UGB amendment). [R. at 1836-1837]

The city initiated the evaluation and amendment of its UGB in June of 2007. The first step was to develop an estimate of the total number of new housing units needed over the planning period (from 2008 to 2028). [R. at 1069] The city utilized some of the safe harbors set forth in OAR 660, division 24 in projecting the number of new households, and used a vacancy factor based on 2000 census data. [R at 1069] The total number of projected households, and thus the number of housing units, that the city found is needed for the 2008–2028 period is 16,681. [R. at 1070]

The city also produced several iterations of a buildable lands inventory (BLI), beginning in 2005, and updated several times through October of 2008. Based on the BLI, the city determined that there were 2,909 acres of vacant or redevelopable residential land within the UGB (prior to the expansion). [R. at 1071] The city then determined that buildable lands within the UGB had the capacity to accommodate 11,159 housing units (or 67 percent of the projected housing units needed for the 2008–2028 planning period) [R. at 1071-1072], leaving 5,522 units needed, to be accommodated by expanding the UGB.

The city prepared three alternate housing needs assessments: the "2709 Trend Forecast," the "Goal 10 Housing Need Forecast," and the "Transition Forecast." [R. at 1075-1078] The findings state that the Transition Forecast satisfies Goal 10. [R. at 1078] The Transition Forecast projects a need for 10,843 (65 percent) detached units and 5,838 (35 percent) attached units for the 2008–2028 planning period.[12] The city then derived a

[12] The city *adopted* a housing *type* mix of 65 percent detached and 35 percent attached, because this was the built mix in 2008. [R. at 1306-07] The city didn't adopt a separate housing *tenure* mix because it considered the housing type mix of 65 percent detached and 35 percent attached to be "a surrogate measure for tenure." [R. at 1306]

"need" for additional residential land in an expanded UGB totaling 941 acres, based on the projected 65/35 housing type mix, using the same allocation of planning designations for the new units that exists in the current UGB (52 percent RS, 35 percent RM, and 13 percent RH) [R. at 1079-1080] The city's estimate of land need reflects some projected increase in average density within these zones, from approximately four units per net acre within the existing UGB to approximately six units per net acre on the lands added to the UGB for residential purposes. [R. at 1080, 1081]

The city has taken several actions to increase the capacity for residential development within the existing UGB. [R. at 1083-1084] These include amendments to the Bend Development Code in 2006, as well as two new efficiency measure proposed in this amendment (beginning to *plan* for 500 units of attached housing in the Central Area Plan, and plan for 600 units of additional housing along transit corridors). [R. at 1085] These two new efficiency measures are reflected in amendments to Chapter 5 of the city's General Plan. [R. at 1085, note 48; see also R. at 1311 (transit corridor planning to be done prior to 2012, no date is provided for Central Area planning)]

The city also estimated land need for several other uses related to residential use. First, the city prepared a separate estimate of land needed for second homes. [R. at 1086-1088] The city estimates that 18 percent of the number of the total additional housing units projected as needed for the planning period from 2008 to 2028 will be needed for second homes, or an additional 3,002 units. The city also projected that these second-home units will develop at a net density of six units per acre, leading to a land need of 500 acres for second homes. The city estimated that 377 acres of land were consumed over the prior seven years by second home development. [R. at 1086]

The city also estimated land need for schools (192 acres) [R. at 1089], parks (474 acres) [R. at 1090], private open space and private rights-of-way and institutional uses (other than schools and parks). Based on data for the land area of these uses within the existing UGB, the city added 15 percent to the amount of land need for housing to account for these uses. [R. at 1091] Finally, the city added another 21 percent for land needed for streets and other public rights-of-way. [R. at 1092]

The city adopted a Framework Plan Map as part of its UGB expansion. The map identifies seven master plan areas. The General Plan states, "The framework plan functions somewhat like a general plan map by indicating general locations, land use types, and densities of a variety of future urban uses," [p. 1-5] and, "* * * Owners of large parcels will be required to demonstrate how projects will be developed after annexation in ways that are consistent with the illustrations of the framework plan and the identified land need." [p. 1-6]

The following table, which is a copy of table III-14 from the city's findings, summarizes the amount of land the city found was needed for expansion of its UGB for residential and other non-employment purposes during the 2008-2028 planning period. [R. at 1092]

Table 1. Summary of UGB Expansion Needed for Housing and Related Uses (2028)

Acres for new housing units	941
Acres for public schools	192
Acres for public parks and trails	474
Acres for second homes	500
Subtotal	2,107
Acres for other land uses (institutional, private open space, private ROW)	442
Acres for public rights of way	316
Estimate of Total Acres Needed	2,886

The city also included almost 3,000 acres of land in the UGB expansion that are not identified as being needed for housing or employment, or any other land need. [R. at 1054] While it appears that the city considers these acres to be unsuitable for any urban land needs, the city does not explain why these additional lands are included within the UGB if they cannot serve an urban need for land. There are no findings addressing these lands other than the two sentences at R. 1054.

c. Objections

The following subsection summarizes and paraphrases objections filed relating to the amount of land in the UGB expansion area for residential and other non-employment uses. The department also commented on these issues in letters to the city dated October 24, 2008 and November 21, 2008. Responses to these objections are provided in subsections 1.e and 2.e, below.

Anderson – The city and county underestimate the amount of land needed for right-of-way, and therefore fail to comply with OAR 660-024-0040(1). Specifically, the estimate is based on land use within the existing UGB, and fails to account for substandard existing rights-of-way and for needs attributable to stormwater management. [May 7, 2009 letter from Andrew Stamp]

Toby Bayard – The proposal doesn't plan for needed housing types to meet the housing needs of all residents as required by Goal 10, particularly lower income and multifamily housing. The proposal underestimates the land need for housing for lower income households.

The UGB amendment includes approximately 3,500 acres above the city's projected land needs, evidently including a variety of lands that are not suitable for urban uses. These lands include land in rural subdivisions, and appear to include lands that contain Goal 5 resources, but none of the reasons for inclusion are contained in the city's findings. State law does not allow a buffer or cushion (the city included a cushion of 519 acres).

The city has failed to show that residential uses cannot be reasonably accommodated within the existing UGB. The city estimates a potential capacity within the UGB of 44,738 units, but assumes that only 25 percent of this capacity will be utilized. Existing residential density in Bend is less than half that of other Oregon cities of the same size.

The city fails to plan for efficient use of the lands added to the UGB, by assuming that 76 percent of that land will be zoned RS (average density of 4 du/acre). Only 33 acres of the total 941 acres is assumed to be zoned RH (average density of 22 du/acre).

Bend's 1998 General Plan projected a housing mix of 55 percent single-family and 45 percent multi-family (including 10 percent mobile home parks), but actual development since 1998 has been 77 percent single-family and 23 percent multi-family (with 0 percent mobile home parks). The city assumes that housing density and mix will continue to produce the same housing types, without regard for current and future housing needs of the city's population over the next 20 years. The 1998 planned mix of 55/45 percent is identical to the mix provided by the Oregon Housing and Community Services Department's Housing Needs Model, which the city rejected and replaced with a much higher percentage of single-family housing and a much lower percentage of multi-family housing. The city also changed to a different type of housing mix, "detached percent and attached percent" instead of "single-family percent and multi-family percent," which includes single-family housing in the form of high end, low density detached housing, and attached housing in the form of attached housing in the form of high end townhomes, condos, and resort communities. The new mix terminology does less to ensure that both detached and attached housing types more affordable to lower and middle income households are likely to develop. The proposal includes medium and high density development only in the Central Area and on Transit Corridors without demonstrating that this will meet the 20-year housing needs of all residents.

The city has reduced the density in the RL (Residential Low Density) and RS (Residential Standard Density) zones.

The city's estimate of land need for second homes is too high, and is not supported by the evidence in the record.

The city's estimate of land need for public right-of-way is too high.

The city did not sufficiently consider efficiency measures inside the existing UGB as required by ORS 197.296(9). The efficiency measures that were adopted lack documentation to assure that they will be effective. [April 29, 2009 letter]

Carpenter/McGilvary – The city and county underestimate the amount of land needed for right-of-way, and therefore fails to comply with OAR 660-024-0040(1). Specifically, the estimate is based on land use within the existing UGB, and fails to account for substandard existing rights-of-way and for needs attributable to stormwater management. [May 5, 2009 letter from Bruce White]

Central Oregon LandWatch – The city does not explain how or why unsuitable lands are added to the UGB to arrive at a gross acreage total of 8,462 acres. The city's findings do not explain why some lands are considered unsuitable, nor why they are nevertheless added to the UGB. The city's determination that lots less than 3 acres in size are

unsuitable if they have existing development is not explained, not does it comply with Goal 14.

The city has not complied with OAR 660-015-0000(14)(2), in that it has not demonstrated that its projected needs cannot be met within the existing UGB.

The city's projected land need of 500 acres for second home development is not justified and is based on incorrect data.

The city's projected land need of 474 acres for parks is not justified, and is based on plans not incorporated into the city's comprehensive plan. In addition, the city fails to account for the fact that some of this need is and will continue to be met on lands outside of the UGB.

Regarding land need for public right-of-way, the city's estimate is based on existing development patterns and does not consider provisions for skinny streets that can and have reduced the amount of land required in newer developments in the city.

Regarding land needed for private rights-of-way and open space, there is no showing of why this type of private land use is needed under Goal 14, when public parks are already provided.

The city misconstrues 660-024-0040(1) in including a "buffer" of 519 acres over and above its demonstrated land need for residential use.

The city fails to consider the approval of the Tetherow destination resort and its effect on land need within the UGB for this type of use.

The city relied on current market conditions as the basis for determining that a greater degree of redevelopment will not occur within the 20-year planning period. The proposed housing mix of 65 percent single-family detached and 35 percent multi-family will not correct a historic shortfall of land for medium and higher density housing types. The city has not done enough to promote infill and redevelopment within the existing UGB, and must adopt more measures to plan for more multi-family housing. [May 7, 2009 letter from Paul Dewey]

Barbara I. McAusland – Bend's Development Code lacks incentives needed for the construction of affordable housing. Providing for second homes in the residential lands need consumes residential land without providing for the primary affordable housing needs of residents. Too much land is added to the UGB. [May 5, 2009 letter]

Newland Communities – The city underestimates the residential land need through the planning period. The assumptions used by the city concerning redevelopment and infill are overly optimistic, and do not account for various livability land needs such as parks and schools. The city also did not adjust its capacity analysis to reflect infrastructure of lot configuration constraints. The city failed to consider the presence of dwellings on lots

in its capacity analysis. The proposed expansion improperly provides less "room" or "livability" per person than existed during the period 1981–2008. The buildable land inventory within the existing UGB is overly conservative and likely overestimates the number of residential units that could be accommodated within the existing UGB and underestimates the amount of land needed within the proposed UGB.

The city's use of the Oregon Housing and Community Services Department's Housing Needs Model is in error, and will likely result in an underestimate of land need outside the existing UGB during the planning period. The Housing Needs Model should not be used in a UGB expansion, and Bend's use of it should be disregarded. The state should disregard the city's discussion or application of the Housing Needs Model and rely on actual trends (77/23 split) or the transition forecast of 65/35. The city must use the 1998-2005 housing mix and densities as required by HB 2709. [ORS 197.296]

The city is required to project housing density and mix, not housing tenure, and not a particular single family/multi-family split.

The theoretical surplus of 519 acres is needed to fulfill land needs, and to provide for effective delivery of infrastructure and complete communities. [May 7, 2009 letter from Christie White]

Oregon Department of State Lands – The city did not properly analyze housing need by type and density as required by ORS 197.296(3)(b) and failed to plan for needed housing as required by ORS 197.303. The city's conclusion concerning a 65/35 detached/attached housing mix is too generalized to comply with the specificity required under ORS 197.296(3)(b), 197.296(9) and 197.303 for a determination of the number of units and amount of land needed for each housing type (attached and detached single-family housing, and multiple family housing, each for both owner and renter occupancy) for the next 20 years.

The city also fails to adequately consider regional housing needs and a fair allocation of housing types, as required by OAR 660-008-0030.

As a result of these deficiencies, the proposal fails to demonstrate that the UGB will provide sufficient buildable land to accommodate projected housing needs for 20 years. [May 7, 2009 letter from Gary Vrooman]

Swalley Irrigation District – The city and county violated Goal 10 by failing to show that there are measures to achieve needed housing types.

The amount of land determined to be needed is too large and beyond what the city determined was needed. The 519-acre cushion must be removed.

The buildable land inventory does not include all buildable land as defined in ORS 197.295, *e.g.*, by excluding vacant land accessed by private road, by very narrowly defining "redevelopable" land, by excluding "split-zoned" parcels, and by not including

all “partially vacant” land planned or zoned for residential use. The city’s buildable land inventory and housing need analysis ignores or minimizes manufacture home parks as a needed housing type without a factual basis. The city ignores, contrary to Goal 10, the shortage of workforce housing. The city double-counts land need for open space, parks and schools. Parcels 3 acres or smaller with a house are arbitrarily rejected as “unsuitable” for future infill or redevelopment.

The city has selected the most expensive lands to serve with public facilities, making it impossible for affordable housing to be provided.

The city ignored the housing that is planned within two destination resort sites in its housing needs assessment.

The city has failed to include efficiency measures for the existing UGB as required by Goal 14 and ORS 197.296. [May 6, 2009 letter from Wendie Kellington, pp. 63-65, 72, 77-78]

d. Analysis and Conclusions

Population (Statewide Planning Goal 14, Factor 1; and OAR 660-024-0030). The city’s extension of Deschutes County’s acknowledged population forecast, from 2025 to 2028 complies with relevant state law. [ORS 195.036; 195.034] The city used a 1.7 percent annual growth rate for the 2025–2028 period, which is the same average annual growth rate that the County forecast for Bend for 2025. [ORS 195.034(1); R. at 1067-1068]

Buildable Lands Inventory/Capacity Analysis (ORS 197.296(3)–(5); Statewide Planning Goal 10; OAR 660-024-0050; OAR 660-008-0010).
Quantity of Buildable Lands Within the Prior UGB – OAR 660-008-0010 requires that the BLI document the amount of buildable land in each residential plan designation. The BLI must further break down the analysis into the amount of land in each plan designation that is vacant, and the amount that is redevelopable. [OAR 660-024-0050(1)] Buildable lands are residentially designated lands within the UGB that are suitable, available and necessary for residential uses. [OAR 660-008-005(2)] Lands are generally considered suitable and available unless severely constrained by natural hazards, subject to protection measures such as those required by Goal 5, have slopes over 25 percent, are within the 100-year floodplain, or cannot be provided with public facilities. [OAR 660-008-005(2)] In addition, “redevelopable lands” are lands zoned for residential use that are already developed, but where there is a strong likelihood that existing development will be converted to more intense residential uses during the planning period. [OAR 660-008-0050(6)]

Buildable lands include lands that may be used for a mix of residential and employment uses. [ORS 197.296(4)(a)] Finally, the city must create a map or document to verify and identify specific lots or parcels that have been determined to be buildable. [ORS 197.296(4)(c)]

The findings do not clearly explain how the city determined the amount of land that is redevelopable or vacant (the total quantity of vacant and redevelopable lands is determined to be 2,909 acres). [R. at 1071] Generally, the city indicates that the BLI is based on a parcel-level database, where city staff reviewed each tax lot to determine its development status (vacant, vacant platted, vacant with constraints, and redevelopable). [R. at 1071] The city included a summary of the BLI in its newly adopted Chapter 5 of the Bend Area General Plan. [R. at 1288, Table 5-4] However, there does not appear to be a map of the lands determined to be buildable in the record—making it impossible to identify the quantity or location of redevelopable or vacant lands. In addition, the city's most recent BLI indicates in notes that:

(a) Developed residential lots contain existing dwellings and do not meet the [redevelopment] criteria below, or are used for employment, schools, parks, open space, institutional uses, or parking lots[;] and

(b) Redevelopable residential lots can double the number of dwelling units on the lot, are greater than 0.5 acre, have a land value greater than improvement value, [*and*] have no CC&Rs prohibiting future land division[;] and

(c) Constrained lots are those with development constraints (no public road access) or with physical constraints over 50% of the lots (includes slopes greater than 25%, areas of special interest, and floodplains. [R. at 2042]

Based on these notes from the most recent BLI, it appears that the city excluded "constrained" lands that may qualify as "buildable land" under OAR 660-008-005(2). That rule provides that lands are generally considered suitable unless they meet certain specific criteria. It also appears that the city concluded that no redevelopment will occur on lots unless they contain at least 0.5 acres and have a land value exceeding improvement value. The criteria in the rule do not correspond to the criteria used by the city.

It also appears that the city considered some lands as "developed residential lots" that could be redeveloped, such as lands used for open space or parking lots. The criteria for "redevelopable residential lots" do not appear to comply with OAR 660-008-0005(6). Although consideration of land and improvement values and CC&Rs is relevant to the likelihood of existing development being converted to more intense residential uses over 20 years, there is no finding or reasoning in the city's decision that documents the determination required by the rule (i.e., that there is a strong likelihood that existing development will be converted to the capacities the city projects).

Finally, the BLI does not include consideration of potential development in lands that may be used for a mix of residential and employment uses. [R. at 2129] In sum, the department is unable to determine whether the *amount* of vacant and redevelopable land projected by the city for each residential plan designation complies with OAR 660-008-0005, 660-008-0010, 660-024-0050, and ORS 197.295 and 197.296(3) and (4). The director remands the city and county decisions with direction to:

1. Include a map of buildable lands, as required by ORS 197.296(4)(c), as well as a zoning map and a comprehensive plan map for the lands within the prior UGB.

2. Include as its inventory of buildable lands, an analysis for each residential plan district of those lands that are "vacant," and of those lands that are "redevelopable" as those terms are used in ORS 197.296(4)-(5) and OAR 660-008-005(6). As part of this inventory, include an analysis of what amount of redevelopment and infill has occurred, and the density of that development, by plan district, since 1998. The inventory must include the UAR and SR 2 ½ plan districts, as well as the RL, RS, RM and RH districts.

3. If the city excludes lands on the basis that there is not a strong likelihood that existing development will be converted to more intense residential uses during the planning period, include an analysis of lands within all districts showing the extent to which infill and redevelopment has or has not occurred since 1998.

Capacity Analysis for the Prior UGB – In determining the capacity of buildable lands, the city estimated that *all* vacant and redevelopable land will develop during the planning period. [R. at 1071] However, the city also bases its capacity analysis on the assumption that development in the RL, RS and RM plan designations will occur at the minimum density allowed by zoning for vacant lands in these districts, and that development in the RH district will occur at a lower density than the minimum allowed due to parcelization patterns. [R. at 1071] Most of the buildable lands capacity is estimated to be vacant lots and parcels rather than from lands that might redevelop. [R. at 1071, Table III-4]

The findings refer to a March 3, 2008 memorandum as providing the detail for the city's assumptions on buildable land capacity. [R. at 1071, 8408-8414] That memorandum indicates the city used the following assumptions regarding the projected density of new housing units per *acre* through *redevelopment*: one unit per acre for RL; two units per acre for RS; five units per acre for RM; and essentially no redevelopment for RH lands. For *vacant* lands that are *already platted* (or in the process of division), the assumed densities per *lot* are: one unit per lot for RL and RS, and two units per lot for RM and RH. For *vacant acreage*, the densities per *acre* are: two units per acre for RL, four units per acre for RS; eight units per acre for RM; and fourteen units per acre for RH. These calculations net out land for right-of-way (at 31 percent; later changed to 21 percent). [R. at 8409-8410; 1072] The findings do not include an analysis of lands zoned UAR or SR 2½ within the prior UGB (there appear to be UAR areas at Cooley Road, and at Juniper Ridge, and SR 2 ½ areas north of Roper Road, as well as other scattered UAR areas on the west side of the city, all within the prior UGB).

The city's minimum densities for its residential plan designations per its Development Code (Section 2.1.600), and the total acreage within the prior UGB for each as reported by the city, [R. at 8412] are:

- Urban Area Reserve (UAR) one unit per ten gross acres (acreage not listed)

- Suburban Low Density Residential (SR 2½) one unit per 2½ gross acres (single family detached housing) (acreage not listed)

- Low Density Residential (RL) 1.1 units per gross acre (single family detached housing) (1,527 total acres)

- Standard Density Residential (RS) 2.0 units per gross acre (single family detached housing) (9,611 acres)

- Medium Density Residential (RM-10) 6.0 units per gross acre (manufactured homes and attached housing) Note that single-family detached housing is a permitted use in this zone, with no apparent minimum density. (1,336 acres, include RM)

- Medium Density Residential (RM) 7.3 units per gross acre (attached multi-family housing) Note that single-family detached housing is a permitted use in this zone, with no apparent minimum density.

- High Density Residential (RH) 21.7 units per gross acre (attached multi-family housing) (316 acres) [R. at 8411]

While the assumption that *all* buildable lands will be developed during the planning period is aggressive, assumptions regarding the amount of development that will occur on those lands is quite conservative, particularly given the predominance of land planned for lower density within the existing UGB (RL and RS, with the latter allowing a minimum lot size of one-half acre and the former a minimum lot size of just under one acre). In addition, the city apparently failed to analyze lands zoned UAR or SR 2½ at all in terms of development capacity. The final determination of capacity within the existing UGB, which uses these assumptions, yields a total of 10,059 units (before new efficiency measures are considered). [R. at 1071, Table III-4]

Under ORS 197.296(3) and (5)(a), the determination of capacity must be based on data relating to land within the UGB that has been collected since the last periodic review (the city completed its last periodic review in 1998). More specifically, ORS 197.296(5)(a) requires that the determination of housing capacity be based on:

> (A) The number, density and average mix of housing types of urban residential development that have actually occurred;
> (B) Trends in density and average mix of housing types of urban residential development;
> (C) Demographic and population trends;
> (D) Economic trends and cycles; and
> (E) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

The findings do not relate the capacity analysis to the factors that the statute requires. Although some of the city's earlier efforts were based on actual infill and redevelopment

data from 1998 to 2008,[13] the decision simply uses assumptions based on minimum allowed density.[14] The analysis also leaves out any analysis of the extent to which lands have been, or are likely to be, rezoned to higher densities. As a result, the director determines that the city's capacity analysis does not comply with Goal 10 or ORS 197.296(3) or 197.296(5)(a). The director remands the city and county decisions with direction to:

1. For each zoning district, analyze the number of units, density and average mix of housing types of urban residential development that has actually occurred since 1998 (including through rezoning) and how much of this occurred on vacant lands, and how much occurred through redevelopment;

2. For each zoning district, analyze whether future trends over the 20-year planning period are reasonably expected to alter the amount, density and mix of housing types that has actually occurred since 1998; and

3. For each zoning district, adopt findings and conclusions regarding the number of units, the density, and the mix of housing types that the city concludes is likely to occur over the planning period, and identify how much is expected to occur on vacant lands, and how much is expected to occur through redevelopment.

Housing Needs Analysis (ORS 197.296(3)(b)(5); Statewide Planning Goal 10; OAR 660-024-0040 and 0050; OAR 660-008-0005, 0010 and 0030; Goal 14). Like the statutorily required analysis of housing capacity within the existing UGB, the scope and basis for the housing needs analysis is largely dictated by state statute. ORS 197.296(3)(b) and (5) require that the city:

> Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed *for each needed housing type* for the next 20 years." ORS 197.296(3)(b)(emphasis added); and that
>
> The determination of housing * * * need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has

[13] Using 1998-2005 built densities and the current distribution of residential land among the different residential zones would appear to result in a capacity of 12,280 housing units within the existing UGB rather than 10,059 units as the city ended up finding. [Table 13, R. at 2132] The low average built densities in the RL zone (two units per net acre) and RS zone (four units per net acre), and the predominance of those zones (84 percent of the city's total residentially-designated land is RL or RS [Table 5-4, R. at 1288] results in a lower capacity within the existing UGB.

[14] It also appears that the city excluded certain developed lands from consideration for redevelopment potential. Even developed lands must be considered for redevelopment under Goal 10. *Opus Development Corp. v. City of Eugene*, 28 Or LUBA 670, 693-695 (1995).

[sic] been collected since the last periodic review or five years, whichever is greater. The data shall include:

> (A) The number, density and average mix of housing types of urban residential development *that have actually occurred*;
> (B) *Trends* in density and average mix of housing types of urban residential development;
> (C) Demographic and population *trends*;
> (D) Economic *trends* and cycles; and
> (E) The number, density and average mix of housing types *that have occurred* on the buildable lands described in subsection (4)(a) of this section. [ORS 197.296(5)] [emphasis added]

In addition, ORS 197.303 defines "needed housing" as:

> * * * housing types determined to meet the need shown for housing within an urban growth boundary *at particular price ranges and rent levels*. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" also means:
>
> > (a) Housing that includes, but is not limited to, *attached and detached single-family housing and multiple family housing for both owner and renter occupancy*;
> > (b) Government assisted housing;
> > (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and
> > (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions." [ORS 197.303(1)] [emphasis added]

OAR 660-008-0005 defines several terms used in the preceding statutes that are pertinent to the scope of a city's required housing needs analysis, including: "attached single family housing," "detached single family housing," "housing needs projection," and "multiple family housing." In particular, the term "housing needs projection" (which is the same as the "housing needs analysis" under 197.296(3)) is:

> * * * a local determination, justified in the plan, of the mix of housing types and densities that will be:
>
> > (a) *Commensurate with the financial capabilities of present and future area residents of all income levels during the planning period*;
> > (b) Consistent with any adopted regional housing standards, state statutes and Land Conservation and Development Commission administrative ruels; and
> > (c) Consistent with Goal 14 requirements. [OAR 660-008-0005(4)] [emphasis added]

The city must estimate housing need for each housing type for *both* owner and renter occupancy. ORS 197.303(1)(a). Needed housing also requires that the city evaluate the need for housing at particular price ranges (owner occupancy) and rent levels (renter occupancy), and (as noted above) commensurate with the financial capabilities of *current and future* residents. [Statewide Planning Goal 10, Goal 10 definition of "Needed Housing Units;" OAR 660-008-0005(4) (definition of "housing needs projection"] Finally, OAR 660-008-0010 and ORS 197.307(3) require that "[s]ufficient buildable lands shall be designated on the comprehensive plan map to satisfy housing needs by type and density range as determined in the housing needs projection." See generally, *DLCD v. City of McMinnville*, 41 Or LUBA 210 (2001).

OAR 660-024-0040(7) provides several safe harbors used by the city, under which a city is not required to separately estimate the need for certain housing types (government-assisted housing, manufactured dwellings on individual lots, manufactured dwelling parks).

The collective result of these requirements as applied to the City of Bend is that the city is required to estimate housing need for at least three housing types:

- Attached single family housing (common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot, OAR 660-008-0005(1));
- Detached single family housing (a housing unit that is free standing and separate from other housing units, OAR 660-008-0005(3); and
- Multiple family housing (attached housing where each dwelling unit is not located on a separate lot, OAR 660-008-0005(5)).

In addition, the city must estimate housing need for each of these three housing types for *both* owner and renter occupancy. [ORS 197.303(1)(a)] This estimate must be based both on data concerning the development that has actually occurred since the last periodic review, and on demographic and housing trends. [ORS 197.296(5)(a)] The city must consider the housing needs of both present and future residents. OAR 660-008-0005(4) and OAR 660-008-0010. See generally, *DLCD v. City of McMinnville*, 41 Or LUBA 210 (2001).

<u>Projected Overall Need for Housing Units</u> – The city projected its overall need for housing during the planning period by dividing the total forecasted population increase (less persons in group quarters) by its projected household size (based on the 2000 census) to derive a forecast for needed new housing units. [R. at 1070, Table III-2] The city utilized several safe harbor provisions of OAR 660-024-0040 in making these forecasts. The findings show that it is qualified to use of these safe harbor provisions, and that the forecast of new housing units needed in the 2008–2028 period complies with state laws. The total of new housing units needed during the planning period is 16,681. [R. at 1070] The director finds that the city's projection of overall need for housing units complies with applicable state law.

Projected Need by Density and Housing Type – The city carried out three different housing needs analyses: a "HB 2709 Forecast;"[15] a "Housing Needs Model;" and a "Transition Forecast." [R. 1074-1078]. It appears that the city relied on the "Transition Forecast" for its final decision. [R. at 1078 ("The city finds that this final forecast (aka transition forecast) will meet Goal 10.")] However, the city *adopted* as its final housing need analysis a new Chapter 5 of its General Plan. [R. at 1050, 1280-1315 ("This section of Chapter 5 represents Bend's Housing Needs Analysis." R. at 1285] Nevertheless, the city's findings refer to the three prior analyses rather than to Chapter 5, for reasons that are not clear. As a result, it is extremely difficult to understand the city's reasoning.

The beginning of the newly adopted General Plan Chapter 5 includes a series of important findings, including:

- "The inadequate supply of land has led to a lack of multi family units * * *."
- "Central Oregon has the highest net migration in the state. The inadequate supply of land has led to a lack of multi-family units."
- "The rapid increase in population has resulted in a growth in demand for workforce housing that has outpaced the production of workforce housing units. Between 2000 and 2005, job growth created a demand for 9,057 units of workforce housing while only 8,230 units were produced."
- "* * * [M]ore affordable forms of housing, such as multi-family units, are currently being priced out of the Bend market."
- "Affordable housing for service workers, both for individuals and familites, is in short supply in Bend. * * * * While the cost of rental housing has not increased as rapidly as house prices, recent rent increases are starting to place additional

[15] The city states that its "House Bill 2709 trend forecast" -- an "extrapolation of actual housing mix and density trends between 1998 and 2005" [R. at 2121] -- is consistent with ORS 197.296. The department does not agree. ORS 197.296(5) sets out the state's UGB housing capacity and need methodology for cities like Bend that have 25,000 or more people in their UGBs. The UGB data on which the city must rely include:

- The number, density and average mix of housing types of urban residential development that have actually occurred;
- Trends in density and average mix of housing types of urban residential development;
- Demographic and population trends;
- Economic trends and cycles; and
- The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section. [ORS 197.296(5)(a)]

Only two of these data sources, the first and last, address *past* housing development; the others address future housing *trends.* This means that the city cannot rely exclusively on past data to determine housing need and capacity within the existing UGB. The analysis must also be based on current and future trends.

pressure on low-income households. Further complicating the issue is the seasonality of many jobs in the region * * * making it difficult for the region to meet peak housing needs. * * *"

- "The lack of affordable housing for the workforce has a negative affect on employers in Central Oregon. * * *"

- "The increasing lack of housing affordable to low and moderate income households is resulting in many area workers purchasing homes and living in other communities, including Redmond, Prineville and others. * * * This is exacerbating traffic congestion and other issues caused by rapid growth in the community. It also affects the ability of area employers to attract workers for jobs at many income levels, including service and professional workers." [R. at 1282-1284].[16]

- "In 2000, there were 2,087 and 2,285 very low and low income households, respectively, in Bend. There were only approximately 1,300 housing units available at prices at or under 30% of these households' monthly income * * *. Over 90% of these were rental units." [R. at 1309]

The city analyzed the housing development that occurred within its prior UGB between 2000 and 2008 for two housing types: attached and detached. [R. at 1286] There is no separate analysis of single family attached housing (the data for this housing type are combined with the detached single family housing data). The data show that the proportion of single family housing within the UGB has increased from 70 percent to 78 percent of all units over this period, while the proportion of multi-family housing has held steady (at 20 percent). The proportion of housing in manufactured home parks has decreased rapidly. [R. at 1286, Table 5-3 (note, there are math errors in the cited percentages)] The city also (in narrative, summary form) analyzed the change in density for single family and multi-family housing, finding that single family housing density has increased by 54 percent since 1999, and that the density of some types of multi-family housing has increased by 10 percent (there is no narrative regarding apartments or condominiums). [R. at 1289-1290] The findings also show a significant *decrease* in rental housing as a proportion of the total between 1990 and 2000. [R. at 1290, Table 5-7].

Like Chapter 5, the findings concerning the Transition Forecast consider housing need only for two categories: detached units and attached units. [R. at 1078, Table III-10] The projected housing mix of these two categories is 65 percent detached, and 35 percent attached. The findings indicate that most detached units will be owner-occupied, and that 38 percent of the attached units also are currently owner-occupied, with that percentage

[16] "It is clear that the city has a shortage of land in the higher density zones. A comparison of the land need and land supply by zones shows an overall deficit of about 250 net acres in the RM zone and a deficit of about 200 acres in the RH zone. From a planning perspective, it doesn't make sense to expect that this shortage of RM and RH land will be met entirely in the UGB expansion area(s)." [R. at 2133, City of Bend, Residential Lands Study, April 25, 2005]

expected to increase. [R. at 1078-1079] In other words, the Transition Forecast assumes that at least 78 percent of the housing needed between 2008 and 2028 will be owner-occupied (65% + 38% of 35%).

There are two main problems with the analysis. First, the lack of a clear connection between the findings and its adopted housing needs analysis (Chapter 5), along with the collapsing of housing types into two summary categories (attached and detached), makes it effectively impossible to determine whether the amendment complies with the substantive requirements of Goal 10 and ORS 197.296 to designate sufficient lands to satisfy housing needs by housing type and density. As a result of the use of varying categories and terminology, the director is unable to determine whether the housing needs analysis complies (in form) with ORS 197.296 and Goal 10.

This is not simply a technical problem; the use of varying housing type categories and labels in the findings makes it impossible to evaluate whether they comply with Goal 10 and ORS 197.296 (compare Tables III-5, III-6, III-8, III-9 and III-10). The terminology also makes it impossible to determine whether and how the city's residential zones provide for various housing types as contemplated by OAR 660, division 8. The "transition forecast," which blends actual development with future needs, provides an estimated future housing *type* mix of 54 percent detached and 46 percent attached. [R. at 2130] It is impossible for the director to compare this result with the other two forecasts, the 1998–2005 built mix, and with the 1998 planned mix, because the findings express housing mix in terms of single-family vs. multi-family housing types, not detached versus attached housing types.

More substantively, it is clear from the findings that there is a current and projected future shortage of land for multi-family housing. [R. at 1075] In addition, the city has identified a significant need for additional workforce housing to reduce the growing trend of commuting into Bend from surrounding communities [R. at 1282], and a need for additional seasonal worker housing. [R. at 1282] Neither the findings nor the Housing Needs Analysis explain how the current and future planning designations of land will provide for these housing needs. Instead, the decision simply assumes (and does not attempt to alter) the recent trends that have created these housing needs.

Specifically, the city has planned most of its residential lands (87 percent) within the prior UGB for low-density, single family residential use (RL (1.1 dwelling per gross acre minimum density) and RS (2.2 dwellings per gross acre minimum density)). Multi-family housing (buildings with more than 3 units) is not allowed within the RL and RS zones (duplexes and triplexes are conditional uses in the RS zone). [Bend Code section 2.1.200, R. 1287-1288].

Further, the city is planning for an equivalent distribution of lands among residential districts for the lands the UGB expansion area. [R. at 1079; 1080] (Table III-12 shows 76 percent of the total acreage as being in the RS zone; note that lands in the RL zone are not included in this table at all because, according to the city, this zone will not provide

needed housing.) [R. at 1079; see also R. at 1098 (Framework Plan[17] allocates 84 percent of (non-employment) lands added to the UGB as RS)]. The record lacks findings on why the existing distribution by zone is appropriate for the expansion area, and why it is appropriate for the 20-year planning period, especially in light of other findings in the record about demographic, household income, and housing affordability trends for the Bend area that indicate the existing distribution is not appropriate for the future.[18]

Conversely, previous planning decisions may have undermined the city's ability to provide needed multi-family and high density housing. The city's 2008 BLI reports that there are 341 acres designated as high density residential (RH), which contained 1,246 dwelling units, of which 172 units are single family dwellings. [Table 5-4, R. at 1288, Table 5-5, R. at 1289] This amounts to a gross density of 3.65 dwelling units per acre for the 341-acre inventory of RH-designated land.

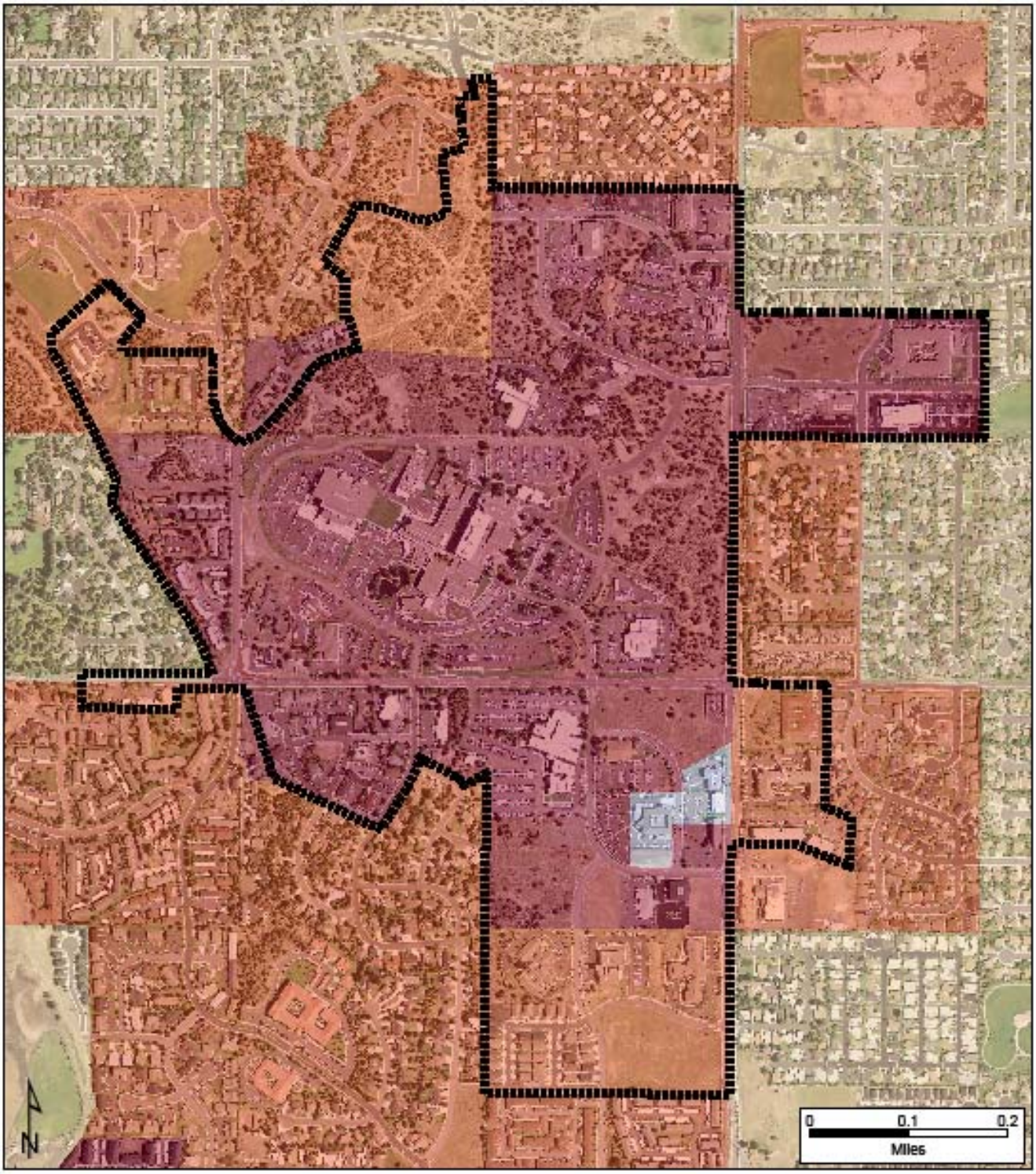
In attempting to understand the low unit per acre yield from the RH inventory, the department has determined that approximately 215 acres of the 341 RH inventory is included within the Medical District Overlay Zone, which is anchored by St. Charles Hospital. (See Figure 2 on the following page). A review of existing land uses within the overlay zone's RH-designated area shows that a majority is devoted to the hospital and related medical uses, including satellite facilities and offices, as well as what appears to be a potential hospital expansion area. Most of the assisted living and nursing home units within the overlay district are actually located on medium density (RM) designated and zoned land. Very little high density housing is found in the approximately 215-acre area of RH. This is partially confirmed by the 2008 BLI, which shows only 29 nursing home dwelling units in the city's RH inventory.

It can be fairly concluded from this data that these approximately 215 acres of RH lands have and will yield very little actual multi-family housing. This "non-yielding" area represents 63 percent of the city's entire RH inventory, leaving only 126 acres of RH land citywide to meet the needs of this needed housing type.

Housing densities within the city appear to have increased to some extent since the last periodic review, and in this sense the city may be moving toward compliance with the intent of Goal 10, OAR 660-008-0020, ORS 197.296 and ORS 197.307(3). Further, the overall amount of land identified as needed by the city for residential uses (941 acres), *may* be reasonable given the city's rapid growth. However, without findings that connect the identification of housing needs with a showing that sufficient lands have been

[17] The Framework Plan referred to in the findings at R. 1098 is referred to elsewhere as the draft Framework Plan. R. 1056]. The Framework Plan is referenced in the City's General Plan, but it is not clear that the city has adopted the Framework Plan.

[18] The city adopted a housing *type* mix of 65 percent detached and 35 percent attached because this was the built mix in 2008. [R. at 1306-07] It is not clear whether this mix applies to the entire amended UGB, or only to the expansion area.



Medical District Overlay Zone

Figure 2

Oregon
Department of Land Conservation & Development

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

RH - Res Urb High Density
RM - Res Urb Medium Density
RS - Res Urb Standard Density
Other City Zones (Employ, Mix Use, & Pub. Fac.)
Overlay Zone Boundary

Aerial image: 2009 NAIP
LSB and zoning information extracted from maps provided by City of Bend and Deschutes County
DLCD GIS (v0.01)010
HospitalPgF.mxd

provided to meet those needs, the director is unable to conclude that the city's decision complies with Goal 10, the Goal 10 rules, the needed housing statutes, or Goal 14 and OAR 660, division 24.

For the foregoing reasons, the director remands the city and county decisions, with direction to:

1. Revise the Housing Needs Analysis to comply with ORS 197.296, OAR 660-008-0020, and ORS 197.303. The Housing Needs Analysis must include an evaluation of the need for at least three housing types at particular price ranges (owner occupancy) and rent levels (renter occupancy), and commensurate with the financial capabilities of *current and future* residents. Those housing types include: (a) attached single family housing (common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot pursuant to OAR 660-008-0005(1)); (b) detached single family housing (a housing unit that is free standing and separate from other housing units pursuant to OAR 660-008-0005(3); and (c) multiple family housing (attached housing where each dwelling unit is not located on a separate lot pursuant to OAR 660-008-0005(5));

2. Adopt the revised Housing Needs Analysis as an element of the comprehensive plan, along with findings that demonstrate how the revised Housing Needs Analysis complies with the applicable statutory, goal and rule requirements described above.

<u>Amount of Land Added to the UGB for Residential Land Need</u> – The amendment includes a conclusion that there is a need for 941 acres of additional land for needed housing, for 5,522 dwelling units that cannot be accommodated within the prior UGB. [R. at 1082] As noted above, without findings that connect this amount to needed housing types as identified by the city in its own findings, and as required by state law, the director is unable to determine whether the amount of land added to the UGB is lawful.

A final key assumption used by the city to determine the quantity of land required in an expansion area for needed housing is that new residential development in the expansion area will occur at an overall density of six units to the net acre, not including lands planned for low density development. [R. at 1079, 1080][19] The findings state that this density:

> * * * would be higher than densities seen in recent development because the 2006 Development Code requires minimum densities of development to ensure housing

[19] The General Plan amendments assumed an average net density of 5.9 dwelling units per net acre, for the expansion area only, based on average net densities for the RS, RM and RH Zones. [R. at 1308] These densities don't appear consistent with the 2006 built densities or the planned densities for the existing UGB or the "Needed density by housing types," and the plan doesn't include findings for the decision to use these numbers. Compare Table 13 [R. at 2132], Table 5-28 [R. at 1308], Table 5-29 [R. at 1308], and Table 5-29A [R. at 1309].

> developed in the RM and RH zone occurs at densities higher than the assumed overall overage of six units to the net acre. The city feels compelled to point out that the needed density of six units to the net acre is 50 percent higher than the current net density of just under 4 units to the acre. [R. at 1081]

As described in more detail below, the director does not agree that the minimum density provisions of the city's 2006 Development Code ensure or otherwise encourage any increase in density given the current and planned allocations of land between the SR 2½, RL, RS, RM and RH districts within the city and within the UGB expansion area. There is simply too much land planned as SR 2½, RL and RS, combined with minimum densities for these districts of one unit per 2.5 acres, 1.1 unit per acre, and two units per acre, respectively, to ensure anything but large lot residential development.

The use of an overall average residential density for the UGB expansion area of 6.0 units per net acre assumes that the city will maintain the same proportional allocation of zones within its prior UGB in the expansion area, providing no progress toward planning for more efficient urban development. This results in the city adding more land to its UGB than is necessary to provide needed housing, and in the long term this will only exacerbate the transportation and public facility challenges facing the city. As a result, the director finds that the city has not demonstrated that the amount of land added to the city's UGB for needed housing complies with Goal 10 or Goal 14, or their implementing rules, or with the needed housing statutes. The director remands the city and county decisions, with direction to:

> Analyze what the mix of plan designations should be in the UGB expansion area in direct relation to the city's projected housing needs, and consider the adoption of new residential plan districts that encourage more multi-family, higher density single family housing, and other needed housing types for a greater proportion of the expansion area, in order to meet the city's and the region's demonstrated housing needs.

<u>Measures</u> – In order to approve the UGB expansion, the director also must determine whether the identified needs for residential land can reasonably be accommodated on land within the prior UGB. [Goal 14; OAR 660-024-0050(4)] In addition, Goal 10 and ORS 197.307(3) require that, when the city identifies a need for housing at particular price ranges and rent levels, sufficient buildable lands must be provided to satisfy that need. ORS 197.296(7) also requires adoption of measures that "demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet needs over the next 20 years."

As part of its decision, the city adopted two new measures intended to increase the proportion of its housing need that could be satisfied within the existing UGB. These measures add 500 units of housing in the Central Area Plan, and up-zone areas along

transit corridors for another 600 units. Chapter 5 of the General Plan (Housing) requires that transit corridor amendments be implemented prior to 2012 [R. at 1311]; there is no timeframe associated with the Central Area Plan work. Nor does Chapter 5 include any specific commitment in terms of number of housing units. Although these units are "assumed" to be attached, the numbers are described as an estimate. [R. at 1303] As a result, the director is unable to determine that these measures "demonstrably increase the likelihood" that the additional residential development will occur.

The city also notes in its findings that it has taken *prior* efficiency measures. [R. at 1083] With respect to these measures, the director believes that the main efficiency measures identified by the city are not likely to be effective. The minimum adopted densities range from 1.1 unit per gross acre to 2.0 units per gross acre for most residentially zoned lands. Even in the city's medium-density zones, the minimum densities are 6.0 to 7.3 units per acre. These densities do little or nothing to address the city's identified need for multi-family, lower income, or workforce housing. As noted above, multi-family housing is not allowed at all in the RS zone (other than duplexes and triplexes, which are conditional uses). The 2007 Residential Lands Study does not demonstrate how much these actions have increased housing densities, how many additional housing units they provided, or how much urban land they saved in the past, nor does it show how much of the city's needed housing types and units, and what amount of residential land, these actions will provide within the next 20 years. As a result, the director determines that the city has failed to demonstrate that the estimated needs cannot reasonably be accommodated on land already within the UGB. The director remands the city and county decisions, with direction to:

1. Consider measures to encourage needed housing types within additional areas of the city, including rezoning of areas along transit corridors and in neighborhood centers.

2. Consider splitting the existing RS zone, which covers most of the residential areas of the city, into two or more zones in order to encourage redevelopment in some areas while protecting development patterns in well-established neighborhoods.

3. In areas where the city is planning significant public investments, consider up-zoning as a means to help spread the costs of such investments.

4. Consider strengthening the minimum density provisions in the existing UAR and SR 2½ zones by eliminating PUDs and other clustering tools.

5. Consider strengthening the minimum density provisions in the existing RS and RM zones to encourage development of needed housing types, rather than relying on low density residential development.

As noted above, the director believes the city likely will be able to make a showing that some amount of residential land is needed in an expanded UGB due to the city's rapid growth rate, but the director believes there are other reasonable measures that the city can

take to accommodate more of the needed housing within the prior UGB over the next 20 years.

e. Response to Objections

Toby Bayard –
Objection: The UGB amendment includes approximately 3,500 acres above the projected land needs, evidently including a variety of lands that are not suitable for urban uses. These lands include land in rural subdivisions, and appear to include lands that contain Goal 5 resources, but none of the reasons for inclusion are contained in the findings. State law does not allow a buffer or cushion (the city included a cushion of 519 acres).
Response: This objection is sustained. As noted in the department's analysis, the findings provide no basis for including lands beyond the roughly 5,000 acres shown as needed for residential and employment related land needs.

Objection: The city has failed to show that residential uses cannot be reasonably accommodated within the existing UGB. The city estimates a potential capacity within the UGB of 44,738 units, but assumes that only 25 percent of this capacity will be utilized. Existing residential density in Bend is less than half that of other Oregon cities of the same size.
Response: This objection is sustained. Goal 14 and OAR 660-024-0050 require the city to show that its needs for urban land cannot reasonably be accommodated within the existing UGB.

Objection: The city has assumed no redevelopment of RL and RS lands within the UGB. Goal 14 and Goal 10 requires the city to analyze what redevelopment has actually occurred on these lands since 1998, and to estimate redevelopment based on actual experience as well as future trends, rather than simply concluding that no redevelopment will occur.
Response: This objection is sustained. As noted above, state statue requires the city to base its estimate of redevelopment on what has actually occurred within the UGB as well as future trends. The city's findings do not address redevelopment or infill that has occurred on UAR, SR 2½, RL, or RS lands.

Objection: The city fails to plan for efficient use of the lands added to the UGB, by assuming that 76 percent of that land will be zoned RS (average density of four dwelling units per acre). Only 33 acres of the total 941 acres is assumed to be zoned RH (average density of 22 dwelling units per acre).
Response: This objection is sustained. The city's Framework Plan and findings, as well as Chapter 5 of the General Plan, indicate that only a very small percentage of land added to the UGB will be planned for moderate or high-density residential uses. Given the findings that there is a shortage of multi-family housing, and shortages of affordable and workforce housing, the decision to follow existing land allocations in the expansion lands violates both Goal 10 and Goal 14, and their implementing rules.

Objection: Bend's 1998 General Plan projected a housing mix of 55 percent single-family and 45 percent multi-family (including 10 percent mobile home parks), but actual development since 1998 has been 77 percent single-family and 23 percent multi-family (with 0 percent mobile home parks). The city assumes that housing density and mix will continue to produce the same housing types, without regard for current and future housing needs of the city's population over the next 20 years. The 1998 planned mix of 55/45 percent is identical to the mix provided by the Oregon Housing and Community Services Department's Housing Needs Model, which the city rejected and replaced with a much higher percentage of single-family housing and a much lower percentage of multi-family housing.

The city also changed to a different type of housing mix, "detached percent and attached percent" instead of "single-family percent and multi-family percent," which includes single-family housing in the form of high end, low density detached housing, and attached housing in the form of attached housing in the form of high end townhomes, condos, and resort communities. The new mix terminology does less to ensure that both detached and attached housing types more affordable to lower and middle income households are likely to develop. The proposal includes medium and high density development only in the Central Area and on Transit Corridors without demonstrating that this will meet the 20-year housing needs of all residents.
Response: This objection is sustained for the reasons set forth in the department's analysis. The form of the city's Housing Needs Analysis makes it impossible to determine what housing needs are, and whether the city's UGB expansion will meet those needs.

Objection: The city did not sufficiently consider efficiency measures inside the existing UGB as required by ORS 197.296(9). The efficiency measures that were adopted lack documentation to assure that they will be effective.
Response: This objection is sustained. As determined above, the city needs to evaluate additional measures to assure that it provides lands for needed housing, and the two efficiency measures that the city has adopted are not adequately assured based on the lack of specificity in Chapter 5.

Central Oregon LandWatch –
Objection: The city has not complied with OAR 660-015-0000(14)(2), in that it has not demonstrated that its projected needs cannot be met within the existing UGB.
Response: This objection is sustained. Both Goal 14 and ORS 197.296 require the city to adopt measure to provide needed housing within its UGB before looking to lands outside of the UGB.

Objection: The city relied on current market conditions as the basis for determining that a greater degree of redevelopment will not occur within the 20-year planning period. The proposed housing mix of 65 percent single-family detached and 35 percent multi-family will not correct a historic shortfall of land for medium and higher density housing types. The city has not done enough to promote infill and redevelopment within the existing UGB, and must adopt more measure to plan for more multi-family housing.

Response: This objection is sustained for the reasons set forth in the director's decision.

Barbara I. McAusland –
Objection: Bend's Development Code lacks incentives needed for the construction of affordable housing. Providing for second homes in the residential lands need consumes residential land without providing for the primary affordable housing needs of residents. Too much land is added to the UGB.
Response: These objections are sustained in part. As set forth in the director's decision above, the city must consider additional measure to assure that lands are provided for the development of needed housing. The director agrees with the city and with the objector that second home development competes with other needed housing types, and should be considered in the city's decisions, and that the city's planning for expansion areas can influence whether the lands are used for second home development or other forms of housing. The director agrees that the city has not justified the amount of land added to the UGB.

Newland Communities –
Objection: The city underestimates the residential land need through the planning period. The assumptions used concerning redevelopment and infill are overly optimistic, and do not account for various livability land needs such as parks and schools. The city also did not adjust its capacity analysis to reflect infrastructure of lot configuration constraints. The city failed to consider the presence of dwellings on lots in its capacity analysis. The proposed expansion improperly provides less "room" or "livability" per person than existed during the period 1981-2008. The buildable land inventory within the existing UGB is overly conservative and likely overestimates the number of residential units that could be accommodated within the existing UGB and underestimates the amount of land needed within the proposed UGB.
Response: The director denies Newland's objection that the city has underestimated the need for residential land through the planning period. As set forth above, the director is unable to determine whether the city has underestimated or overestimated is need for residential land due to problems with the city's BLI and HNA.

The director does not agree that the assumptions used by the city concerning redevelopment and infill are overly optimistic. Again, those assumptions are inadequately documented under ORS 197.296.

The director does not agree that the city failed to consider livability needs. The city has included estimated land need for parks and schools. Again, however, the amounts of land included for these needs are not adequately documented under Goal 14 or OAR 660, division 24.

The director denies the objection that the city's capacity analysis should reflect infrastructure of lot configuration constraints without more specific evidence that lands cannot be served during the planning period. The city did consider the presence of dwellings on lots in its capacity analysis, as set forth above.

The director denies the objection that the proposed expansion improperly provides less "room" or "livability" per person than existed during the period 1981-2008. There is evidence in the record that the density of the city is significantly lower than other large cities in Oregon, and there is nothing in state law that prevents the city from increasing the efficiency of its development pattern and lowering its costs for public services.

The director denies the objection that the buildable land inventory within the existing UGB is overly conservative and likely overestimates the number of residential units that could be accommodated within the existing UGB and underestimates the amount of land needed within the proposed UGB for the reasons set forth in the director's analysis, above. In its current form, it is not possible to conclude whether the city's BLI complies with ORS 197.296 and Goal 10.

Objection: The city's use of the Oregon Housing and Community Services Department's Housing Needs Model is in error, and will likely result in an underestimate of land need outside the existing UGB during the planning period. The Housing Needs Model should not be used in a UGB expansion, and Bend's use of it should be disregarded. The state should disregard the city's discussion or application of the Housing Needs Model and rely on actual trends (77/23 split) or the transition forecast of 65/35. The city must use the 1998-2005 housing mix and densities as required by HB 2709 [ORS 197.296].
Response: Based on the city's findings, it does not appear that the city relied on the Housing Needs Model. Instead, the city relied on the HNA in Chapter 5 of its General Plan and (as set forth in its findings) its "Transition Forecast." The Housing Needs Model is one source of evidence of needed housing, and one which the city apparently did not rely on. As a result, this objection provides no basis for remand of the city's decision. The director agrees that 1998-2008 housing mix and densities (for each of the city's residential districts) is one of the bases that the city must consider (along with future trends), as set forth in the analysis above.

Objection: The city is required to project housing density and mix, not housing tenure, and not a particular single family/multi-family split.
Response: This objection is denied, in part. The city is required to project housing density and mix for both owner-occupied and rental housing, for each residential district, for single family detached, single family attached, and multi-family housing. ORS 197.296(3) and (5).

<u>Oregon Department of State Lands</u> –
Objection: The city did not properly analyze housing need by type and density as required by ORS 197.296(3)(b) and failed to plan for needed housing as required by ORS 197.303. The city's conclusion concerning a 65/35 detached/attached housing mix is too generalized to comply with the specificity required under ORS 197.296(3)(b), 197.296(9) and 197.303 for a determination of the number of units and amount of land needed for each housing type (attached and detached single-family housing, and multiple family housing, each for both owner and renter occupancy) for the next 20 years.
Response: This objection is sustained, for the reasons set forth in the director's analysis, above.

Objection: The city also fails to adequately consider regional housing needs and a fair allocation of housing types, as required by OAR 660-008-0030.
Response: This objection is sustained. The city is obligated under Goal 10, and the cited rule, to consider needed housing on a regional basis. The city's findings indicate that much needed housing for the City of Bend is being provided outside of the city, forcing the region's residents to drive long distances and creating imbalances between cities in Central Oregon. The city and the county must address these regional issues on remand.

Objection: As a result of these deficiencies, the proposal fails to demonstrate that the UGB will provide sufficient buildable land to accommodate projected housing needs for 20 years.
Response: This objection is sustained. Until the city completes the tasks required on remand, it has not demonstrated that its UGB will provide sufficient buildable land to accommodate projected housing needs for 20 years.

Swalley Irrigation District –
Objection: The city and county violated Goal 10 by failing to adopt measures to achieve needed housing types.
Response: This objection is sustained, for the reasons set forth in the director's analysis above.

Objection: The buildable land inventory does not include all buildable land as defined in ORS 197.295, e.g., by excluding vacant land accessed by private road, by very narrowly defining "redevelopable" land, by excluding "split-zoned" parcels, and by not including all "partially vacant" land planned or zoned for residential use. The city's buildable land inventory and housing need analysis ignores or minimizes manufactured home parks as a needed housing type without a factual basis. The city ignores, contrary to Goal 10, the shortage of workforce housing. The city double-counts land need for open space, parks and schools. Parcels 3 acres or smaller with a house are arbitrarily rejected as "unsuitable" for future infill or redevelopment.
Response: This objection is sustained for the reasons set forth in the director's analysis above.

Objection: The city has selected the most expensive lands to serve with public facilities, making it impossible for affordable housing to be provided.
Response: This objection is sustained, in part. ORS 197.296(9) requires cities to ensure that land for needed housing is in locations appropriate for the housing types identified as needed. The city has identified needs for multi-family, workforce, and seasonal worker housing, and a general housing affordability problem, and yet at least some of the lands included within the expansion area are shown by the city's analyses to have very high service costs. The city's revised HNA should address and link needed housing types with its existing analysis of service costs.

Objection: The city ignored the housing that is planned within two destination resort sites in its housing needs assessment.

Response: This objection is sustained for the reasons set forth in response to the similar objection from Central Oregon LandWatch.

Objection: The city has failed to include efficiency measures for the existing UGB as required by Goal 14 and ORS 197.296.
Response: This objection is sustained, in part. The city has included two new efficiency measures and referred to some existing efficiency measures as described in the director's analysis above. However, as set forth in detail above, these measures are both too uncertain, and inadequately related to the city's housing needs, to ensure that the city is complying with the need criteria of Goal 14, or with the requirements of ORS 197.296 to adopt measures to ensure that the city is planning for needed housing.

f. Summary of Decision on Housing and Residential Land Needs

The director remands the UGB amendment with the following instructions:

1. Include a map of buildable lands, as required by ORS 197.296(4)(c), as well as a zoning map and a comprehensive plan map for the lands within the prior UGB;

2. Include as its inventory of buildable lands, an analysis for each residential plan district of those lands that are "vacant," and of those lands that are "redevelopable" as those terms are used in ORS 197.296(4)-(5) and OAR 660-008-005(6). As part of this inventory, include an analysis of what amount of redevelopment and infill has occurred, and the density of that development, by plan district, since 1998. The inventory must include the UAR and SR 2 ½ plan districts, as well as the RL, RS, RM and RH districts;

3. If the city excludes lands on the basis that there is not a strong likelihood that existing development will be converted to more intense residential uses during the planning period, include an analysis of lands within all districts showing the extent to which infill and redevelopment has or has not occurred since 1998;

4. For each zoning district, analyze the number of units, density and average mix of housing types of urban residential development that has actually occurred since 1998 (including through rezoning) and how much of this occurred on vacant lands, and how much occurred through redevelopment;

5. For each zoning district, analyze whether future trends over the 20-year planning period are reasonably expected to alter the amount, density and mix of housing types that has actually occurred since 1998;

6. For each zoning district, adopt findings and conclusions regarding the number of units, the density, and the mix of housing types that the city concludes is likely to occur over the planning period, and identify how much is expected to occur on vacant lands, and how much is expected to occur through redevelopment;

7. Revise the Housing Needs Analysis to comply with ORS 197.296, OAR 660-008-0020, and ORS 197.303. The Housing Needs Analysis must include an evaluation of the need for at least three housing types at particular price ranges (owner occupancy) and rent levels (renter occupancy), and commensurate with the financial capabilities of *current and future* residents. Those housing types include: (a) attached single family housing (common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot pursuant to OAR 660-008-0005(1)); (b) detached single family housing (a housing unit that is free standing and separate from other housing units pursuant to OAR 660-008-0005(3); and (c) multiple family housing (attached housing where each dwelling unit is not located on a separate lot pursuant to OAR 660-008-0005(5));

8. Adopt the revised Housing Needs Analysis as an element of the comprehensive plan, along with findings that demonstrate how the revised Housing Needs Analysis complies with the applicable statutory, goal and rule requirements described above;

9. Analyze what the mix of plan designations should be in the UGB expansion area in direct relation to the city's projected housing needs, and consider the adoption of new residential plan districts that encourage more multi-family, higher density single family housing, and other needed housing types for a greater proportion of the expansion area, in order to meet the city's and the region's demonstrated housing needs;

10. Consider measures to encourage needed housing types within additional areas of the city, including rezoning of areas along transit corridors and in neighborhood centers;

11. Consider splitting the existing RS zone, which covers most of the residential areas of the city, into two or more zones in order to encourage redevelopment in some areas while protecting development patterns in well-established neighborhoods;

12. In areas where the city is planning significant public investments, consider up-zoning as a means to help spread the costs of such investments;

13. Consider strengthening the minimum density provisions in the existing UAR and SR 2½ zones by eliminating PUDs and other clustering tools; and

14. Consider strengthening the minimum density provisions in the existing RS and RM zones to encourage development of needed housing types, rather than relying on low density residential development.

2. Land Added to the UGB for Related (Non-Employment) Uses

a. Legal standards

Goals 10 and 14 and OAR 660, divisions 8 and 24 are the applicable state laws.

b. Summary of Local Actions

As noted in the introduction to this section, in addition to the 941 acres of land added to the UGB for residential uses, the city has added 1,925 acres to meet its estimated land need for public schools, parks, second homes, private open space and rights-of-way, and public rights-of-way. The amount of land the city estimates is needed for each of these uses (based partially on its analysis of land use within the prior UGB) is summarized in Table 1, in subsection 1.b of this section. [R. at 1092]

c. Objections.

Objections related to land need are itemized in subsection 1.c, above, and the department's responses related to those objections specific to non-residential, non-employment land need are provided in section 2.e, below.

d. Analysis and Conclusions.

Public schools and parks. The estimates of land need for public schools [R. 1088-1089] and parks [R. 1089-1090] are based on per-capita service standards recommended by the school district and the parks district. While there may be no inherent problem with the use of service standards, the city's application of the standards assumes that *all* new school and park facilities to serve new residents in Bend will be located on expansion lands outside of the prior UGB. The findings do not address whether the estimated land needs for schools can reasonably be accommodated within the UGB, as required by OAR 660-024-0050(4). Similarly, the findings for parks do not address whether the estimated need can be met within the UGB, or the extent to which the need may already be met by existing or planned facilities *outside* of the UGB (some types of park facilities are allowed outside of UGBs; see, OAR 660, division 34).

In addition, the land need estimate for public parks was increased from 362 acres to 474 acres at the very end of the city's review process, based not on the district's service standards but on an estimate of land need "on a quadrant basis using the city's Framework Plan." [R. at 1090] The findings do not clearly explain the basis for this increase,[20] and given the director's action with regard to the Framework Plan (see below) do not have an adequate factual base. As a result, the director is unable to find taht there is an adequate factual basis for the increased estimate of land needed for public parks. The director remands the city and county decisions, with direction to:

1. Determine whether the need for land for public schools can reasonably be accommodated within the existing UGB;

[20] The city's acceptance of this estimate was based on city council direction to err on the side of including too much, rather than too little land. [R. at 1090, note 55; R. at 8801]

2. Determine whether the need for land for public parks (including trails) can reasonably be accommodated within the existing UGB, and whether this need is already met in whole or in part by facilities planned or existing outside of the UGB; and

3. Adopt findings that justify the increase in land needed on a "quadrant" basis for parks, or use the prior estimate of the district for a lesser acreage.

Second homes. The director agrees with the city that second homes are a "legitimate Goal 10 issue." The city has estimated a land need for 500 acres for second home development. This acreage represents over half (again) the amount of land added for new housing units (first homes).

The city received testimony estimating that 377 acres of land were developed with second homes during the seven years prior to its decision. [R. at 1086] The city also received testimony that 20 percent of the total number of homes that would be developed during the planning period would be second homes. [R. at 1087] However, the city elected to use an 18 percent factor instead. [R. at 1087]

The director believes there is substantial evidence in the record to support the city's determination concerning the number of *units* of second home development during the planning period (between 18 and 20 percent of the total units needed). However, the city's findings do not identify or explain why the city used an average density of six units per net acre (the same density used for the expansion area generally) for this housing type. The findings do not explain why second homes require the same amount of land as the city is planning for first home development. Nor do the findings evaluate whether (or to what extent) this use might be accommodated within the prior UGB. [OAR 660-024-0050] Instead, the findings assume the entire need must be met on expansion lands at the same density as first home development. The result is that, although the city estimates second homes will be 18 percent of the total units developed over the next 20 years, it then allocates second homes more than half of the amount of land allocated to first home development. As a result, the director is unable to determine that land need for this use complies Goals 10 or 14, or their implementing rules, or with ORS 197.296. The director remands the city and county decisions, with direction to:

1. Coordinate with the county specifically concerning the need for second-home housing, and where this need should be satisfied regionally;

2. Evaluate whether this need can reasonably be accommodated on lands within the existing UGB;

3. To the extent that additional lands are required, establish a reasonable, specific density of development for this housing type for the next 20 years.

Private Open Space and Private Rights-of-way. The city applied a 15 percent factor to its projected residential (and park and school and second home) land needs to reflect projected land need for private open space and private rights-of-way. This figure is based on an analysis of the proportion of land within the prior UGB devoted to this use, and assumes the same land allocation within the expansion area. [R. at 1092] However, projecting a land need for private open space and rights-of-way for public parks and for public schools does not appear logical (unless the 15 percent figure was derived for all non-employment lands within the existing UGB, which is not clear from the findings). Further, there is no explanation in the record why prior development patterns, with a relatively large amount of private open space, is needed within the expansion area. Elsewhere in its decision, the city determines that lots that have access through private rights-of-way are not suitable for urbanization. Simply adopting past development patterns is not a sufficient basis to demonstrate a land need under Goal 14 or under ORS 197.296.For all these reasons, the director is unable to determine that this element of the city's decision complies with Goal 14 or OAR 660-024-0040.

The director remands the city and county decisions, with direction to either remove private open space and private rights-of-way as categories of land need, or justify why private open space and private rights-of-way are needed within the UGB expansion area in addition to estimated land needs for public parks and public rights-of-way.

Surplus Acreage. The amendment expands the UGB by 5,475 "suitable" acres to meet the estimated land need of 4,956 acres, yielding a surplus of 519 acres. [R. at 1193] The city's findings explain this excess acreage by referring to OAR 660-024-0040(1), which acknowledges that 20-year projections of land needs are estimates that should not be held to an unreasonably high level of precision. The city also appears to believe that this amount of acreage is needed for several specific reasons, including efficient provision of public services (e.g., including land on both sides of roads in some expansion areas), to facilitate the development of complete neighborhoods, and to make it possible to distribute employment lands throughout the expansion area. [R. at 1193] The findings, however, simply state these reasons, without explaining where these areas are, or why it is not possible to reduce acreage elsewhere in order to keep the total acreage consistent with its estimated land need.

The state does not require precision in estimating land need, and the city's estimates for residential, employment, and other land needs necessarily involve some degree of uncertainty.[21] But once the city *makes* its estimate, state law does not allow the city to simply add a cushion. Instead, state law requires the city to makes its best effort to arrive at a reasonable estimate of land need and then stick with that number. The inclusion of a specific amount of land in the UGB in addition to estimated need appears to be driven by its desire to include particular properties in the expansion area rather than first

[21] As an example, the Goal 10 findings state that the "[c]ity identified a need for 2,714 acres of additional land for housing based on the inventory, the coordinated population forecast, and the housing needs analysis." [R. at 1219] However, elsewhere the findings state that the estimated residential land need is 2,866 acres. [R. at 1092, 1167]

determining an amount of land need, and then deciding where to satisfy that need. [R. at 1193]

In addition, as noted at the introduction to this section, the city has included almost 3,000 additional acres of land within its UGB expansion area with no need determination at all. The city's decision appears to reflect an interpretation of state law that if lands are not suitable for urbanization,[22] they may nevertheless be included within a UGB with no need showing. That interpretation turns the state's urban growth management statutes, goals and rules on their heads.[23]

The city has provided no justification or explanation for the inclusion of these lands in its findings. As a result, the director remands the city and county decisions, with direction to remove the approximately 3,000 acres of lands from the UGB expansion area that the city has found are not suitable for urbanization, or explain with specificity why their inclusion is justified under Goal 10 and Goal 14.

Buffer Areas and Land Shown as RL in the Framework Plan. The adopted "Alternative 4A" UGB includes a 29-acre strip of Urban Low Density Residential (RL) along the central west edge of the proposed UGB, north of Skyliners Road and west of Master Plan Areas 3 and 4. [*See* Bend Urban Area Framework Plan Map, R. at 3; map of "Alternative 4A – Preliminary UGB Expansion December 3, 2008," Supp. R. at 3; and Supp. R. at 207-08] Neither the 2007 Residential Lands Study nor the General Plan amendments provide an adequate factual basis for a need for this land for this use and, in fact, the findings provide that lands proposed for RL plan designations are not serving an urban need. [R. at 1079] The city has not demonstrated a Goal 10 or 14 need for a very low density residential buffer with housing at two units per acre along the west side of the existing UGB between Skyliners Road and Shevlin Park.

More generally, the Framework Plan shows a substantial amount of lands planned as RL (Low Density Residential, 1.1 to 2.2 dwelling units per acre). As noted above, the city does not anticipate that the housing in these lands will serve any urban need. [R. at 1079] We find no findings explaining why it is appropriate to bring these lands within the UGB or what the urban land need is for them. The Framework Plan indicates that the city has no expectation that these lands will ever become urban. In fact, much of the lands were found by the city to not be suitable for urbanization.

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[22] The city's bases for determining that lands in the expansion area are not suitable for urbanization also contain multiple problems, including that: (a) the conclusion that a parcel smaller than three acres with an existing dwelling on it is not suitable for urbanization lacks an adequate factual basis, and is not consistent with Goal 14; (b) the city's conclusion that lands within certain rural subdivisions cannot urbanize due to their CC&Rs is not supported by the city's own findings, which do *not* show that these lands cannot undergo additional development except in the case of a couple of the subdivisions. These issues are addressed in more detail in the portion of this decision concerning the city's decision about *where* to expand its UGB.

[23] For example, see *Collins v. LCDC*, 75 Or App 517 (1985).

As a result, the director finds that their inclusion in the UGB violates Goal 14 and Goal 10 and their implementing rules, as well as ORS 197.296. The director remands the city and county decisions, with direction to remove the lands from the UGB expansion area that the city has designated as RL in its Framework Plan map, or explain with specificity why their inclusion is justified under Goal 10 and Goal 14.

e. Response to Objections

Anderson –
Objection: The city and county underestimate the amount of land needed for right-of-way, and therefore fails to comply with OAR 660-024-0040(1). Specifically, the estimate is based on land use within the existing UGB, and fails to account for substandard existing rights-of-way and for needs attributable to stormwater management.
Response: This objection is denied. While additional right-of-way may be required for stormwater management, the city has included a 15 percent factor for private rights-of-way and open space that should provide more than enough land area for stormwater management needs. In addition, the city's assumption that most of the added residential land will be planned RL or RS provides substantial excess land beyond that required for needed housing. There is no specific evidence regarding the quantity of land needed for stormwater management and public right-of-way, or that the amount of land the city has added to the UGB cannot accommodate these uses. The city should evaluate the amount of land needed for stormwater management in connection with its reevaluation of land need for the UGB expansion area, but no separate remand is required.

Toby Bayard –
Objection: The proposal doesn't plan for needed housing types to meet the housing needs of all residents as required by Goal 10, particularly lower income and multifamily housing. The proposal underestimates the land need for housing for lower income households.
Response: This objection is sustained. As noted above, the city's Housing Needs Analysis fails to analyze needed housing types as required by Goal 10, the Goal 10 rule, and ORS 197.296. The city's Framework Plan would devote most of the expansion area to low density residential uses, where large lots would likely not provide needed housing for lower income households.

Objection: The city's estimate of land need for second homes is too high, and is not supported by the evidence in the record.
Response: This objection is denied in part. As noted in the department's analysis, second home housing is an appropriate Goal 10 issue, and there is substantial evidence to support the city's determination concerning the need for second home units. However, as to the acreage of land needed in a UGB expansion area, the objection is sustained. As explained above, the city has not explained whether this need can be accommodated within the existing UGB, or the amount of land needed in the expansion area.

Objection: The city's estimate of land need for public right-of-way is too high.

Response: This objection is denied. There is substantial evidence in the record to support the city's use of a 21 percent factor in estimating right-of-way for lands added to the UGB (the amount of land devoted to right-of-way within the existing UGB).

Carpenter/McGilvary –
Objection: The city and county underestimate the amount of land needed for right-of-way, and therefore fails to comply with OAR 660-024-0040(1). Specifically, the estimate is based on land use within the existing UGB, and fails to account for substandard existing rights-of-way and for needs attributable to stormwater management.
Response: This objection is denied for the same reasons that the objection of Anderson was denied (above).

Central Oregon LandWatch –
Objection: The city does not explain how or why unsuitable lands are added to the UGB to arrive at a gross acreage total of 8,462 acres. The city's findings do not explain why some lands are considered unsuitable, nor why they are nevertheless added to the UGB. The city's determination that lots less than 3 acres in size are unsuitable if they have existing development is not explained, not does it comply with Goal 14.
Response: These objections are sustained. State law does not allow lands that are not needed, and not suitable, for urban development to be added to an urban growth boundary. The city's findings do not explain its justification for adding lands beyond the approximately 5,000 acres of land need shown for housing, housing-related, and employment needs.

Objection: The city's projected land need of 500 acres for second home development is not justified and is based on incorrect data.
Response: This objection is denied in part and sustained in part. The objection is denied with respect to the city's estimate of needed units. The objection is sustained with regard to the acreage needed within the UGB expansion area, for the reason set forth above with regard to the similar Bayard objection.

Objection: The city's projected land need of 474 acres for parks is not justified, and is based on plans not incorporated into the city's comprehensive plan. In addition, the city fails to account for the fact that some of this need is and will continue to be met on lands outside of the UGB.
Response: This objection is denied in part, and sustained in part. The district's plans can serve as substantial evidence for the city's decision, even though those plans have not been adopted by the city as part of its comprehensive plan. As a result, the city could chose to base its decision on evidence including service standards recommended by the district. However, the element of the objection with regard to the location of where this land need may be met is sustained, for the reasons set forth above.

Objection: Regarding land need for public right-of-way, the city's estimate is based on existing development patterns and does not consider provisions for skinny streets that can and have reduced the amount of land required in newer developments in the city.

Response: This objection is denied. The city can choose to rely on evidence consisting of development patterns from lands within the prior UGB in estimating land need in the expansion area for public right-of-way unless there is a showing that doing so would violate the city's code or comprehensive plan.

Objection: Regarding land needed for private rights-of-way and open space, there is no showing of why this type of private land use is needed under Goal 14, when public parks are already provided.
Response: This objection is sustained for the reasons set forth in the director's decision.

Objection: The city misconstrues 660-024-0040(1) in including a "buffer" of 519 acres over and above its demonstrated land need for residential use.
Response: This objection is sustained for the reasons set forth in the director's decision.

Objection: The city fails to consider the approval of the Tetherow destination resort and its effect on land need within the UGB for this type of use.
Response: This objection is sustained. Both the city and the county have an obligation to consider other second-home development in the region in determining how much second-home development is needed within Bend's UGB. The director's decision requires the city and the county to coordinate in determining regional need for this type of housing, and what proportion of that need should be accommodated within Bend.

Newland Communities –
Objection: The theoretical surplus of 519 acres is needed to fulfill land needs, and to provide for effective delivery of infrastructure and complete communities.
Response: This objection is denied, in part. The director agrees that the 519 acres in question may only be included if the city documents a need for that amount of land. Otherwise, the objection is denied because the city has failed to provide the required justification of need under Goal 14, as set forth in detail above.

Swalley Irrigation District –
Objection: The amount of land determined to be needed is too large and beyond what the city determined was needed. The 519-acre cushion must be removed.
Response: This objection is sustained, in part. As set forth in more detail above, the city has not adequately documented its 20-year need for land for housing and other non-employment uses. In addition, the city may not include land in addition to its documented 20-year need (e.g., the 519 acres of "cushion").

f. Summary of Decision on Land Need Not Related to Residential or Employment Needs

The director remands the UGB amendment with the following instructions:

1. Determine whether the need for land for public schools can reasonably be accommodated within the existing UGB;

2. Determine whether the need for land for public parks (including trails) can reasonably be accommodated within the existing UGB, and whether this need is already met in whole or in part by facilities planned or existing outside of the UGB;

3. Adopt findings that justify the increase in land needed on a "quadrant" basis for parks, or use the prior estimate of the district for a lesser acreage;

4. Coordinate with the county specifically concerning the need for second-home housing, and where this need should be satisfied regionally;

5. Evaluate whether this need can reasonably be accommodated on lands within the existing UGB;

6. To the extent that additional lands are required, establish a reasonable, specific density of development for this housing type for the next 20 years;

7. Either remove private open space and private rights-of-way as categories of land need, or justify why private open space and private rights-of-way are needed within the UGB expansion area in addition to estimated land needs for public parks and public rights-of-way;

8. Remove the approximately 3,000 acres of lands from the UGB expansion area that the city has found are not suitable for urbanization, or explain with specificity why their inclusion is justified under Goal 10 and Goal 14; and

9. Remove the lands from the UGB expansion area that the city has designated as RL in its Framework Plan map, or explain with specificity why their inclusion is justified under Goal 10 and Goal 14.

3. Is the UGB amendment consistent with the Bend Area General Plan?

a. Legal standard

Comprehensive Plan data, findings, conclusions, and policies must be complete, comply with the statewide planning goals, and be internally consistent. ORS 197.015(5), ORS 197.250, and Goal 2.

b. Summary of Local Actions

On January 5, 2009, the city adopted a UGB expansion and other Bend Area General Plan amendments. [R. at 1228-1835] The amendments regarding housing and residential land are in Chapter 5 of the Plan. [R. at 1280-1315]

c. Analysis

No objections were received concerning consistency of the action with Bend's General Plan. The UGB amendment findings state: "Adopted policies in the Bend General Plan support the designation of higher-density residential areas in proximity to commercial services, parks and schools." [R. at 2133] However, the only places that the city plans for needed medium density and high density housing is in the Central Plan Area, on some planned transit routes (location undefined), and in the expansion area; no new medium density and high density housing, infill development, or redevelopment is planned for existing neighborhoods. Therefore, this part of the UGB amendment is not consistent with existing plan policies. (For more details, see the discussions in this report regarding (1) compliance with Goal 14 with efficiency measures, and (2) Goal 10 compliance.)

The UGB amendment and related plan amendments are also inconsistent with the following plan policies:

- Housing Policy 4: "Implement strategies to allow for infill and redevelopment at increased densities, with a focus on opportunity areas identified by the city through implementation strategies associated with this policy." [R. at 1311] Evidence of inconsistency: *As discussed elsewhere in this report*, the city is apparently restricting infill and redevelopment to (1) certain areas in the Central Area Plan and along planned fixed route transit corridors, and (2) developed exception parcels in the UGB expansion area that are larger than three acres. The record shows no evidence for planned infill and redevelopment in most of the existing UGB and also much of the exception lands in the expansion area.

- Housing Policy 17: "Implement changes to the city's code that facilitate the development of affordable housing for very low, low and moderate-income residents, as determined by appropriate percentages of Area median Family income, consistent with recent updates to the city's development code and/or new strategies identified in the Plan" [R. at 1313] Evidence of inconsistency: As discussed elsewhere in this report, the proposal does not demonstrate for either the 2006 development code or proposed amendments thereto how the code will facilitate the development of needed housing for households of most income levels.

- Housing Policy 21: "In areas where existing urban level development has an established lot size pattern, new infill subdivision or PUD developments shall have a compatible lot transition that compliments the number of adjoining lots, lot size and building setbacks of the existing development while achieving at least the minimum density of the underlying zone. New developments may have smaller lots or varying housing types internal to the development." [R. at 1313] Evidence of inconsistency: As discussed elsewhere in this report, the proposed UGB and other plan amendments do not plan for—in fact, do not permit—any infill subdivisions in existing neighborhoods.

d. Conclusion and decision

The Bend Area General Plan is internally inconsistent. The UGB amendment and related plan amendments adopted on January 5, 2009 are not consistent with Housing Policies 4, 17 and 21.

The director remands the proposal with direction to revise the proposal to be consistent with Housing Policies 4, 17 and 21 in Chapter 5 of the Bend Area General Plan.

4. Do the UH-10, UH-2½ and SR 2½ zones comply with Goal 14 and OAR 660, division 24?

a. Legal Standard

Goal 14 and OAR 660-024-0050(5) (2006) address the zoning of land brought into a UGB.[24] The goal and rule require county zoning for urbanizable land within the UGB to "maintain [the land's][25] potential for planned urban development until appropriate public facilities and services are available or planned."

Retaining the existing rural zoning on land brought into the UGB maintains large parcel sizes, severely restricts new non-resource uses, and limits new primary structures. Allowing parcelization at well below 10 acres and allowing new primary use structures,

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[24] Goal 14 provides, in part:

> Urbanizable Land
> Land within urban growth boundaries shall be considered available for urban development consistent with plans for the provision of urban facilities and services. Comprehensive plans and implementing measures shall manage the use and division of urbanizable land to maintain its potential for planned urban development until appropriate public facilities and services are available or planned.

The statewide planning goal definitions as amended April 28, 2005 define "urbanizable land" as: "Urban land that, due to the preset unavailability of urban facilities and services, or for other reasons, either:

> (a) Retains the zone designations assigned prior to inclusion in the boundary; or
> (b) Is subject to interim zone designations intended to maintain the land's potential for planned urban development until appropriate public facilities and services are available or planned."

[OAR 660, division 15]

Goal 14 planning guideline #2 states: "The size of the parcels of urbanizable land that are converted to urban land should be of adequate dimension so as to maximize the utility of the land resource and enable the logical and efficient extension of services to such parcels."

Likewise, OAR 660-024-0050(5) (adopted October 5, 2006) provides: "When land is added to the UGB, the local government must assign appropriate urban plan designations to the added land, consistent with the need determination. The local government must also apply appropriate zoning to the added land consistent with the plan designation or may maintain the land as urbanizable land until the land is rezoned for the planned urban uses, either by retaining the zoning that was assigned prior to inclusion in the boundary or by applying other interim zoning that maintains the land's potential for planned urban development. The requirements of ORS 197.296 regarding planning and zoning also apply when local governments specified in that statute add land to the UGB."

[25] "Its" refers to land within the UGB.

especially if they are placed in the middle of a parcel, fails to maintain the expansion area in parcels and in form that can develop efficiently and where it is possible to provide efficient and economic urban services. As the city's findings regarding suitability indicate, urbanizing areas that have developed as suburban subdivisions can be extremely difficult.

b. Summary of Local Actions

The county adopted two holding zones for the UGB expansion area: the Urban Holding-10 (10-acre minimum parcel size) and the Urban Holding-2½ (2½-acre minimum parcel size), in Title 19 of the Deschutes County Code. [R. at 1877-80] The findings state that these zones:

> * * * respect the existing pattern of development and permit reasonable use of the land in the interim while retaining the rural densities. Both holding zones allow lot sizes as small as 15,000 square feet provided that the overall density of the development does not exceed the density of the zone. This 'cluster development' provision encourages maximum retention of large lot parcels. Too often holding zones with ten acre minimum lot sizes develop with 'hobby' farms and ranchettes that never redevelop to urban potential. Cluster development allows residential development at the same rural density but preserves the majority of the land for urban development. [R. at 1221]

An existing city zone, Suburban Low Density Residential (SR 2½), like the new UH-2½ and UH-10 zones, was intended to hold parcels within the UGB "until these lands are annexed to the city or until sewer service is available, and such lands are rezoned consistent with planned densities and uses in the Bend Area General Plan."

c. Analysis

The findings quoted above fail to recognize that the "cluster" provisions in the "holding" zones allow substantial low-density suburban development to occur on lands that are planned for urban densities. None of the adopted zones will preserve urbanizable land for future urbanization. As a result, the city and county actions violate Goal 14 and OAR 660-024-0050. Fifteen-thousand square-foot lots (approximately three units per acre) are urban-density lots, albeit at a density that is lower the six units per acre that the city has planned for the expansion area. Urban levels and intensities of development are not permitted within a UGB unless and until urban facilities and services are available and the land is annexed to the city. Even without the provision for "clustering" with 15,000 square foot lots, the UH-2½ and SR 2½ zones' 2.5-acre minimum parcel size is too small to protect urbanizable lands for efficient future urbanization once the lands are annexed and provided with urban public services. State law provides for two ways to preserve urbanizable land for future urban development: retain the existing rural resource zoning, or apply an interim holding zone that maintains large parcel sizes and doesn't

increase vehicle trip generation.[26] State law does not allow holding zones that provide for substantial increases in development, increased traffic generation, and inefficient future development patterns prior to urbanization and the application of urban zoning and provision of urban services.

The existing city zone, Suburban Low Density Residential (SR 2½), like the new UH-2½ and UH-10 zones, is intended to hold parcels within the UGB "until these lands are annexed to the city or until sewer service is available, and such lands are rezoned consistent with planned densities and uses in the Bend Area General Plan." The SR 2½ zone applies only to "existing SR 2½ lands within the UGB." At first glance, this appears to prohibit *new* lots as small as 2½ acres in the urbanizable area (*i.e.*, outside city limits) of the city's UGB. However, there is no maximum lot size in this zone, and existing SR 2½ lots larger than 2.5 acres may be divided into lots as small as 2.5 acres.[27] As explained above, 2.5 acres is too small a parcel size for a holding zone in an urbanizable area because it does not maintain land for efficient future urbanization. Therefore, the SR 2½ zone also violates Goal 14 and OAR 660-024-0050.

The department advised the city of these issues by letter on October 24, 2008. [R. at 4372]

d. Conclusion and Decision

The UH-10, UH-2½, and SR 2½ zones do not maintain the potential of urbanizable land for planned urban development until appropriate public facilities and services are available or planned and therefore violate Goal 14 and OAR 660-024-0050. The director remands the city and county decisions with direction to:

1. Eliminate the UH-2½ zone, and eliminate application of the SR 2½ zone to lands within the UGB expansion area; and
2. Revise the UH-10 zone to:
   a. Prohibit land divisions that create any parcels smaller than 10 acres in size; and
   b. Include development siting standards to avoid future conflicts with the extension of efficient urban transportation, public facilities, and land use patterns; and
3. Apply the UH-10 zone to any and all land acknowledged for addition to the UGB.

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[26] *See, e.g.,* ORS 197.752(1): "Lands within urban growth boundaries shall be available for urban development concurrent with the provision of key urban facilities and services in accordance with locally adopted development standards." *Also see* OAR 660-024-0020(1)(d): "The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary."

[27] See Bend Code Section 10-10.9C.

F. Economic Development Land Need

Several objections raise issues related to the assumptions, analysis and conclusions used to determine land need for employment uses. The legal criteria for this portion of the submittal are found in Statewide Planning Goal 9 and OAR 660, division 9. Subsection 1.a, below, provides a description of what the goal and rules require, and this description is relied upon in subsequent subsections addressing related objections to the UGB amendment. Objections relating to land need for employment uses that not specifically addressed are deemed denied for the reasons set forth in this section.

1. Did the city have an adequate factual basis for including and excluding lands for employment uses?

a. Legal Standard

Statewide Planning Goal 9, "Economic Development," requires that comprehensive plans provide opportunities for a variety of economic activities, based on inventories of areas suitable for increased economic growth taking into consideration current economic factors. The goal requires that comprehensive plans provide for at least an adequate supply of suitable sites, and limit incompatible uses to protect those sites for their intended function.

OAR 660, division 9 is the administrative rule that implements Goal 9. Its purpose is to "link planning for an adequate land supply to infrastructure planning, community involvement and coordination among local governments and the state," and "to assure that comprehensive plans are based on information about state and national economic trends." [OAR 660-009-0000]

OAR 660-009-0010(5) provides that the effort necessary to comply with OAR 660-009-0015 through 660-009-0030 will vary depending upon the size of the jurisdiction, the detail of previous economic development planning efforts, and the extent of new information on national, state, regional, county, and local economic trends. A local government's planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of the administrative rule.

OAR 660-009-0015 requires that comprehensive plans provide an Economic Opportunities Analysis (EOA) that describes a review of economic trends, required site types for likely future employers in the jurisdiction, an inventory of available lands, and assessment of the community's economic development potential. OAR 660-009-0015(1) requires that the review of trends be the principal basis for estimating future employment land uses.

OAR 660-009-0020 requires that comprehensive plans include policies to implement the local economic development objectives, provide a competitive short- and long-term supply of sites for employment, ensure those sites are suitable for expected users, and provide necessary public facilities and services. OAR 660-009-0020(2) states that plans

for cities and counties within a Metropolitan Planning Organization (MPO) must include detailed strategies for preparing the total land supply for development and for replacing the short-term supply of land as it is developed.

OAR 660-009-0025 requires that comprehensive plans adopt measures adequate to implement local economic development policies. These include designation of sites for a 20-year supply of employment land and maintenance of a short-term supply of serviceable lands.

OAR 660, division 24, "Urban Growth Boundaries," provides direction regarding the use of data, findings and conclusions developed to address economic development and Goal 9 during a UGB review. OAR 660-024-0040(5) states that the determination of 20-year employment land need for an urban area must comply with applicable requirements of Goal 9 and OAR 660, division 9, and must include a determination of the need for a short-term supply of land for employment uses. Employment land need may be based on an estimate of job growth over the planning period. Local government must provide a reasonable justification for the job growth estimate, but Goal 14 does not require that job growth estimates necessarily be proportional to population growth.

b. Summary of Local Actions

The EOA is included in the record as Appendix E. [R. at 1498] The EOA includes a discussion of the community's objectives, including target industries. [R. at 1516] The Executive Summary highlights the steps of the complete analysis including demographic trends, historic and expected employment trends, inventory of the current land supply, determination of new employment, land need through 2028, which is reported in the summary as a table [R. at 1503-1506].

Section 3 of the EOA contains the review of trends used for estimating future employment land uses, as required by OAR 660-009-0015(1). [R. at 1519-1566] It provides a detailed report and analysis of trends, including population and demographics, coordinated population projection, educational attainment, household income, wages and benefits, labor force and unemployment, changing economic markets, current covered employment, employment shifts and land needs, the economic outlook, local economic trends, expectations of disproportionate employment growth, land supply as a threat to employment growth, education's role in the economy, and a need for a large university campus.

Other sections of the EOA detail characteristics of Bend's employment lands, discuss the employment projection methodology, and the results of the projections. [R. at 1567-1578]. The EOA includes a discussion of the use of employment categories instead of the more common employment sectors. [R. at 1583-1584]

The EOA includes a note that the analysis and conclusions were modified by the city [R. at 1585]. The modifications, based on input from the planning commission, UGB

technical advisory committee, and stakeholders, are discussed in appendices A-H [R. at 1642-1727].

Appendix A presents the modified employment projections per industrial sector classification as a spreadsheet. [R. at 1642]

Appendix B is a memo outlining staff recommendations of modifications to economic variables relative to consultant work completed for the city. [R. at 1649-1651] To account for uncovered workers, the employment projection is increased by 11.5 percent, based on interpolation of national and state census data. No local employment data were gathered for this analysis. The memo includes a comment by the Oregon Employment Department regional economist that no analysis exists to suggest how land needs for uncovered workers should be calculated, and suggested a rule-of-thumb instead. The memo also makes recommendations regarding modifications to the employment forecast for employment on residential and public facilities lands.

The submittal includes findings in support of the UGB expansion for employment lands. [R. at 1103-1165] These findings include: policy direction, incorporation by reference of a 2008 EOA, trend analysis, employment projection, employment land inventory, employment land need, discussion of how to satisfy the requirements of Goal 9, identification of required site types, assessment of economic development potential, meeting the requirement of MPOs for short-term supply, economic development policies, designation of employment lands, and findings related to uses with special siting requirements.

In summary, the EOA says there is need for 1,008 acres of commercial land and between 100 and 250 acres of land for each of the following use categories: industrial and mixed employment, public facilities, economic uses in residential zones, medical, new hospital site, a university site, and two 56-acre industrial sites. The total employment land need shown is 2,090 acres. [R. at 1114] This compares to the "Scenario A" conclusion that there is a 1,380-acre need, which was the result of a relatively simplistic formula of dividing employment projections by employment densities.

c. Objections and DLCD Comments

DLCD commented on Goal 9 issues prior to local adoption of the UGB amendment. A DLCD letter of October 24, 2008 commented that the EOA lacked findings on site suitability criteria and findings supporting a land need for two approximately 50-acre industrial sites. [R. at 4725]

A DLCD letter of November 21, 2008 commented that assumptions and determinations relating to employment land were either missing, were not calculated accurately, or lacked an adequate factual basis. Specifically, DLCD cautioned against: (1) the use of a 15 percent vacancy rate assumption for the 20-year employment land supply; (2) adding "surplus" employment land to the need calculation to account for market efficiency; and (3) adding residential land need via the EOA based on employment in residential zones.

The letter further comments that these errors led to an overestimation of the need for employment land. [R. at 3765]

Three objectors challenged whether the submittal provides an adequate factual basis for the findings and conclusions drawn: Swalley Irrigation District, Brooks Resources, and Central Oregon LandWatch.

Swalley Irrigation District – The employment forecast is not supported by evidence in the record. [Swalley Irrigation District, May 6, 2009, pp. 47-53]

Brooks Resources – The findings do not demonstrate that at least some of the employment land needs cannot be accommodated within the existing UGB. The record lacks evidence that the Westside UGB expansion area is suitable for employment lands. [Brooks Resources April 29, 2009, pages 2–9]

Central Oregon LandWatch – The findings and EOA are outdated, so there is no basis for need demonstrated. [Central Oregon LandWatch May 7, 2009, pages 11–12]

d. Analysis

A local government's planning effort under Goal 9 is adequate if it uses the best available or readily collectable information to respond to the requirements of the rule. [OAR 660-009-0010(5)] This standard is intended to make the planning effort informative rather than prescriptive. A substantial record of fact gathering and analysis exists in the record.

The methodology for determining employment land need for a legislative UGB amendmentincludes the following main steps:

- Determine the total 20-year employment land supply need by reviewing trends; [OAR 660-009-0005(13), 0015(1) and 0025(2)]
- Subtract existing sites that are defined as vacant; [OAR 660-009-0005(13]
- Subtract existing sites that are defined as likely to redevelop; [OAR 660-009-0005(13)]
- Add needed sites not available in the inventory of vacant or likely to redevelop. [OAR 660-009-0025(2)]

Completing these steps yields the amount of employment land required in a UGB expansion to meet the 20-year employment land supply called for in the Goal 9 rule. It may also identify some amount of surplus employment land. This surplus means that there are currently-zoned employment sites unsuitable to meet the requirements of the 20-year supply, although in usual practice this is absorbed by the need for general employment sites without specific characteristics other than some number of acres in unspecified locations.

The analysis for the EOA did not follow these steps, and the record is unclear and confusing regarding how the amount of land needed for employment was determined. An

EOA was prepared in 2008, and it was incorporated by reference in the findings for the UGB expansion, [R. at 1110] but other, conflicting findings and conclusions were also included, without the differences being reconciled. A table showing the 20-year employment land need in gross acres is included in the findings. [R. at 1114, 1141]

A table showing the existing supply of vacant and developed employment land is also included in the findings. [R. at 1109] However, there is no analysis included that distinguishes developed employment land likely to redevelop during the planning period from that not likely to redevelop. As set forth above, this analysis is key to determining the quantity of land needed for employment uses for a UGB expansion, and is a required part of an EOA. [OAR 660-009-0015 and 660-009-0005(1)] The EOA "* * * assumes that 10 percent of new employment will take place on existing lands." [R. at 1595] However, there is no analysis of trends to support this assumption.

The findings also do not include identification of needed suitable sites (i.e., sites that are not in the inventory of vacant and likely to redevelop sites already in the UGB). The city response to DLCD's request for record clarification [Bend December 7, 2009] refers to sections of the original EOA as the analysis and basis for findings, but the original EOA analysis was significantly modified later in the process [R. at 1585], and it does not appear that the original EOA is still a basis for the city's decision given the findings.

Forecasts and data are not required to be updated once the UGB review process has begun. [OAR 660-024-0040(2)]

Regarding the assumption that Bend will experience a 15 percent vacancy rate on employment land during the planning period, the evidence in the record does not support such a conclusion. [R. at 1616 and 1111-1112]. The findings state that the local vacancy rates have been approximately half this amount. The city justifies the higher long-term rate on a desire to drive industrial and commercial land rents down. That cannot be a basis for inflating trend data because, taken to its extreme, it would have no limit in terms of the acreage assumed to be committed as a result of commercial and industrial vacancies. While employment land availability, and the effects of availability on rents and land prices, are legitimate considerations in planning for growth, assigning an across-the-board vacancy rate that is significant above trends [R. at 1562] does not comply with the Goal 9 rule.

e. Conclusion

Except for the objection from Central Oregon LandWatch that the findings and EOA are outdated, the objections based on adequacy of the factual record, findings and analysis are sustained. The record does not include adequate findings, analysis or evidence to justify the city's determination of employment land need. The director remands with instructions to develop an EOA that includes a determination of the employment land supply consistent with the requirements of OAR 660, division 9. This must at least include the following elements based on factual evidence:

1. Determination of the 20-year supply of employment land;

2. An inventory of existing employment land categorized into vacant, developed land likely to redevelop within the planning period, and developed land unlikely to redevelop within the planning period;

3. Identification of required site types that are not in the inventory of either vacant or likely to redevelop sites;

4. Identification of serviceable land; and

5. Reconciliation of need and supply.

2. Does the analysis show too great a need for employment land?

a. Legal Standard

OAR 660-009-0015 requires that an EOA determine the need for employment land. OAR 660-024-0040(5) establishes the determination of employment land in the context of a UGB amendment. A more complete explanation of the Goal 9 requirements is provided in subsection 1.a of this section. These rules make it clear that the standard is for the city to provide a 20-year supply of land for employment.

In order to justify a need for employment land within the UGB to provide for efficient market functions or to respond to unique market conditions, there needs to be in the record a policy directive to provide additional land to meet some public purpose; a factual basis in the EOA to satisfy OAR 660, division 9; and, to satisfy OAR 660, division 24, a finding that the job growth estimate that supports that land need determination is reasonable.

b. Summary of Local Actions

A general summary of the city's actions is provided in subsection 1.b, above. The EOA discusses the provision of additional employment lands for a variety of locations and sites in addition to the 20-year supply, described in the EOA as Scenario B. [R. at 1620] A summary is provided. [R. at 1632] The land need findings discuss the city's rationale for increasing the supply of employment land 20-year need. [R. at 1115-1165]

Scenario A is characterized as "minimal employment land demand" and is from the 2008 EOA. Scenario B makes several adjustments to the employment land need from Scenario A, based on input from a stakeholder group. Scenario B reduces the land need as determined by a review of trends from 1,380 to 898 acres, reduces the resulting amount of vacancy-rate adjustment from 207 to 134 acres, adds 421 acres of redundant supply for market choice, increases the resulting 21 percent right of way adjustment to 235 acres, and adds 15 percent or 168 acres for other land needs. The total estimated employment land need in Scenario B is unclear [R. at 1622].

The city adopted economic development policies in chapter 6 of the Bend Area General Plan. [R. at 1339] The policies accept the 2008 EOA and associated land needs, establish the short-term supply management plan, establish emphasis on large-lot industrial, and established mixed-use and commercial development guidance. The short-term land supply management plan requires staff to report to council and do not include detailed strategies for preparing the total land supply for development and for replacing the short-term supply of land as it is developed as required by OAR 660-009-0020(2).

c. Objections and DLCD Comments

The department commented that the city erred in increasing its estimated long-term (20-year) employment land supply by 50 percent based on analysis perhaps appropriate for the required short-term supply, and by adding residential land need in the EOA based on employment in residential zones. [R. at 3765-3766] Also see the description of DLCD comments in subsection1.c of this section.

The department received objections from four parties alleging a variety of deficiencies with the submittal related to the amount of employment land the city needs: Swalley Irrigation District, Central Oregon Land Watch, and Brooks Resources Corporation.

Swalley Irrigation District – The UGB was expanded to include more employment land than was justified. The city used an erroneous definition of "developed land" and "serviceable land." [Swalley Irrigation District, May 6, 2009, pp. 47-53]

Brooks Resources – The findings do not demonstrate that at least some of the employment land needs cannot be accommodated within the existing UGB. [Brooks Resources April 29, 2009, pages 2–9]

Central Oregon LandWatch – The EOA employed an inappropriate assumption regarding vacancy rates and institutional use, open space, and right of way. The EOA does not demonstrate a need for several specific uses. The EOA impermissibly adds surplus employment land to the inventory. [Central Oregon Land Watch May 7, 2009, pages 11–12]

Barbara I. McAusland – Barriers to locating industry in Bend argue against the need for an oversupply of industrial land. The findings do not demonstrate a need for an oversupply of employment land. [McAusland May 5, 2009, page 3]

d. Analysis

The determination of the employment land supply is based on the review of trends the local government expects to influence the decision. The local government then identifies the sites that are expected to be needed to accommodate anticipated employment growth. There is in the record policy direction, fact-based analysis of an employment projection, and market analysis of the rationale for providing employment land above the minimum 20-year need. No upper limit is established in rule or statute, but OAR 660-009-0015(2) states that the EOA "must identify the number of sites by type *reasonably expected to be*

needed to accommodate the expected employment growth. . .” [emphasis added] and OAR 660-024-0050 and Goal 14 require an analysis showing that the needs cannot reasonably be accommodated on land already inside the UGB.

The EOA includes two estimates of employment land need [R. at 1618, 1622]. Both scenario A and B include policy directives to increase the base land need for a variety of factors including vacancy, redundant supply, and right-of-way. There is policy direction and ample discussion. However, as noted in subsection 1.c of this section, the city’s findings do not explain the land need determination in a fashion that demonstrates it complies with OAR 660, division 9.

In order to justify an increase in the need for certain types of employment land within the UGB over what a trends-based analysis would conclude, there would need to be a policy directive to provide additional land for economic development purposes in the record; a factual basis in the EOA to satisfy OAR 660, division 9; and, to satisfy OAR 660, division 24, a finding that the job-growth estimate that supports the land need determination is reasonable and cannot be accommodated within the existing UGB.

As noted in subsection 1.c above, the findings do not include identification of needed suitable sites. The EOA does not make a distinction between built sites that are likely to redevelop and those that are not, as required by OAR 660-009-0015(3).

e. Conclusion

The objection is sustained. The director remands with the same instructions explained in subsection 1.e, above.

3. Did the city err in designating 114 acres for employment in residential areas?

a. Legal standard

OAR 660, division 9 requires that an EOA determines the need for employment land. [OAR 660-009-0015] OAR 660-024-0040(5) establishes the determination of employment land in the UGB. A more complete explanation is provided in subsection 1.a of this section, above.

OAR 660-009-0005(3) defines industrial use. OAR 660-009-005(6) defines “other employment uses” as:

> All non-industrial employment activities including the widest range of retail, wholesale, service, non-profit, business headquarters, administrative and governmental employment activities that are accommodated in retail, office and flexible building types. Other employment uses also include employment activities of an entity or organization that serves the medical, educational, social service, recreation and security needs of the community typically in large buildings or multi-building campuses.

OAR 660-009-0025 requires local governments to "adopt measures adequate to implement [economic development] policies" and "(a)ppropriate implementing measures include amendments to plan and zone map designations…"

Goals 10 and 14 and OAR 660, divisions 8 and 24 establish the requirements for designation of residential land and UGB expansion considerations for residential uses.

b. Summary of Local Actions

The findings regarding employment land need in Table 4-3 include 119 acres for employment uses on residentially zoned land. [R. at 1114] The trends analysis includes the number of employees expected to find employment on 119 acres zoned for residential [R. at 1113].

The 2008 EOA recommends an increase to the employment projection for jobs that are typically based in residential zones, such as certain public facilities, schools, churches and home occupations, and that may not be captured by traditional forecast methods, and recommends that additional residential land be designated to accommodate the forecast. [R. at 1651]

c. Objections and DLCD Comments

The department received objections regarding designation of residential areas for employment from Swalley Irrigation District and Central Oregon LandWatch. DLCD had also commented on this issue**.** The department's letter asserts that the EOA allocates a significant amount of employment to the high-density residential districts based on a methodology that does not protect lands for needed multi-family housing from commercial development. [R. at 3767]

Subsequent review has revised this analysis. The city's 2008 EOA [R. at 1651] recommends an increase to the employment projection for jobs typically based in residential zones, such as certain public facilities, schools, churches and home occupations that may not be captured by traditional forecast methods, and recommends that additional residential land be designated to accommodate the forecast.

d. Analysis

It is appropriate to define the portion of projected employment that is expected to take place on residential land in order to gain an accurate approximation of how much will locate in employment zones. However, OAR 660, division 9 does not permit designation of residential land for employment use. Residential land is designated according to the standards of OAR 660, division 8, which permits adjustments to the residential buildable lands inventory to account for non-residential uses.

e. Conclusion

The objection is sustained. The 119 acres of residential land is not justified, and must be removed from the employment land need.

4. Did the city err in including land for a hospital, university campus, and two 50-acre industrial sites?

a. Legal standard

OAR 660-009 requires that an EOA determines the need for employment land. [OAR 660-009-0015] OAR 660-024-0040(5) establishes the determination of employment land in the UGB. OAR 660-009-0025(8) provides requirements for designating employment uses with special siting characteristics.[28] A more complete explanation of OAR 660, division 9 requirements is provided in subsection 1.a of this section, above.

In order to justify an increase in the need for certain types of employment land within the UGB there must be a factual basis in the EOA to satisfy OAR 660, division 9, a policy directive to provide the sites for economic development purposes, and measures to protect the sites for the intended uses.

b. Summary of Local Actions

The EOA discusses the provision of additional employment lands for specific uses including a new hospital, a university campus and two 50-acre industrial sites [R. at 1506, 1517, 1628, 1724]. Policies are included as an appendix to the EOA [R. at 1674]. Findings are included [R. at 1103-1165], with specific use references [R. at 1107, 1114, 1115, 1116, 1120, 1122, 1123, 1124, 1126, 1128, 1140].

c. Objections and DLCD Comments

The department received objections alleging the city lacked justification to add to its estimated need land for a hospital, a university campus and two 50-acre industrial sites. [Central Oregon LandWatch May 7, 2009, p. 11] The department had commented that the city lacked substantial findings to support the addition of large sites for a new hospital, an auto mall, a university campus and two 50-acre industrial sites [R. at 3770, 3771, 3776].

d. Analysis

A jurisdiction's planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of this division per OAR 660-009-0010(5). There is in the record policy direction, fact-based analysis of an employment

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[28] OAR 660-009-0025(8): * * * Cities and counties that adopt objectives or policies providing for uses with special site needs must adopt policies and land use regulations providing for those special site needs. Special site needs include, but are not limited to large acreage sites, special site configurations, direct access to transportation facilities, prime industrial lands, sensitivity to adjacent land uses, or coastal shoreland sites designated as suited for water-dependent use under Goal 17. Policies and land use regulations for these uses must:

(a) Identify sites suitable for the proposed use;

(b) Protect sites suitable for the proposed use by limiting land divisions and permissible uses and activities that interfere with development of the site for the intended use; and

(c) Where necessary, protect a site for the intended use by including measures that either prevent or appropriately restrict incompatible uses on adjacent and nearby lands.

projection and market analysis of the rationale for providing employment land for a hospital, a university campus, and two 50-acre industrial sites.

The justification for these specific uses is undermined, however, by other deficiencies in the EOA. The EOA does not adequately identify land already in the UGB that could be developed for some or all these uses. There city does not appear to have adopted policies or other mechanisms to ensure the land included in the UGB is protected for the intended use and from conflicting uses.

e. Conclusion

While the analysis of the need for the specific employment uses is present, the EOA must also analyze whether these uses can reasonably be accommodated within the existing UGB. Additionally, the city has not adopted policies that provide adequate protections to ensure the sites remain available for the intended uses.

The objection is sustained. The director remands with instructions to analyze whether the identified uses can reasonably be accommodated within the existing UGB, and for the adoption of measures so that employment land with special siting characteristics complies with OAR 660-009-0025(8) regarding protection of the site for the intended use and from conflicting uses.

G. Public Facilities Plans

This section addresses whether the City of Bend's ordinance NS-2111, adopting new public facilities plans for the city and a new Chapter 8, complies with Goal 11, Goal 14, applicable administrative rules, and OAR 660-024-0060, or whether the ordinance takes exceptions to those goals.

a. Legal Standard

Goal 11 and ORS 197.712(2)(e) require cities with a population greater than 2,500 to prepare and adopt public facilities plans for water, sewer and transportation services within the city's UGB. Public Facilities Plans (PFPs) are required primarily to assure that local governments plan for timely, orderly and efficient arrangement of public facilities and services, and to serve as a framework for future urban development. Timely, orderly and efficient arrangement "refers to a system or plan that coordinates the type, locations and delivery of public facilities and services in a manner that best supports existing and proposed land uses." Goal 11 and OAR 660-011-0000.

The required contents of a public facility plan are provided in OAR 660-011-0010(1), and are not intended to cause duplication or to supplant technical documents supporting facility plans and programs. OAR 660-011-0010(3). At a minimum, public facility plans shall include plans for water, sewer and transportation facilities and the responsibility(ies) for preparation, adoption and amendment of a public facility plan shall be specified within an urban growth management agreement. OAR 660-011-0015(1).

When evaluating a proposed UGB amendment, OAR 660-024-0060(8) requires that:

> The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:
>
> (a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the UGB;
> (b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the UGB
> * * *

b. Summary of Local Actions

The city prepared certain water and sewer system master plans in 2007, which evaluated the capacity of existing public facilities to serve areas already within the UGB, as well as areas being studied at that time for possible inclusion in a UGB expansion area. Those master plans also identified significant system improvements needed both to serve lands and uses within the existing UGB (a significant number of homes in the prior UGB utilize septic systems) and to serve lands being considered for inclusion in a UGB expansion area. The master plans evaluate future service needs for a UGB expansion area containing only lands zoned UAR. They did not evaluate other exception lands, including a large area of rural residential development to the south of the city, or most of the lands zoned and planned for farm use to the east that were included in the UGB expansion area. See, e.g. R. at 467 (map of study area); R. at 500-504 (SE interceptor). The sewer collection master plan also did not evaluate the cost of some improvements identified as needed (North interceptor crossing of Deschutes River, R. at 497 "For this river crossing to be cost-effective, a bridge must be constructed over the river. * * * Costs for the bridge structure were not included in the cost for this interceptor."]

In the first half of 2008, the city had certain addenda to the master plans prepared. [R. at 211]. Those include several analyses specific to particular areas (Newlands property; Hamby Road area). On October 8, 2008, the city provided the department an amended 45-day notice of its proposed UGB amendment that included a summary statement that it was also proposing to amend its public facilities plan element of the General Plan. However, no draft of the PFP Chapter (chapter 8) of the city's General Plan was provided until October 20, 2008 (seven days before the first evidentiary hearing).

Bend Ordinance NS-2111 adopts certain Water Public Facilities Plans and Sewer Public Facilities Plans as amendments to the Public Facilities Element of the Bend General Plan. [R. at 35]. The ordinance also appears to adopt the city's sewer and water public facilities plans in support of and associated with its UGB expansion proposal. [R. at 35-1049] Exhibit A (Findings in Support of UGB Expansion) [R. at 37-210], Exhibit B (Findings in Support of the Amendments to the Public Facilities Plan) [R. at 211-224] and Exhibit C (Facilities Plans and all supporting components, addenda and supplements) [R. at 225-1049] are attached to Ordinance NS-2111.

Ordinance NS-2111 states:

> * * * the Public Facilities serve the goals, objectives and policies of the General Plan by addressing the provision of public facilities and services within the urban growth boundary (UGB), services to areas outside the UGB, locating and managing public facilities and financing public facilities. [Record at Page 35] The city's Goal 11 findings state "the proposed amendment to Chapter 8 of the Bend General Plan incorporates the city's water system master plan and collection system master plan as Goal 11 public facility plans," and "[i]n addition, the city has based the proposed expansion of the UGB in part on the development of three

> (3) new sewer interceptors that are located beyond the city's current UGB. [R. at 205]

Exhibit C [R. at 225] includes documents that comprise the adopted Public Facilities Plan. The following is a general description of the facilities plan and incorporated documents provided in the findings:

> The water system master plan covers those areas already inside the Bend UGB, and areas outside the current Bend UGB that are not already served by the Avion Water Company or another private water utility. The sewer master plans include a Collection System Master Plan (CSMP) that covers those areas inside the existing Bend UGB, and areas identified under the (prior, 2007) Bend Area General Plan as urban reserves. The sewer master plans also include a master plan for the reclamation facility, which is located north and east of Bend and treats effluent collected through the city system. [R. at 211]

The proposal includes a new chapter 8 of the Bend Area General Plan dated October 20, 2008. [R. at 1478-1498] No facility collection, distribution or service area maps are provided in chapter 8 of the plan. Map information is contained only in incorporated documents. The findings also incorporate by reference the adoption of water and sewer collection master plans and supporting documentation as the public facility plans for water and sewer service under Goal 11. [R. at 211]

The incorporated water and sewer collection master plans and supporting documents are described as follows. The adopted water public facility plan (WPFP) includes:

- Water System Master Plan (WSMP) Update-Final Report (2007) [R. at 225-340]
- Airport Water System Master Plan (2007) [R. at 341-384]

The adopted sewer public facilities plan (SPFP) includes:

- Collection System Master Plan (CSMP) Final Report (2007) [R. at 385-516]
- CSMP Addendum No. 1 – Final Executive Summary and Alternative Technical Analysis: North East Bend (2007) [R. at 517-550]
- CSMP Addendum No. 2 – Collection System CIP Analysis and Report (2008) [R. at 551-692]
- CSMP Addendum No. 3 – Technical Memorandum 1.5 – Hamby Road Sewer Analysis (2008) [R. at 693-703]
- Water Reclamation Facilities Plan (2008) and Technical memos No. 1-10 [R. at 705-1048]

In a footnote, the city's findings state, "The record on the Bend UGB expansion also includes a 2007 draft of the CSMP, including nine study area plans that were submitted to DLCD on June 11, 2007." [R. at 211, see footnote 1].

A number of technical memos related to sewer planning appear in the city's supplemental submittal provided to the department on May 6, 2009. However, Ordinance NS-2111 and its associated findings do not appear to include these technical memos, and they are not listed as part of the incorporated public facilities plans adopted as part of the UGB adoption package which is described above from page 211 of the record.[29]

The adopted public facilities plan includes sewer, stormwater and water services only. Transportation plans are not included in the public facilities plan amendment. The city's submittal and this report, however, do address transportation separately.

c. Objections and Analysis

The city did not prepare revised public facilities plans for water or sewer to address the additional lands added to its UGB expansion study area in 2008. Although there are parts of the city's submission that address parts of the additional expansion area, the primary two master plans limit their analysis to lands that were planned UAR in 2007. [R. at 450-453] Exception lands and agricultural lands to the east are not analyzed in the sewer system collection master plan. Nor are exception lands to the south of the city. The water system master plan only examined Tetherow and Juniper Ridge outside of the prior UGB. [R. at 249]

Nine objecting parties raised 13 specific concerns related to the city's public facilities plans. Four of the 13 parties filed public facilities plan objections during the city's first UGB submittal to the department on April 16, 2009, and in response to the city's June 12, 2009 supplemental submittal of public facilities plans as part of the UGB expansion proposal.

A list of objectors and a summary of objections filed in response to the city's public facilities plans follows. Parties filing objections on both submittals are noted with an asterisk.

Swalley Irrigation District *
Central Oregon LandWatch *
Rose and Associates, LLC *
Tumalo Creek Development, LLC *
Toby Bayard
Hunnel United Neighbors
Newland Communities
Anderson Ranch
J. L. Ward Company

Swalley Irrigation District – The May 6, 2009 objection states that no notice was provided to DLCD or others for the city's public facilities plans, nor was notice provided advising of hearings on the plans. The objection further states that there was never a time when the city provided opportunity for meaningful input on the location of public

[29] Supplemental Items 99, 99A through 99M, Supplemental R. at 985 – 1210.

facilities. [p. 1]. The city's October 8, 2008 and October 20, 2008 revised notice to DLCD indicated that the city planned to adopt a variety of public facility plans on November 24, 2008, yet those plans were not attached to the revised DLCD notice, making the notice void. [p. 22]

The objection also states that draft public facilities plans were improperly used to influence the location of the UGB without adequate public input, thereby violating Goal 1. [pp. 25-26]

The objection points out that Goal 11 requires the city to (1) evaluate the carrying capacity of "air, land and water resources of the planning area" and not exceed such carrying capacity, (2) provide an orderly and efficient arrangement of public facilities and services, and (3) provide rough cost estimates for planned facilities. According to the objection, the city fails these requirements, particularly in the service areas of the Swalley Irrigation District. [p. 55]

The objection argues that, for reasons generally discussed above, chapter 8 of the Bend Area General Plan does not comply with OAR 660, divisions 11 or 24. [p. 80]

The objection points out that the city's Consolidated Sewer Master Plan (CSMP, 2007) acknowledges significant funding gaps. At the same time, the CSMP fails to compare the cost of sewer upgrades and enhancements to areas of failing onsite system or areas with infill and redevelopment capacity versus the CSMP's program. [pp. 88-89] The objection discusses several areas where the CSMP is allegedly deficient. [pp. 89-95]

The objection asks that the department remand and instruct the city to select public facility options that are reasonably affordable and can demonstrate reasonable costs for needed housing, and that the city be required to examine "undisputed" exception areas in the south and southwest quadrants of the city.[30] [p. 103]

Swalley Irrigation District also submitted objections in a July 6, 2009 letter (herein noted as SID2) on the city's public facility plan submittal. The objection's arguments regarding whether the department and the LCDC have jurisdiction to decide the adequacy of Bend's public facilities plan are examined in section III.D of this report. [SID2, pp. 8-12]

The objection argues that the public facility plan submittal failed to clearly identify what adoption decisions were submitted, leaving objectors to guess what the city actually submitted. [SID2, pp. 12-13]

The objection argues that since the UGB proposal does not demonstrate compliance with Goal 14, ORS 197.298 and OAR 660-0024-0060, the city must start over with its public facilities planning after it develops a new UGB proposal that follows and meets those requirements. [SID2, p. 43] The objection provides a number of technical challenges to

[30] Swalley Irrigation District has objected that lands zoned Urban Area Reserve (UAR) were not acknowledged exception lands.

the city's sewer master plan, which are similar to the objector's earlier May 2009 submittal. [SID2, pp. 45-55]

Central Oregon LandWatch – The May 7, 2009 objections argue that the sewer and water facility plans impermissibly provide infrastructure on lands outside the current UGB. [Page 16 of 18] The objector's June 30, 2009 objections argue that the city predetermined "so many aspects" of its UGB decision on the location of infrastructure, that it has not properly prepared public facility plans for lands inside the current UGB. The objection argues that the city has not recognized its overarching priority "to provide sewer to the thousands of acres and people currently lacking this service within the City." The objection points out that, while the city's Central Area needs infrastructure improvements and capacity to handle substantial infill development, it assumes only 500 new residential units due to Central Area sewer deficiencies. [p. 2] The objection incorporates by reference the June 28, 2009 objections of Toby Bayard.

Rose and Associates, LLC – The objector filed during both submittal phases. In its May 5, 2009 objection, it is argued, "The city erred by adopting the sewer and water master plans as part of the UGB rather than through an independent process." In addition, the city failed to comply with Goal 1 when it adopted the plans without separate public hearings. [p. 3] (See section III.K concerning Goal 1 objections.) The objection also points to technical errors regarding gravity sewer serviceability for specific property excluded from the UGB proposal. [p. 5]

The objector's June 29, 2009 submittal argues that the city sewer plan is inconsistent with the UGB amendment and does not provide for timely, orderly and efficient service, as required by Goal 11. The objection points out specific lands included in the UGB proposal but not in the sewer facilities plan, and other properties included in the sewer facilities plan but not in the UGB proposal. [p. 2]

Tumalo Creek Development, LLC – The objector's July 2, 2009 submittal states that the public facilities plan violates Goal 11 and OAR 660, division 11, because it does not consider more cost effective sewer alternatives. The objection cites its submittal of alternative lower cost technical solutions (e.g., membrane technology associated with satellite treatment facilities) for serving portions of the west side and Central Area, which it determined would provide much needed additional capacity in the city's urban core. According to the objection, however, the city did not consider objector's alternative proposal and the city's findings do not address the proposed alternatives. [p. 2] This objection is also included in the objector's May 7, 2009 submittal.

The objection argues that the sewer facility plan does not provide service in a "timely, orderly, and efficient" manner. The objection specifically points to the ability of the city to serve areas needing a Deschutes River crossing via the proposed North Interceptor as an area that will likely have to wait years and probably decades for sewer service, due to high costs and environmental concerns. The city has not adequately addressed these cost and environmental concerns, according to the objection. [pp. 2-3]

Toby Bayard – The objector's June 28, 2009 objection argues that the city adopted its public facilities plans without the benefit of a public hearing, "having failed to advertise, properly notice, or inform the public that it was accepting testimony on the PFP." (See section III.K of this report, dealing with Goal 1.)

While the objector's June 28, 2009 objections include concerns over how the city adopted its public facility plans and how it used the same plans in determining its Goal 14 boundary location analysis, these issues are addressed elsewhere in this report. (See report discussions on Goal 1 and ORS 197.298.). The objection lays out a number of Goal 11 concerns as follows:

- There is no clear statement demonstrating how various public facilities plan infrastructure costs will be funded [pp. 7, 23]
- The public facilities plans and related documents provide conflicting information [p. 7]
- The sewer facilities plan contemplates provision of services to areas not part of the UGB proposal. [p. 15] At the same time, certain land included in the UGB proposal is not included in the sewer facilities plans. [p. 18]
- The sewer facilities plan does not satisfy Goal 11 requirements for a timely, orderly and efficient arrangement. [p. 20]
- The city's sewer facilities plan was not coordinated with other entities, including state and federal agencies. [p. 20-21]
- The sewer facilities plan and Bend Area General Plan Chapter 8 (Facilities Plan) conflict with each other and with the city's findings. [p. 21-22]
- Key Goal 11 determinants were not properly applied when developing the sewer facilities plan. [p. 22]
- The Northern Interceptor cost estimates omit crucial cost components. [p. 22-23]
- Goal 11 requires that estimates use current year costs but the city used 3-year old cost estimates. [p. 23]

Hunnel United Neighbors – The objection argues that the city failed to provide a sewer facility plan that is internally coordinated or provides for an orderly, timely and efficient arrangement of services. The objection challenges whether the Northern Interceptor produces an orderly arrangement of sewer service, given that Goal 11 directs that priority should be given to the large supply of unsewered land to the southeast and south which is located in the current UGB. The objection questions whether the Northern Interceptor will accommodate timely development in an area that is already subject to "serious transportation issues" and cost of service issues. The objection also questions whether the Northern Interceptor's full cost, which has not been "determined or disclosed" related to the crossing of the Deschutes River, will demonstrate an efficient arrangement of its sewer service plans. [pp. 3-4]

Newland Communities – Most of the objection's concerns raise jurisdictional issues related to review of the public facilities plans; these are addressed in section III.D of this report. The objection provides a single objection directly pertinent to Goal 11, which is stated in precautionary terms as follows: "If DLCD exercises jurisdiction over the PFPs,

DLCD's review must conform with OAR 660-011-0010(1) and OAR 660-011-0050." The objection then argues that the city's decision meets these requirements. [July 2, 2009, letter from Christe C. White]

Anderson Ranch – The objection argues that in preparing its public facility plans, the city failed to comply with the citizen involvement requirements of OAR 660-015-0000(1). This objection is addressed in section III.K of this report under Goal 1 compliance.

J. L. Ward Company – The objection questions whether the sewer facility plan adequately addresses which existing and amended UGB areas are to be served by the proposed Southeast Sewer Interceptor and asks that this be clarified by the city. [June 22, 2009, letter from Jan Ward]

d. Analysis

In this section, the department examines whether the public facilities plans satisfy the requirements of Goal 11 and its rule, and whether those plans are consistent with the land use provisions of Goal 14, ORS 197.298 and OAR 660, division 24 relating to a UGB expansion. The following examination is based on the objections above and on the department's own concerns.

Public notice, hearing issues and public involvement. Under OAR 660-025-0175(3) and ORS 197.610, the city is required to provide the department with notice of a proposed amendment 45 days prior to the city's first evidentiary hearing on the proposal. The notice is required to contain the text of the amendment and any supplemental information that the local government believes is necessary to inform the director as to the effect of the proposal. [ORS 197.610(1)] The department received notice of the city's June 2007 public hearings on its first UGB proposal, including draft public facility plans for a 4,884-acre UGB amendment considered at that time.[31] [32] The city's October 8, 2008 revised notice,[33] however, which proposed to nearly double the size of its UGB proposal to 8,943 acres, did not include updated public facility plans, as pointed out in department letters sent to the city in October 2008 and November 2008.

[31] While the city's June 11, 2007, 45-day notice and submittal included a draft public facilities plan, it did not include other information necessary to review that proposal at that time. Specifically, the submittal did not contain any comparative analysis as required by ORS 197.298 and Goal 14 locational factors.

[32] On March 30, 2007, the city submitted a plan amendment to the department that proposed to amend Chapter 8 – Public Facilities and Services element to the Bend Area General Plan. (DLCD file Bend 002-07, local file 07-012) The proposal included changing the plan text to incorporate by reference two new facility master plans, a Water Master Plan and a Sewage Collection System Plan, with no changes to existing policies or the UGB. The intent of these amendments was to support re-calculation of system development charges for water and sewer services and for capital improvement programming. In April, 2007 the city indefinitely postponed hearings on the amendment. (Source: DLCD plan amendment files)

[33] The city's October 8, 2008 revised 45-day notice was revised on October 20, 2008; neither of the notices contained an updated public facility plan for the 8,943-acre UGB proposal.

Several parties raise objections regarding adequate public involvement and the city's public hearings process related to adoption of its public facility plans; these objections are addressed in sections III.K in this report. Objections have also raised jurisdictional questions relating the city's public facility plan adoption; these objections are addressed in section III.D.

Public facility plans were improperly used to determine the location of the UGB. A key question raised by objector is whether the sewer collection and water distribution master plans are consistent with the city's UGB expansion, and whether these plans provided the analysis required to evaluate alternate locations for a UGB expansion, as required by ORS 197.298, Goal 14 and OAR 660, division 24.

The first step in making such a determination is to examine the capacity of the city's public facilities to serve the existing UGB area, as well as areas proposed for addition to the UGB. OAR 660-024-0060(8).

The next step is a comparative analysis of the relative costs, advantages, and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services. OAR 660-024-0060(8).

The data and findings from the second step may be used in two situations:

1. When a city prepares findings supported by an adequate factual base to demonstrate that future urban services could not reasonably be provided to higher priority lands (such as exception lands) due to topographical or other physical constraints, the city may then exclude these lands from the prioritization otherwise required by ORS 197.298(1). ORS 197.298(3)(b).

2. In addition, if the total amount of land in a particular priority category exceeds the amount needed, the city may apply, weigh and balance the four Goal 14 location factors to select which lands will be added to the UGB. One of those four factors is the "orderly and economic provision of public facilities and services" (see OAR 660-024-0060(1)).

The requirements for analyzing alternate UGB expansion areas are contained in OAR 660-024-0060(8).

The city's Goal 11 findings state, "The city has based the proposed expansion of the UGB in part on the development of three (3) new sewer interceptors that are located beyond the city's current UGB." [Record at 205] The record does not support this finding. The sewer collection master plan included an analysis of planned new sewer interceptors, but the location of those interceptors was (for the most part) not identified as being on agricultural lands (the interceptors are located almost entirely on UAR lands, or within the existing UGB). Further the analysis of what lands will be served in the future in the master plans does not correlate with the lands in the UGB expansion area. The UGB expansion area includes substantial lands that are evaluated in the master plans,

creating an internal conflict in the city's General Plan contrary to Goal 2 as well as Goals 11 and 14. Nor do the master plans contain an analysis of the relative costs, advantages and disadvantages of alternative UGB expansion areas as required by OAR 660-024-0060(8). Instead, they simply analyze the feasibility of serving the existing UGB and UAR lands.

Not all serviceable exception areas were included in the public facility plans. Several objections point to certain lands included in the amended UGB but not included in the public facility plans, and certain other lands included in the public facility plans but not included in the UGB proposal. The Collection System Master Plan (CSMP) study area includes the area within the prior UGB, UAR exception lands adjacent to the existing UGB, all of the 1,500-acre Juniper Ridge area in the north one square mile of EFU lands,[34] and the Tetherow destination resort located southwest of the current UGB. [R. at 410] The CSMP has also included some exception lands adjacent to the UGB designated as SR 2½, and property owned by the Department of State Lands (DSL). The UGB expansion area does not include the DSL and Tetherow properties, and only a portion of the Juniper Ridge site (as location of a future university site); nor does it include a large area of rural residential development south of the city.

The city also adopted CSMP Addendum No. 1–Final Executive Summary and Alternative Technical Analysis: North East Bend (2007) which expands the territorial scope of the CSMP approximately 1.5 miles eastward north of Butler Market Road to include both exception and resource lands in the northeast area of the UGB proposal. [R. at 517-550] The main purpose of this study is to propose a more southerly alignment for the Plant Interceptor sewer line to the treatment plant. It is not clear from the record what disposition occurs between the CSMP's original version of the Plant Interceptor expansion and alignment and the North East Bend supplement, which appears as an alternative to the original CSMP Plant Interceptor proposal. Chapter 8 of the General Plan appears to provide that the CSMP (rather than the Addendum) controls. [R. at 1495 ("[The CSMP] shall direct the development of the system and be the basis for all sewer planning and capital improvement projects." R. at 1495, Policy 2.)[35]

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[34] Land referred to as Section 11 owned by the Oregon Department of State Lands, zoned for exclusive farm use and located adjacent to the current UGB on the east side.

[35] The city also adopted CSMP Addendum No. 3–Technical Memorandum 1.5–Hamby Road Sewer Analysis (2008) which proposes an alternative sewer interceptor approximately one mile east of the existing UGB on a mix of exception and resource land. The newly proposed route at least partially replaces an earlier proposed Southeast Interceptor alignment along 27th Street. [R. at 693-703] This proposed alternative interceptor, proposed as an alternative alignment for the Southeast Interceptor, would flow north from Stevens Road (Department of State Lands property located at Section 11) along Hamby Road to one of the Plant Interceptor alternatives described above. Similar to the Plant Interceptor alternatives, the findings do not explain the disposition between the CSMP's original alignment for the Southeast Interceptor expansion and the Hamby Road alternative. The Addendum No. 3 shows the costs of the two alignments to be very similar, and indicates that there are disadvantages to the Hamby Road alignment. [R. at 698]

Approximately 640 acres of exception land adjacent to the prior (and current) UGB in the southwest area in the vicinity of Bucks Canyon Road and west of Highway 97 are not evaluated in the CSMP. This area meets the city's suitability criteria, but is not included in the UGB or in the CSMP. [R. at 2449] The Bucks Canyon Road exception area is zoned RR-10 and consists of mostly large-lot exception properties. This exception area was included in the September 2008 UGB alternatives analysis in Alternatives 1 and 2, and a significant portion of Alternative 3. [R. at 5983, 5986 and 5989, respectively] Each alternative map showed proposed sewer interceptors and major roadway facilities. These exception lands are not considered in the CSMP although they meet the suitability criteria for residential development and are located at a higher elevation than gravity sewers in CSMP Planning Study Area No. 8 served by the CSMP's proposed Southeast Sewer Interceptor. [R. at 463, 476]

The Water System Master Plan Update does not cover all the existing UGB or expanded UGB area. The Water System Master Plan (WSMP) update was completed in March 2007. [R. at 226] According to the WSMP, the city serves 53,000 people within its existing UGB at the time the study was completed. The remaining population within the UGB was served by two private water providers, the Avion Water Company and Roats Water System. [R. at 236] The WSMP goes on to point out that the plan includes the "current service area within the UGB and the Tetherow development area as well as the Juniper Ridge area." [R. at 236]

The WSMP does not contain any public facility plan components for the Avion Water Company or Roats Water System, as required by OAR 660-011-0005 and -0010 and OAR 660-024-0020(1). The WSMP does not appear to contain composite service maps of the UGB service areas or illustrations of the proposed principle water distribution system operated by the Avion Water Company or Roats Water System.

The UGB expansion proposal includes areas served by the city, Avion Water Company, and Roats Water Company. However, there is no evidence that the WSMP includes plans for these expansion areas, as required by the Goal 11 and 14 rules. The WSMP also does not appear to satisfy the coordination requirements in Goals 2 and 11.

Sewer plans undercut providing adequate and timely services to unserved, underserved and areas with high infill and redevelopment potential, such as the Central area. This objection is closely related to the Goal 14 requirement to promote efficient patterns of urban development; adequate provision of density measures called for by ORS 197.296 and Goal 14; and OAR 660-024-0050(4), which calls for demonstration that land needs cannot reasonably be accommodated on land already inside the UGB prior to expanding the boundary.

The most significant CSMP project to affect the service capacity of the Central area is the need for a threefold increase in capacity of the Westside pump station, which is a major regional facility serving west and central Bend. The CSMP shows that ultimate buildout of the service area relying on the Westside pump station will require rerouting some of the increased flow from the pump station to a new Westside Interceptor, hence

connection to a new Northern Interceptor near Highway 97, all to relieve the current central interceptor, which follows a northeasterly alignment to the treatment plan. [R. at 493, 494, 495, 497] The CSMP's cost estimate for upgrading the Westside pump station, Westside Interceptor and Northern Interceptor to near Highway 97 is almost the same as building the entire Northern Interceptor, including an alignment that crosses the Deschutes River and follows the contour around the north and west quadrants of Awbrey Butte. [R. at 488, 499, 504]

The CSMP notes that 53 percent of the acreage, or 9,468 acres, within the existing UGB does not currently receive sanitary sewer service based on the city's 2005 database. [R. at 407] The city identifies 2,909 acres of vacant and redevelopable residential land by plan designation in UGB in 2008. [R. at 1071, 1083] The CSMP describes its UGB buildout conditions as the number of dwelling units "calculated assuming all parcels developed on a net acreage basis at the average zoning density for the specific land use type for each parcel." [R. at 407] For areas within the current UGB, the CSMP utilizes average densities for new housing construction over the last six years, as inventoried by the city planning department.[36] [R. at 417] The city's RS designation is estimated to build out at 5.3 dwelling units per acre during the planning period.

For UAR areas located outside the existing UGB, the CSMP assumes an average residential density of 5.3 dwelling units per acre. [R. at 417] However, nothing in the record demonstrates how almost 3,000 acres of land "unsuitable" for urban development, and 519 acres of buildable "surplus," are analyzed and accounted in the sewer facility plan. The effect of these approximately 3,500 acres of "unsuitable" and "surplus" land on the capability and capacity of service cannot be determined from the record when it provides little or no information on the location of such "unsuitable" and "surplus" lands.

On the other hand, the city's housing needs analysis assumes that vacant and redevelopable residential land within the current UGB, will build out at the current average density of 3.96 units per acre. [R. at 1071, 1289] For the expanded UGB area, however, the housing needs analysis assumes an average density of just under 5.9 units per acre on 941 net acres of residential development spread over 2,866 acres. [R. at 1080, 1082] In essence, the city proposes to provide higher densities in UGB expansion areas on the city periphery than on existing vacant and redevelopable land inside the existing UGB.

Both needs analysis numbers are inconsistent with those used by the CSMP. For areas in the existing UGB, the city's needs analysis density is significantly less than that of the CSMP, which from a sewer service perspective, effectively leaves more development capacity inside the UGB than reported by the city.

[36] This residential density data is provided in Table 2-7 of the CSMP. [Record at Page 418] An average overall density and period of measurement is not provided, though. The department believes this data shows recent density of new construction for the period of 1998 to 2005.

The Bend General Plan incorporates a defective PFP. The discussion above highlights internal inconsistencies between the city's water and sewer facilities plans and the UGB expansion. Chief among these inconsistencies are that the sewer plans include areas that are not part of the UGB expansion area, and the UGB expansion area includes areas not analyzed in the CSMP. Similar deficiencies appear for the water system plan. These internal inconsistencies are incorporated into the Bend General Plan in chapter 8, Public Facilities and Services, do not provide an adequate public facilities plan required by Goal 2 and Goal 11 or as required by the Goal 11 rules or the UGB amendment rules (OAR 660, divisions 11 and 24, respectively). [R. at 1480, 1483]

No timely, orderly and efficient arrangement of public facilities. Timely, orderly and efficient arrangement refers to "a system or plan that coordinates the type, locations and delivery of public facilities and services in a manner that best supports the existing and proposed land uses." [Goal 11 and OAR 660-011-0000] If the public facility plan is found to be incomplete, as described immediately above, then the water and sewer facility plans, as a whole, cannot demonstrate the "timely, orderly and efficient arrangement of public facilities."

Did not evaluate carrying capacity. "Carrying capacity" is a term used by Statewide Planning Goal 6. This term does not apply directly to Goal 11 unless a water or air quality violation is found. Since the UGB expansion does not directly implicate water or air quality standards, there is no Goal 11 compliance issue.

Can the city's public facilities plan be acknowledged for areas of the existing UGB, only? At the city's request, the department considered whether the updated public facilities plan could be partially acknowledged for use in planning sewer and water services within the existing UGB. In order to be acknowledged, the adopted plan would need to demonstrate compliance with Goal 11 and its rules, including those parts of the goal and rules that prohibit extension of sewer collection systems beyond the UGB to serve properties located outside of the current UGB. The exception includes mitigating circumstance for specifically recognized health hazards.

Internal inconsistencies identified in this section, including density assumptions related to infill and redevelopment, and the efficient development of vacant land, need to be resolved between the city's needs analysis and its public facilities plans before the public facilities plans may be acknowledged. In addition, the city must complete its public facility plan for water by including information called out in OAR 660-011-0010 for areas served by the Avion Water Company and Roats Water Company, consistent with the city's urban growth management agreement with each water company. [OAR 660-011-0015] As a result, the director determines that he cannot partially acknowledge the city's public facilities plan based on the current submittal.

d. Conclusions

The director remands the public facilities plans for sewer and water, and directs the City of Bend to complete the work described below.

The city is directed to prepare revised public facility plans and amend chapter 8 of the Bend Area General Plan to clearly identify what sewer and water projects are needed to accommodate development in the UGB expansion area, including the elements listed below. To the extent that the city is relying on relative costs of public facilities and services to justify inclusion of particular lands within the UGB expansion area, it must include the comparative analysis required by OAR 660-024-0060(8).

Revised public facilities plans shall contain the items listed in ORS 660-011-0010(1), which outlines the minimum content for a public facility plan, including:

a. An inventory and general assessment of the condition of all the significant public facility systems which support the land uses designated in the acknowledged comprehensive plan;

b. A list of the significant public facility projects which are to support the land uses designated in the acknowledged comprehensive plan. Public facility project descriptions or specifications of these projects as necessary;

c. Rough cost estimates of each public facility project;

d. A map or written description of each public facility project's general location or service area;

e. Policy statement(s) or urban growth management agreement identifying the provider of each public facility system. If there is more than one provider with the authority to provide the system within the area covered by the public facility plan, then the provider of each project shall be designated;

f. An estimate of when each facility project will be needed; and

g. A discussion of the provider's existing funding mechanisms and the ability of these and possible new mechanisms to fund the development of each public facility project or system.

H. Transportation Planning

Several objections raise issues related to whether the transportation planning component of UGB planning complied with relevant requirements. The legal criteria for this portion of the submittal are primarily found in Statewide Planning Goal 12 and OAR 660, division 12 (the "Transportation Planning Rule" or "TPR").

1. Did the amendments to the transportation plan violate Goal 12 or OAR 660, division 12 and related portions of Goal 14 and OAR 660-024-060?

Several objections allege the amendments to the City of Bend's urban-area transportation plan violate Goal 12 and the TPR and related portions of Goal 14 and OAR 660-024-060, which require consideration of cost and feasibility of providing transportation facilities needed to serve planned urban development. The department submitted comments to the city prior to adoption of the amendments, and these comments along with the objections raise issues with whether the evaluation of transportation facility improvement needs (i.e., major road and highway improvements) provide a complete and accurate evaluation and comparison of the costs, advantages, and disadvantages of alternative UGB expansion areas.

a. Legal Standard

OAR 660-024-0060(8) sets forth how cities must evaluate and compare public facility costs of alternative boundary expansion areas:

> The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:
>
> * * *
>
> (c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

b. Summary of Local Actions

The city has adopted findings that reflect a transportation analysis of UGB alternatives conducted in 2007 by DKS (Bend UGB Expansion: Transportation Analysis), which has been incorporated into amendments to the city's transportation system plan (TSP), and the transportation element of the general plan. [R. at 2184-2303] The city's evaluation and comparison of transportation costs, advantages and disadvantages follows the city's overall approach to evaluation of alternatives, which combines multiple individual areas into a few composite options for UGB expansion.

The major findings of the city's transportation analysis are as follows:

- Overall impacts, needed mitigation measures, and costs are similar under any of the alternatives analyzed.

- State highways will be severely congested..... The most severe congestion would be on US 97 north of Colorado Avenue to the city limits. Significant system expansion, new facilities or new management measures would be needed to comply with state mobility standards."

- The four land use scenarios for UGB expansions have very similar relative impacts on the Capacity Street network. ....The location, function and scale of needed additional improvements on the state and city street network had very many common elements among the scenarios. That means that the total expected investment will be very similar no matter which combination of areas within the planning area is selected for UGB expansion.

- Development in the Juniper Ridge area does have several unique roadway elements associated with the state highway that do not occur with the other land use scenarios considered. These potentially could include upgraded junctions with US 97 at Cooley Road, US 97 at Deschutes Market Road and a potential additional connection in between. The scale of these projects would require additional review and approvals with ODOT.

- The total cost estimated for mitigations to the transportation system resulting from UGB expansion ranges from $154 million to $232 million .... A major element of this cost range is targeted for improvements at the US 97 / US 20 junction area which is under study by ODOT for a preferred alternative solution (cost estimated at $125 million to $185 million in 2006 Refinement Plan.)

- Further study is required to select the best options on state facilities in the US 97 and Cooley Road areas that were identified for the Juniper Ridge development scenario. Recommendations made in this study are preliminary only. Specifically the concept of upgrades at Cooley Road and Deschutes Market Road require further study in conjunction with the Juniper Ridge Master Plan to understand the best combination of

investments on the state highway system. (Findings in Support of UGB Expansion, page 150-151; [R. at 1202-1203]

c. Objections and DLCD Comments

The department and the Oregon Department of Transportation (ODOT) expressed concerns about the city's evaluation and comparison of transportation costs of different UGB expansion alternatives prior to adoption. The department raised this issue in its comment letters in July 2007 and October 2008.

In November 2007, the department advised that the city needed to do more work and coordination with ODOT to compare costs, advantages and disadvantages of expanding UGB to the north. [R. at 10378] In October 2008, the department again expressed concern that the city's process for evaluating transportation costs was not complete or detailed enough to comply with requirements in OAR 660, division 24. The department's comments questioned the city's decision to assign costs of major roadway improvements in the north area of Bend to the entire city, and the city's overall conclusion that the extent of needed transportation improvements was essentially the same regardless which lands were included in the UGB.

ODOT expressed significant concern about the proposal to extend commercial and other intensive zoning along both ends of Highways 20 and 97. Of particular concern was the northerly portion of Highway 97 and 20. Intensifying land use in this area will further complicate the process of identifying transportation solutions and, given that it will likely be 15-20 years before a long-term solution could be constructed, these more intensive uses will exacerbate the existing congestion and safety issues. (ODOT Preliminary Comments on City of Bend UGB Expansion, October 27, 2008) [R. at 4392]

ODOT also commented on the April 2007 DKS Traffic Report: "It is unclear to what extent this analysis reflects the impacts and needed mitigation for the currently proposed "Alternative 4." We are currently comparing this report to the Alternative 4 proposal but it is clear that the preferred alternative has not been sufficiently analyzed to determine what the transportation investment costs will be." (ODOT Preliminary Comments on City of Bend UGB Expansion, October 27, 2008) [R. at 4392]

Five objectors challenged whether the city has adequately evaluated and compared transportation costs, advantages and disadvantages of alternative UGB expansion areas:

- Swalley Irrigation District
- Rose and Associates
- Central Oregon LandWatch
- Newland Communities
- Department of State Lands

Each of these objectors made objections to the city's analysis that can be characterized as follows:

- The city failed to analyze relative costs of serving individual areas and instead assigned the cost of major improvements to the city or UGB as a whole, when in fact, these improvements are primarily needed to serve a particular area. Several objectors referred to comments provided by ODOT expressing concern about improvements proposed to in the North area, to Highway 20 and 97.

- The analysis of roadway improvements needs did not use a consistent or accurate method to evaluate transportation of roads needed to serve development in different areas of the city.

Individual objectors provided additional specific objections to the city's analysis, as follows.

Swalley Irrigation District – The city assigned costs of major roadway projects that appear to be needed primarily to serve UGB expansion to the NW to the entire city. These include a proposed new bridge crossing the Deschutes River and improvements to state highways 97 and 20. The city fails to provide a detailed cost estimate for the Deschutes River bridge construction. [Swalley, May 6, 2009, page 75]

Department of State Lands – The city excluded transportation infrastructure improvement costs directly associated with specific alternative UGB expansion areas, leading to flawed conclusions and decisions. The city excluded from its analysis expensive transportation improvements at Cooley Road that are required to serve the Juniper Ridge expansion area. The city also excluded the expensive bridge over the Deschutes River that is necessary to serve select northwest UGB candidate expansion areas. These projects are by far the largest improvements in the city's transportation infrastructure list, yet those improvements are not applied to the UGB expansion areas they uniquely serve. If the candidate UGB expansion areas served by these infrastructure improvements were not included in the UGB, then these expensive projects would not be needed or built to the same extent, and the extraordinary costs of the projects would not be incurred to the same degree. [DSL, May 7, 2009, page 5 of 6]

Rose and Associates, LLC – North end highway and bridge improvements are estimated at $300-$500 million with no clue as to where funding might come from. Rather than analyze the direct impacts of adjacent properties upon development, the city spread these costs evenly through out the system. This same methodology was not employed at the south end interchange, for example. There is not consistency in the methodology creating an unfair advantage for the north and west properties in terms of cost per acre to develop. [Rose and Associates, May 1, 2009, Exhibit 2]

The city used different local roadway spacing standards (arterials and collectors) for the north and west areas than they did for the southeast area. Due to steep slopes, the Deschutes River and other natural features, it would not be practical to build a standard grid system as is required in the southeast. Therefore, in the city's analysis, the cost to serve the southeast area is higher than serving the north and west areas. What they didn't

take into account was the extraordinary cost of building roadways on steep terrain. They also didn't take into account the extraordinary cost of building a bridge across the river and the north end interchange. The relative cost comparison is fundamentally flawed. [Rose and Associates, May 1, 2009 Exhibit 2]

Newland Communities – The city did not properly consider costs and advantages of its property (and others) in the southeast area that will rely on the existing collector and arterial street system and not require trips on the heavily impacted Highway 97 and 20 for access to employment and other local trips. [Newland Communities, May 7, 2008, pages 21-22]

Central Oregon LandWatch – The city did not provide a detailed transportation analysis for the UGB expansion that it ultimately adopted. The analysis the city relied upon covers earlier proposals that are significantly different than the one ultimately adopted by the city and county.

Expansion in the northwest area would require widening of Newport and Galveston Streets from three to five lanes, which would violate a city plan policy that restricts widening of these streets (Street System Policy 21 of the Bend Area General Plan). [LandWatch, May 7, 2009, page 16]

d. Analysis

The city's evaluation of transportation costs of serving different areas is improper and incomplete. By bundling combinations of different areas into UGB expansion alternatives, the city has not properly conducted the evaluation of "alternative areas" called for in OAR 660-012-0060(8) because the analysis does not disclose unique costs associated with serving individual areas.

The city has not justified assignment of cost for key major highway improvements in Highway 97/20 area to all of the possible UGB expansion areas. State highway and related improvements in the north Highway 97/20 area are the single largest transportation cost identified in the city's evaluation. The city's estimate, based on a 2006 refinement plan is that facilities will cost $125 million to $185 million. These improvements makes up roughly 80 percent of the total cost of transportation improvements needed to serve the proposed UGB expansion areas. The city's findings assert that these improvements will be needed for any of the possible UGB expansion areas the city is considering. The city's position is not supported by the findings provided and is contrary to the information that is in the record and as a result does not have an adequate factual base.

The city's findings, summarized above, state that Juniper Ridge has unique additional costs, but does not itemize or otherwise identify these costs, and indicates that the further study of appropriate solutions is needed, and that this would need to be done "in conjunction with the Juniper Ridge Master Plan." By contrast, the city has provided a

detailed estimate of individual street improvements needed to serve most of the other proposed expansion areas.

Also, as Central Oregon LandWatch notes, the city's analysis does not appear to have considered existing plan policies that that restrict widening of Newport and Galveston.

The DKS analysis that the city relies on was conducted prior to the development of the city's adopted UGB amendment, Alternative 4A. Alternative 4A is significantly different from the UGB expansion alternatives analyzed by DKS and as a result the city's analysis does not comply with OAR 660-024-0060.

e. Conclusion

The director remands the evaluation of transportation costs of UGB expansion alternatives for further work consistent with the requirements of OAR 660-024-0060(8). The findings and analysis need to be revised to:

1. Identify and assign costs of individual UGB expansion areas, rather than combinations of different areas;
2. Provide additional information regarding the costs of providing transportation facilities to serve individual areas, including any extraordinary costs related to overcoming topographic barriers or rights of way;
3. Provide more detailed analysis of the extent to which the costs of improvements for major roadway improvements in north area (including proposed improvements to Highways 20 and 97) are a result of and should be assigned to development in the north area rather than the city as a whole. (That is, the city's analysis and evaluation should assess whether the extent of improvements in north area might be avoided or reduced in scale or cost if the UGB was not expanded in this area, or if the extent of the UGB expansion was reduced.); and
4. Provide comparable estimates for providing needed roadway capacity for areas that, because of topographic constraints, may need to be served by different types of road networks. For example, growth on the east side can apparently be served by a fairly complete grid of streets, while topographic barriers limit potential for a full street grid in this area.

2. Does the UGB amendment violate Goal 12 because the urban-area Transportation System Plan has not been acknowledged to be in compliance with the Transportation Planning Rule?

a. Legal Standard

The TPR requires that cities and counties adopt TSPs establishing a system of planned transportation facilities and services to adequate to support planned land uses.

b. Summary of Local Actions

The city's findings note that the city adopted a TSP that was approved in periodic review. [R. at page 1202]

c. Objections

Swalley Irrigation District contends that the city's UGB amendment does not comply with various portions of the TPR that require the city to adopt a TSP, which sets forth a system of planned facilities and services to meet identified transportation needs.

d. Analysis

The Bend TSP, adopted in 2000, was *partially* approved by the commission in periodic review. The commission's approval of the TSP itemized a number of relevant TPR requirements with which the city had not fully complied**.** However, the department believes that, notwithstanding this remaining work, the existing TSP is partially acknowledged and the city may rely upon it. The TSP complies with Goal 12 and the TPR except for those provisions where the periodic review order specifically indicated additional work remains to be done. The objector does not indicate how the UGB amendment is inconsistent with specific provisions of the TPR where the city has additional work to do.[37]

e. Conclusion

The city has a substantially complete, commission-approved TSP. Because the objector has not identified specific TPR provisions that require additional work by the city that affect the UGB decision, the department disagrees that the TPR requirement that the city have an adopted TSP has been violated.

3. Does the UGB amendment violate Goal 12 and the Transportation Planning Rule because findings do not demonstrate there are adequate planned transportation facilities to serve the planned land uses?

a. Legal standard

OAR 660, division 24 requires that UGB amendments comply with all statewide planning goals and rules, including Goal 12 and the TPR. OAR 660-012- 0020(1)(d) allows cities to defer addressing requirements of OAR 660-012-0060 (to demonstrate that there are adequate planned transportation facilities) until property is re-designated or rezoned to allow urban development.[38]

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[37] The department has separately identified outstanding work related to TPR planning requirements for metropolitan areas that the city has not completed. These are discussed below, but were not raised by Swalley and so are not considered here.

[38] OAR 660-024-0020(1)(d) The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary;

b. Summary of Local Actions

The findings indicate that the city has elected to defer addressing OAR 660-012-0060 to subsequent plan amendments and zone changes as provided for in OAR 660-024-0020. The findings supporting the UGB amendment indicate that adopted zoning for UGB expansion areas put in place interim plan and zone designations that are intended to restrict development to levels that would not result in more traffic generation than allowed by existing zoning. [R. at 1202]

c. Objection

Swalley Irrigation District contends that the UGB amendment fails to comply with provisions of OAR 660-012-0060, applicable to plan amendments and zone changes, which require that the city plan for adequate transportation facilities and services to accommodate planned land uses.

d. Analysis

The city is required to address OAR 660-012-0060 requirements as part of its UGB decision *only* if it that decision also authorizes more intense use of the land (in terms of trip generation) than allowed under current zoning. In this case, the UGB decision defers addressing OAR 660-012-0060 to a separate process that would involve a plan amendment and zone change. In short, while the city has the option to address and comply with the OAR 660-012-0060 now, it has chosen instead to defer compliance with the TPR to a subsequent plan amendment or zone change, which it is allowed to do if its interim zoning does not allow development that would generate more vehicle trips than the prior zoning.

As noted in section III.E.4 of this report, however, the interim zoning applied by the city and the county includes provisions that *may* allow for development that would generate more vehicle trips. The director is unable to determine whether the city and county have complied with this provision because their findings do not address it and there does not appear to be a comparison of prior and current zoning of the expansion area for Alternative 4A in the record.

e. Conclusion

The objection is sustained. OAR 660, division 24 specifically allows local governments to address OAR 660-012-0060 in a subsequent plan amendment or zone change, but only if they show that the interim zoning adopted for the UGB expansion area will not generate more traffic than the prior zoning. The expansion area includes a significant amount of land that had prior resource zoning (mainly EFU), that now is zoned UAR-10, as a result, the director concludes that the city and county have failed to show that they are entitled to defer the application of OAR 660-012-0060.

The director remands with direction to either retain current zoning within the expansion area or evaluate and adopt findings and measures to address OAR 660-012-0060.

4. Planning Status of the Proposed Deschutes River Bridge Crossing

a. Legal Standard

OAR 660-012-0025 describes how local governments are to comply with the statewide planning goals in preparing TSPs. This rule includes three major requirements:

- It directs that TSPs are to include land use decisions regarding planned transportation facilities (OAR 660-012-0025)(1));
- It directs that TSPs include findings showing that planned facilities are consistent with applicable goal requirements (OAR 660-012-0025)(2)); and
- It allows, under certain conditions, that local governments may defer required planning decisions to a subsequent refinement plan. (OAR 660-012-0025(3))[39]

b. Summary of Local Actions

The TSP indicates that the city "contemplates" a new bridge over the Deschutes River in northwest Bend. The TSP also includes two new minor arterial street segments that would extend from existing roadways to either side of the Deschutes River to the location where the proposed bridge is contemplated:

> The transportation circulation plan for the greater Bend urban area also contemplates a new bridge over the Deschutes River. This new bridge would join an extension of Skyline Ranch Road on the west to an extension of Cooley Road on the eastside. *Arterial street connections are included in the plan to accommodate that facility.*
>
> The exact location and alignment of the affected roadways and bridge crossing is the subject of further study and evaluation. Also, the *final* determination of need, evaluation of state land use Goal 5 and other impacts is being deferred to a refinement study. Findings of need and impact will be incorporated into the TSP once that study has been completed. [R. at 1472, emphasis added]

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[39] (3) A local government or MPO may defer decisions regarding function, general location and mode of a refinement plan if findings are adopted that:

(a) Identify the transportation need for which decisions regarding function, general location or mode are being deferred;

(b) Demonstrate why information required to make final determinations regarding function, general location, or mode cannot reasonably be made available within the time allowed for preparation of the TSP;

(c) Explain how deferral does not invalidate the assumptions upon which the TSP is based or preclude implementation of the remainder of the TSP;

(d) Describe the nature of the findings which will be needed to resolve issues deferred to a refinement plan; and

(e) Set a deadline for adoption of a refinement plan prior to initiation of the periodic review following adoption of the TSP.

The proposed bridge is also shown on the adopted roadway system map.[40]

While the TSP appears to be deferring key planning decisions about the bridge to a refinement study, the adopted findings addressing OAR 660-012-0025(3)[41] say:

> [The city is] not proposing to defer decisions regarding function, general location and mode of a refinement plan to a later date. [Exhibit D, Bend UGB Expansion Study – Statewide Planning Goal 12 Findings, pages 15 and 41 of 55]

In the process of conducting its review, the department has learned that the city may have adopted the wrong findings.[42]

c. Objection and DLCD Comments

Swalley Irrigation District contends that the UGB amendment violates several provisions of the TPR, including OAR 660-012-0025. [Swalley Irrigation District, May 6, 2009, page 56] As discussed in detail in objections related to Goals 5, 11, and 14, Swalley argues that the sewer plan assumes a crossing of the Deschutes River—in the form of either a bridge or tunnel under the river—but does not incorporate the cost of this crossing in its cost estimates, or address relevant goal requirements that would apply to this decision.

DLCD's October 24, 2008 letter asked that the city clarify the planning status of the proposed bridge:

> While this improvement is included in the plan's list of "outstanding issues" the text of the plan suggests that the city has made key land use decisions about need, mode, function and general location of this planned improvement [in]…. Section 9.6.3 (quoted above)
>
> If the city is making a decision that this roadway and bridge are planned facilities subject only to subsequent decisions about selecting a precise alignment, the plan

[40] The river crossing is highlighted with a large asterisk with this note: "Bridge subject to further study of need and location (see TSP Chapter 9)" [R. at 1476]

[41] The city's adopted Goal 12 and TPR findings are referenced in the record at page 1220. The referenced exhibit, Exhibit D, was included in the city's 2007 notice to the department, but was not included in the adopted record.

[42] In response to a request from the department to confirm the contents of the city's record and findings, city staff advised the department that the wrong set of TPR findings were adopted. [Bend letter, December 7, 2009, page 8 of 9] The adopted findings are a draft version dating from June 2007. The record includes "replacement" findings developed in 2008 that are somewhat different than the 2007 findings, but these were not adopted by the city or county as their official findings. In addition, the city advises that it has posted a *third* set of TPR findings on its website that were not part of the city's record. Due to time constraints in preparing this report, the department has not been able to analyze these findings in detail. And, in any event, the director must base his decision on the city's adopted findings.

needs to (1) address the relevant goals, including Goal 5, (2) establish an overall corridor within which the roadway may be located; and (3) specify the process and standards by which a subsequent decision selecting an alignment for the roadway and bridge will be made. [R. at 4735]

d. Analysis

OAR 660-012-0025 directs that TSPs clearly make or defer decisions about proposed transportation improvements. In this case, the plan is ambiguous. It neither clearly authorizes the proposed bridge, with findings demonstrating that the bridge is consistent with relevant goals, nor clearly defers specific planning decisions about the bridge to a subsequent process.

It appears that the city may have intended to defer a decision on a possible bridge in the northwest area to some point in the future. However, the TSP does not accomplish deferral consistent with OAR 660-012-0025. The TSP does not include findings and provisions required to properly accomplish deferral consistent with the OAR 660-012-0025(3). In addition, parts of the TSP and other parts of the UGB submittal suggest a decision to plan a bridge at this location (i.e., the statement that the bridge is contemplated, and decision to plan for minor arterial roadways extending to either side of the river at to the proposed bridge location).

In short, further work is needed to either authorize the bridge as a planned facility, or defer decisions to a subsequent refinement plan consistent with OAR 660-012-0025. Also, whichever path the city chooses to take in addressing OAR 660-012-0025, its work should be conducted in concert with work addressing two other requirements: OAR 660-024-0060(8) evaluating and comparing costs of different UGB expansion alternatives and evaluating whether widening of Newport and Galveston streets is consistent with the city's adopted plan policies for these streets.

e. Conclusion

The objection is sustained. The plan policy language does not comply with OAR 660-012-0025. As described above, OAR 660-012-0025 requires specific findings and actions when a local government acts to defer required planning decisions to a refinement plan. The city's findings and policies do not fulfill requirements of OAR 660-012-0025(3). The director remands the decision with instructions to either revise the TSP to include planning decisions required to comply with the TPR and applicable goals or properly accomplish deferral consistent with OAR 660-012-0025(3).

Because the bridge is an expensive improvement and appears intended to serve a specific area, the city should, as part of its Goal 14 work, consider whether the bridge improvement is needed to serve a specific areas proposed for UGB expansion, and consider the costs of such an improvement as part of its evaluation of expansion alternatives consistent with OAR 660-024-0060(8).

5. Is the city obligated to complete overdue requirements to reduce reliance on the automobile?

This subsection addresses several issues related to TPR requirements that apply specifically to city's within metropolitan planning areas (MPOS), and whether these requirements must be satisfied prior to significantly amending its UGB. The TPR establishes planning requirements for cities within MPO areas to develop a strategy to reduce reliance on the automobile through the adoption of transportation and land use measures. This section of the report addresses three related issues:

1. Whether the metropolitan planning requirements of the TPR are applicable to Bend at this time;

2. Whether Bend's plan is in compliance with provisions applicable to metropolitan areas for adoption of standards and benchmarks to reduce reliance on the automobile; and

3. Whether the planning requirements in the TPR must be met prior to a significant amendment of the UGB.

Goal 12 and the TPR apply to the UGB expansion decision. Bend is subject to TPR requirements for metropolitan areas, and is well past deadlines for completing the required work. The outstanding work is significant because it is likely to require that the city take additional steps to promote mixed-use land use patterns that support multiple modes of transportion. This work relates directly to requirements in Goal 14 that the city maximize efficiency of urban land uses, and demonstrate that lands within the UGB cannot reasonably accommodate anticipated housing, employment and other land needs.

Issue 1: Whether Bend is Subject to Metropolitan Transportation Planning Requirements at this time.

a. Legal standard

OAR 660-012-0016 and -0055 require that each MPO prepare a regional transportation system plan (RTSP) in coordination with adoption of the federally-required regional transportation plan (RTP). Under both provisions, MPO plans and the city's conforming amendments to its TSP must be adopted no later than one year after the federally required RTP.[43]

[43] OAR 660-012-0016: (1) In metropolitan areas, local governments shall prepare, adopt, amend and update transportation system plans required by this division in coordination with regional transportation plans (RTPs) prepared by MPOs required by federal law. Insofar as possible, regional transportation system plans for metropolitan areas shall be accomplished through a single coordinated process that complies with the applicable requirements of federal law and this division. * * *

(2) When an MPO adopts or amends a regional transportation plan that relates to compliance with this division, the affected local governments shall review the adopted plan or amendment and either:

b. Summary of Local Actions

The city asserts that obligations in OAR 660-012- 0016 and -0055 to conduct metropolitan planning are not applicable at this time:

> OAR 660-012-0016…[and]…OAR 660-012-0055(1)…[do] not apply to the City of Bend because at the time the 2000 Bend Urban Area Transportation System Plan was prepared and adopted on October 11, 2000, the city of Bend was not part of an MPO. [Exhibit D, Bend UGB Expansion Study – Statewide Planning Goal 12 Findings, pp. 15 and 41 of 55]

However, the city's findings, prepared in 2007 and adopted by reference in its submittal, indicate that the city understood the one-year deadline for adoption of an RTSP:

> An RTP that meets federal requirements is expected by the end of June 2007 and an RTP that meets the requirements of this division is expected by the end of December 2007. The City of Bend is committed to amending the City's TSP to be consistent with the adopted RTP within one year of the adoption of the RTP. [Exhibit D, Bend UGB Expansion Study – Statewide Planning Goal 12 Findings, page 42 of 55]

c. DLCD Comments

The department advised the city that the metropolitan transportation planning requirements in the TPR are applicable to Bend at this time. The department raised this issue in its comment letters in July 2007 and October and November 2008:

> The Transportation Planning Rule (TPR) requires that metropolitan areas adopt transportation and land use plans and measures that significantly increase the availability and convenience of alternative modes of transportation and reduce reliance on the automobile. Bend is past due in completing this work. The City of

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(a) Make a finding that the proposed regional transportation plan amendment or update is consistent with applicable provisions of adopted regional and local transportation system plan and comprehensive plan and compliant with the applicable provisions of this division; or,

(b) Adopt amendments to the relevant regional or local transportation system plan that make the regional transportation plan and the applicable transportation system plans consistent with one another and compliant with the applicable provisions of this division. Necessary plan amendments or updates shall be prepared and adopted in coordination with the federally-required plan update or amendment. Such amendments shall be initiated no later than 30 days from the adoption of the RTP amendment or updated and shall be adopted no later than one year from the adoption of the RTP amendment or update or according to a work plan approved by the commission. * * *

OAR 660-012-0055(1)(b): When an area is designated as an MPO or is added to an existing MPO, the affected local governments shall, within one year of adoption of the regional transportation plan, adopt a regional TSP in compliance with applicable requirements of this division and amend local transportation system plans to be consistent with the regional TSP.

> Bend is currently obligated to work with department to prepare a work plan and schedule for completing the required work. (DLCD, November 21, 2008) [R. at 3781]

d. Analysis

The metropolitan transportation planning requirements were applicable at the time the city adopted its amended UGB and amended its TSP. As outlined above, the TPR includes two separate but essentially equivalent requirements for adoption and update of transportation system plans in metropolitan areas.

OAR 660-012-0016 was adopted in 2006 and specifically addresses the relationship of state and federally required transportation plans. This was intended to minimize duplication of effort in meeting state and federal transportation planning requirements. As noted above, the rule specifically directs that TPR required planning "…be accomplished through a single coordinated process" and allows up to one year for local governments to adopt conforming amendments when a federally adopted plan is adopted or amended. (OAR 660-012-0016 also allows local governments to request an extension to the one year deadline, but the city has not requested an extension.)

OAR 660-012-0055, adopted in 1991, requires local governments in a newly designated or expanded MPO to adopt a TSP within one year of adoption of a federally required RTP.

The Bend MPO was designated in 2002, and the MPO adopted an RTP on June 27, 2007. Consequently, the city was obligated to adopt amendments to its TSP meeting relevant TPR requirements no later than June 27, 2008.[44]

The fact that the city was not part of an MPO in 2000 when it adopted its TSP does not affect the applicability of the metropolitan planning requirements. OAR 660-012-0016 clearly directs that metropolitan planning requirements be addressed *at the same time* and *through the same process* that is used to develop the RTP.

The MPO has been working on preparation of an RTP since the area was designated as a metropolitan area in 2002. The city's proposed UGB expansion proposal, TSP, and the RTP have been developed at the same time (2006-2007), and all three plans cover the same planning period: through 2030. Under the terms of the TPR, the city's TSP is subject to metropolitan planning requirements and must include these in its transportation plan.

e. Conclusion

The TPR requirements for metropolitan areas are applicable to Bend at this time.

[44] The city could also have requested that the commission approve a work program extending the date for completion of the required plan as provided in OAR 660-012- 0016, but it has not done so.

Issue 2: Whether the adopted TSP complies with TPR requirements for metropolitan areas.

a. Legal Standard

OAR 660-012-0035 includes requirements regarding planning for transportation choices, and reduced reliance on the automobile. The rule includes a specific target for reduction in vehicle miles traveled (VMT) and provides timeframes for completion and review procedures.[45]

b. Summary of Local Actions

The submittal includes conflicting findings on its compliance with metropolitan transportation planning requirements. As noted above, city argues that provisions of the TPR for metropolitan areas do not apply to Bend at this time. However, the city's findings also say that the city has adopted performance measures and benchmarks as required by 0035 and that it can demonstrate that it has planned for a five percent reduction in vehicle miles travelled (VMT) per capita, as required by the rule:

> * * * the TSP includes benchmarks to assure satisfactory progress towards meeting the approved standard or standards adopted pursuant to this rule at

[45] OAR 660-012-0035: (4) In MPO areas, regional and local TSPs shall be designed to achieve adopted standards for increasing transportation choices and reducing reliance on the automobile. Adopted standards are intended as means of measuring progress of metropolitan areas towards developing and implementing transportation systems and land use plans that increase transportation choices and reduce reliance on the automobile. It is anticipated that metropolitan areas will accomplish reduced reliance by changing land use patterns and transportation systems so that walking, cycling, and use of transit are highly convenient and so that, on balance, people need to and are likely to drive less than they do today.
OAR 660-012-0035(5) *MPO areas shall adopt standards to demonstrate progress towards increasing transportation choices and reducing automobile reliance* as provided for in this rule:

(a) *The commission shall approve standards by order upon demonstration by the metropolitan area* that:

(A) Achieving the standard will result in a reduction in reliance on automobiles;

(B) Achieving the standard will accomplish a significant increase in the availability or convenience of alternative modes of transportation;

(C) Achieving the standard is likely to result in a significant increase in the share of trips made by alternative modes, including walking, bicycling, ridesharing and transit;

(D) VMT per capita is unlikely to increase by more than five percent; and

(E) The standard is measurable and reasonably related to achieving the goal of increasing transportation choices and reducing reliance on the automobile as described in OAR 660-012-0000.

(6) *A metropolitan area may also accomplish compliance with requirements of subsection (3)(e), sections (4) and (5) by demonstrating to the commission that adopted plans and measures are likely to achieve a five percent reduction in VMT per capita over the 20-year planning period*. The commission shall consider and act on metropolitan area requests under this section by order.
(7) *Regional and local TSPs shall include benchmarks* to assure satisfactory progress towards meeting the approved standard or standards adopted pursuant to this rule at regular intervals over the planning period. MPOs and local governments shall evaluate progress in meeting benchmarks at each update of the regional transportation plan. Where benchmarks are not met, the relevant TSP shall be amended to include new or additional efforts adequate to meet the requirements of this rule. [emphasis added]

> regular intervals over the planning period. [Exhibit D, Bend UGB Expansion Study – Statewide Planning Goal 12 Findings, page 27 of 45]
>
> * * * the City can demonstrate to the commission that adopted plans and measures are likely to achieve a five percent reduction in VMT per capita over the 20-year planning period.[46] In addition, the City has adopted interim benchmarks for VMT reduction and shall evaluate progress in achieving VMT reduction at each update of the TSP. [Exhibit D, Bend UGB Expansion Study – Statewide Planning Goal 12 Findings, page 27 of 55]

c. DLCD Comments

The Bend metropolitan area does not have commission-approved standards or benchmarks for achieving reduced reliance on the automobile as required by OAR 660-012-0035. The department raised this issue in its comment letters of October 24, 2008 and November 21, 2008:

> We…recommend that the city revise or delete the finding related to TPR Section 0035. This section of the rule relates to adoption of measures to implement an adopted, Commission-approved standard (required of 0035(5)-(6). As noted above, work related to these requirements remains as an outstanding work task. (DLCD, October 24, 2008, page 16.) [R. at 4737]
>
> The key outstanding [TPR] requirement relates to adoption of a plan and measures to significantly increase the availability and convenience of alternative modes of transportation and reduce reliance on the automobile. This includes development and adoption of specific targets for accomplishing reduced reliance. (TPR Section 035(5)) (DLCD, November 21, 2008) [R. at 3781]

d. Analysis

While the city has adopted several benchmarks for adding bike and pedestrian facilities and transit service, it has not formally proposed or adopted a performance measure as required by provisions of OAR 660-012-0035, and has not obtained or sought commission approval of such a standard as required by OAR 660-012-0035(5)(a).

Further, although the city asserts that it can demonstrate that its TSP is likely to achieve a five percent reduction in VMT—thus meeting relevant requirements of the TPR—nothing in city's TSP or adopting findings provide evidence to support this assertion, or that would provide a basis for a commission order approving this finding as provided under OAR 660-012-0035(6).

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[46] Under terms of OAR 660-012-0035(6), a metropolitan area can meet the requirement to adopt standards for accomplishing reduced reliance on the automobile in sections 0035(4) and (5) "…by demonstrating to the commission that adopted plans and measures are likely to achieve a 5% reduction in VMT per capita over the 20 year planning period."

e. Conclusion

The city's amended TSP does not satisfy TPR requirements for metropolitan planning. The city must develop a standard and benchmarks that show how the city's transportation and land use plans will significantly increase the availability and convenience of alternative modes of transportation and reduce reliance on the automobile and obtain commission approval of those measures.

Issue 3: Whether the TPR's requirements for metropolitan area planning must be completed prior to or contemporaneously with the city's UGB amendment

a. Legal standard

OAR 660-024-0020 requires that the city address all of the statewide planning goals in its decision to amend its UGB:

> (1) All statewide goals and related administrative rules are applicable when establishing or amending a UGB, except as follows:
>
> * * *
>
> (d) The transportation planning rule requirements under OAR *660-012-0060* need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary …. OAR 660-024-0020 (emphasis added).[47]

This rules allows deferral of the application of OAR 660-012-0060, but not of other provisions of the TPR. The TPR includes several specific requirements for metropolitan areas that affect or are implemented through changes to land use densities, designations and design standards to meet specific requirements in the TPR to significantly increase transportation options and significantly reduce reliance on the automobile. These include:

- Adoption of local standards, approved by LCDC, that demonstrate the city's TSP will significantly increase transportation options and reduce reliance on the automobile. (OAR 660-012-0035(4)-(6))
- Adoption of a parking plan and a transit plan (OAR 660-012-0020(2)(c) and (g))
- Adoption of ordinance amendments to allow for transit-oriented developments, and transit-supportive uses and densities along transit routes (OAR 660-012-0045(4))

[47] As noted above, the director sustained an objection from Swalley Irrigation District concerning this requirement as it relates to deferring application of OAR 660-012-0060 of the TPR to subsequent plan and zone change decisions.

b. Summary of Local Actions

Table 2 below summarizes the city's actions and findings that relate to planning requirements for metropolitan areas. As noted above, for the most part the city contends that these requirements do not apply to the city at this time. Individual findings appear to suggest that the city has nonetheless adopted actions that comply with metropolitan planning provisions in the TPR.

Table 2. City findings and actions related to TPR Requirements for Metropolitan Areas

TPR Section	Summary	Goal 14 Related Outcome	City Findings/Status
0035(4)–(7)	Performance standards for increasing trans-portation options and reducing reliance on the automobile	Plan and zoning changes to allow more mixed use higher density residential and employment development; especially in close-in areas, and infill and redevelopment	City has not adopted performance standards. The TSP includes several "benchmarks" for TDM, bike and pedestrian improvements that were adopted as part of city's 2000 TSP that predate Bend's designation as an MPO[48]
0020(2)(g) 0045(5)(c)	Parking Plan to reduce per capita parking by 10% or adopt parking management reforms	Supports increased employment density, multifamily housing density	City findings assert city has met this requirement of the rule. Nothing in TSP or record includes a parking management plan that meets applicable requirements
0020(2)(c)(C)	Transit Plan designating major transit routes and major stops	Supports higher residential and employment densities	TSP includes a map of potential routes and three potential major stops.[49] [50] Policies dating from 2000 TSP direct city to continue work on transit planning
0045(4)–(5)	Ordinances allowing transit-oriented developments and transit supportive uses and densities along transit routes	Increased housing and employment densities along transit routes	City has adopted some changes to ordinances as a result of 2000 TSP work and PR remand. Policies direct city to continue work.[51] No new ordinance provisions as part of this amendment.

c. DLCD Comments

The department raised this issue in its comment letters in October and November 2008:

[48] TPR requires benchmarks that measure progress in implementing adopted, LCDC approved performance standards. Since Bend does not have an adopted, approved performance standard, these benchmarks do not meet -0035 requirements.

[49] At present, the following are proposed as major transit stops: the downtown transit center, St. Charles Medical Center and Central Oregon Community College. Also, as the system grows, evaluation of major transit stops in the northern and southern reaches of the Bend area should be conducted. [R. at 1388]

[50] "The final determination of public transit routes, facilities and amenities within the UGB areas will be subject to further analysis and funding availability. [R. at 1453]

[51] "Major transit corridors shall be opportunity areas within ¼ mile of either side of a corridor shall be a priority for medium to high density residential designations to implement the Framework Plan. [TSP, R. at 1354]

> In our July 2007 comments we recommended that the city clarify the relationship of proposed TSP amendments to the city's obligations to prepare and adopt a regional transportation system plan (RTSP) in compliance with the TPR. Of particular note are TPR requirements to plan for reduced reliance on the automobile. Because land use strategies play an important role in accomplishing this objective, this work should be integrated with the city's consideration of UGB amendments. (DLCD, October 24, 2008) [R. at 4737]

> The key outstanding [TPR] requirement relates to adoption of a plan and measures to significantly increase the availability and convenience of alternative modes of transportation and reduce reliance on the automobile. This includes development and adoption of specific targets for accomplishing reduced reliance. (OAR 660-012-035(5)) Because urban growth patterns affect reliance on the automobile, the proposal needs to assess how expansion to different areas would affect city's efforts to reduce reliance on the automobile. In general, reduced reliance on the automobile is accomplished by planning for compact, mixed use development, with an emphasis on focusing development in close in areas and along major transit routes. This is especially true for major trip generating uses, including regional commercial development, the proposed university and hospital medical center. For these uses, the proposal should evaluate whether needs can be met through increased infill or redevelopment or more intense development of close in sites. (DLCD, November 21, 2008) [R. at 3781]

d. Analysis

The city is required to address portions of Goal 12 and TPR related to metropolitan planning in its UGB amendment. The UGB expansion adds a significant quantity of land and residential and employment capacity to the Bend urban area that will affect transportation systems and that will have long-term effects on the extent to which area residents must rely on automobiles. Compliance with these provisions of the rule is important now because the work needed to meet these requirements relates to and affects the city's decisions about how to accommodate future urban growth. Generally, this portion TPR is met by changes to land use designations and densities that result by planning and zoning additional areas for compact, mixed use development and higher densities, through increased rates of infill and redevelopment and through development of transit oriented development or mixed use centers or neighborhoods:

> It is anticipated that metropolitan areas will accomplish reduced reliance by changing land use patterns and transportation system so that walking, cycling and use of transit are highly convenient and so that, on balance, people need to and are more likely to drive less than they do today. [OAR 660-012-0035(4)]

In addition, the TPR includes detailed guidance about the kinds of land use actions that metropolitan areas should consider to accomplish this objective.[52]

As the department stated in its comments to the city, this work must be integrated into the city's analysis of future land use needs as part of the UGB amendment process. As discussed above, the Goal 14 rule requires the city to consider and adopt efficiency measures to attempt to accommodate future land use needs on lands that are currently within the UGB. Since city must comply with the TPR as part of its UGB amendment, the city's efficiency measures must also include land use related actions that comply with the TPR.

e. Conclusion

The city's plan does not comply with key portions of the TPR related to planning for reduced reliance on the automobile. The city does not have a commission-approved standard for accomplishing reduced reliance on the automobile; a transit or parking plan; or related implementing measures allowing for transit oriented development.

Compliance with this part of the TPR is likely to require that the city take steps to plan and zone lands to encourage more compact, mixed use development, either through infill and redevelopment in the central area, or more detailed planning for transit oriented development or mixed use centers along transit routes. This work is closely related to work city is otherwise required to complete in order to comply with Goal 14 to adopt "efficiency measures." The city's decision is remanded to address these portions of the TPR, and to coordinate this work with its proposed UGB expansion.

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[52] OAR 660-012-0035(2) lists the types of land use changes that local governments are encouraged to consider to reduce reliance on the automobile:
(a) Increasing residential densities and establishing minimum residential densities within one quarter mile of transit lines, major regional employment areas, and major regional retail shopping areas;
(b) Increasing allowed densities in new commercial office and retail developments in designated community centers;
(c) Designating lands for neighborhood shopping centers within convenient walking and cycling distance of residential areas; and
(d) Designating land uses to provide a better balance between jobs and housing considering:
(A) The total number of jobs and total of number of housing units expected in the area or subarea;
(B) The availability of affordable housing in the area or subarea; and
(C) Provision of housing opportunities in close proximity to employment areas.

6. Did the rezoning of lands within the UGB expansion area violate Goal 2, OAR 660-024-0050(5) and the Transportation Planning Rule?

a. Legal standard

OAR 660-024-0050(5) (2006)[53] provides that at the time a city and county adopt a UGB amendment, they must also adopt comprehensive plan and zoning designations that are consistent with the 20-year land need determinations for all land that is being added to the UGB. This rule codifies long-standing appellate case law.[54] For Bend, this rule applies to revisions to plan and zoning maps to address future urban residential, commercial, industrial, institutional, park, and other uses in the expansion area. There are two ways to zone the land being added to the UGB: (1) retain the existing rural zoning, such as rural residential or exclusive farm use, or (2) apply interim urban holding zones that limit or prohibit land divisions, maintain large parcel sizes, limit uses, and prohibit increased vehicle trip generation.[55] The purpose of this requirement is to maintain the potential of the urbanizable land[56] within the UGB for future planned urban development.

b. Summary of Local Actions

In addition to adopting new interim plan and zoning designations, the city also designated future land uses for the expansion area on the Urban Area Framework Plan Map [R. at

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[53] The text of OAR 660-024-0050(5) (2006):

> When land is added to the UGB, the local government must assign appropriate urban plan designations to the added land, consistent with the need determination. The local government must also apply appropriate zoning to the added land consistent with the plan designation or may maintain the land as urbanizable land until the land is rezoned for the planned urban uses, either by retaining the zoning that was assigned prior to inclusion in the boundary or by applying other interim zoning that maintains the land's potential for planned urban development. The requirements of ORS 197.296 regarding planning and zoning also apply when local governments specified in that statute add land to the UGB.

[54] A UGB expansion based on a specific need must be conditioned on zoning and development the subject property to achieve the result of providing for the identified need. *Concerned Citizens vs. Jackson County*, 33 Or LUBA 70 (1997).

[55] *See, e.g.*, ORS 197.752(1): "Lands within urban growth boundaries shall be available for urban development concurrent with the provision of key urban facilities and services in accordance with locally adopted development standards." *Also see* OAR 660-024-0020(1)(d): "The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary."

[56] The definitions in OAR 660, division 15 define "Urbanizable land" as: "Urban land that, due to the present unavailability of urban facilities and services, or for other reasons:

(a) Retains the zone designations assigned prior to inclusion in the boundary; or
(b) Is subject to interim zone designations intended to maintain the land's potential for planned urban development until appropriate public facilities and services are available or planned."

"Urban land" is defined as "land inside an urban growth boundary."

4897]. Part of the expansion area was designated as six master plan areas: four on the west side, one on the south side, and one on the northeast side. The map specifies the approximate gross "available acres" for various urban uses for each master plan area.

c. Objection

Tumalo Creek Development LLC contends Bend violated Goal 2 by assigning future plan designations in the proposed Framework Plan to lands outside its jurisdiction. This would be lawful only if the designations are guidelines. If the map designations are binding, the city must coordinate with Deschutes County and comply with statutes and rules regarding re-zoning, including Goal 2. Objector states that it owns the land designated as Master Plan Area 3. [May 7, 2009 letter, p. 2]

d. Analysis

The city designated future urban land uses on the Urban Area Framework Plan Map. This designation was coordinated with Deschutes County through the county's co-adoption of the UGB amendment, Framework Plan amendments, and plan and zoning map amendments, in compliance with OAR 660-024-0050(5)(2006). However, the city did not apply the *appropriate* plan designations and zoning as required by OAR 660-024-0050(5).[57]

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[57] The proposal does not comply with the OAR 660-024-0050(5) requirement to apply appropriate plan designations and zoning to the expansion area. This rule states:

> When land is added to the UGB, the local government must assign appropriate *urban* plan designations to the added land, consistent with the need determination. The local government must also apply appropriate zoning to the added land consistent with the plan designation, or may maintain the land as urbanizable land either by *retaining the zoning* that was assigned prior to inclusion in the boundary *or* by applying other *interim zoning that maintains the land's potential for planned urban development until the land is rezoned for the planned urban uses.* The requirements of ORS 197.296 regarding planning and zoning also apply when local governments specified in that statute add land to the UGB. [Emphasis added]

The city applied the following *plan designations* to the expansion area: Urban Reserve Residential, Urban Reserve Commercial, Urban Reserve Industrial, Surface Mining, and Public Facilities. [Bend Urban Area Proposed General Plan Map, R. at 40, 174, 1189, 1055, 1226, 1232] Except for the last two, these are rural, not *urban* plan designations.[57] The city has in the past zoned a large amount of land outside the UGB as "urban reserve"[57] but has not used such zoning inside the UGB.

The proposed *zoning* for the expansion area also does not comply with OAR 660-024-050(5). The county adopted two new zones for the expansion area, the Urban Holding-10 (10-acre minimum parcel size) and the Urban Holding-2½ (2½-acre minimum parcel size), in Title 19 of the Deschutes County Code. [R. at 1852] The code also states that an existing city zone, Suburban Low Density Residential (SR 2½), like the new UH-2½ and UH-10 zones, is an urban holding zone. Please see the detailed discussion in section III.E regarding the department's position that these three zones will not preserve urbanizable land for future urbanization and therefore are not urban holding zones in violation of Goal 14 and OAR 660-0050(5). The "land uses" that appear on the Bend Area Framework Plan Map [R. at 1235] are neither land use designations nor the pre-expansion zoning or interim holding zones; they are the intended future urban uses, only.

e. Conclusion and Decision

The city and county did not violate Goal 2 by adopting future urban plan designations for lands within the proposed UGB expansion area. The city appropriately coordinated with Deschutes County. The director denies this objection.

However, as described in more detail immediately below, the city violated OAR 660-024-0050(5) by applying *rural* plan designations (Urban Reserve Residential, Urban Reserve Commercial, Urban Reserve Industrial) to portions of the expansion area, and by applying zoning designations that fail to maintain the expansion area as urbanizable land either by retaining the zoning that was assigned prior to inclusion in the boundary *or* by applying other interim zoning *that maintains the land's potential for planned urban development until the land is rezoned for the planned urban uses.*

I. UGB Location

1. Do the UGB locational analysis and UGB amendment comply with the requirements of ORS 197.298, Goal 14 and OAR 660, division 24?

a. Legal standard

ORS 197.298, Goal 14 and OAR 660-024-0060[58] contain the applicable state requirements that establish *where* a city may expand its urban growth boundary (UGB).

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[58] ORS 197.298 Priority of land to be included within urban growth boundary:

(1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:

(a) *First* priority is land that is *designated urban reserve* land under ORS 195.145, rule or metropolitan service district action plan.

(b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, *second* priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an *exception area or non-resource land*. Second priority may include *resource land that is completely surrounded by exception areas* unless such resource land is high-value farmland as described in ORS 215.710.

(c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the amount of land needed, *third* priority is land designated as *marginal land* pursuant to ORS 197.247 (1991 Edition).

(d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, *fourth* priority is land *designated in an acknowledged comprehensive plan for agriculture or forestry*, or both.

(2) Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.

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

(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."
[emphasis added]

Statewide Planning Goal 14 (as amended April 28, 2005) requires the following:

Boundary Location
The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:
(1) Efficient accommodation of identified land needs;
(2) Orderly and economic provision of public facilities and services;
(3) Comparative environmental, energy, economic and social consequences; and

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

The relevant rules in OAR 660-024-0060 (adopted 10-5-06) are as follows:

Boundary Location Alternatives Analysis

(1) When considering a UGB amendment, a local government must determine which land to add by evaluating alternative boundary locations. This determination must be consistent with the priority of land specified in ORS 197.298 and the boundary location factors of Goal 14, as follows:

(a) Beginning with the highest priority of land available, a local government must determine which land in that priority is suitable to accommodate the need deficiency determined under 660-024-0050.

(b) If the amount of suitable land in the first priority category exceeds the amount necessary to satisfy the need deficiency, a local government must apply the location factors of Goal 14 to choose which land in that priority to include in the UGB.

(c) If the amount of suitable land in the first priority category is not adequate to satisfy the identified need deficiency, a local government must determine which land in the next priority is suitable to accommodate the remaining need, and proceed using the same method specified in subsections (a) and (b) of this section until the land need is accommodated.

(d) Notwithstanding subsection (a) through (c) of this section, a local government may consider land of lower priority as specified in ORS 197.298(3).

(e) For purposes of this rule, the determination of suitable land to accommodate land needs must include consideration of any suitability characteristics specified under section (5) of this rule, as well as other provisions of law applicable in determining whether land is buildable or suitable.

(3) 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.

(4) In determining alternative land for evaluation under ORS 197.298, “land adjacent to the UGB” is not limited to those lots or parcels that abut the UGB, but also includes land in the vicinity of the UGB that has a reasonable potential to satisfy the identified need deficiency.

(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.

(6) The adopted findings for UGB adoption or amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis. If the analysis involves more than one parcel or area within a particular priority category in ORS 197.298 for which circumstances are the same, these parcels or areas may be considered and evaluated as a single group.

(7) For purposes of Goal 14 Boundary Location Factor 2, “public facilities and services” means water, sanitary sewer, storm water management, and transportation facilities.

(8) The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation with regard to impacts on the state transportation system. “Coordination” includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:

(a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the UGB;

(b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the UGB; and

The department provided a detailed explanation of how to complete an analysis of UGB locational alternatives in letters to the city dated May 27, 2008, October 24, 2008, and November 21, 2008 [R. at 3758, 4356, 4722, and 7268]. Deschutes County legal counsel also provided public written advice concerning the locational analysis on September 17, 2007 that is consistent with the department's letters. [R. at 8870] The process is set forth in Goal 14, ORS 197.298, and OAR 660, division 24, and is summarized as follows.

Once a local government has accommodated as much of its total 20-year identified needs for housing and employment as it reasonably can in the current UGB,[59] it then proceeds to analyze lands within a study area outside the existing UGB from which to select lands to satisfy any remaining needs. Goal 14, ORS 197.296, OAR 660-024-0050(4).

The first step is to determine a study area around the existing UGB. Next, the government determines which lands in the study area are the highest priority lands under ORS 197.298(1). For Bend, since there are no acknowledged urban reserves that were adopted under OAR 660-024-0060(1)(a) and ORS 197.298(1)(b), the highest priority lands for urbanization are exception areas (areas that are not subject to the agricultural or forest lands goals, and that usually are planned for rural residential, rural industrial, rural commercial or other rural uses). In the case of Bend, exception areas include properties zoned UAR, RR-10, and SR 2½, as Goal 3 and Goal 4 exceptions were taken for all of these lands (the status of the UAR zoned lands is addressed in more detail later in this section).

Once the highest priority lands are identified, the local government must develop a list of the lands and/or map them. The list or map, along with other data, is then used to analyze the lands for their suitability.

The suitability analysis relates directly to how the local government has justified its need for additional lands. If the additional lands are for general needed housing (e.g., for single family residential) the suitability criteria that may be used as a screen to eliminate lands from consideration (at this stage) are the same general criteria used in determining what residential lands are "buildable" (housing) or "suitable vacant and developed land" (employment). OAR 660-024-0060(1)(e) and 660-024-0010(1)(lands for housing are not buildable if they: have severe natural hazards, are protected by Goal 5, have slopes over 25 percent, are within the 100-year floodplain, can't be provided with public facilities); OAR 024-0010(8))(lands for employment are not "suitable" unless they are "serviceable" (OAR 660-009-0005(9) and are either "vacant" (a lot greater than 1/2 acre not containing permanent improvements or greater than 5 acres where less than 1/2 acre is occupied by

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(c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

[59] The adequacy of the city's accommodation of identified need and efficiency measures for land within the existing UGB is addressed in more detail elsewhere in this report.

improvements, OAR 660-009-0005(14)) or developed but likely to be redeveloped during the planning period. OAR 660-009-0005(1).

If, however, the additional lands are for an "identified need" with "specified characteristics" in terms of location, then the local government may use the required locational characteristics identified in the need showing as a screen to eliminate lands from consideration. OAR 660-024-0060(5). An example is rail-dependent industrial uses. If the local government's economic opportunities analysis demonstrates a need for this type of employment use, lands without rail access could (and should) be excluded from review under the priority of lands statute (ORS 197.298(1)). Similarly, if the local government's housing needs analysis shows a need for high-density, multi-family housing that needs to be located close to a university, or that is located on a planned bus route (in the comprehensive plan), then the city or county may specify suitability criteria that limit its locational analysis to lands that will satisfy the identified need. OAR 660-024-0060(5).

Once the local government has determined the quantity of suitable first priority lands adjacent to the existing UGB, it compares that quantity with the amount of land need it has demonstrated in its housing needs analysis and/or economic opportunities analysis. OAR 660-024-0060(1)(b). If the amount of suitable land in the first priority category exceeds the amount needed, it then uses the Goal 14 location factors to identify which first priority lands to include in its UGB. OAR 660-024-0060(1)(b). The Goal 14 location factors are not criteria, they are considerations that are applied to each alternative parcel or group of parcels. The parcel or parcels that, on balance, best satisfy the factors are selected. In other words, no single one of the four location factors may be the sole basis for selecting a particular parcel(s) to add to the UGB.

If the amount of suitable land in the first priority category does *not* exceed the amount needed, the city or county then proceeds to evaluate the second priority category in the same manner, and so on until sufficient lands are included in the UGB.OAR 660-024-0060(1)(c).

As noted above, ORS 197.298(3)(a) allows a city or county to limit the application of the priority of lands for urbanization established in ORS 197.298(1) if the need being addressed is specific type of identified need with particular locational requirements. Similarly, ORS 197.298(3)(b) and (c) also provide bases for not including lands that would otherwise be a higher priority for a UGB expansion. See also, OAR 660-024-0060(1)(d). The exceptions to the priority statute for the difficulty of providing future urban services (ORS 197.298(3)(b), and for maximum efficiency of land use within the proposed UGB are narrowly construed as exceptions to the general rule for where UGBs are to expand.[60]

[60] ORS 197.298(3) allows a city or county to exclude higher priority parcels from consideration up-front, before the city selects suitable parcels in that priority; and, if the land supply in that priority category exceeds need, before the city applies the Goal 14 boundary location factors. There is a high threshold to exclude higher priority land, such as exception land (including land zoned UAR) and instead add lower

This step provides a tentative list of highest priority parcels (within the exception lands category) to add to the UGB.[61]

If the amount of suitable exception land is *not* sufficient to meet the land need, the local government adds all of the suitable exception lands to the UGB expansion area, and then evaluates lands in the next highest priority category in ORS 197.298(1). For Bend, the next highest priority of land for urbanization is resource land with low resource production capability.

If the analyses do not yield enough land to meet the housing and employment needs the city has identified, then city may consider lower priority lands (i.e., the next set of higher capability farm and forest lands) and produce a tentative list of suitable lands in this final priority category for addition to the UGB.

If there remains an unmet need after this process, the next step is to expand the study area and begin the process described above again from the beginning.

b. Summary of Local Actions

The following is a summary of the city's and county's analyses of where to expand the UGB:

In January 2006, the city established a study area of approximately 27,000 acres for both a proposed UGB expansion and a proposed urban reserve area designation. [R. at 45, 1060] In June 2007, the first UGB expansion scenario was prepared and sent to the department with a 45-day notice. On August 7, 2007, the city and Deschutes County

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priority lands, such as farmlands. For example, the fact that it may cost more to provide public services to one area than others does not satisfy ORS 197.298(3)(b) or OAR 660-024-0060. Likewise, the fact that one parcel will yield fewer new homes or less development than others does not allow a local government to exclude that land from a UGB expansion area in favor of other, lower priority lands. LUBA and the courts have construed the ORS 197.298(3) exceptions narrowly to allow inclusion of lower priority lands at the exclusion of higher priority lands only in cases with compelling facts. *See, e.g., DLCD v. Douglas County*, 36 Or LUBA 26 (1999) ("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.); *1000 Friends of Oregon, et al vs. Metro*, 38 Or LUBA 565 (2000)("Metro must determine whether exception lands can reasonably accommodate the proposed use. As we stated in *Parklane I* and *Residents of Rosemont*, exception criterion (ii) is not satisfied by findings that alternative sites to resource lands cannot accommodate the proposed use 'as well as' those resource lands … a finding that the resource land has relatively fewer developmental constraints or a higher percentage of buildable lands than an alternative site is not sufficient to satisfy the 'reasonably accommodate' standard").

[61] "The goal of consideration under [the Goal 14 boundary location factors] is to determine the 'best' land to include within the UGB, based on appropriate consideration and balancing of each factor." The Goal 14 location factors "must be considered together and balanced, but individual factors are not independent approval criteria." *Alliance for Responsible Land Use v. Deschutes Cty*, 40 Or LUBA 304, 318-319 (2001), *aff'd* 179 Or App 348 (2002). *Also see* OAR 660-024-0060(1)(b).

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withdrew the urban reserve amendment until the UGB expansion was resolved. [DLCD Form 3 Notice of Denial/Withdrawal, Supplemental Record at 1423] In the fall of 2007, the city enlarged the study area to over 44,000 acres,[R. at 1061] and to respond to direction from the city council to consider the need for land for employment uses as well as housing. [R at 1060]

The city established and applied "threshold suitability criteria" to lands within the enlarged study area. [R. at 1062] The suitability criteria were intended to be consistent with the Goal 14 location factors. [R. at 1062] The parcels that met all of these criteria were considered suitable to meet Bend's needs for housing and employment (and other land needs). [R. at 1168-1170] Those suitability criteria included:

- Whether the parcel can be served [with sewer] by an existing or proposed city facility detailed in the 2008 Collection System Master Plan [e.g., the amended Public Facilities Plan]
- Whether the parcel is serviceable according to the 2007 City Water Master Plan, as amended, or a private water district service area
- If the parcel scores medium or high for street connectivity
- Not an active surface mine, not a state of local park, not a landfill, not a destination resort
- Vacant or improved with improvement value below $20,000
- Improved with a dwelling, if on a parcel greater than 3 acres
- Improved with a school or church, if on a parcel greater than 5 acres
- Not recreational land
- Not owned by the Bend/La Pine School District
- Not in a commercial farm classification with 23 acres of irrigation water rights
- Not subject to restrictive CC&Rs
- Not in private open space
  [R. at 1169]

The "suitable" parcels were then separated into the ORS 197.298 priority groups. The city then applied the Goal 14 location factors to the exception lands by ranking them. The city developed five alternate UGB expansion scenarios after performing additional analysis and evaluation under planning commission direction.

Alternative 1 "places a strong emphasis on the statutory priorities of ORS 197.298(1)" and has "an overriding emphasis on including higher priority lands under the statute."[62] [R. at 1186] The Planning Commission recommended Alternative 4 to the city council, which modified Alternative 4 as a new Alternative 4A. The city council adopted Alternative 4A on January 5, 2009, and Deschutes County adopted it on February 11, 2009. Alternative 4A between 8,462 and 8,943 acres of land to the UGB. The city's

[62] Alternative 1 is the only one of the total seven scenarios for which the city makes this statement. Alternative 1 included 87 percent exception land and 13 percent resource land. Alternative 4A, which the city council adopted on January 5, 2009, reduced the amount of exception land to 74 percent and increased the amount of resource land to 26 percent.

findings report the total acreage as 8,462 acres [R. at 1054], but the city's post-adoption notice to the department reports the acreage as 8,943 (which *may* be the "total" acreage of 8,462 plus the city's "surplus" of another 519 acres). [R. at 1054]. Of the 8,500 plus acres added, it appear the city included approximately 3,500 to 4,000 acres of land that it determined are not "suitable" for inclusion in the UGB. [R. at 1054]

Of the 5,475 acres of "suitable" land included in the UGB, 4,069 acres (74 percent) was first priority exception land (79 percent of which is zoned Urban Area Reserve), and 1,406 acres (26 percent) was resource land.[63] [R. at. 47-48, 153-154, 156, 171-178, 1050, 1062-63, 1166-1207, including Figures V-6 and V-7 and Table V-9]

c. Objections

Tony Aceti – The amendment includes too much EFU land and not enough exception land. [May 4, 2009 page 1]

Terry L. Anderson – The southwest Buck Canyon area, which is suitable exception land, should be included in the amended UGB. [May 6, 2009, page 1]

Central Oregon LandWatch – The amendment does not justify its assumption that the following lands are unsuitable:

- Parcels smaller than three acres with a house,
- Split-zoned parcels, and
- Parcels that did not score "medium" or "high" for street connectivity.

In applying the Goal 14 boundary location factors, the city did not adequately consider the "economic" part of the factor that considers "[o]rderly and economic provision of public facilities and services." The city also fails to apply one of the location factors, "Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB." (May 7, 2009, pp. 9, 13, 15-16]

Hilary Garrett – The amendment passed over suitable high-priority exception land in the southwest Buck Canyon area for actively farmed EFU lands east of Hamby Road for the indefensible reason that the farm parcels will help build the southeast sewer interceptor. One of the suitability criteria was not evenly applied to like lands; *i.e.*, objector's residential subdivision of lots largely smaller than three acres was included while parcels smaller than three acres in another part of the UGB study area were excluded. No parcels smaller than three acres should be included in the amendment. [April 18, 2009, pp. 1-2]

Miller Tree Farm – The city's threshold suitability criteria impermissibly allowed the city to add resource land in place of much of the available exception land. The city gave these criteria more weight than the ORS 197.298 priorities, without justification in the record for doing so. As LUBA ruled in *Residents of Rosemont v. Metro*, 38 Or LUBA 199

[63] In response to a department request for direction to location in the record, the city identified the following pages as constituting the city's boundary location analysis: 1059-1065, 1166-1207, and 7772-7775.

(2000) and *1000 Friends of Oregon v. Metro*, 38 Or LUBA 565 (2000), it isn't sufficient to determine that exception lands cannot accommodate the proposed use as well as resource lands can accommodate the same use(s). Development must be directed to exception lands rather than the resource lands if the exception lands can reasonably accommodate the proposed development. For example, a finding that exception lands can't accommodate as much or as dense residential development per acre as resource lands does not justify excluding those exception lands. The city did not properly apply and balance the Goal 14 boundary location factors. [May 5, 2009, pp. 1-2, 8-10]

Paul J. Shonka – The amendment includes too much EFU land and not enough exception land. [May 1, 2009, pp. 1-2]

Cindy B. Shonka – The amendment includes too much EFU land and not enough exception land. [May 1, 2009, pp. 1-2]

Tony and Cyllene King (McGraw and Associates, LLC) – The amendment includes too much EFU land and not enough exception land. [May 1, 2009, p. 1]

Oregon Department of State Lands – The selection of land does not comply with the ORS 197.298 priorities to add land to a UGB. The "Stevens Road Tract," a large parcel of EFU land abutting the east side of Bend's UGB and owned by the objector, should be included in the expansion if any resource land is included, because the tract is the city's "top-ranked UGB candidate expansion area." [May 7, 2009, pp 4-5]

Rose and Associates, LLC – The city's sewer, water and transportation plans dictated the location of the UGB expansion and predetermined the outcome of the location analysis, in violation of Goal 14. The location analysis fails to include one of the four Goal 14 boundary location factors: "Comparative environmental, energy, economic and social consequences." The location analysis inappropriately deferred the evaluation and comparison of alternate sites for provision of public facilities and services, which is required by OAR 660-024-0060(8). [May 5, 2009, p. 3]

Barbara I. McAusland – The correct lands were not selected in the location analysis. [May 5, 2009, pp. 1-2]

Swalley Irrigation District The correct lands were not selected in the location analysis and the city's suitability findings are inadequate, in violation of Goal 14. The city fails to adequately consider adding thousands of acres of highest priority exception lands in the southwest area. The amendment lacks a factual basis for its claim that all suitable exception land has been included. The city's suitability criteria, including exclusion of parcels smaller than 3 acres with a dwelling, are not consistent with State law. The city fails to comply with its own ordinance that requires application of the Goal 14 boundary location factors and the Goal 2 exception process that were in effect before LCDC amended Goal 14, Goal 2, and OAR 660-004-0010 on April 28, 2005. Exception land in the northwest area should be removed from the amendment. The location alternatives analysis should have considered the impacts of urbanization on rural irrigation systems,

which are water systems under OAR 660-024-0060(8). [May 6, 2009, pp. 40, 42-43, 60-61, 71-73, 75-79]

Newland Communities – The findings support inclusion of the objector's 149 agriculturally designated acres in the northeast area that are surrounded by exception lands on the northeast, north, west, and south. Inclusion of this land should be augmented with a better "legal and factual argument" based on the record, which the objector provides. The city properly followed the location analysis in Goal 14, OAR 660-024-0060, and ORS 197.298. [May 7, 2009, pp. 3, 9-10, 22]

Harold W. Sampson – The city should include the exception lands east of N. Highway 97 bordered by the Burlington Northern Railroad and Juniper Ridge and should eliminate the auto mall and industrial area west of N. Highway 97. [May 1, 2009, p. 1]

Brooks Resources Corporation – Land selected for employment uses is not suitable for that use. [April 29, 2009, pp. 5-8]

d. Analysis

The city and county locational analysis of where to expand its UGB does not comply with ORS 197.298, Goal 14 or the pertinent provisions of OAR 660, division 24 as summarized above. The analysis does reflect a substantial effort to examine what lands are best suited for addition to the UGB, but the methodology and approach used improperly excluded a substantial amount of land planned and zoned as exception lands (including a significant amount of land in existing suburban subdivisions, many of which rely on septic systems) from consideration for inclusion in the UGB. This resulted from the city's use of suitability criteria, some of which did not correspond to the future housing and employment needs identified by the city, and some of which simply do not comply with state law.[64]

Generally, the analysis of suitability is not transparent and lacks clear explanations linking its analysis to the data in the record. In addition, once they began considering farm land for the UGB expansion, the city and county were required to analyze farm lands with the poorest soils first, which they failed to do. The record does not demonstrate that all resource lands within the study area are grouped by soil capability, and then considered and added according to capability (lower capability lands before higher capability lands), in accordance with Goal 14, ORS 197.298, and OAR 660-024-0060.

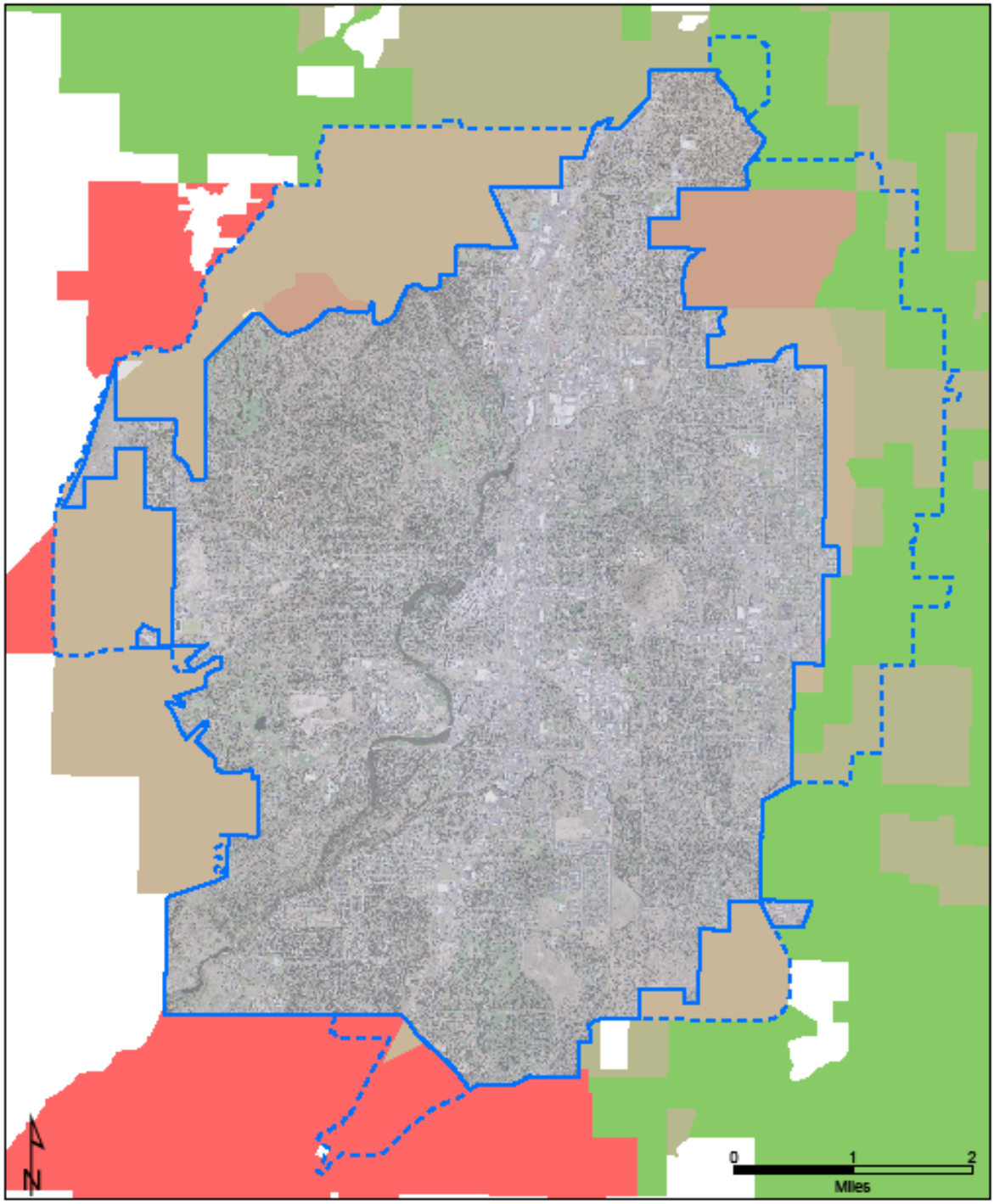
[64] On or about April 10, 2008, the city planning commission was presented with a proposed "strategy" for the city's boundary alternatives analysis. [R. at 7772-75] The memorandum quoted relevant portions of Goal 14, OAR 660-024-0060, and ORS 197.298, but its explanation of how those laws must be applied was incorrect. In letters dated May 27, 2008, October 24, 2008, and November 21, 2008, the department advised the city of the deficiencies in its UGB location analysis, and offered detailed direction on how to complete the analysis correctly under state law. [R. at 3758, 4356, 4722, and 7268] The incorrect "strategy" proposed in the memorandum appears to be the methodology that the city used to arrive at Alternative 4A, which the city council adopted on January 5, 2009.

The city and county did, generally, attempt to avoid land planned as agricultural land. However, the present findings and record do not justify (at this point) any significant inclusion of agricultural lands in the UGB expansion area. The city has begun to make an adequate showing that expansion onto some agricultural lands to the east may be necessary to provide public services to higher priority lands (ORS 197.298(3)(c) [R. at 1183-1186], but given the uncertainty concerning the *amount* of land needed, the director cannot determine that the city has made the showing required by the statute at this time. There also are several, technical, problems with the submittal. The record does not include a map or description of all resource parcels in the study area, as required by OAR 660-024-0060(6). The boundary location analysis map shows only those parcels determined to be "suitable" because they met all of the city's threshold suitability criteria. [R. at 165, 1180, Figure V-4] The department has prepared a map showing the zoning of lands in the study area as Figure 2, using GIS data from Deschutes County.

The record does not include a map or description of all exception parcels in the study area, which is required by OAR 660-024-0060(6). But see Figure 3 on the following page, prepared by the department based on the county's official zoning maps. The boundary location analysis map in the record shows only those exception parcels that are determined "suitable" because they met all of the "threshold suitability criteria." [R. at 164, 1179 - Figure V-3] The city removed all other exception parcels from the study area prior to the boundary location analysis, using the "threshold suitability criteria" that appears to be developed *after* the completed need analysis. Other exception lands are not part of the need analysis in the record. [R. at 47-48,153-160, 1062-63, 1168-75]

Suitability. As described above, in order to eliminate lands from consideration for inclusion in a UGB expansion, they either must be found to be generally unsuitable based on the criteria in OAR 660, division 8 ("buildable" lands for housing) or division 9 ("suitable and available lands" for employment), or (if the lands are being added for a specific identified land need) the suitability criteria must be based on the applicable needs analysis (HNA or EOA). In addition, lands in a study area may be unsuitable for one need, and suitable for another (for example, suitable for single family housing, but unsuitable for a medical center). The underlying housing and employment needs analyses establish a generalized housing need – mainly for single family housing, as well as general commercial uses, and do not identify why these general uses can't be met (at least in part) on adjacent exception lands identified as unsuitable. As shown in Figure 2, there is a substantial amount of exception land to adjacent to the southern boundary of the city. The city's analysis of these lands is addressed in more detail, below.

The city's application of site criteria to *all* planned urban uses before the study area parcels were divided into the ORS 197.298(1) priorities was overbroad. This step prematurely rejected many parcels that are suitable for one or more of the city's future land needs before those parcels could be analyzed under OAR 660-24-0060 and ORS 197.298. The city improperly "refined and reduced the size of the study area for the 20-year UGB expansion (2028) in an iterative fashion." [R. at 152, 1167]



Exception Lands Zoning

Figure 3

Oregon
Department of Land
Conservation & Development

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

Unincorporated County Areas

- EFU Resource
- SR2.5 - Res. Suburb. Low Density
- UAR - Urban Area Reserve
- MUA10 - Multi Use Agriculture
- RR10 - Rural Residential

Urban Growth Boundary

- Current UGB
- Expansion Area

Aerial image: 2008 NAIP
UGB and zoning information extracted from maps provided by City of Bend and Deschutes County

DLCD GIS jcd 01/05/10
Areazoning@1.mxd

The suitability criteria for a UGB amendment for a *general* residential or employment land need are identified in OAR 660-024-0010(8) (for employment uses) and in OAR 660-024-0010(1) (for general housing needs). OAR 660-024-0060(5) allows local governments to apply additional suitability criteria, but only for an "identified need." That term is a term of art, from ORS 197.298(3)(a) – e.g. an "identified need" that has specific locational requirements that are unique to that particular use. The city could, for instance, determine that there is a need for and identified housing type, such as higher density attached multi-family housing along transit routes (where there is access to multiple modes of travel), and thereby justify not following the statutory direction to include exception lands before agricultural lands, if the only locations for this identified type of housing that are along planned or current transit (bus) lines are zoned for agriculture. Similarly, if the economic opportunities analysis identified a need for a site with rail access, and the only such site is on agricultural lands, then the city could use rail access as a suitability criterion and screen out exception lands if there are no exception lands with rail access.

Some of the city's suitability criteria do follow the general suitability criteria allowed under OAR 660-024-0010(1) and 0010(8). Others are appropriate only for an "identified need" for a particular planned urban use that has specific locational requirements. To assist the city on remand, the director provides his evaluation of the city's criteria in the following table.

Table 3. Findings Regarding Boundary Location Threshold Suitability Criteria

Criterion	Analysis
Lot is not entirely within the 100-year floodplain.	This criterion is based on OAR 660-008-0005(2) (for housing)[65] and OAR 660-009-0005(2) (for employment),[66] and is a permissible screen for both general land need and specific identified land needs.
Lot is serviceable for *city* sanitary (does not include private or public systems other than the city).	This criterion is a permissible screen under OIAR 660-008-0005(2)(e) (cannot be provided with public facilities), except for the limitation to *city* facilities. So long as sanitary sewer is available or feasible during the planning period, the property cannot be excluded as unsuitable.
Lot is serviceable for city water.	This criterion is permissible, see analysis immediately above.
Lot is in regional stormwater plan service area.	This criterion is permissible, see analysis immediately above.

Criterion	Analysis
The lot scores medium or high for street connectivity.	This criterion is not a permissible suitability screen. As long as street access is feasible during the planning period, the property can be provided with public facilities. This criteria can, however, be used as a Goal 14 factor for determining what exception lands to include in the event there is an excess amount of such lands and the city and the county are deciding which exception lands to include.
Lot is a public or private right-of-way for roads, sidewalks, and/or landscaping.	Publicly owned land generally is not considered buildable (Goal 10 – within the existing UGB) or suitable (OAR 660-024), and is an appropriate suitability screen. However, *private* right-of-way and open space land is "generally considered "suitable and available."
Lot does not contain an active surface mine in the county's Goal 5 inventory.	This criterion, which is based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), is a permissible suitability screen for general land need.
Lot is not designated by the county as a Goal 5 resource.	This criterion, which is based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), is a permissible suitability screen for general land need.
Lot is not a cemetery.	This criterion, which is based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), is a permissible suitability screen for general land need.
Lot is not owned by the federal government.	This criterion, which is based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), is a permissible suitability screen for general land need.
• Lot is not a state park; • Lot is not owned by the Bend Metro Park and Recreation District (listed twice). • Lot is not owned by Bend-La Pine School District	These criteria, which are based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), are permissible suitability screens for general land need.

Criterion	Analysis
Lot is not a public or private open space.	This criterion is a permissible suitability screen for *publicly owned* open space, but not for private open space. OAR 660-008-0005(2).
Lot is developed with a school or church and is larger than 5 acres.	(1) Some church and school land may be redeveloped. Such lands may be screened as "unsuitable" only based on findings and an adequate factual base that they are not likely to be redeveloped during the 20-year planning periodLarger lots with substantial vacant land generally will be considered to be suitable (at least in part)..
Lot is not a landfill.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period. OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment).
Lot is not a destination resort approved by the county.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period.
Lot has recorded CC&Rs prohibiting further division.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period. The director finds that the evidence citied in the city's findings, R. at 1171-1174, does not support the city's conclusion that the listed subdivisions cannot be redeveloped. The comments in Table V-6 [R. at 1173] show that additional residential development is not prohibited in almost all of the subdivisions listed. Even for those few subdivisions where additional land divisions are prohibited by CC&Rs, the findings do not address whether there are vacant lots, or whether additional housing not involving a land division, such as an "in-law" apartment or "granny flat" may be feasible.

Criterion	Analysis
Lot has improvements with a value of less than $20,000.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period. The valuation threshold used by the city is very low in relation to the potential value of residential redevelopment, and would appear to effectively define lands that have minimal improvements as being developed rather than vacant.
Lot has 1 dwelling and is larger than three acres.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period. The acreage threshold used by the city is very high. A lot with an existing home and several acres of land normally could accommodate some additional residential development during a twenty-year planning period. As noted in the section of this report addressing housing need, the city has not analyzed the actual level of redevelopment that has occurred on such lands, making it impossible to reach definitive conclusions about the amount of redevelopment that is likely to occur, as those terms are used in OAR 660-008-0005(2) and 660-024-0010(1) and 0060(1)(e) and (5). The city appears to have excluded a substantial amount of exception lands based on this criterion.

Criterion	Analysis
Lot is zoned EFU-TRB with 23 acres of high value soils when irrigated OR zoned EFU-UAL with 36 acres of high value soils when irrigated.	The capability of soils on commercial farm parcels becomes relevant only if and when (a) all suitable exception parcels have been added, (b) some amount of 20-year land need remains, (c) the city goes to the next highest priority under ORS 197.298(1), which is agriculture or forest land, (d) lower capability agriculture or forest parcels have been given priority over higher capability resource parcels per ORS 197.298(2), (e) lower capability resource parcels are not suitable for the identified need, or there is not enough lower capability resource land to meet that remaining need, and (f) lowest priority high value resource land must be considered.

By excluding a large amount of adjacent exception lands as "unsuitable" based on suitability criteria that are not tied to a specific identified need for housing or employment, or are not based in the general criteria allowed under OAR 660-024-0060, the city and county have not complied with Goal 14, ORS 197.298, and OAR 660, division 24. The analysis creates an artificial shortage of first priority exception lands, and then uses that shortage to justify including lower priority resource land, effectively undermining the statutory priorities in ORS 197.298.[67]

[67] In *D.S. Parklane Development, Inc. v. Metro*, 35 Or LUBA 516 (1999), *aff'd as modified* 165 Or App 1 (2000), LUBA found that Metro, in part, created its own inadequacy of higher priority lands to accommodate urban land need. LUBA concluded that this error undermined the urban reserve rule's priority scheme "and hence the urban reserve rule." "[W]e conclude that Metro's failure to study enough higher priority lands created in part the inadequacy that Metro relied upon to designate lower priority lands, and further that Metro's application of Subsections 2, 3 and 4 [of OAR 660-021-0030] as described above effectively undermines the urban reserve rule's priority scheme and hence the urban reserve rule." *Id.* at 554.

"The relationship between the elements of ORS 197.298(1) through (3) is essentially the same as the relationship between the elements of OAR 660-021-0030(3) and (4), and LUBA's and the Court of Appeals' interpretation of the latter should guide the interpretation of the former." *Residents of Rosemont v. Metro*, 38 Or LUBA 199, 249 (2000), *aff'd in part, rev'd and rem's on other grounds* 173 Or App 321 (2001). The statutory exceptions to the priorities to add land to a *UGB* in ORS 197.298(3), enacted in 1995, were based on the statutory exceptions to the priorities to add land to *urban reserves* in OAR 660-021-0030(4), which LCDC had previously adopted in 1992. Therefore, interpretations of the OAR 660-021-0030(4) priority exceptions in *Parklane* apply to Bend's use of the ORS 19.298(3) priority exceptions in this UGB amendment, including the magnitude of error caused by improper use of both the priorities and the exceptions to the priorities.

In conclusion, even assuming that (1) the city's 20-year land need estimate of 4,956 acres [R. at 39, 43, 152, 1054, 1058, 1167] is correct, and (2) the city does not need to adopt any additional efficiency measures to accommodate housing need within the existing UGB, its appears that the city could meet all of its 20-year land needs within adjacent exception lands.[68]

Aggregation of Lands for Alternatives Analysis. A second general problem with the locational analysis is that large areas grouped for evaluation do not have similar circumstances as required by OAR 660-024-0060(6). The analysis:

- Aggregates all parcels in the study area and then applied the same "threshold suitability criteria" for all urban land needs;
- Did not separate resource parcels by soil capability before applying site need criteria;
- Did not map or describe the resource parcels in the study area by soil capability;
- Classified resource lands by current use, which is not a valid "common circumstance" under Goal 14, ORS 197.298, and OAR 660-024-0060;
- Segregated exception parcels with potential scenic or natural resources from other exception parcels, without any Goal 5 inventory and regulatory protection program as a basis for doing so;
- Grouped together exception and resource parcels into UGB alternative scenarios based, in part, on cost to extend sewer lines, instead of following the methodology for selecting parcels to include in Goal 14, ORS 197.298 and OAR 660-024-0060;
- Segregated exception parcels into two different groups—parcels zoned Urban Area Reserve and all other exception parcels—when all exception parcels are the same priority and must be treated alike under ORS 197.298(1)(b).

As a result, the analysis does not comply with the OAR 660-024-0050(5) requirement to apply appropriate plan designations and zoning to the expansion area. This rule states:

> When land is added to the UGB, the local government must assign appropriate *urban* plan designations to the added land, consistent with the need determination. The local government must also apply appropriate zoning to the added land consistent with the plan designation, or may maintain the land as urbanizable land either by *retaining the zoning* that was assigned prior to inclusion in the boundary *or* by applying other *interim zoning that maintains the land's potential for planned urban development until the land is rezoned for the planned urban uses.* The requirements of ORS 197.296 regarding planning and zoning also apply when local governments specified in that statute add land to the UGB. [emphasis added]

[68] The findings provide that only 5,733 acres of the adjacent exception lands in the study area are "suitable," and only 5,434 acres are both "suitable and available." [R. at 159, 175-176, 1174, 1190-91]

Response to Objections. For the reasons set forth above, the following objections are sustained by the director:

- The amendment includes too much EFU land and not enough exception land (Tony Aceti, Paul J. Shonka, Cindy B. Shonka, Tony and Cyllene King (McGraw and Associates)).

- The amendment does not justify excluding parcels that have a house and are smaller than three acres (Central Oregon LandWatch, Swalley Irrigation District).

- The amendment does not justify excluding parcels that are split-zoned or don't score medium or high for street connectivity (Central Oregon LandWatch)

- The correct parcels were not selected for inclusion in the UGB. (Barbara I. McAusland, Swalley Irrigation District).

- The city improperly excluded suitable high priority exception land in the SW Buck Canyon area (Hilary Garrett).

- One of the suitability criteria was not evenly applied to like lands; i.e., objector's residential subdivision containing lots smaller than three acres was included, while parcels smaller than three acres in another part of the UGB study area were excluded (Hilary Garrett).

- The use of threshold suitability criteria impermissibly allowed the city to add resource land in place of much of the exception land. Development must be directed to the exception lands instead of resource lands if the exception lands can reasonably accommodate the proposed development. A finding that exception lands cannot accommodate as much or as dense residential development per acre as resource lands does not justify excluding those exception lands (Miller Tree Farm).

- The selection of land does not comply with the ORS 197.298 priorities to add land to a UGB (Department of State Lands).

- The suitability findings are inadequate, in violation of Goal 14 (Swalley Irrigation District).

- The amendment fails to adequately consider adding thousands of acres of highest priority exception lands in the SW area (Swalley Irrigation District).

- The amendment lacks a factual basis for its claim that all suitable exception land has been included (Swalley Irrigation District).

- Suitability criteria, including exclusion of parcels smaller than three acres with a dwelling, are not consistent with State law (Swalley Irrigation District).

- The SW Buck Canyon Area is suitable exception land and should be included in the expansion if needed (Terry L. Anderson).

- The city fails to apply one of the location factors, "Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB" (Central Oregon LandWatch).

- The location analysis fails to include one of the four Goal 14 boundary location factors: "Comparative environmental, energy, economic and social consequences" (Rose and Associates, LLC).

- The amendment does not properly apply and balance the Goal 14 boundary location factors (Miller Tree Farm).

The following objections are denied:

- The "Stevens Road Tract," a large parcel of EFU land abutting the east side of Bend's UGB that is owned by the objector, should be included in the UGB expansion if any resource land is included, because it is the city's "top-ranked UGB candidate expansion area" (Department of State Lands). Reason for denial: Because of the improper application of relevant state goals, statutes and rules in the city's urban growth boundary location analysis, it is not possible to determine, until the city redoes the location analysis on remand, whether any resource land must be added to the UGB, and if so, where. In addition, there is no showing that these lands have lower capability soils, under ORS 197.298(2).

- The amendment fails to comply with a city ordinance that requires application of the Goal 14 boundary location factors and the Goal 2 exception process that were in effect before LCDC amended Goal 14, Goal 2, and OAR 660-004-0010 on April 28, 2005 (Swalley Irrigation District). Reason for denial: LCDC adopted amendments to Goal 14, Goal 2, and OAR 660-004-0010 on April 28, 2005, effective April 28, 2006. These amendments, among other things, revised the Goal 14 location factors and eliminated the need for Goal 2 exception findings for a UGB amendment. A city that began the UGB amendment process prior to LCDC's action had the option of proceeding with either the "old" Goal 14 or the "new" Goal 14. The city submitted a 45-day notice of the UGB amendment on June 11, 2007[69] and adopted the UGB amendment on January 5, 2009; Deschutes County adopted the UGB amendment on February 11, 2009; and the city and county submitted a revised UGB amendment to the department on April 16, 2009[70], after the goal amendments took effect. Between the time that the city submitted its notice and the time the city and county adopted the revised UGB amendment, the city made several changes to the findings and conclusions and used the amended Goal 14. Any provisions in the city's plan or code to the contrary are not consistent with current State law and are not valid or enforceable. The goals and that apply to this UGB amendment are those in effect after LCDC amended Goal 14, Goal 2, and OAR 660-004-0010.

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[69] See Notice of Proposed Amendment in the department's City of Bend PAPA file 010-007.

[70] See Notice of Adoption of UGB Amendment in the department's City of Bend UGB file 2009-01.

- Exception land in the northwest area should be removed from the amendment (Swalley Irrigation District). Reason for denial: The director cannot determine based on the current record whether these lands should or should not be included.

- The location alternatives analysis should have considered the impacts of urbanization on rural irrigation systems, which are water systems under OAR 660-024-0060(8) (Swalley Irrigation District). Reason for denial: OAR 660-024-0060(8)[71] specifies how cities apply the Goal 14 boundary location factors to the land in a statutory priority category in order to select the parcels to fulfill the city's 20-year land need for a particular urban use. This rule addresses application of only one of the four factors, "orderly and economic provision of public facilities and services," which must be weighed and balanced when applied to all parcels in the relevant priority. Goal 14 and OAR 660, division 24 use the term "public facilities and services," but public facilities and their component systems are defined in Goal 11 and OAR 660, division 11. Goal 11 defines "water system" as "a system for the provision of piped water for human consumption subject to regulation under ORS 448.119 to 448.285." (emphasis added) Irrigation is "the watering of land by artificial means to foster plant growth." (emphasis added)[72] Thus, an irrigation system is not a water system under Goal 11, Goal 14, and their implementing rules, and a city does not consider irrigation systems in a UGB location analysis.

The following objections are addressed in other sections of this report:

- The location analysis inappropriately deferred the evaluation and comparison of alternate sites for provision of public facilities and services, which is required by OAR 660-024-0060(8) (Rose and Associates, LLC) (see Goal 12).

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[71] This rule statess:

> (8) The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:
>
> (a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the UGB;
>
> (b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the UGB; and
>
> (c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

[72] Definition from Merriam-Webster On-Line Dictionary.

- Land selected for employment uses is not suitable for that use (Brooks Resources Corporation) (see Goal 9).

d. Conclusion and decision

The UGB location analysis and UGB amendment do not comply with the boundary location requirements in Goal 14, ORS 197.298, and OAR 660, division 24.

The director remands the UGB amendment with direction to submit a UGB location analysis that is consistent with requirements of Goal 14, ORS 197.298, and OAR 660, division 24, as described in this report.

2. Do the UGB location analysis and UGB amendment comply with ORS 197.298?

This section addresses the following additional issues related to the location analysis under Goal 14 and ORS 197.298:

- Which lands in Bend's UGB study area are considered exception lands under ORS 197.298(1)(b)?
- Are lands zoned UAR urban reserves under ORS 197.298(1)(a), exception lands under ORS 197.298(1) (b), or something else?
- Do ORS 197.298(2) requirements to rank parcels by soil capability apply to all of the land priorities in ORS 197.298(1)(a) through (d), or does it apply only to designated resource lands in ORS 197.298(1)(d)?
- Does the UGB expansion comply with the ORS 197.298(2) requirement to give higher priority to resource land of lower capability?
- Does the UGB expansion comply with ORS 197.298(3)(a) in including certain agricultural lands to satisfy identified needs for a future university site, and for large site, general industrial center?
- Does the UGB expansion comply with ORS 197.298(3)(c) in eliminating higher priority exception lands to the south of the city from consideration for inclusion in the UGB?

a. Legal standard

The relevant state law is ORS 197.298. As the department explained in comment letters to the city on May 27, 2008, October 24, 2008, and November 21, 2008 [R. at 3758, 4356, 4722, and 7268], ORS 197.298 requires Bend's UGB location analysis to include the following:

> First, determine which parcels in the study area are the highest priority lands under ORS 197.298(1). For Bend, these are exception parcels under ORS 197.298(1)(b)

because there are no acknowledged urban reserves under ORS 195.145 and ORS 197.298(1)(a).[73] Make a list of these parcels and/or map them. Determine which of these parcels are suitable for an identified land need[74] by analyzing each parcel according to specific site suitability characteristics for the intended use, if any (*i.e.*, residential, commercial or industrial), that were identified in the earlier need analysis (for example, if the city's EOA identified special size, location and access characteristics necessary for regionally significant industrial sites).

The city may determine that study area parcels are not suitable by applying: (1) one or more of the physical site need characteristics that were identified during the need analysis, if any; or (2) one or more of the three exceptions to the statutory priorities in ORS 197.298(3), which may or may not overlap with the previously identified physical site need characteristics; or (3) both.[75]

The remaining parcels after this analysis form a preliminary list of suitable highest priority (exception) parcels. If the amount of suitable exception land under ORS 197.298(1) (b) *exceeds* the land need deficiency amount outside the existing UGB, then the city applies the four Boundary Location Factors in Goal 14 to all of the suitable exception parcels or areas, in order to narrow down the list and select the best exception parcels for the amount of the land need.[76] This provides a tentative list of highest priority parcels to add to the UGB.

If the total amount of suitable exception land is *not sufficient* to meet the amount of land need, the city must first add all of the suitable exception parcels, and then

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[73] Bend's exception areas consist primarily of parcels zoned UAR, RR-10, and SR 2½.

[74] To determine whether the land in any of the ORS 197.298(1) priorities is "inadequate to accommodate the amount of land needed" for a particular urban use under ORS 197.298(1), a local jurisdiction must consider both quantity and suitability. *City of West Linn vs. LCDC*, 201 Or. App. 419, 440 (2005).

[75] In order to exclude lands in any priority category in favor of land in a lower priority, a city or county must provide data, analysis, and findings consistent with one or more of the three exceptions in ORS 197.298(3). ORS 197.298(3) allows a city to remove higher priority parcels from consideration up-front, before the city selects suitable parcels in that priority; and, if supply in that priority exceeds need, before the city applies the Goal 14 boundary location factors. However, there is a high threshold to exclude higher priority land, such as exception land (including land zoned UAR) and instead add lower priority lands, such as farmlands. For example, the fact that it may cost more to service one parcel than to service others does not satisfy ORS 197.298(3)(b). Likewise, the fact that one parcel will yield fewer new homes or less development than others does not satisfy ORS 197.298(3)(c). LUBA and the courts have construed the ORS 197.298(3) exceptions narrowly to allow inclusion of lower priority lands at the exclusion of higher priority lands only in cases with compelling facts.

[76] Because they are factors and not criteria, the considerations embodied in the factors are applied to each alternative parcel or group of parcels. The parcel or parcels that, on balance, best satisfy the factors should be selected. In other words, no single one of the four location factors, such as "orderly and economic provision of public facilities and services" or "efficient accommodation of identified land needs," may be the sole basis for selecting particular parcels to add to the UGB. See OAR 660-024-0060(1) (b).

evaluate all of the parcels and/or areas of similar parcels in the next highest priority category in ORS 197.298(1). For Bend, the next highest priority of land for urbanization is resource land with low resource production capability in ORS 197.298(1) (d).

This evaluation *may* start with a suitability analysis based on: (1) one or more physical site need characteristics that were identified during the need analysis, if any, or (2) one or more of the exceptions to the priorities in ORS 197.298(3) if there are adequate data and findings to support one or more of the three exceptions, or (3) both. (See OAR 660-024-0060(1)(c) and (2).) The steps described for highest priority exception land above are applied to each available parcel of lower-capability farmland, providing a tentative list of suitable parcels in this priority to add to the UGB Note that the Goal 14 boundary location factors are *not* triggered and applied in this situation. The Goal 14 factors are applied only when there is an excess amount of suitable land in a priority category.

If, after the previous analyses, the city still does not have enough land to meet all of its 20-year identified need for the particular use, the city may consider lower priority lands (*i.e.*, the next set of higher capability farm and forest lands) under ORS 197.298(2), using the same analytical methodology used to select higher priority lands, and produce a tentative list of suitable parcels in this final priority to add to the UGB.

b. Summary of Local Actions

The analysis classified parcels designated UAR as exception lands. [R. at 162, 1177] In addition, the Bend Area General Plan (the city's comprehensive Plan) includes a statement that "Lands in this Urban Reserve area [land zoned UAR] are considered first for any expansion of the Urban Growth Boundary." Because of this plan provision, the amendment ranked UAR-zoned land higher than other exception land and included it in the UGB expansion before considering the other exception parcels zoned Suburban Residential 2.5-acre minimum, MUA 10-acre minimum, and Rural Residential 10-acre minimum. [R. at 175, 1190]

It is unclear from the record whether the city selected resource parcels in accordance with ORS 197.298(2), which includes mapping or describing the soil capability of all resource parcels in the study area, grouping them according to soil capability, considering low capability parcels before high capability parcels, and applying the Goal 14 boundary location factors if there is more resource land than needed.[77]

[77] The record is missing a map showing the soil capability of all resource parcels in the original or revised study area. The boundary location analysis map that shows resource lands does not show soil capability. [See R. at 165,1180, Figure V-4]

Consideration of resource parcels assumes that all of the 20-year needed cannot reasonably be accommodated on land within the existing UGB through efficiency measures, and on exception land outside the existing UGB. Whether the city can reasonably accommodate more or all of its 20-year land needs within the existing UGB or on exception land is addressed elsewhere in this report.

The amendment includes resource lands for a future university site on the city-owned property known as Juniper Ridge, and for a large-site general industrial center adjacent to the East State Highway 20/Hamby Road intersection. The city's analysis is that land of lower priority (*e.g.*, exception land), could not reasonably accommodate these uses, justifying an exception to the statutory priorities to add land to a UGB under ORS 197.298(3)(a). [R. at. 166-167, 1181-82]

The amendment also includes 1,253 acres of resource land identified as Areas A through D on the east and northeast side of the existing UGB. The primary justification for including these lands is that planned sanitary sewer lines must cross these intervening resource parcels in order to serve exception parcels elsewhere. The findings state that maximum efficiency of land uses within the proposed UGB requires inclusion of these lower priority resource lands in order to include or provide services to the higher priority exception lands, pursuant to an exception to the statutory priorities to add land to a UGB in ORS 197.298(3) (c). [R. at 168-171, 1183-86, including Figure V-5]

c. Objections

Tony Aceti – The amendment includes too much EFU land and not enough exception land. [May 4, 2009, p. 1]

Paul J. Shonka – The amendment includes too much EFU land and not enough exception land. [May 1, 2009, pp. 1-2]

Cindy B. Shonka –The amendment includes too much EFU land and not enough exception land. [May 1, 2009, pp. 1-2]

Tony and Cyllene King (McGraw and Associates, LLC) – The amendment includes too much EFU land and not enough exception land. [May 1, 2009, p. 1]

Oregon Department of State Lands (DSL) – The amendment's selection of land does not comply with the ORS 197.298 priorities to add land to a UGB. [May 7, 2009, p. 4]

Barbara I. McAusland – The correct lands were not selected in the location analysis. [May 5, 2009, pp. 1-2]

Swalley Irrigation District – The correct lands were not selected in the location analysis. The amendment fails to adequately consider adding thousands of acres of suitable highest priority exception lands in the southwest area. The amendment lacks a factual basis for its claim that all suitable exception land has been included. The amendment's suitability criteria are not consistent with state law, including exclusion of parcels smaller than three acres with a dwelling. The amendment's suitability findings are inadequate. The analysis was not based on appropriately adopted public facilities plans (see Goal 11 objections). ORS 197.298(2)'s requirement to rank parcels by soil capability applies to all of the types

of land in ORS 197.298 (1)(a)–(d) being considered for addition to a UGB (*i.e.*, urban reserves, exception areas, non-resource lands, and marginal lands), and not just rural resource land under ORS 197.298(1)(d). The lands designated "Urban Area Reserve" were never properly excepted from Goals 3 and 4 and therefore are Agricultural lands not exception lands under ORS 197.298(1)(b) (except for one small area designated "Industrial Park"). [May 6, 2009, pp. 34-40, 59-61, 68, 70, and 77-78]

Newland Communities – The amendment properly followed the location analysis in Goal 14, OAR 660-024-0060 and ORS 197.298. The amendment properly included much of objector's land. Objector's property, although designated Agricultural, has the high priority of exception or non-resource land because a private consultant's report concludes that 85 percent of the tract is non-agricultural land. [May 7, 2009, pp. 3, 9, and 11-12]

Rose and Associates, LLC – The lands designated "Urban Area Reserve" were never properly excepted from Goals 3 and 4 and therefore are Agricultural lands not exception lands under ORS 197.298(1)(b) (except for one small area designated "Industrial Park"). [May 5, 2009, pp. 1-2]

The requirements, objections, and analysis of the UGB location are complex. The following subsection is comprised of issues and sub-issues paired with a summary of the results of the department's findings.

d. Analysis

Which lands in Bend's UGB study area are exception lands evaluated under ORS 197.298(1)(b)? Are lands zoned UAR urban reserves evaluated under ORS 197.298(1)(a), exception lands evaluated under ORS 197.298(1)(b)? On June 25, 1981, LCDC acknowledged the City of Bend comprehensive plan, which included city and county exceptions to Goals 3 and 4 for approximately 6,858 acres of land outside the 1981 UGB. These lands were designated UAR, 10-acre minimum parcel size (UAR-10), Suburban Residential, 2.5-acre minimum parcel size (SR 2½), and Surface Mining (SM). Parcels zoned UAR are therefore exception lands. UAR parcels in Deschutes County have not been designated as urban reserves under ORS 195.145.[78] UAR lands in Deschutes County are exception lands. [R. at 7268; Excerpts from the July 7, 1981 LCDC Compliance Acknowledgment Order for the Bend comprehensive plan are attached as Exhibit A]

Does the ORS 197.298(2) requirement to rank parcels by soil capability apply to all of the land types in ORS 197.298(1)(a) through (d), or does it apply only to resource lands in ORS 197.298(1)(d)? The ORS 197.298(2) requirement to rank parcels by soil capability applies only to designated resource lands under ORS 197.298(1)(d). The types of land specified in ORS 197.298(1)(a)–(c) being considered for addition to a UGB (*i.e.*,

[78] In fact, it is impossible for land zoned Urban Area Reserve to be statutory urban reserves. ORS 195.145 was adopted by the Legislative Assembly in 1993, 12 years after Bend's comp plan, including Goal 3 and 4 exceptions for UAR parcels, was acknowledged.

urban reserves, exception areas, non-resource lands, and marginal lands) are not ranked by soil capability, and soil capability is not a criterion or factor to determine whether those parcels are added to the UGB.

LUBA has agreed that the ORS 197.298(2) priority ranking scheme is applicable only to resource lands. In its decision remanding expansion of the Myrtle Creek UGB, LUBA stated: "ORS 197.298(2) and Goal 14, factor 6[79] establish a second priority system for including agricultural lands."[80]

"The relationship between the elements of ORS 197.298(1)–(3) is essentially the same as the relationship between the elements of OAR 660-021-0030(3) and (4), and LUBA's and the Court of Appeals' interpretation of the latter should guide the interpretation of the former."[81] The statutory exceptions to the priorities to add land to a *UGB* in ORS 197.298(3), enacted in 1995, were based on the statutory exceptions to the priorities to add land to *urban reserves* in OAR 660-021-0030(4), which LCDC had previously adopted in 1992. Therefore, appellate interpretations of the OAR 660-021-0030(4) priority exceptions[82] apply to Bend's use of the ORS 197.298(3)(a) and (c) priority exceptions in this UGB amendment, including assigning the same meaning to the second sentence of OAR 660-021-0030(3)(c) and ORS 197.298(2). In 2000, the commission amended OAR 660-021-0030 to move the text that was a separate sub-rule, OAR 660-021-0030(3)(d), into 660-021-0030(4), apparently for consistency with ORS 197.298. In 1995, the rule text originally adopted as OAR 660-021-0030(3)(d) was codified in its own statutory subsection, ORS 197.298(2), instead of being included within ORS 197.298(1)(d).

The language of ORS 197.298(2) and the second sentence of OAR 660-021-0030(3)(c) indicates that their use is limited to resource lands by referring to the resource capability as "appropriate for the current use." This could not apply to exception land or non-resource land (ORS 197.298(1)(b) and OAR 660-021-0030(3)(a) because once an exception has been taken to land outside a UGB, it is no longer farm or forest land.

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[79] Before LCDC amended Goal 14 in 2005, the goal contained seven factors. Factor 6 was: "Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority." The 2005 amendments separated the factors into two groups: need criteria and location factors. At the same time, location factor 6 was deleted because LCDC considered a reference to ORS 197.298 in the new preface to the location factors an adequate representation of state policy to retain agricultural land. [See April 14, 2005 staff report to LCDC, attached as Exhibit B]

[80] *DLCD vs. Douglas County*, 36 Or LUBA 26, 36-37 (1999). LUBA also stated: "Like ORS 197.298(2), Goal 14, factor 6 requires that when agricultural lands are added to the UGB higher priority must be given to land of lower agricultural capability." *DLCD vs. Douglas County*, 36 Or LUBA at 37, fn 14.

[81] *Residents of Rosemont*, 38 Or LUBA at 249.

[82] *See, e.g., D.S. Parklane Development, Inc. v. Metro*, 35 Or LUBA 516 (1999).

Does the amendment comply with the ORS 197.298(2) requirement to give higher priority to resource land of lower capability? The amendment submittal does not contain the data and findings that constitute an ORS 197.298(2) soil capability comparison and analysis. The amendment does not include a map showing the soil capability of all resource parcels in the study area. The boundary location analysis map that shows resource lands does not show soil capability. The record lacks the data, analysis, and (particularly) findings that resource lands within the study area were grouped by soil capability, with lower capability lands being considered before higher capability lands, in accordance with Goal 14, ORS 197.298, and OAR 660-024-0060.[83]

The analysis in the city and county's decisions relies on the current use of resource parcels as a factor in determining which resource parcels to include in the UGB [R. at 178-184, 1193-99]; however, under state statute, resource lands must be selected for inclusion in a UGB based exclusively on soil capability. [See ORS 197.298(1)(d) and (2)]

Does the city's UGB expansion comply with ORS 197.298(3)(a)in including certain specified areas to satisfy an identified need for land?

Does the UGB expansion comply with ORS 197.298(3)(c) in including certain resources lands in order to provide services tohigher priority exception lands?

The decisions rely on both ORS 197.298(3)(a) and (c)[84] to include resource lands on the North and East side of the city. [R. at 1181-86] Two specific employment needs are identified that must be met on agricultural lands: a need for a future university campus with approximately 150 acres of land, and a need for a large site general industrial center on county-owned land adjacent to the intersection of E. Highway 20 and Hamby Road. [R. at 1181]

The director has previously determined that the decision adequately establishes a need for these two employment uses, but that there has not been an analysis of whether they may reasonably be accommodated within the prior UGB. If the city and county conduct an analysis of lands within the existing UGB, and conclude that these uses cannot be reasonably accommodated, and that analysis is supported by appropriate findings and an adequate factual base, then they will have made the showing required by ORS 197.298(3)(a) and Goal 14 for a specific identified land need. At this point, however, due

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[84] ORS 197.298(3):

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

(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.

to the absence of the required analysis of whether the use can occur within the existing UGB, the director is unable to conclude that the decision complies with ORS 197.298(3)(a).

The UGB expansion also includes 1,253 acres of agricultural lands included in Areas A-D on the East side of the city, based on the need to include them to serve adjacent exception lands. ORS 197.298(3)(c). [R. 1183-1186]. The findings generally demonstrate that inclusion of *some* of these lands may be necessary in order to provide services to lands already within the (prior) UGB and to serve exception lands in the expansion area. However, the findings also state that some agricultural lands in these areas were included "in order to achieve a logical boundary." In addition, the decision relies on the city's newly adopted public facilities plan and, as determined in that section of this decision, there are deficiencies in those plans.

"Area A" appears to consist of two non-contiguous groups of parcels totaling 143 acres adjacent to the northeast corner of the current UGB. [R. at 169-170, 1184-85 including Figure V-5] The amendment justifies adding this resource land as follows: "Inclusion of this area will allow for extension of urban services from the current UGB to the Pioneer Loop Exception land. Inclusion of Area A will allow for the extension of Cooley Rd. eastward to Deschutes Market Rd. and eventually to a link with Hamehook/Hamby Rd. In addition, the planned North Sewer Interceptor will pass through Area A as it is extended westward from the wastewater treatment plant. This interceptor is included in the city's adopted Sewer Public Facility Plan." [R. at 168-169, 1183-84] The problem with this rationale is that it is not clear why the entire area of resource lands must be included in order to serve lands within the UGB and exception parcels adjacent to the northeast of the current UGB. [see Figure V-5, R. at 169, 1184].

"Area B" is a 422-acre area on both the west and east sides of Hamehook Road and both north and south of Butler Market Road, east of the current UGB. It is separated from the east boundary of the UGB by a large area of exception parcels also proposed for inclusion. [See Figure V-5, R. at 169, 1184] The amendment states that "[t]his resource is included in order to provide urban services (specifically the planned Hamby Rd. sewer interceptor) from exception lands abutting Pioneer Loop in the north to exception lands on both sides of Hamby, south of Nelson Rd.…the Hamby interceptor…must pass through these resource lands in order to reach higher priority exception areas to the south." [R. at 169, 1184] The record does not demonstrate the need to add Area B, a large area of resource parcels, in order to provide public services to a small exception area east of Hamehook Road. [See Figure V-5, R. at 169]

"Area C" is 536 acres of resource land on both sides of Hamehook Road. Again, the amendment states that this land is needed to extend the sewer interceptor – and also parks and schools -- to exception land farther south; however, the Alternative 4A map shows that the exception areas farther south are accessible from the existing UGB. [Figure V-5, R. at 169, 1184]

"Area D" is 152 acres of resource land east of the current UGB, south of Areas A through C. The Alternative 4A map shows that the exception parcels adjacent to Area D are accessible from the existing UGB. [See Figure V-5, R. at 169, 1184] The findings do not explain why the entire area of resource lands must be include in order to serve the exception areas.

In conclusion, at this time the director is unable to determine that the inclusion of these agricultural lands complies with ORS 197.298(3)(c). It appears that once the problems with the public facilities plans are resolved, the city may be able to make the showing required by the statute to include some of these lands, but at present there is too much uncertainty regarding the overall amount of land need to determine that these lands must be included (it may not be necessary to include the adjacent exception lands if the overall quantity of land need is substantially lower). In addition, the city's findings must determine with specificity that inclusion of the agricultural lands is necessary in order to serve nearby exception lands.[85]

Response to Objections. The following objections are denied by the director:

- ORS 197.298(2)'s requirement to rank parcels by soil capability applies to all of the types of land in ORS 197.298 (1)(a)–(d) being considered for addition to a UGB (*i.e.*, urban reserves, exception areas, non-resource lands, and marginal lands), and not just rural resource land under ORS 197.298(1)(d) (Central Oregon LandWatch, Swalley Irrigation District). Reason for denial: As explained in the issues discussion above, the ORS 197.298(2) requirement to prioritize land by soil capability applies only to resource lands.

- Environmental impacts to natural resources, the barrier of high land cost to affordable housing, or the impact to irrigation districts may justify rejecting suitable exception land for resource land under the ORS 197.298(3) exceptions to the ORS 197.298 (1) and (2) statutory priorities (Central Oregon LandWatch). Reason for denial: The only bases for rejecting exception parcels are:

    - They are not suitable for a particular use based on physical site need criteria established during the need analysis, or

    - An adequate factual record justifies one of the three exceptions to the statutory priorities in ORS 197.298(3).

[85] "Subsection 4(c) applies where the inclusion of lower priority lands is <u>*required*</u> in order * * * to achieve a maximally efficient urban form, either because higher priority lands *cannot be included* absent inclusion of lower priority lands, or because urban services *cannot be provided* to higher priority lands absent inclusion of those lands. If a proposed urban reserve area can achieve '[m]aximum efficiency of land uses,' that is, develop at urban densities and efficiencies, *without* including lower priority lands, then inclusion of such lands is not required, and Subsection 4(c) does not apply." *D.S. Parklane Development, Inc.*, 35 Or LUBA at 617.

- Environmental impacts to natural resources, the barrier of high land cost to affordable housing, and the impact to irrigation districts are neither Goal 14 physical site need characteristics, nor ORS 197.297(3) exceptions to the statutory priorities to add land to a UGB. In addition, the record does not justify the city's rejection of any exception land for either of those reasons.

- Lands zoned UAR are highest priority for inclusion in the UGB under ORS 197.298(1)(a) (Miller Tree Farm). Reason for denial: As discussed in the issues section above, for the City of Bend, all exception lands are first priority under ORS 197.298(1)(b) for addition to the UGB; UAR-zoned parcels do not have any higher priority than other exception parcels.

- The lands designated "Urban Area Reserve" were never properly excepted from Goals 3 and 4 and therefore are Agricultural lands, not exception lands under ORS 197.298(1)(b) (except for one small area designated "Industrial Park") (Swalley Irrigation District, Rose and Associates, LLC). Reason for denial: As discussed in the issues section above, parcels zoned Urban Area Reserve were acknowledged as exception lands in 1981.

- The city properly followed the location analysis in Goal 14, OAR 660-024-0060, and ORS 197.298 (Newland Communities). Reason for denial: As discussed in the issues section above, the UGB location analysis was not consistent with Goal 14, OAR 660-024-0060, and ORS 197.298.

- The city properly included much of Objector's land (Newland Communities). Reason for denial: Because of the improper application of relevant state goals, statutes and rules in the city's urban growth boundary location analysis, it is not possible to determine, until the city redoes the location analysis on remand, whether any resource land may be added to the UGB, and if so, where.

- Objector's property, although designated Agricultural, has the high priority of exception or non-resource land because a private consultant's report concludes that 85 percent of the tract is non-agricultural land (Newland Communities). Reason for denial: ORS 197.298(1)(b) exception lands are only those that have been acknowledged as such by LCDC. Unless and until Deschutes County re-designates the objector's land as non-resource land or marginal land, this land is in the lowest priority of designated agricultural or forest land under ORS 197.298(1)(d).

e. Conclusion and decision

The UGB location analysis and UGB amendment do not comply with the ORS 197.298 priorities for adding land to an urban growth boundary.

J. Natural Resources and Hazards

The department submitted comments and received objections related to compliance with Statewide Planning Goal 5 and received one objection related to Statewide Planning Goal 7. These goals relate to natural resource areas and natural hazards.

1. Did the city and county comply with Goal 5 and its implementing rules in amending the city's UGB?

The department received a variety of objections that the city failed to comply with Goal 5 by not adequately applying Goal 5 to the UGB expansion area, and by identifying land within the proposed expansion area as protected land without adequate justification for the designation.

a. Legal Standard

Statewide Planning Goal 5 and OAR 660, division 23 address protection of significant natural, scenic and historic resources and open space. Rules in OAR 660, division 23 specify which resource categories must be protected by comprehensive plans and which are subject to local discretion and circumstances; the rules provide guidance on how to complete inventories and protection programs, and when the rule requirements apply. OAR 660, division 23 requires cities to inventory significant riparian areas, wetlands and wildlife habitat.

For some Goal 5 resources the rule allows cities to rely on inventories compiled by other agencies, and for other resources the local government must complete their own inventory of the resource. For all inventoried significant Goal 5 resources, a local government must complete a process to develop and implement appropriate protection measures. If a local program to protect a Goal 5 resource includes development restrictions, the loss of buildable land that results from these restrictions must be accounted for when determining the amount of land need.

OAR 660, divisions 23 and 24 both specify that a UGB expansion triggers applicability of Goal 5. [OAR 660-023-0250(3)(c) and OAR 660-024-0020(1)(c)] At a minimum, a local jurisdiction expanding its UGB must complete the following for the expansion area when factual information is submitted that a Goal 5 resource or the impact area of a Goal 5 resource is included in the UGB expansion area:

- Conduct an inventory of Goal 5 resources that are required to be inventoried and for which the rule does not rely on state or federal inventories. These are riparian corridors, wetlands, and wildlife habitat
- Adopt the local state and federal inventories as described in the rule for resources that require inventories. These are: federal Wild and Scenic Rivers, Oregon Scenic Waterways, state-designated critical groundwater areas and restrictively classified areas, approved Oregon Parks and Recreation Commission recreation trails, Oregon

State Register of Natural Heritage Resources sites, federally designated wilderness areas, and certain specific energy sources.
- Develop a local protection programs for all significant Goal 5 resources that are identified in an inventory, as required by the rule specific to the resource category.

Local jurisdictions have the option of conducting inventories and developing protection programs for historic resources, open space, and scenic views and sites. When using this option at the time of a UGB expansion, the Goal 5 process for these resources must be complete before land can be designated unbuildable or limitations on building can be considered in sizing the expansion area. [OAR 660-023-0070] The Goal 5 process is complete for these resources when:

- Existing and available information about Goal 5 resource sites is collected [OAR 660-23-0030(2)]
- Information on the location, quantity, and quality of the resource is determined to be adequate [OAR 660-23-0030(3)]
- The significance of resource sites is determined [OAR 660-23-003(4)]
- A list of significant resources is adopted of as part of the comprehensive plan [OAR 660-23-0030(5)]
- An analysis is completed of the economic, social, environmental and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use [OAR 660-23-0040]
- A program to achieve Goal 5 is developed and adopted based on the conclusions of the ESEE analysis [OAR 660-23-0050]

b. Summary of Local Actions

Findings in the submittal state that the proposed UGB expansion and Public Facilities Plan element of the city's General Plan satisfy Goal 5 because, "it avoids to the extent practicable lands with county-inventoried Goal 5 resources." The findings for Goal 5 further state that Deschutes County's Goal 5 program "does not identify any acknowledged riparian corridors, wetlands, wildlife habitat or other Goal 5 resources within the proposed urban growth boundary." [R. at 1215] The findings also state that review of the National Wetlands Inventory shows no wetlands within the proposed expansion area, and this serves to satisfy Goal 5 requirements.

The findings describe the county's knowledge of wildlife habitat within its jurisdiction, and explains that the proposed expansion area does not include any lands in the Wildlife Area Combined Zone, "applied to Goal 5 wildlife habitat," and does not include county-mapped deer winter range or elk habitat [R. at 1216]. The findings do not state when the county's inventories were last updated.

The findings identify two significant riparian corridors within the proposed expansion area and explain that they are protected through the county's plan and code. The findings also state that "approximately 22 additional [riparian] acres are located in the proposed UGB expansion area outside of the Deschutes River and Tumalo Creek." [R. at 1216]

The findings also consider the possibility that additional Goal 5 resources will be identified through future planning efforts. The record states that existing city code implementing its Waterway Overlay Zone and its areas of special interest will apply to newly identified Goal 5 resources. [R. at 1216]

New policies commit the city to perform "a complete Goal 5 inventory once the new UGB is acknowledged." Other policies prevent urbanizable land from becoming urban until the Goal 5 inventory is complete and protection measures are in place. [R. at 1217] The findings apparently use the term "Goal 5 resource" only to refer to resources that have, or will at some point, be identified as significant Goal 5 resources.

The findings do not include information about the approach to areas of special interest (ASI), a city classification described in the Bend General Plan. The ASI classification includes Goal 5 scenic, open space and habitat resources. [R. at 1247] Some discussion of the city's intention to identify and manage impacts to ASIs is presented in the findings on the UGB locational analysis. [R. at 159]. Although the term "Areas of Significant Interest" is not used, the findings state that about 299 acres will not be available for urban uses, "because of their significance as scenic or natural resource" [R. at 159] The bulleted list of evidence for these resources in the proposed expansion area describes landscape features that fit the ASI classification. These include: the presence of the Deschutes River viewshed; presence of the Deschutes River Canyon State Scenic Waterway; and past surveys documenting prominent rock outcroppings, which are potential scenic resources.

Bend has included the Bend Area General Plan as amended January 5, 2009 in the record. Chapter 2, "Natural Features and Open Space," provides some information on riparian areas, wetlands and wildlife habitat, and the city's commitment to protecting these resources. The preservation of water resources, riparian areas and wildlife habitats is identified as one of the goals necessary to ensure Bend's livability by provide long term protection of open space and natural features. [R. at 1244] In several places, the Natural Features and Open Space chapter recognizes that the Deschutes River and Tumalo Creek provide important habitat for a variety of aquatic life, birds, reptiles and mammals, both big and small. On page 1251 of the record, it is stated that all of the significant wetlands identified for the local wetland inventory, conducted in 2000, are located along the Deschutes River.

The plan includes several policies for natural features and open space. Policy 4 states:

> Prior to the completion of the Goal 5 inventory, analysis and ordinance by the city, properties seeking annexation shall conduct a Goal 5 inventory pursuant to OAR 660-023. Where a significant Goal 5 resource is identified, amendments to the Bend Area General Plan and the Bend Development Code shall be proposed and adopted, consistent with inventory findings and OAR 660-23, to ensure appropriate protection of the resource, prior to approval of any land use action.

This appears to be one of the policies mentioned in the findings. [R. at 1217]. It would allow development to proceed and provide for a property-by-property approach to the inventory and protection of Goal 5 resources.

The "Natural Features and Open Space" chapter of the plan explains that the identification and preservation of ASIs and natural features is part of an effort to "retain and conserve the natural character of Bend as the community grows and changes." (R. at 1247] ASIs are identified as "features typical of Central Oregon, or represent important wildlife areas." [R. a 1247]. The association of river canyons with wildlife habitat is recognized in this section.

The analysis for UGB amendment alternative 4A includes information on the environmental consequences of selecting the alternative, and discusses Goal 5 resources for each quadrant. It appears that the term "Goal 5 resource" is used to refer to a resource that has already been identified as significant and placed on the Deschutes County inventory of significant resources, or that may be identified by the city as significant in the future. There are findings of no Goal 5 resources for the northeast priority 2 and priority 4 quadrants and the southeast priority 2 and priority 4 quadrants. It is stated that the southeast priority 4 quadrant is near Townsend bat habitat and has features that could qualify as an ASI. The northwest priority 2 quadrant is described as having one Goal 5 resource, a 200-acre aggregate site, and potential Goal 5 resources within the Tumalo Creek corridor. It is also stated that a State Scenic Waterway designation is recognized for portions of the Deschutes River that run through this quadrant. [R.. at 2460-1261]

There are findings of "no naturally occurring wetlands" for four of the six quadrants, presumably based on the National Wetlands Inventory. The analysis states that the southwest quadrant "contains some soils that have characteristics that may be indicative of potential areas of special interest," and that the northwest quadrant contains a band of lowlands along the canyon bottom of the Deschutes River and Tumalo Creek which is in the 100-year floodplain. [R. at 2430-2462]

c. Objections and DLCD Comments

DLCD provided comments regarding Goal 5 requirements to the city in letters of October 24 and November 8, 2008. [R. at 4728-4729 and 3782] There were two main issues raised with respect to Goal 5: the Goal 5 *procedures* that are required prior to land being identified as non-buildable, and the *inventory* requirements for Goal 5 resources that are triggered at the time of a UGB expansion.

In the October 24 letter, DLCD described several Goal 5 resource categories that overlapped with the "areas of special interest" designation used by the city, and described some options for meeting the objectives of preserving the values of these land both within and outside the confines of Goal 5. The November 8th letter recognized the city's intent to complete the Goal 5 requirements following completion of the UGB expansion, and stated this was not sufficient to comply with the rule. Both letters explained that it was the city's obligation to inventory riparian areas, wetlands and wildlife habitat and assess

resource sites for significance when factual information was submitted that these resources exist in the expansion area.

Objectors have raised concerns regarding the decision to postpone application of the Goal 5 process to known resources that exist within the proposed expansion area. In particular, riparian areas, wetlands, wildlife habitat and state Scenic Waterways need to be inventoried and protected as part of the UGB expansion planning process.

The following comments have been submitted regarding compliance with OAR 660-023 and OAR 660-024-060.

Swalley Irrigation District – Avoidance of county-designated Goal 5 resources (e.g., big game habitat) does not comply with the Goal 5 rule. At the time of a UGB expansion, resources within the expansion area must be reevaluated due to the new conflicting uses allowed. The city failed to apply Goal 5 protections to state scenic waterways. The designation of land along the Deschutes River and canyon as unbuildable was made without completion of the Goal 5 process. It is premature to adopt the Combined Sewer Master Plan and the transportation plan without an adequate inventory of Goal 5 resources. [Swalley, May 6, 2009, p. 45]

Toby Bayard – The city failed to complete Goal 5 inventories of natural areas, scenic and historic areas and open space. Land set aside for protection within the proposed expansion area was not adequately identified as a Goal 5 resource. Reliance on county Goal 5 inventory is not sufficient to meet Goal 5 requirements that apply to the proposed UGB expansion. The city failed to maintain an inventory of historic, open space, and scenic views and sites. [Bayard, April 29, 2009, pp. 1 and 34]

Bend Metro Park and Recreation District – The city failed to provide an adequate Goal 5 analysis as part of the proposed UGB expansion, pursuant to OAR 660-023-0250. The city inappropriately defers Goal 5 analysis to after the adoption of the UGB. [Bryant Lovlien & Jarvis, PC for Bend Metro Parks & Recreation District, May 5, 2009, pp. 1-2]

Central Oregon Land Watch – The city wrongly interpreted OAR 660-024-0020(1)(c) and 660-023-0250(3)(c) and failed to apply Goal 5 requirements as part of the proposed UGB expansion. The designation of 299 acres as restricted due to the presence of Goal 5 resources is not based on a Goal 5 inventory. The city wrongly relies on existing county Goal 5 inventory information to identify to satisfy Goal 5 requirements triggered by the UGB expansion. [Paul Dewey Attorney at Law for Central Oregon Land Watch, May 7, 2009, pp. 5 and 14-15]

Edward J. and Doris E. Elkins – City failed to justify their designation of available lands and constrained lands since no Goal 5 analysis has been completed. A portion of the land was identified as constrained without adequate inventory and assessment. [Elkins, April 26, 2009, pp 1-3].

Department of State Lands – The city failed to conduct Goal 5 inventories and analysis in the proposed UGB expansion areas. [Vrooman, Oregon Department of Justice for Oregon Department of State Lands, May 7, 2009, p. 4]

Tumalo Creek Development, L.L.P. – The city's proposed areas of special interest do not comply with Goal 5. The city failed to conduct a Goal 5 process to properly identify the location of and potential conflicts with ASI designated land. [David C. Allen Attorney, for Tumalo Creek Development, LLC, May 7, 2009, p. 3]

Toby Bayard (PFP) – The city failed to meet its Goal 5 obligations. Specifically, the city did not perform a Goal 5 inventory in advance of recommendations to construct a major sewer system interceptor. [Bayard, July 2, 2009, pp. 11-14]

Swalley Irrigation District (PFP) – The city failed to apply the Goal 5 process during adoption of the public facilities plan, which was required due to the presence of a designated State Scenic Waterway in the northwest quadrant. This objection is also included in the objections made to the UGB expansion. The city failed to address the habitat conservation planning effort that is underway for the bull trout and to recognize constraints on sewers and other infrastructure that are likely to result from the federal endangered species listing. Potential impacts to Tumalo Creek have not been evaluated. [Swalley Irrigation District, July, 6 2009, pp. 29-31]

d. Analysis

The city states that the proposal "avoids to the extent practicable lands with county-inventoried Goal 5 resources," and that Deschutes County's Goal 5 program "does not identify any acknowledged riparian corridors, wetlands, wildlife habitat or other Goal 5 resources within the proposed urban growth boundary." [R. at 1215] These statements may be accurate if Goal 5 resources are understood to mean only resources that the *city* has determined to be significant, but it does not appear that the city made that decision. Even so, there appears to be some contradiction. The findings also state that the Deschutes County Code, Chapter 23.112, identifies two Goal 5 riparian areas within the expansion area. The findings go to explain that "most of these areas are along the Deschutes River and Tumalo Creek…[but] approximately 22 additional acres are located in the proposed UGB expansion area outside of the Deschutes River and Tumalo Creek." [R. at 1216]

OAR 660-23-0250(3)(c) specifies that that the requirements of Goal 5 apply when a post-acknowledgment plan amendment "amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area." The resource sites at issue in this rule are not only sites that have already been identified by the county as significant. The rule requires the city to independently evaluate the expansion area where where resources are identified and evaluate them for significance and possible protection. The city may use the county's inventory as a starting point, but it must also evaluate other information and make its own determination of significance.

The city has factual information that natural resource sites may exist in the UGB expansion area. The alternatives analysis and associated maps clearly show that the Deschutes River and Tumalo Creek run through proposed expansion areas. The Bend Area General Plan recognizes the association between these two landscape features and important wildlife habitat. [R. at 1251 and 1254]

The plan also recognizes the association between the Deschutes River and wetlands. [R. at 1251] Four out of the six quadrants in Alternative 4 are described as having "no naturally occurring wetlands," [R. at 2432, 2437, 2442 and 2447] presumably based on National Wetland Inventory data. The southwest quadrant is described as having soils with "characteristics that may be indicative of areas of special interest." [R. at 2453] The northwest quadrant is described as having land along the Deschutes River and Tumalo Creek that is within the 100-year floodplain. [R. at 2461] The descriptions of these latter two quadrants may indicate the likelihood of wetlands. The record also acknowledges the State Scenic River designation for the Deschutes River [R. at 2460], and the existence of a Goal 5 aggregate resource in the northwest quadrant. [R. at 2460-2461]

Based on the evidence in the record of Goal 5 resources, the city needs to conduct an inventory, identify conflicting uses, and complete the Goal 5 process for the following resources in the proposed expansion area: riparian corridors, wetlands, and wildlife habitat. Potential impacts from new uses that will result from the proposed UGB expansion on the significant Goal 5 resources that are located in the expansion area must also be identified. These include State Scenic Waterways along the Deschutes River and the aggregate resource site in the northwest quadrant.

The city will also need to complete the Goal 5 process for areas of special interest, if these lands are to be considered unavailable for urban use within the proposed UGB expansion area. The Goal 5 process includes the identification of potential impacts from allowed uses and an assessment of the consequences of allowing, limiting or prohibiting uses and activities that conflict with a significant resource. This process is intended to generate findings that justify the final decision to alter or not alter development options. It is possible that the city will be able to rely on significance criteria and portions of the impact analysis that were completed to implement the ASI program within the existing UGB. However, if the ASI program development was competed under OAR 660, division 16, additional work will be needed. The fact that the ASI definition includes wildlife habitat, and implementation of protection measures serve in part to protect habitat, the city will need to consider the requirements of OAR 660-23-0110, when applying Goal 5 to these resources.

Failure to complete an inventory of historic resources was mentioned by one objector, but local governments are not required to identify and protect significant historic resources under Goal 5. If a jurisdiction chooses to identify historic resources, the process and criteria described in OAR 660-23-0200 must be followed. Another objector stated that the city had not adequately addressed current efforts to develop a habitat conservation plan for bull trout in the Deschutes River. Although the listing of bull trout under the

federal Endangered Species Act may be an important consideration for UGB expansion, Goal 5 does not require fish habitat to be included in a wildlife inventory. The inclusion of fish habitat will depend on choices made by the city when applying the rule (OAR 660-23-0110(4)), and is a consideration in protection of riparian corridors.

The director concurs with the objectors that the city has not completed the steps necessary to asses Goal 5 resources within the UGB expansion area for significance, and has not adequately addressed potential impacts to known significant Goal 5 resources as required by OAR 660-023-0250(3)(c) and OAR 660-024-060. The director also concurs that the areas of special interest identified by the city have not been evaluated sufficiently by the city at this point in time for land to be set aside for their protection. Furthermore, the director agrees with objectors that planning for transportation, housing and parks is undermined by the lack of analysis of the location, quantity, and quality of Goal 5 resources.

e. Conclusion

The UGB amendment and the amendments to the Public Facilities Plan do not comply with OAR 660, division 23. The director remands with direction to complete the inventory, assessment, and program development work needed to comply with Goal 5.

2. Is the designation of Surface Mining on certain property appropriate?

a. Legal Standard

OAR 660-023-0180 addresses identification of significant aggregate resources, approval of mining activity, and protection of the resource from conflicting uses. The rule sets criteria for significance and prescribes a process for evaluating potential impacts from the proposed mining activity. The rule requires a plan amendment for amending the local inventory of significant aggregate resources, changes to the mining activities allowed on the site, changes to the post-mining use of the site, and changes to the restrictions imposed in the impact area on new uses that could conflict with a protected mining activity.

b. Summary of Local Actions

The Bend Urban Area General Plan Map, dated December 12, 2008, shows the comprehensive plan designation for property owned by Shevlin Sand and Gravel to be surface mining. [R. at 1226]

c. Objection

One objector, Shevlin Sand and Gravel (SSG), raised a concern about a comprehensive plan map designation of surface mining that does not correlate with the Department of Aggregate and Mineral Industry (DOGAMI) permit authorizing mining. The objector does not cite a violation of local or state regulations, but explains that the plan designation depicted on the Bend Urban Area Proposed General Plan Map creates a problem with making use of their property. More land is designated as surface mining

than is covered under the DOGAMI permit for their mining operation. The land not covered by the DOGAMI permit can't be mined, and it can't be used for other purposes due to the plan designation. The objector does not state when the plan designation was made.

The objection is, "The surface mining designation makes [the] portion of the property [not covered by the DOGAMI permit] useless, because it is legally impossible for SSG to conduct mining and processing operations in this area." The objector recommends that the City of Bend change the boundary of the area designated surface mining to include only the area subject to the DOGAMI permit. The objector has provided a diagram showing the DGAMI permit boundary. Some land would need to be removed and other land added to the area designated as surface mining for the boundaries to be coincident. [Johnson & Sherton Attorney for Shevlin Sand and Gravel, May 7, 2009, pp. 1-2]

d. Analysis

The map designation is presumably based on a previous action by Deschutes County to designate the Shevlin Sand and Gravel property as a significant aggregate resource. A UGB expansion does not trigger a requirement for the city to conduct a new inventory of aggregate resources within the expansion area. Local jurisdictions are only required to amend the significant aggregate resource inventory in response to an application for a post-acknowledgement plan amendment. [OAR 660-23-0180(2)] A change in the boundaries of this site will require consideration of a separate plan amendment and will need to be based on findings developed consistent with OAR 660-23-0180.

e. Conclusion.

The objection is not sustained.

3. Does the UGB amendment comply with Goal 7 when the findings do not address wildfire hazard?

a. Legal Standard

Goal 7 is: "To protect people and property from natural hazards." There is no administrative rule associated with this goal.

The goal requires local governments to "adopt comprehensive plans (inventories, policies and implementing measures) to reduce risk to people and property from natural hazards." The definition of natural hazard includes wildfires. The goal provides how local governments are to implement the goal, and avoiding development in hazard areas is one of the principles to be considered.

b. Summary of Local Actions

The UGB amendment findings, analysis and conclusions do not address wildfire risk as a consideration regarding where to locate the boundary.

c. Objection

Central Oregon LandWatch objected that the UGB amendment does not address wildfire risk and specifically that emergency preparedness and emergency access are not addressed. The objector submitted evidence that the City of Bend "is one of four western cities at the greatest risk of wildfire." The objector cites to Goal 7 provisions, and states the department should review new fire hazard information and notify local governments (presumably Bend and Deschutes County in this case) that the information requires a local response, as required by Goal 7. The objection does not identify this new information. [Central Oregon LandWatch, May 7, 2009, p. 17]

d. Analysis

Deschutes County has adopted a community wildfire protection plan for the Greater Bend Area that identifies significant wildfire risks for the area. The department agrees that the county and city should consider wildfire risk in evaluating the location and type of development for the city's UGB expansion. However, at present, the Goal 7 does not *require* such an action by the county and city.

e. Conclusion

The director denies this objection. However, the director also believes that the city and county should consider the information in the Community Wildfire Protection Plan for the Greater Bend area on remand as they determine where to expand the UGB and how to plan for the expansion area.

K. Procedural Issues

Several objections raise issues related to whether the city and county have complied with certain procedural requirements in adopting the five ordinances at issue in this review. The legal criteria for this portion of the submittal are primarily found in ORS 197.610, OAR 660-025-0175 and OAR 660-018-0020, and Goals 1 and 2. This section addresses objections relating to local procedure and coordination for both the four ordinances initially submitted to the department (the two county ordinances, and city ordinances NS 2112 (UGB) and NS 2113 (code amendments), and the city's public facilities plan, adopted as ordinance NS 2111.

1. Did the city properly notice its submittal of the ordinances and plan amendments to the department?

Swalley Irrigation District (Swalley) alleges that the City of Bend's April 16, 2009 notice of its submittal to the department is inadequate to meet ORS 197.626, 197.633(2)(b), OAR 660-025-0175(3), and OAR 660-025-0100 (as well as Goal 1) in that the notice does not identify with clarity what decisions were submitted to the department for review. Swalley Objection 2(A), at 17-18.

a. Legal Standard

OAR 660-025-0175 sets forth how local governments must provide notice of UGB amendments, and the requirements for submittal of their final decision:

(3) The local government must provide notice of the proposed amendment according to the procedures and requirements for post-acknowledgement plan amendments in ORS 197.610 and OAR 660-018-0020.
(4) The local government must submit its final decision amending its urban growth boundary, or designating urban reserve areas, to the department according to all the requirements for a work task submittal in OAR 660-025-0130 and 660-025-0140.

In turn, OAR 660-025-0130 governs what must be submitted to the department and when, and OAR 660-025-0140 governs notice of the submittal and objections.

b. Summary of Local Actions

The city submitted notice of the city's and county's adoption of four ordinances to the department on April 16, 2009. Those four ordinances were the city's ordinances adopting the amended UGB and amending the city's development code in certain respects (Ordinances NS-2112 and NS-2113), and the county's ordinances co-adopting the amended UGB and making certain amendments to the county's comprehensive plan map and text for the lands within the UGB expansion area. [R. at 1050-1051 (city ordinance NS 2112 - UGB); R. at 1836-1844 (city ordinance NS 2113 – development code);

[county ordinance 2009-1 – UGB map and DCC and TSP map]; [county ordinance 2009-2 – zoning map and certain DCC amendments].

The city did *not* submit ordinance NS 2111, amending the city's Public Facilities Plan element of its General Plan, to the department on April 16, 2009 (although a copy of this ordinance, which was adopted immediately before the UGB amendment ordinance, was included in the record for the submittal of the UGB ordinance (NS 2112), and the city submitted a separate notice of adoption of the Public Facilities Plan on January 9, 2009). However, on June 12, 2009, following LUBA's decision and May 8, 2009 order in LUBA Nos. 2009-010, 2009-011 and 2009-020, the city did separately submit ordinance No. NS-2111 to the department, and provided notice to the objectors, as required by OAR 660-025-0175(3) and (4) and OAR 660-025-0130 and -0140.

c. Analysis

Although the city's action in adopting the Public Facility Plan elements of its General Plan as a separate ordinance from its UGB amendment may have caused confusion, there is no legal prohibition on what the city did. The city's 45-day notice covered both the UGB amendment and amendments to elements of the city's comprehensive plan, including the Public Facilities Plan. The city properly gave post-adoption notice of its submittals to the department and those entitled to notice.

d. Conclusion

The director denies this objection. The city properly gave pre- and post-adoption notice of its submittals to those entitled to notice, include Swalley.

2. Did the city provide required notice and hearings for its ordinances?

Swalley, Bayard, Hillary Garrett, and Central Oregon LandWatch allege that the local processes leading to the submittals were unreasonably confusing and provided inadequate notice. Swalley Objection 2(B), at 18-28; Bayard Objection 1, at 23-25; Central Oregon LandWatch Objection at 6-8; Hillary Garrett, at 3-4.

a. Legal Standard

OAR 660-018-0020 sets forth how local governments must provide notice to the department 45 days in advance of the first evidentiary hearing on a proposed comprehensive plan amendment:

> (1) A proposal to amend a local government acknowledged comprehensive plan * * * must:
>
> > (a) Be submitted to the director at least 45 days before the first evidentiary hearing on adoption. * * *
> >
> > (c) Contain two copies of the text and any supplemental information the local government believes is necessary to inform the director as to the effect of the proposal. One of the required copies may be an electronic copy;

* * *

(e) In the case of a map change, include a map showing the area to be changed as well as the existing and proposed designations. Wherever possible, this map should be on 8-1/2 by 11-inch paper;

* * *

(2) The text submitted to comply with subsection (1)(c) of this rule must include the specific language being proposed as an addition to or deletion from the acknowledged plan or land use regulations. A general description of the proposal or its purpose is not sufficient. In the case of map changes, the text must include a graphic depiction of the change, and not just a legal description, tax account number, address or other similar general description.

These provisions concern the required notice to the department. They do not prohibit changes to a proposed action. If a local government substantially amends a proposed plan amendment, then it must describe the changes in its notice of adoption. [OAR 660-018-0045]

Statewide Planning Goal 1 sets forth what must be contained in a local government's citizen involvement program. The city's citizen involvement program is acknowledged for compliance with Goal 1. The city's hearings procedures for legislative amendments do include a local code requirement for 20-day advance local notice of public hearings on legislative plan amendments, which is cited by Bayard and Garrett. BDC Section 4.1.315.

b. Summary of Local Actions

The city provided an amended 45-day notice to the department of its revised proposal to amend the UGB and certain provisions of its comprehensive plan, including the Public Facilities element of its plan, and including its development code, on October 8, 2008. [R. at 4820] Swalley, Garrett and Bayard identify several respects in which they and other local participants were frustrated or confused about what was proposed, and allege that the proposed Public Facilities Plan was not submitted to the department until October 20, 2008, and that the local newspaper notice did not separately identify that amendments to the Public Facilities Plan were to be heard.

The record indicates that the proposed amendments to Chapter 8 (Public Facilities) of the General Plan were first presented to the city's planning commission on or about August 15, 2008. [R. at 6150, 6250] The record also indicates that the location and, to some extent, size of the proposed UGB amendment was changed significantly on or about October 3, 2008, and that the city and county planning commissions met to consider the submittals on October 27, 2008. [R. at 1211] The city gave public notice of the planning commissions' hearing on October 7, 2008; [R. at 4756] and public notice of the city council hearing on November 7, 2008. [R. at 3954-55] It is not clear when the city provided the text of the proposed changes to Chapter 8 of its General Plan (Public Facilities); it appears that the text was sent on or about October 20th.

c. Analysis

Swalley, Garrett and Bayard are correct that the city's notices failed to comply with OAR 660-018-0020 and ORS 197.610, in that the submittal was late (in relation to the first evidentiary hearing) and may not have initially been complete. It also appears that the city's notice of the planning commissions' joint hearing and the city council hearing violated BDC section 4.1.315 by failing to provide notice 20 days in advance of the hearings. However, Swalley, Garrett and Bayard also note that they were allowed to and did provide written testimony to the planning commissions (and city council) at public hearings on the proposals.

Whether a violation of the notice requirements of ORS 197.610 requires a remand depends on whether the objector(s) were prejudiced by the late or inadequate notice. See, *No Tram to OHSU, Inc. v. City of Portland*, 44 Or LUBA 647, 658 (2003). In this case, Swalley and other objectors allege that they were prejudiced by the lack of time to review the extensive submittal, which was changed substantially by the city in early October. The objectors have identified substantial prejudice in the sense of not having been able to present their concerns to the local decision-makers.

d. Conclusion

Goal 1 is violated in the context of a legislative comprehensive plan amendment only if the local government does not follow its citizen involvement program. *Casey Jones Well Drilling, Inc. v. City of Lowell*, 34 Or LUBA 263, 284 (1998); *Wade v. Lane County*, 20 Or LUBA 369 (1990). Swalley and Bayard have not identified a violation of Goal 1.

However, as set forth above, the record shows that the city did violate ORS 197.610 by failing to provide timely and adequate notice of its proposed amendment to its General Plan. As a result, the director concludes that remand is required in this case.

3. Did the city otherwise violate Goal 1?

Toby Bayard (and to some degree Swalley and Central Oregon LandWatch) alleges that the city failed to provide critical information to the public in a timely fashion, and made substantial last-minute changes in its proposal that had the effect of not allowing the public adequate time to comment. [Bayard Objection 1 at 1-26; Central Oregon LandWatch Objection at 6-8]

a. Legal Standard

Goal 1 is to "develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process." [OAR 660-015-0000(1)] Goal 1 establishes requirements for local citizen involvement programs. Its provisions do not apply to comprehensive plan amendments unless those amendments include the government's citizen involvement program. The city and county submittals do not amend or affect either the city's or county's citizen involvement program. Under those circumstances, the submittals are in violation of Goal 1 only if the submittals include provisions that are inconsistent with the city or county citizen involvement programs.

Homebuilders Assoc. v. Metro, 42 Or LUBA 176, 196-197 *aff'd Homebuilders Assn. of Metropolitan Portland*, 184 Or App at 669. No objector attempts to establish that the submittals include provisions that are inconsistent with either citizen involvement. In addition, the objectors do not identify any specific provision of the city's citizen involvement program that has been violated. See, General Plan, Chapter 1.

b. Summary of Local Actions

The city is not amending its citizen involvement program.

c. Analysis

Because the city is not amending its citizen involvement program, Goal 1 does not establish requirements for the local government actions before the director.

d. Conclusion

The director denies the Bayard, Central Oregon LandWatch and Swalley objections concerning Goal 1, because the goal does not establish legal requirements for the actions that are before the director for review.

4. Did the local governments fail to coordinate with Swalley Irrigation District, Central Oregon Irrigation District, or ODOT in violation of Goal 2?

Swalley Irrigation District (Swalley) and Toby Bayard allege that the city and county failed to coordinate with the Swalley and other governmental entities, as required by Goal 2. In particular, Swalley alleges that the submittals were not coordinated with the district in the sense that the district's needs were considered and accommodated as much as possible. Goal 2; ORS 197.015(5). [Swalley Objection 2(A), at 28-34. Bayard Objection 2, at 27-33]

a. Legal Standard

The coordination elements of Goal 2 require local governments to exchange information with affected governmental units. In addition, information received from affected governmental units must be used by the adopting local government. *Santiam Water Control District v. City of Stayton*, 54 Or LUBA 553, 558-559 (2007); *DLCD v. Douglas County*, 33 Or LUBA 216, 221 (1997); *Brown v. Coos County*, 31 Or LUBA 142, 145 (1996). The adopting government must provide "notice clearly explaining the nature of the proposal and soliciting comments concerning the proposal." *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372, 394, *aff'd* 130 Or App 406 (1994). A local government's 45-day notice to DLCD is not sufficient for this purpose. *Id*.

Similarly, newspaper notice is not sufficient. *Adkins v. Heceta Water District*, 23 Or LUBA 207, 218 (1992). Finally, the local government's findings must address the concerns raised; simply rejecting the concerns or deferring addressing them to a later time is not sufficient. *Cox v. Polk County*, 49 Or LUBA 78, 89 (2005). *DLCD v. Douglas County, supra*. Goal 2 and ORS 197.015(5) do not mandate success in accommodating

the needs or legitimate interests of all affected governmental agencies, but they do mandate a reasonable effort to accommodate those needs and legitimate interests "as much as possible." *Turner Community Association v. Marion County*, 37 Or LUBA 324, 353-354 (1999). From the foregoing, the coordination requirement is satisfied where the local government has engaged in an exchange of information regarding an affected governmental unit's concerns, put forth a reasonable effort to accommodate those concerns and legitimate interests as much as possible, and made findings responding to legitimate concerns.

b. Summary of Local Actions

The city adopted findings summarizing its coordination with irrigation districts, including Swalley. [R. at 1214-1215] Those findings describe how the city and the district communicated, and the city's consideration of the concerns raised by the district. According to the city's findings, it removed a 332-acre area entirely within the district. Also according to the city it "cannot balance SID's opposition to urbanization with the need for urbanization of the identified lands, for all of the reasons explained in the city's findings." [R. at 1215]

c. Analysis.

The director concludes that the city has complied with the coordination elements of Goal 2. The city met repeatedly with the district; conducted an analysis of the acreage of irrigated lands affected by the proposal; removed some irrigated lands from the proposal; and adopted findings describing the district's concerns and how they were accommodated. Although the notice provided by the city was confusing, it appears to have met legal requirements, and the district itself has indicated that it was able to make its concerns known in writing.

d. Conclusion

The director concludes that the city's and county's actions (the three city ordinances, and the two county ordinances) were adopted in compliance with the coordination requirements of Goal 2. The objection is denied.

5. Did the city improperly adopt the Public Facilities Plan?

Toby Bayard and Hillary Garrett and Central Oregon LandWatch, and Hunnel United Neighbors and Anderson Ranch all allege that the city improperly adopted the Public Facilities Plan in NS 2111. Specifically, they allege there was no public hearing on the ordinance, and that the city's public notice only referenced the UGB amendment. Bayard Objection 2, at 25; Garret Objection, at 3.

a. Legal Standard

BDC section 4.1.310 requires a public hearing before the city's planning commission and its city council on any legislative change to the city's plan or land use regulations. BDC 4.1.315 requires public notice of the hearing 20 days prior to the date of the hearing.

b. Summary of Local Actions

The city held a public hearing on the proposed Public Facilities Plan. The planning commission held a hearing on October 27, 2008 and the city council held a hearing on November 24, 2008. The city provided public notice of the proposed UGB amendment, which included the proposed adoption of Chapter 8 of the General Plan (Public Facilities).

c. Analysis

BDC section 4.1.310 requires a public hearing on the legislative change to the city's General Plan. The code does not prevent the city from splitting proposed changes to its comprehensive plan into two ordinances, so long as a public hearing was held that covers all of the changes. The city's hearings appear to have met the code requirement. The objectors have not identified a legal requirement concerning the level of detail required in the city's public notice.

d. Conclusion

Based on the reasoning above, the director denies these objections.

IV. CONCLUSIONS AND DECISION

1. Conclusions

The scope of the director's review of the decisions is whether they comply with the statewide planning goals and relevant statutes and administrative rules. The foregoing sections of this report explain the analysis and findings for the relevant provisions of law. The conclusions resulting from of the director's review are as follows.

Goal 1

As explained in section III.K.2 and 3, the local governments comply with Goal 1.

Goal 2

As explained in sections III.H.5 and III.K.4, the local government actions and decisions generally comply with Goal 2. However, as explained in sections III.E. and III.G., there are inconsistencies between the housing needs analysis and the UGB decision, and between the public facilities master plans and the UGB decision such that the decisions do not comply with the Goal 2 requirement for consistency with the comprehensive plan. Bend and Deschutes County complied with the requirement of Goal 2 that it coordinate the UGB amendment with affected units of local government. The director concludes that the decisions do not comply with Goal 2, for the reasons stated above and in the analysis sections of this report.

Goal 3

Compliance with Goal 3 in the context of a UGB amendment relies on satisfaction of Goal 14 requirements. See the section for Goal 14, below. Because the local governments have not demonstrated that the UGB amendment has satisfied the need criteria or location factors in Goal 14, the director cannot conclude that agricultural land is preserved and maintained pursuant to Goal 3. The director concludes that the decisions do not comply with Goal 3.

Goal 4

Compliance with Goal 4 in the context of a UGB amendment relies on satisfaction of Goal 14 requirements. In this case, no land subject to Goal 4 is affected by the decision. The director concludes that, as a result, Goal 4 does not apply to the decisions.

Goal 5

As discussed in section III.J, the UGB submittal does not comply with the requirements of Goal 5. The city has not completed the steps necessary to asses Goal 5 resources within the UGB expansion area for significance, and has not adequately addressed potential impacts to known significant Goal 5 resources as required by OAR 660-023-

0250(3)(c) and OAR 660-024-060. The director concludes that the decisions violate Goal 5.

Goal 6

Goal 6 ensures compliance with state and federal environmental laws. No person has objected that the decisions violate Goal 6, or that Goal 6 compliance will be affected by the UGB expansion. The city's amended public facilities plans indicate that the city will be in compliance with state and federal water quality laws. As a result, the director concludes that the UGB expansion complies with Goal 6.

Goal 7

As discussed in section III.J.3, the director concludes that the decisions do not conflict with the requirements of Goal 7.

Goal 8

The city's analysis of land needs included an analysis of lands required for parks. No person has objected that the UGB expansion violates Goal 8. The director concludes that the expansion complies with Goal 8.

Goal 9

This goal is addressed in section III.F. The UGB amendment does not appropriately identify land for employment uses for the planning period. The data and analysis in the adopted economic opportunities analysis are inadequate to justify the amount and location of employment land includes in the UGB expansion. As a result, the director concludes that the decisions violate Goal 9.

Goal 10

As explained in section III.E, the adopted housing needs analysis does not demonstrate that the comprehensive plan will permit appropriate housing types and densities that accommodate housing affordability needs for Bend's population. The residential land needs analysis contains data, assumptions, and conclusions that are not supported by the evidence in the record. As a result, the director concludes that the decisions do not comply with Goal 10.

Goal 11

The public facilities plans and comprehensive plan amendments prepared in conjunction with the UGB amendment do not comply with the requirements of Goal 11 or OAR 660, division 11. As a result, the director concludes that the decisions do not comply with Goal 11.

Goal 12

The decision did not properly evaluate transportation impacts or clearly make or defer decisions about proposed transportation improvements. The city, as a member of a

metropolitan planning organization, needs to address requirements for increasing the availability and convenience of alternative modes of transportation and reducing reliance on the automobile and it has not done so. As a result, the director concludes that the decisions do not comply with Goal 12.

Goal 13

Compliance with Goal 13 in the context of a UGB amendment relies on satisfaction of Goal 14 requirements. See the section for Goal 14, below. Because the local governments have not demonstrated that the UGB amendment has satisfied the need criteria or location factors in Goal 14, particularly as they relate to efficient arrangement of land uses, the director cannot conclude that energy is conserved pursuant to Goal 13. As a result, the director determines that the decisions do not comply with Goal 13.

Goal 14

Primary considerations for evaluating compliance with Goal 14 include 20-year land need and the appropriate location for the UGB. Need is addressed in section III.E and F while boundary location is addressed in section III.I. The findings and conclusions supporting the decision do not adequately justify the amount of land included in the UGB amendment for residential, employment, or other uses. The findings supporting the decision on UGB location do not adequately address the requirements of the goal. As a result, the director determines that the decisions do not comply with Goal 14.

ORS 197.296, 197.298, 197.303, 197.307

2. Decision

The director remands the decisions to the City of Bend and to Deschutes County for further action, consistent with this report and order.

VICTOR ATIYEH
GOVERNOR

Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310 PHONE (503) 378-4926

July 7, 1981

The Honorable Ruth Burleigh
Mayor, City of Bend
P.O. Box 431
Bend, OR 97701

Dear Mayor Burleigh:

It gives me a great deal of pleasure to confirm that the Land Conservation and Development Commission, on June 25, 1981, officially acknowledged the comprehensive plan and implementing ordinances of the City of Bend as being in compliance with the Statewide Planning Goals.

The acknowledgment signifies a historic step for the City's land use planning efforts.

I would like to commend the local officials, staff, and citizens of your City for their hard work and foresight in the field of land use planning.

Congratulations,

W. J. Kvarsten
Director

WJK:DZ:af
5980A/5B

Enclosure

cc: Deschutes County Board of Commissioners
Betsy Shay, Coordinator
Brent Lake, Field Representative
Dick Wilson, Real Estate Division
Claire Puchy/Dale Blanton, Lead Reviewers
Jim Knight, DLCD
DLCD Library
Portland Field Office

BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF THE CITY OF BEND'S COMPREHENSIVE PLAN AND IMPLEMENTING MEASURES	)	COMPLIANCE ACKNOWLEDGMENT ORDER

On January 14, 1981, the City of Bend, pursuant to ORS 197.251(1) (1977 Replacement Part), requested that its comprehensive plan and implementing measures be acknowledged by the Land Conservation and Development Commission to be in compliance with the Statewide Planning Goals.

The Commission reviewed the attached written report of the staff of the Department of Land Conservation and Development on June 25, 1981 regarding the compliance of the aforementioned plan and measures with the Statewide Planning Goals. Section IV of this report constitutes the findings of the Commission.

Based on its review, the Commission finds that the City of Bend's comprehensive plan and implementing measures comply with the Statewide Planning Goals adopted by this Commission pursuant to ORS 197.225 and 197.245.

THEREFORE, IT IS HEREBY ORDERED THAT:

The Land Conservation and Development Commission acknowledges that the aforementioned comprehensive plan and implementing measures of the City of Bend are in compliance with the Statewide Planning Goals.

DATED THIS 7TH DAY OF JULY, 1981.

FOR THE COMMISSION:

W. J. Kvarsten, Director
Department of Land
Conservation and Development

WJK:DZ:af
5982A/5B

Attachment

LAND CONSERVATION AND DEVELOPMENT COMMISSION
ACKNOWLEDGMENT OF COMPLIANCE

RESPONSE TO CONTINUANCE ORDER OFFERED

January 22, 1980

City of Bend

DATE RECEIVED:
January 14, 1981

DATE OF COMMISSION ACTION:
June 26, 1981

I. REQUEST

Acknowledgment of Compliance with the Statewide Planning Goals for the comprehensive plan and implementing measures.

II. SUMMARY OF RECOMMENDATIONS

Staff:

Recommends the Commission acknowledge the City of Bend's comprehensive plan and implementing measures to be in compliance with the Statewide Planning Goals.

Local Coordination Body:

None received.

FIELD REPRESENTATIVE: Brent Lake
Phone: 389-2253

LEAD REVIEWER: Dale Blanton/Claire Puchy
Phone: 378-4926

COORDINATOR: Betsy Shay
Phone: 382-4000

Date of Report: June 17, 1981

III. BACKGROUND INFORMATION

The Commission reviewed the City of Bend's initial acknowledgment request in December, 1979, and offered to continue the request 120 days to allow the City time to complete work to comply with Statewide Planning Goals 1, 2, 4-6 and 8-14. Major problems were primarily due to the fact that the UGB and major portions of the plan were established prior to the adoption of the Statewide Planning Goals. Most plan policies were advisory rather than mandatory, and there was an inadequate factual base for a number of goals. The location and size of the UGB were not supported with adequate findings.

IV. ADDITIONAL MATERIALS

The following additional materials have been submitted by the City as part of its second acknowledgment request:

City and urban area plan amendments, and UGB amendments	City Resolution No. 1557 (12-17-80) County Ordinance No. 80-216 (12-18-80)
City Zoning Ordinance amendments	City Ordinance No. NS-1308 (1-7-81)
City Zoning Map amendments	City Ordinance NS-1314 (2-18-81)
Urban Area Zoning Map and ordinance amendments	County Ordinance No. 80-217 (12-18-80)
Historic Preservation Ordinance	City Ordinance No. NS-1289 (9-17-80) County Ordinance No. PL-21 (9-17-80)
Joint Urban Area Planning Commission	City Ordinance No. NS-1300 (11-19-80) County Ordinance No. 80-226 (12-18-80)
City of Bend - Water System Master Plan	(July 1980)

V. FINDINGS AND REASONS

Previously Approved Goals:

In making its continuance offer in December, 1979, the Commission found the City of Bend's request in compliance with Statewide Planning Goal 7. The amendments made do not conflict with that action taken by the Commission.

Requirement 2

All lands remaining outside the boundary established in 1. above, but inside the current UGB must be designated as natural resource, rural or urban reserve, and zoned in the UAR-10 or other protective zone classification until such time as a boundary change is justified.

Response

Lands between the IUGB and out UGB have been designated as Agriculture or Open Space on the plan map and zoned in UAR-10 (Urban Reserve), SM (Surface Mining) and SR-2 1/2 (Residential Suburban).

An exceptions statement has been adopted for the area between the IUGB and the outer UGB. This document states:

> "The City and County have agreed to a new Initial Urban Growth Boundary that excludes approximately 25 percent of the land contained in the 1979 Urban Growth Boundary. These lands are designated as urban reserve and surface mining, and zoned SR-2 1/2, UAR-10, and SM. The majority of the SR-2 1/2 areas are currently developed with lot sizes of that size or smaller.
>
> The inventory of soil data indicates that most of the agriculture lands are Class VI and are interspersed between lava ridges of scabland Class VIII. The forest soils are site 6 except for a small area of 4 contained within the Tumalo Creek Canyon which is Shevlin Park. The conclusion from this analysis is that these lands are marginal resource lands. Much of the land is surrounded by existing one to five acre subdivisions. These areas have been excepted in the Deschutes County Comprehsive Plan.
>
> The urban reserve area acts as a buffer to the more rural and resource lands beyond the UGB. The use of the urban reserve will promote more orderly and efficient development, and still retain the 1972 planning commitments which have resulted in financial commitments from both the public and private sectors. The minimum lot sizes of 2 1/2 to 10 acres will be compatible with the adjacent land uses, and in most cases are the same as the adjacent MUA-10 and RR-10 zoning outside the UGB.
>
> The provisions of these areas as urban reserve will enable the community to convert these areas when needed, and hopefully reduce any impact of the small number of individual owners of larger parcels within the IUGB. It is important to pre-plan future expansion areas for compatibility and consistency with

adjacent uses and services. These areas offer opportunities important to the Bend's and Deschutes County's economy for destination resorts. These areas offer the community an opportunity to review rural urban conflicts and develop more compatible urban and rural relationships.

No alternatives were considered, since this would require the enlargement of the 1979 UGB.

Based on these considerations, the City and County are taking an exception to Goals 3 and 4 as they relate to the land between the IUGB and the UGB."

Objection

1000 Friends of Oregon has objected to acknowledgment of the Bend Plan for Goal 14 (see Attachment A). The objection raises the following issues:

1. Unjustified use of a double UGB.

2. Inadequate demonstration of need and commitment for lands included in the UGB.

3. Inappropriate urban densities.

4. Inappropriate inclusion of lands within the UGB.

Response

The concept of a second UGB as a longer term boundary for planning purposes does not violate Goal 14 or other resource Goals in this instance. The concept here can be an effective long-range tool for facilities and urbanization planning. Adopted plan policies cited earlier in this section of the report ensure the orderly provision of facilities and services within the IUGB. Although no specific policy prohibits annexation beyond the IUGB, this has not been a compliance requirement. Even though not explicitly stated as policy, the City cannot under Goal 14, annex beyond the IUGB. If the plan indicated that such an annexation could occur, this would violate Goal 14. The combination of quality of resource lands, holding zones and a requirement to amend the IUGB before more intense development insures the IUGB will function as an effective Goal 14 boundary.

As noted in the conclusion to this section of this report, the City has adequately considered the seven factors of Goal 14 in establishing the IUGB. Although the boundary contains more land than needed, the area is justified based upon commitment and other locational factors.

The SR 2 1/2 outside the IUGB is justified because the area is relatively parcelized and for the most part, surrounded by a Deschutes County exception to Goals 3 and 4 based upon commitment. This area is clearly a

dividing line between the larger urbanizable parcels inside the IUGB and the agricultural areas beyond the outer UGB and as such provide for an orderly transition between urban, rural and resource lands.

The RL lands (20,000 square foot) do not impact the City's ability to meet its housing needs, but are not efficient in terms of economy of services. However this area is, for the most part already developed to these lot sizes and is outside the Phase II service area. According to the City:

> "These RL areas have supplied a substantial amount of the recently developed lots providing modest priced housing within the urban area. In most cases, until such time as the sewer would become available, these areas will not be further divided.
>
> The County's subdivision ordinance does contain replatting provisions. The Urban Area Planning Commission is working on a redraft of the subdivision ordinance to bring standards, procedures, and requirements into uniformity within the urban area. We will add provisions for redivision as part of this process" (see Attachment C).

Finally, the inclusion of a 177 acre parcel inside the UGB, but outside the IUGB does not impact the County's ability to preserve all or portions of the parcel as a habitat area. This parcel's inclusion in the outer UGB does not violate Goal 14.

Conclusion: The City of Bend complies with Goal 14.

The City has revised its urban growth boundary to exclude 6,858 acres which are not needed and could not be justified based upon Goal 14 requirements. The revised boundary is justified because the land is committed to urban development through facilities or existing development. Locational considerations of Goal 14 (Factors 3-7) are addressed by the findings document through general findings and specific findings for each geographic segment of the boundary. This initial urban growth boundary serves as a viable Goal 14 UGB. Any land use changes outside the IUGB will require an amendment pursuant to the seven factors of the Goal. The outer UGB will work as a longer term growth area, which will be retained for potential urbanization at the time the land is needed. In the interim, UAR-10, SM and SR-2 1/2 zoning will retain the area in a land use pattern which will enable more intensive development in the future.

OVERALL CONCLUSION

The City of Bend has made extensive modifications to its comprehensive plan and implementing measures to correct deficiencies identified by the Commission in December, 1979. Among the major changes were a completely updated land use and buildable lands inventory, a new water plan, a new

parks plan, and a revised economic base analysis. Perhaps the most significant change has been the establishment of a UGB and IUGB with Deschutes County. The City now has a sound plan upon which land use decisions can be based.

V. RECOMMENDATION

Staff:

Recommends the Commission acknowledge the City of Bend's comprehensive plan and implementing measures to be in compliance with the Statewide Planning Goals.

Local Coordination Body:

None received.

CP:kb
5514A
6/15/81

Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2524
Phone: (503) 373-0050
First Floor/Coastal Fax: (503) 378-6033
Second Floor/Director's Office: (503) 378-5518
Web Address: http://www.oregon.gov/LCD

April 14, 2005

EXHIBIT: 6
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 4/28/05
PAGES: 22
SUBMITTED BY: DLCD staff

TO: Land Conservation and Development Commission (LCDC)

FROM: Bob Rindy and Jim Hinman, DLCD

SUBJECT: **Agenda Item 6; April 28, 2005, LCDC meeting**

WORK SESSION AND POSSIBLE ADOPTION OF PROPOSED AMENDMENTS TO GOAL 14 AND RELATED ADMINISTRATIVE RULES CONCERNING URBAN GROWTH BOUNDARIES

AGENDA ITEM SUMMARY

This item is a work session intended for Land Conservation and Development Commission (LCDC) to discuss and potentially adopt proposed amendments to Goal 14 and two related administrative rules – OAR 660, Divisions 004 and 026. The proposed amendments (Attachments A through C to this report) are intended to clarify and streamline the state's urban growth boundary (UGB) requirements and procedures. LCDC held a final public hearing on these proposals February 3, 2005, and extended the time for written comments until February 28, 2005. The Commission held a work session on March 17, 2005, to discuss the proposals and the comments regarding the proposals. At that time, the Commission indicated its intent to consider adoption of the goal and rule amendments at its April 28, 2005, meeting.

For more information about this agenda item, contact Bob Rindy, at (503) 373-0050, Ext. 229, or email at bob.rindy@state.or.us.

SUMMARY OF RECOMMENDED ACTION

The department recommends that the Commission adopt the proposed Goal 14 amendments and related rule amendments, OAR 660, Divisions 004 and 026.

BACKGROUND AND HISTORY

The Commission initiated this policy project on June 11, 2004. The intent is to clarify and streamline the UGB amendment process by amending Goal 14 and by adopting new administrative rules outlining procedures and requirements for UGB amendments. An addition new rule (not presented with this report) would include "safe-harbors" that will specify optional methods for local governments to use in order to save time and expense in the UGB amendment process.

LCDC appointed an advisory workgroup to guide the department and Commission with this project, consisting of twenty four members from a variety of backgrounds representing local governments, state agencies, citizens and interest groups concerned about the UGB amendment process. The workgroup began meeting in July 2004 and has met twelve times.

The workgroup discussion of amendments to Goal 14 resulted in proposed changes to the existing text that would more clearly express longstanding UGB policy and other requirements, and improve wording that is currently ambiguous or unclear. The workgroup has also recommended the elimination of a major step in the UGB process – the "exceptions process" – and replacing it with more clearly expressed requirements intended to accomplish the same purposes. The workgroup discussion resulted in proposed amendments to Goal 14 and two related rules (Divisions 004 and 026), published October 20, 2004, that were the subject of ten public hearings statewide conducted by the department in November 2004 through January 2005, and also the subject of two LCDC public hearings and one work session.

In addition to consideration of Goal 14 itself, the workgroup's primary purpose has been to draft a new set of rules (under a proposed new Division 024 under OAR 660) in order to clearly set forth the procedures and requirements for UGB amendment, and to provide a higher level of detail than the goal itself concerning these procedures and requirements. Most important, the draft rules would establish new "safe harbor" provisions intended to reduce local government time and cost in amending a UGB. An initial draft of these new rules was published on October 20, 2004, and was also a subject of the department's ten public hearings in November 2004 through January 2005. Based on comments received in the initial ten public hearings, the workgroup determined that there had not been enough time for study and discussion of the new rules, especially the proposed safe harbors. In response, at its December 8, 2004, meeting, LCDC directed the department and the workgroup to extend the time period for study and consideration of the proposed new UGB rules under Division 024. The workgroup will meet at least through the Fall of 2005 in order to refine the proposed new rules for LCDC's consideration later in 2005.

In its February and March 2005, meetings, LCDC indicated its intent to consider adoption of the proposed amendments to Goal 14 (and the two related rules). The workgroup met December 18, 2004, and January 6, 2005, in order to respond to the Commission's direction with regard to the proposed Goal 14 amendments. Based on this discussion, the department issued a new draft of the goal amendments (and two related rules at OAR 660, Divisions 004 and 026) on January 7, 2005.

On February 3, 2005, the Commission held a final public hearing on the proposed amendments to Goal 14 and related rules. After the close of that hearing, LCDC directed the department to extend the period for written comments. The comment period was extended to February 28, 2005, based on a revised draft of the Goal amendments dated February 9, 2005, and a written proposal for the applicability dates of the new goal and rule amendments should they be adopted by the Commission (See Attachment D).

NOTE: This report does not include detailed descriptions of the intended goal amendments. The department's November 29, 2004, and January 19, 2005 staff reports provided detailed descriptions as to the intent of the various changes in the proposed Goal 14 and related rule amendments, and these descriptions were also summarized and attached to the department's March 3, 2005, staff report to LCDC.

SUMMARY OF MARCH 17, 2005, LCDC WORKSESSION

At its March 17, 2005, meeting, the Commission held a work session on the proposed amendments. At that time the Commission discussed the various issues that had been raised in testimony regarding the proposal. The Commission's discussion is summarized below.

1. Timeline for Goal Adoption

The Commission discussed postponing action to amend Goal 14 until the broad "30-year review" of the land use program contemplated in the department's legislative proposal, Senate Bill 82. The Commission decided the proposed amendments to Goal 14 should not be put off to that longer-term review of the program.

2. Potential for Litigation regarding Changes to Goal 14

The Commission agreed that, although changes to the goal should be made very carefully because they are likely to be the subject of litigation in the future, the potential for unintended consequences as a result of such litigation should not deter action to clarify and streamline Goal 14.

3. Livability

The Commission favored leaving the term "livability" in the Land Need section of the goal, but also leaving the clarifying language on page 1, lines 30 through 32 of Attachment A, that had been crafted in order to replace "livability". In its discussion the Commission indicated that, although the term livability, as interpreted in the past, does not provide a different standard than the new clarifying language, there is a public perception that omitting the term could in some manner affect a change in the goal. The Commission asked the department to omit Option 1 in the proposed goal amendments, and prepare a version for Commission consideration in April that carries forward Option 2 retaining the word "livability" (See Attachment A).

4. The "and" Between Need Factors 1 and 2

The Commission discussed the two need factors, and agreed that local governments need to address both of these factors (1) and (2), and may not choose either one or the other. This was in response to a suggestion that prior policy allowed local governments to consider both factors, but then address only one or the other. The department pointed out that the seven factors were always connected by an "and," i.e., there had not been

previous policy suggesting only one of the need factors could be addressed. Thus, to change the "and" to "or" would be a change in policy.

The discussion also highlighted the fact that authorizing only one of the need factors to be addressed could imply that a local government may ignore Factor 1 and approve a UGB amendment without support of a 20-year population forecast. The amended goal states that the determination of a land need is a two-step process: First, calculate the 20-year population forecast, and then calculate the amount of land needed for one or more need categories. As part of this discussion, the Commission also directed that the department's staff report clarify that a new 20-year population forecast is not necessarily required in order to amend a UGB. Rather the local government must show that the proposed UGB amendment "is consistent with" the 20-year forecast, either a new forecast or the current forecast. Thus, a "quasi-judicial UGB amendment" proposed by a property owner could still be considered based on the current population forecast.

5. The "or" in the list of uses under Factor 2

Proposed amendments to Need Factor 2 link the list of land need categories with the term "or", rather than "and" as in the current list ("Demonstrated need for land suitable to accommodate housing, employment opportunities, livability "or" uses such as public facilities, streets and roads, schools, parks or open space"). The department explained that this was done in order to clarify that a local government could pursue a UGB amendment in order to accommodate only one of the categories of needs on the list while not addressing the other, for example, to accommodate the need for housing land while not simultaneously examining the need for employment land. In the discussion, it was brought out that the term "and/or" may have been more appropriate, but that term is discouraged by legal counsel and protocols for rule drafting. The Commission directed the department to propose wording that accomplishes the same thing without using "and/or," and that more clearly indicates the intent to authorize a UGB amendment for one or more need categories. The department has proposed the following:

> "(2) Demonstrated need for land suitable to accommodate housing, employment opportunities, and livability ***or any combination of the foregoing***, and uses such as public facilities, streets and roads, schools, parks or open space."

6. Special Characteristics for Need

The Commission discussed the new proposed wording indicating that local government may specify characteristics of needed land, and the alternative wording proposed by Jeff Bachrach, which provides more specificity than the department's proposed wording. The Commission discussed whether the language should remain fairly broad, as in the current draft proposal, or provide a higher order of specificity, as in Mr. Bachrach's proposal. It was concluded that the general direction in the workgroup's proposal provides a greater degree of discretion for local governments.

7. The Reference to ORS 197.298

The Commission discussed whether to include this reference in the goal, and whether or not there is need for more detailed guidance on the manner in which cities address this statute and the locational factors. The Commission decided to include the reference, and to consider the question of additional guidance in the new UGB rules under consideration by the workgroup. Proposed legislation affecting this statute was also discussed and the Commission agreed that we would not likely know whether this bill would pass by April 28, and we should not delay action due to that uncertainty.

It was also noted that this statute is the only place in the goal that provides for consideration of the preservation of farm and forest land in UGB amendments. If at any point in the future that statute is deleted or modified, the Commission indicated it would need to revise the locational factors to return Factor (6) or something equivalent.

8. If "livability" is retained as a need, should it be remove it as a location factor?

The Commission asked whether the decision to retain "livability" as a need factor would mean that it is no longer appropriate to add it as a locational factor (the term is included as a new Location Factor 2, see Page 2, Line 12 of Attachment A). The department notes that Location Factor 2 also includes the term "efficient urban form", which is not currently a location factor.

By retaining the word "livability" in both the sections, the Commission may be implying – and a Court could well conclude - that "livability" is something different in each section, and that is not necessarily what the UGB workgroup intended. The department indicated that there might conceivably be some aspects of "livability" that are purely locational, and therefore this term could logically remain under the Boundary Location section of the goal. On the other hand, the goal does not currently require local governments to address "livability" as a locational factor. As such, this would arguably be a *modification* of the goal, *not* a *clarification.* If the rationale for retaining "livability" in the land needs section is to *not* change the Goal, then the Commission might also consider *not* adding the term to the locational factors.

If the commission decides to *not* add "livability" as a new location factor, the department would recommend that the commission also consider whether the remaining piece of that factor, regarding "efficient urban form," should stand alone as a new Location Factor 2, or should be combined with the proposed modified Location Factor 1, which also addresses efficiency.

9. Urbanizable land available "over time"

The discussion brought out concerns regarding the phrase "over time" and whether this might be misinterpreted to mean there would be some sort of sequence for making UGB land available. This discussion also raised the fact that the proposed goal should do more

Exhibit G

1000 Friends of Oregon v. Land Conservation and Development Com'n
244 Or.App. 239, 259 P.3d 1021
Or.App.,2011.
July 13, 2011

Court of Appeals of Oregon.

1000 FRIENDS OF OREGON, Friends of Yamhill County and Ilsa Perse, Petitioners, v. LAND CONSERVATION AND DEVELOPMENT COMMISSION and City of McMinnville, Respondents.

06WKTASK001709; 08WKTASK001760; A134379.
Argued and Submitted Sept. 28, 2010.
Decided July 13, 2011.

Background: Citizens sought review of decision by Land Conservation and Development Commission approving a large expansion of the urban growth boundary (UGB) of city.

Holdings: The Court of Appeals, Sercombe, J., held that:
(1) statute providing for land priority in expanding a city's UGB could be applied to prioritize areas of potential UGB expansion based upon the functional needs of particularly intended land uses;
(2) Commission improperly applied land priority statute in approving the city's resort to lower-priority land because of the relatively higher costs of providing a particular public facility or service to the higher priority area; and
(3) Commission's order regarding expansion of city's urban growth boundary lacked substantial reason and was inadequate for judicial review.

Reversed and remanded.

West Headnotes

[1] KeyCite Citing References for this Headnote

414 Zoning and Planning
414III Modification or Amendment; Rezoning
414III(A) In General
414k1158 Particular Uses or Restrictions
414k1160 k. Changes to comprehensive or general plan. Most Cited Cases

Statute providing for land priority in expanding a city's urban growth boundary (UGB) could be applied to prioritize areas of potential UGB expansion based upon the functional needs of particularly intended land uses. West's Or.Rev. Stat. Ann. § 197.298(1).

[2] KeyCite Citing References for this Headnote

414 Zoning and Planning
414III Modification or Amendment; Rezoning
414III(A) In General
414k1158 Particular Uses or Restrictions
414k1160 k. Changes to comprehensive or general plan. Most Cited Cases

The more specific limitations in statute providing for land priority in expanding a city's urban growth boundary (UGB) displace the application of their more generic and flexible counterparts in administrative rule regarding urbanization. West's Or.Rev. Stat. Ann. § 197.298(1, 3); OAR 660–015–0000(14).

[3] KeyCite Citing References for this Headnote

414 Zoning and Planning
414III Modification or Amendment; Rezoning
414III(A) In General
414k1158 Particular Uses or Restrictions
414k1160 k. Changes to comprehensive or general plan. Most Cited Cases

Land Conservation and Development Commission improperly applied statute providing for land priority in expanding a city's urban growth boundary (UGB) in approving the city's resort to lower-priority land because of the relatively higher costs of providing a particular public facility or service to the higher priority area. West's Or.Rev. Stat. Ann. § 197.298(1).

[4] KeyCite Citing References for this Headnote

414 Zoning and Planning
414X Judicial Review or Relief
414X(C) Scope of Review
414X(C)1 In General
414k1624 k. Decisions of boards or officers in general. Most Cited Cases

Reviewing court's role is to determine whether the Land Conservation and Development Commission applied the correct legal test in deciding whether the city's decision regarding expansion of urban growth boundary was supported by substantial evidence.

[5] KeyCite Citing References for this Headnote

414 Zoning and Planning
414X Judicial Review or Relief
414X(A) In General
414k1592 k. Preservation before board or officer of grounds of review. Most Cited Cases

A party's claim of error by Land Conservation and Development Commission in its periodic review order is limited to the Commission's resolution of objections raised in the periodic review proceedings. Rules App.Proc., Rule 5.45(1).

[6] KeyCite Citing References for this Headnote

414 Zoning and Planning
414III Modification or Amendment; Rezoning
414III(B) Proceedings to Modify or Amend
414k1189 k. Filing, publication, and posting; minutes and findings. Most Cited Cases

414 Zoning and Planning KeyCite Citing References for this Headnote
414X Judicial Review or Relief
414X(A) In General
414k1594 k. Record. Most Cited Cases

Land Conservation and Development Commission's order regarding expansion of city's urban growth boundary lacked substantial reason and was inadequate for judicial review, where the Commission failed to consistently identify the needed categories and quantities of land uses, which was the fundamental premises of its justification of the boundary change. West's Or.Rev. Stat. Ann. § 197.298.

[7] KeyCite Citing References for this Headnote

414 Zoning and Planning
414III Modification or Amendment; Rezoning
414III(A) In General
414k1158 Particular Uses or Restrictions
414k1160 k. Changes to comprehensive or general plan. Most Cited Cases

Inefficiencies in the provision of roads to a potential urbanizing area is not sufficient to exclude that area under provision of statute prioritizing land for extension of a city's urban growth boundary that allowed lower priority land to be included if future urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints; transportation facilities are not an “urban service” under the statute. West's Or.Rev. Stat. Ann. § 197.298(3)(b).

[8] KeyCite Citing References for this Headnote

414 Zoning and Planning
414III Modification or Amendment; Rezoning
414III(A) In General
414k1158 Particular Uses or Restrictions
414k1160 k. Changes to comprehensive or general plan. Most Cited Cases

The incompatibility of any proposed residential use of the subarea with nearby industrial and institutional uses is a legitimate consideration in applying statute prioritizing land for extension of a city's urban growth boundary. West's Or.Rev. Stat. Ann. § 197.298(1).

[9] KeyCite Citing References for this Headnote

414 Zoning and Planning
414X Judicial Review or Relief
414X(A) In General
414k1592 k. Preservation before board or officer of grounds of review. Most Cited Cases

Citizens' assertion on appeal that Land Conservation and Development Commission made inconsistent determinations regarding excepting areas from city's expansion of its urban growth boundary was not preserved because citizens never asserted to the Commission that the city was constrained to treat both areas in the same way.

[10] KeyCite Citing References for this Headnote

414 Zoning and Planning
414III Modification or Amendment; Rezoning
414III(A) In General
414k1158 Particular Uses or Restrictions
414k1160 k. Changes to comprehensive or general plan. Most Cited Cases

Issues regarding pedestrian circulation in area were insufficient to exclude the area from consideration as part of city's expansion of its urban growth boundary under statute that prioritized land for such expansions. West's Or.Rev. Stat. Ann. § 197.298(1).

[11] KeyCite Citing References for this Headnote

414 Zoning and Planning
414III Modification or Amendment; Rezoning
414III(A) In General
414k1158 Particular Uses or Restrictions
414k1160 k. Changes to comprehensive or general plan. Most Cited Cases

Land Conservation and Development Commission erred in its application of statute providing for land priority in expanding a city's urban growth boundary to city's findings that sloped area was unsuitable for inclusion in expanded boundary by considering the orderly and economic

provision of public facilities and services to the area; the provision of public facilities and services factor can be used in evaluating candidate land, but not in determining such land in the first instance. West's Or.Rev. Stat. Ann. § 197.298.

[12] KeyCite Citing References for this Headnote

414 Zoning and Planning
414III Modification or Amendment; Rezoning
414III(A) In General
414k1158 Particular Uses or Restrictions
414k1160 k. Changes to comprehensive or general plan. Most Cited Cases

Land Conservation and Development Commission erred in failing to determine whether the city's rationale for excluding certain lots from its proposed expansion of its urban growth boundary was based upon consequences and compatibility considerations relevant under statute providing for land priority in determining urban growth boundary and whether that rationale was legally sufficient without consideration of a larger area. West's Or.Rev. Stat. Ann. § 197.298(1).

**1023 Mary Kyle McCurdy, Portland, argued the cause and filed the briefs for petitioners.

Steven Shipsey, Assistant Attorney General, argued the cause for respondent Land Conservation and Development Commission. On the brief were John R. Kroger, Attorney General, Jerome Lidz, Solicitor General, and Denise G. Fjordbeck, Attorney–in–Charge Civil/Administrative Appeals.

Jeffrey G. Condit, Portland, argued the cause for respondent City of McMinnville. With him on the brief was Miller Nash LLP.

Before ORTEGA, Presiding Judge, and SERCOMBE, Judge, and LANDAU, Judge pro tempore.

SERCOMBE, J.

*241 This case concerns whether the Land Conservation and Development Commission (LCDC or commission) erred in approving a large expansion of the urban growth boundary (UGB) of the City of McMinnville (city). A UGB is the part of the land use map in a city's comprehensive plan that demarcates the area around a city that is available for expansion and future urban uses. Here, the city proposed to expand its UGB in various directions by several hundred acres and to redesignate the included territory for different types of urban uses, including neighborhoods of integrated commercial and higher-density residential land. Most of the included acreage is high-quality agricultural land that was previously zoned for exclusive farm uses. The primary issue in this case is whether ORS 197.298, a statute that prioritizes the types of land that can be added to a UGB, requires that other territory—land not designated for agricultural use or lower-quality farmland—be added to the UGB instead of some of the high-quality agricultural land. We conclude that LCDC erred in its application of ORS 197.298 and that a correct application of the law could compel a different result. We therefore reverse the

order under review and remand the case to LCDC for further action under a correct interpretation of the governing standards.

I. BACKGROUND

The parties to this case differ as to the meaning of the standards that apply to UGB changes that result from periodic review of the city's comprehensive plan. In order to better frame the contentions of the parties and the history of the proceedings, we begin by describing the legal framework for regulation of the future uses of land around an incorporated city and the periodic review planning process used to adopt those regulations.**1024 ORS 197.175(1) requires cities and counties to exercise their planning and zoning responsibilities in accordance with state land use statutes and special rules (goals) approved by LCDC. ORS 197.175(2) specifically directs that each city and county "adopt, amend and revise comprehensive plans in compliance with goals approved by [LCDC]." The LCDC goals, in turn, set out substantive standards for the content of comprehensive plans. However, a city *242 or county can take an "exception" to the application of a goal to particular property regulated by the comprehensive plan.

We recently described the relationship of the goals and the exception process in *Waste Not of Yamhill County v. Yamhill County*, 240 Or.App. 285, 287–89, 246 P.3d 493 (2010), *adh'd to as modified on recons.*, 241 Or.App. 199, 255 P.3d 496 (2011):

"Some of those goals require plans to restrict the use or development of different types of resource lands, *e.g.*, Goal 3 (Agricultural Lands), OAR 660–015–0000(3), and Goal 4 (Forest Lands), OAR 660–015–0000(4). When a city or county wishes to adopt a property-specific plan provision that is inconsistent with a goal requirement, it approves an exception to that goal requirement as part of the comprehensive plan. * * *

"ORS 197.732(2) [and Goal 2, Part II] * * * describe[ ] three types of exceptions: for physically developed land that is not available for the goal use; for land that is 'irrevocably committed' to a nongoal use; and for land needed for a use not allowed by a goal policy. The latter type of exception, a 'reasons' or 'need' exception is allowed by ORS 197.732(2)(c) [and Goal 2]:

" 'A local government may adopt an exception to a goal if:

" ' * * * * *

" '(c) The following standards are met:

" '(A) Reasons justify why the state policy embodied in the applicable goals should not apply;

" '(B) Areas that do not require a new exception cannot reasonably accommodate the use;

" '(C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

*243 " '(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.' "

Thus, when a city amends its comprehensive plan, including any amendment to its UGB, the city must justify the change as being consistent with the LCDC goals, except to the extent that compliance with a goal is excused by an exception to its application.

Goal 14 (Urbanization), OAR 660–015–0000(14), provides particular standards for setting or changing a UGB: [FN1]

FN1. The provisions of Goal 14 were amended by LCDC on April 28, 2005. The amendments allow local governments "that initiated an evaluation of the [UGB] land supply prior to April 28, 2005, and consider[ed] an amendment of the UGB based on that evaluation" to apply the former version of Goal 14 to that amendment. The city applied the former version of Goal 14. All references to Goal 14 and its implementing regulations in this opinion pertain to the former Goal 14 and the regulations in effect prior to the goal amendments, unless otherwise noted.

"Urban growth boundaries shall be established to identify and separate urbanizable land from rural land. Establishment and change of the boundaries shall be based upon considerations of the following factors:

"(1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;

"(2) Need for housing, employment opportunities, and livability;

"(3) Orderly and economic provision for public facilities and services;

"(4) Maximum efficiency of land uses within and on the fringe of the existing urban area;

"(5) Environmental, energy, economic and social consequences;

**1025 "(6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,

"(7) Compatibility of the proposed urban uses with nearby agricultural activities.

"The results of the above considerations shall be included in the comprehensive plan. In the case of a change *244 of a boundary, a governing body proposing such change in the boundary separating urbanizable lands from rural land, shall follow the procedures and requirements as set forth in the Land Use Planning goal (Goal 2) for goal exceptions."

The referenced Goal 2 standards for exceptions are to the exception standards noted above. 243 Or.App. at 241–43, 259 P.3d at 1023–24.

ORS 197.298 supplements the Goal 14 criteria used to justify a UGB change. The statute requires that land be added to a UGB in a priority sequence:

"(1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:

"(a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.

"(b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.

"(c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247 (1991 Edition).

"(d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both.

"(2) Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.

"(3) Land of lower priority under subsection (1) of this section may be included in an urban growth boundary if *245 land of higher priority is found to be inadequate to accommodate the amount of land estimated in subsection (1) of this section for one or more of the following reasons:

"(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."

Thus, ORS 197.298(1) requires that the statutory priorities be applied to UGB amendments "[i]n addition to any requirements established by rule addressing urbanization," *i.e.*, Goal 14 and its implementing administrative rules. The priority statute directs the application of different, but somewhat analogous, factors in approving UGB changes than those mandated by Goal 14. This case raises questions about the fit between Goal 14 and ORS 197.298: whether Goal 14 is applied to the classification of lands as eligible for prioritization under ORS 197.298, how Goal

14 works in determining whether higher-priority land is "inadequate to accommodate the amount of 5 land needed," and the ways the two policies are otherwise integrated in their application.

One final legal setting is worthy of discussion at this point. The plan amendments in this case arose in the context of "periodic review" of the city's comprehensive plan. The statutes that define the periodic review process provide context to an understanding **1026 of the demands of Goal 14 and ORS 197.298 when a UGB is changed as part of a plan update.

Once a local comprehensive plan has been approved or "acknowledged" by LCDC as consistent with the statewide planning goals, ORS 197.628(1) requires that the plan and implementing land use regulations be periodically updated

"to respond to changes in local, regional and state conditions to ensure that the plans and regulations remain in *246 compliance with the statewide planning goals adopted pursuant to ORS 197.230, and to ensure that the plans and regulations make adequate provision for economic development, needed housing, transportation, public facilities and services and urbanization."

ORS 197.296 specifies particular work tasks for larger cities during periodic review to accommodate demand for new housing. A locality must "demonstrate that its comprehensive plan * * * provides sufficient buildable lands within the urban growth boundary * * * to accommodate estimated housing needs for 20 years." ORS 197.296(2). To do this, ORS 197.296(3) requires that a local government shall

"(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and

"(b) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years."

If the housing need determined under ORS 197.296(3)(b) exceeds the housing capacity inventoried under ORS 197.296(3)(a), then ORS 197.296(6) requires that the local government (a) "[a]mend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for the next 20 years"; (b) amend its plan and implementing regulations to "include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for the next 20 years without expansion of the urban growth boundary"; or (c) adopt a combination of actions under (a) and (b).

II. HISTORY OF THE PROCEEDINGS

The city followed the dictates of ORS 197.296 in the periodic review process. In 2003, after three years of study and hearings, it adopted text and map amendments to the McMinnville Growth Management and Urbanization Plan (MGMUP), along with supporting findings, documentation of its future population and employment needs, a buildable land analysis, and an assessment of alternative lands for *247 expanding the UGB. The city was rapidly growing,

having doubled in population between 1980 and 2002 to 28,200 persons. The city estimated it would grow to a population of 44,055 by 2023. Based on that expected growth, the city assessed its residential, industrial, and other land needs for the next 20 years.

The MGMUP set out a growth management strategy to minimize the extent, and guide the direction, of changes in the city's UGB to accommodate those future land needs. The plan directed zoning changes to facilitate more dense uses in the downtown area and along major roads, infill and redevelopment of underutilized land, and creation of "neighborhood activity centers" (NACs), in order to intensify land uses in the UGB expansion areas.

The plan described NACs as follows:

"Under this concept, neighborhoods are each centered or organized around an activity center that would provide a range of land uses within walking distance of neighborhoods—preferably within a one-quarter mile area—including neighborhood-scaled [commercial and civic uses]. Surrounding the activity center (or **focus area)** are **support areas,** which include the highest-density housing within the neighborhood, with housing densities progressively decreasing outward.

"These activity centers would be selected due to their location, distribution, proximity to vacant buildable lands, ability to accommodate higher intensity and density **1027 development, and their context and ability to foster the development of a traditional, or complete, neighborhood. The selected Neighborhood Activity Centers should be equally spaced around the edge of the McMinnville urban area, with the downtown area serving as the geographic center or hub."

(Boldface in original.) After further specifying those technical parameters for an NAC, which require a high degree of comprehensive master planning and a defined amount of land, the plan concludes that

"Neighborhood Activity Centers should not be located in areas that are heavily parcelized, or characterized by numerous individual ownerships. Priority should be given *248 to locations that consist primarily of large vacant parcels in order to maximize the ability to realize such development in a cost effective, comprehensively planned manner."

The city determined that the NAC form of development would facilitate the construction of new medium-density to high-density housing, as compared with the low-density residential development pattern of the past, and decrease the quantity of land that needed to be added to the UGB by approximately 225 acres.

With those assumptions, the city determined that it needed to expand the UGB by 1,188 gross acres, including 890 buildable acres. The city concluded that this was necessary to accommodate a need for 537 acres for residential use (341 acres for low-density residential development and 106 acres for medium-density and high-density residential use), 193 acres for office and commercial uses, and 314 acres for parks in order to serve an estimated population of 44,055 by 2023.[FN2] The plan and its findings quantified needs for additional land supply, both inside and outside of the existing urban growth boundary, by land use type *(e.g.*, single-family detached housing, manufactured dwellings, row/townhouses, and apartments) and zoning designation.

FN2. The remaining acres were needed for institutional and governmental uses.

The adopted UGB changes designated four parts of the added land for neighborhood activity centers (Three Mile Lane, Southwest, Northwest, and Grandhaven NACs). For the most part, those boundary changes captured prime agricultural land. Another area of agricultural land was added, a good part of which had already been developed as a city park (Norton Lane). The city also proposed to add four exception areas to the boundary to meet residential needs (Fox Ridge Road, Redmond Hill Road, Riverside South, and Lawson Lane). The city decided, however, not to add five exception areas (Westside Road, Bunn's Village, Old Sheridan Road, Riverside North, and Booth Bend Road) for various reasons.

The findings adopted to justify those actions evaluated a number of considerations in applying ORS 197.298(1) to nine alternative exception areas, including potential for annexation, costs of water service, transportation circulation *249 issues, consistency with a compact urban form (distance from commercial services and schools), compatibility with adjacent land uses, and environmental concerns. The findings analyzed whether the exception areas would be suitable for an NAC. Both the plan and the adopted findings concluded that the five excluded exception areas would be insufficient to meet that need:

"These sub-areas are, in summary, extensively parcelized; held in multiple ownerships; require costly extension or upgrades to existing public utilities to support urban density development; are located some distance from existing public utilities, schools, and other services; in some cases, located adjacent to heavy industrial development and rail; and have extensive amounts of rural residential development in locations and patterns that make higher density development impracticable or [un]timely."

The findings further explained, "Absent supporting urban residential development, it is not appropriate that these sub-areas be considered for other identified residential land needs, such as schools, parks, and churches, or for commercial land needs." The plan assumed that future low-density residential land need could be satisfied by land within the existing UGB. The findings then evaluated**1028 the included exception areas and five parcels of high-quality agricultural land (Norton Lane, Three Mile Lane, Northwest, Grandhaven, and Southwest properties) for consistency with the Goal 14 locational factors. [FN3]

FN3. Another agricultural area, West Hills South, was analyzed but not proposed to be added to the UGB at that time.

The city presented the MGMUP amendments and supporting documentation to the Department of Land Conservation and Development (DLCD or department) for approval as a completed work task.[FN4] Petitioners 1000 Friends of Oregon and Friends of Yamhill County objected to the *250 city's submissions and appealed the director's decisions on those objections to LCDC. After a hearing, the commission approved inclusion of three exception areas in the UGB (Riverside South, Fox Ridge Road, and Redmond Hill), and remanded the proceeding to the city for an evaluation of adding lower-quality agricultural land, as well as, among other

things, consideration of parkland needs and the exclusion of floodplain areas from the proposed UGB. On remand, the city adopted ordinances to remove floodplains from three expansion subareas, adjust slightly the calculations of needed lands, change the boundaries of the added areas, correct implementing zoning, justify its parklands assumptions, and otherwise respond to the remanding directives. In particular, the city added some lower-quality agricultural land (Fox Ridge North and West Hills South), and adopted new findings to justify its exclusion of other lower-quality agricultural lands.

FN4. Under the periodic review process, when a work task is completed, the actions are submitted to the DLCD director for approval. ORS 197.633(4). The director can approve or remand the work task, or refer the work task to LCDC. *Id.* If the director approves completion of the work task, the action is final unless an interested party files an objection to the approval. If a work task is referred or appealed, LCDC will consider the matter under a process set out by its rules. ORS 197.633(5). *See also* ORS 197.633(2) (required rulemaking for periodic review process); OAR ch. 660, div. 25 (periodic review rules).

Ultimately, the city determined that it needed to add 663 gross acres to the UGB for residential land needs to be developed at a higher density (6.3 dwellings/acre) than allowed under low-density residential zoning. It proposed to add four NAC areas to meet 488 acres of that need, two additional parcels of agricultural land to address 175 acres of that need (Norton Lane and West Hills South), and the three previously approved exception areas to be developed for residences at lower densities (Riverside South, Fox Ridge Road, and Redmond Hill Road).

And so, the city sought DLCD approval of the retooled UGB amendments. Petitioners filed extensive and particular objections to the submission with the DLCD director. In general, petitioners asserted that the city zoning map and regulations did not adequately implement the plan directives, the large size of the proposed UGB expansion was not justified, and the expansion improperly included prime agricultural land instead of available exception areas and areas of poorer soils. Petitioners argued that those actions were inconsistent with ORS 197.298, Goal 14, and the Goal 2 exception criteria. Petitioners objected to particular city findings that ruled out individual exception areas and lower-quality agricultural lands, complaining either that the findings lacked factual support or were insufficient to explain the particular decision under all applicable decisional standards. *251 The objections were not sustained by the DLCD director, who approved the UGB changes.

Petitioners appealed to LCDC. Petitioners took issue with DLCD's response to their objections. They complained that the DLCD report did not respond to their objections and that DLCD otherwise erred in sustaining factual findings and making legal determinations about the various parcels included and excluded from the proposed UGB change. Among the many specific assertions, petitioners argued that the NAC designations over-allocated needed amounts of commercial land and parkland, the boundary expansion excluded over 225 buildable acres of exception lands, and the relevant legal standard was “whether exception areas can accommodate the use at all, not whether they can do so as efficiently or beneficially as farmland.” Specifically, petitioners alleged that “the city's **1029 identified land needs are not limited to pedestrian- and transit-oriented development in neighborhood activity centers” and added that,

"[u]nder ORS 197.298, resource land cannot be included in a UGB instead of exception land if the exception land can reasonably accommodate some portion of identified needs. It cannot be excluded simply because it cannot meet one type of identified land need."

Petitioners reiterated that the exclusion of parcels with lower-quality agricultural lands could not be justified because of their inability to accommodate an NAC when "the city has [a] specific, identified land need for low density housing that exceeds the capacity of all the exception areas it has included within the UGB."

Following a hearing, the commission upheld the department's approval of the plan amendments. Petitioners sought review in this court. After petitioners filed their opening brief, LCDC withdrew its original order for reconsideration.

The order on reconsideration generally approved the exclusion of the exception areas because "they could not accommodate the identified land need (MGMUP, pp. 6–5 to 6–10)" [FN5] based on physical constraints, location relative to *252 existing and planned facilities, surrounding uses, market demand, and "[e]xisting development patterns and other factors affecting urbanization." LCDC more particularly justified the failure to include particular exception areas because the area could not (1) be served with public facilities under ORS 197.298(3)(b); (2) "reasonably accommodate the need for pedestrian- and transit-oriented development in a neighborhood activity center"; (3) "accommodate residential use"; or (4) "reasonably accommodate the need for a compact, pedestrian-friendly urban area." As to the omitted lower-quality resource land, West Hills was excluded because it could not "reasonably accommodate the city's identified need [for 'medium- or high-density housing']" and because of topographic constraints to the supply of water under ORS 197.298(3)(b). The resource area north of Fox Hills Road was left out because, "pursuant to Goal 2, the city did not need to consider lands under ORS 197.298 that could not reasonably accommodate its identified need." The resource land near the airport was determined to not "accommodate an identified need due to safety issues." Based on these and other extensive findings, LCDC concluded that "the city has adequately justified those areas included and excluded from the UGB based on relevant criteria." The LCDC order is before us on review.

FN5. The referenced part of the MGMUP is a summary of the analysis of alternative sites for a UGB expansion. It describes the city's "identified land needs" as needs for "an increased percentage of multi-family, or single-family attached, housing," in general, and neighborhood activity centers, in particular, and for "314 acres of public parkland, 96 acres for public school use, and 106 acres for future commercial development." The summary further notes the "identified residential land needs as they are described in the 'McMinnville Residential Land Needs Analysis' (and the revisions to that document), and the 'Urbanization Element Update.' " The residential land needs analysis describes generic residential land needs.

III. CONTENTIONS OF THE PARTIES

Petitioners raise three assignments of error. We reject the second and third assignments of error without further discussion. The remaining assignment of error raises a number of general concerns about whether the city properly applied Goal 14 and ORS 197.298 to sort through potentially eligible property for inclusion in the UGB. Those concerns are that the city initially erred in amending the UGB and LCDC erred in upholding the UGB decisions because (1) the

*253 city did not apply the Goal 14 standards completely or consistently when it assessed exception areas by, on the one hand, using a particular factor to rule out some land with a disqualifying characteristic, but, on the other hand, including land in the boundary with that same quality; and (2) the city ruled out some land for consideration by defining its land needs too particularly at the front end of the ORS 197.298 prioritization— *i.e.*, land needed for use as an NAC or for particularized residential land needs—so that less exception land was available for the city's particular needs and more agricultural land was **1030 included in the boundary than otherwise would have been included had the city's needs been defined more generically.

As to the latter contention, respondents argue that ORS 197.296(3)(b) requires the city to determine "housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing." To the extent that need cannot be met by zoning changes inside the UGB, then land can be added to the UGB under ORS 197.298 to address those particular housing needs. Respondents claim that that is what the city did.

LCDC defends its decision more specifically. The commission contends that Goal 14, in general, and its incorporated Goal 2 exception factors can be used to define even more particular land needs at the front end of the ORS 197.298 analysis. Thus, LCDC asserts that the city defined the NAC land form as the need to be evaluated under the priorities statute and relied on the desired characteristics of an NAC site as reasons to rule out higher-priority land in order to resort to lower-priority land under ORS 197.298. Petitioners disagree and counter that, even if an NAC does qualify as a generic or specific land need under ORS 197.298, the land added through the NACs does not satisfy all of the city's quantitative needs for additional residential land and a more rigorous application of ORS 197.298 is required to justify bringing agricultural land into the boundary for that non–NAC need.

Petitioners also dispute the sufficiency of LCDC's findings on their objections to the city's rationale for not including particular exception areas in the UGB (Old *254 Sheridan Road, Riverside North, and Booth End Road) or not adding lower-quality agricultural land (West Hills, north of Fox Ridge Road, north of McMinnville Airport, and various smaller tracts) before including prime agricultural land. The city and LCDC respond that the locational factors in Goal 14 were properly applied to categorize those exception and lower-value agricultural lands as insufficient.

Many of the general differences between the parties stem from their different understandings about how ORS 197.298 works to sort land available for inclusion within a UGB. In petitioners' view, the priorities statute works to categorize land as available to meet broadly defined land use needs (in this case, for residential land of any kind). Higher-priority land qualifies to meet that need unless urban services cannot be provided to the land because of physical constraints. Goal 14 is then applied to the prioritized and available land to determine the specific urban growth areas.

According to respondents, however, ORS 197.298 is applied—especially during the periodic review process—to determine the adequacy of land for more particular land use needs (in this case, for higher-density residential uses). Higher-priority land qualifies to meet that need unless it is determined to be unsuitable under the Goal 14 locational factors and the Goal 2 exceptions

criteria. Goal 14 is then applied to corroborate the inclusion of higher-priority land and to justify any further selection among land of a lower-priority class.

We ultimately conclude that neither party has it quite right. For the reasons stated below, we agree that ORS 197.298 does provide the first cut in the sorting process and that Goal 14 is then applied to justify the inclusion or exclusion of the sorted lands and any remaining choices about what land to include in the boundary. Goal 14 also plays a role in identifying the types of land that are subjected to the priorities statute. Goal 14 is used in evaluating the adequacy of available land under ORS 197.298(1), but in a more particular way than suggested by respondents. We reach those initial conclusions based on an analysis of the text and context of ORS 197.298.

*255 IV. STATUTORY CONSTRUCTION ANALYSIS

Our determination of the legislature's intent in enacting ORS 197.298 is guided primarily by the text and context of the statute, in light of any pertinent legislative history. *State v. Gaines*, 346 Or. 160, 171–72, 206 P.3d 1042 (2009). In the analysis of the text of the statute, we give words of common usage their "plain, natural, and ordinary meaning." **1031 *PGE v. Bureau of Labor and Industries*, 317 Or. 606, 611, 859 P.2d 1143 (1993). That textual analysis, of course, is assisted by our prior construction of the statutory terms. *Waite v. Dempsey*, 203 Or.App. 136, 141, 125 P.3d 788 (2005). The context of a statute includes the entire enactment of which it was a part, *State v. Ortiz*, 202 Or.App. 695, 699–700, 124 P.3d 611 (2005), as well as related statutes on the same subject, *State v. Carr*, 319 Or. 408, 411–12, 877 P.2d 1192 (1994).

A. *Step One: Determine the land needed under ORS 197.298(1)*

[1] The first issue concerns how to categorize land needs that arise from periodic review for purposes of the application of ORS 197.298 to a large-scale expansion of a UGB. LCDC and the city argue that ORS 197.298 can be applied to prioritize areas of potential UGB expansion based upon the functional needs of particularly intended land uses *(i.e.*, an NAC). Petitioners, by contrast, suggest that the statute is applied to broad, generic types of land use needs that are identified during periodic review (*e.g.*, 250 acres for residential uses) and that adequacy determinations under ORS 197.298(1) are less particular in focus.

Again, the descending priorities in ORS 197.298(1) are applied to determine whether the priority land is "inadequate to accommodate the amount of land needed." The first step is to determine the "amount of land needed." That determination is necessarily made by the application of Goal 14, which provides that "[e]stablishment and change of the boundaries shall be based upon considerations of the following factors: (1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals; (2) Need for housing, employment opportunities, and livability * * *." In *Residents of Rosemont v. Metro*, 173 Or.App. 321, 328, 21 P.3d 1108 (2001), we explained that

*256 "[w]e held in *Baker [v. Marion County*, 120 Or.App. 50, 852 P.2d 254, *rev. den.*, 317 Or. 485, 858 P.2d 875 (1993),] that factors 1 and 2 of Goal 14 are interdependent and that, if one of the factors is not fully satisfied, or is less determinative, that factor must still be considered and

discussed in deciding if a need for expansion of a UGB has been shown under factors 1 and 2 of Goal 14."

(Footnote omitted.) In the context of periodic review, Factor 1 pertains to a determination of overall land need in order to accommodate population growth. Factor 2 requires subcategorization of that need at least to specify separate quantities of land needed for "housing, employment opportunities, and livability." Because different types of land use consume different amounts of land (*e.g.*, the dwellings/acre densities for low-, medium-, and high-density residential development), determining the amount of land needed to be added to a UGB during periodic review under Factors 1 and 2 necessarily requires differentiation of land use types according to their land consumption attributes. The coordinated application of ORS 197.298 with Goal 14 ("[i]n addition to any requirements established by rule addressing urbanization") implies that ORS 197.298 is applied during periodic review to the quantified land use needs identified by the operation of Factors 1 and 2 of Goal 14.

That application of ORS 197.298 is more directly required by ORS 197.296 during the periodic review process. That statute prompts a quantification of the amounts of land needed for specific residential purposes prior to UGB amendments that result from the periodic review process.[FN6] As part of that process, ORS 197.296(3) requires an analysis of "housing need by type and density range * * * to determine the number of units and amount of land needed for each needed housing type for the next 20 years." If those needs cannot be met within the existing UGB **1032 through rezonings or infill, then the locality must "[a]mend its urban growth boundary to *257 include sufficient buildable lands to accommodate housing needs." ORS 197.296(6)(a). The statutory direction to amend the UGB "to accommodate housing needs" that are classified "by type and density" strongly implies that the next step—the operation of ORS 197.298—works on those same inventoried needs. Thus, for purposes of periodic review, ORS 197.298 works on types of land uses that generate the need for specific quantities of land as a result of the application of the need factors of Goal 14 and related statutory directives, including ORS 197.296.[FN7] We reject petitioners' general contention that LCDC erred in applying ORS 197.298(1) to evaluate the city's need for higher-density residential land, as opposed to all residential needs. [FN8]

FN6. The 1995 Legislative Assembly adopted the initial versions of ORS 197.296 and ORS 197.298 as part of one law. Or. Laws 1995, ch. 547. In construing the meaning of a statute, we have looked at the context of related statutes in the same chapter in which a provision has been codified, *Morsman v. City of Madras*, 203 Or.App. 546, 561, 126 P.3d 6, *rev. den.*, 340 Or. 483, 135 P.3d 318 (2006), and at other provisions of the bill enacting that statute, *Ortiz*, 202 Or.App. at 699–700, 124 P.3d 611.

FN7. LCDC did not approve any addition to the McMinnville UGB because "[s]pecific types of identified land needs cannot be accommodated on higher priority lands" under ORS 197.298(3)(a). We need not apply that part of the statute to dispose of the contentions in this review proceeding. ORS 197.298(3)(a) does have contextual relevance, however, in contrasting the types of "[s]pecific * * * land needs" under ORS 197.298(3) with the types of land use needs identified at the front end of ORS 197.298 as the statute is applied during the periodic review process. The text of ORS 197.298(3) suggests that its "specific types" pertain to need for land of

a particular quality or situation, such as size, site characteristics, service levels, or proximity to other land uses, that occurs only on lower-priority land. For example, ORS 197.712(2)(c) requires comprehensive plans to "provide for at least an adequate supply of sites of suitable sizes, types, locations and service levels for industrial and commercial uses consistent with plan policies." That more discrete land need is in contrast to the more generic land use needs identified during periodic review and used in making adequacy determinations under ORS 197.298(1).

FN8. We need not decide the relationship of the current Goal 14 to ORS 197.298. The land need portion of Goal 14 now requires that a UGB change be based on

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

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

B. *Step Two: Determine the adequacy of candidate lands under ORS 197.298(1) and (3)*

1. *General scheme characteristics—the tension between ORS 197.298 and Goal 14*

The next step is somewhat more complicated—the application of ORS 197.298(1) and (3), together with Goal 14, to locate and justify the inclusion of land to fill that quantified need. ORS 197.298(1) provides that its prioritization *258 scheme, which allows for bringing prime resource land into the UGB as a last resort, is "[i]n addition to any requirements established by rule addressing urbanization"—a plain reference to Goal 14 (Urbanization) and its implementing rules. As noted above, Goal 14 sets out seven factors for changing a UGB: two "need" factors relate to determining the need for additional land ("[d]emonstrated need to accommodate long-range population growth" and "[n]eed for housing, employment opportunities, and livability") and five "locational" factors relate to justifying the selection of land to satisfy those determined needs (either inside the existing UGB or at specific locations outside the UGB) based on public facilities and services, efficiency of land uses, consequences of any allowed development, retention of agricultural land for farm use, and compatibility of development with nearby agricultural activities.[FN9]

FN9. The incorporated Goal 2 exception standards also require an analogous assessment of the reasons for a UGB change (comparable to Goal 14, Factors 1 and 2); why areas that do not require an exception to Goal 14 (*i.e.*, areas already inside the UGB) "cannot reasonably accommodate the use"; the long-term environmental, economic, social, and energy consequences of expanding at a particular location, as opposed to other possible locations; and the compatibility of development allowed by the expansion with adjacent uses.

In prior decisions concerning the application of Goal 14 to UGB changes, we have required that all five locational factors be considered together and balanced in assessing the alternative locations for a UGB change. In **1033 *Citizens Against Irresponsible Growth v. Metro*, 179 Or.App. 12, 17, 38 P.3d 956 (2002), we 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." Similarly, in *1000 Friends of Oregon v. Metro,* 174 Or.App. 406, 409–10, 26 P.3d 151 (2001), we noted that

"the locational factors are not independent approval criteria. It is not necessary that a designated level of satisfaction of the objectives of each of the factors must always be met before a local government can justify a change in a UGB. Rather, the local government must show that the factors were 'considered' and balanced by the local government in *259 determining if a change in the UGB for a particular area is justified. It is within a local government's authority to evaluate the Goal 14 factors and exercise its judgment as to which areas should be made available for growth."

In other words, under Goal 14, an expansion of a UGB to include agricultural land could be justified if considerations of the cost of public facilities, land use efficiency, and environmental, energy, economic, and social consequences and compatibility with nearby land were favorable.

By contrast, ORS 197.298 appears to operate less flexibly. Under the priorities statute, prime agricultural land can be included within a UGB *only if* urban reserve land, nonresource land, exception land, and marginal land are "inadequate to accommodate the amount of land needed" for identified urban uses.

So, which scheme ultimately controls the choice of where to expand a UGB—the flexible Goal 14 or the more rigid ORS 197.298? Our case law—in a very imprecise way—suggests that the answer may be either or both.

We have previously determined that Goal 14 interacts with ORS 197.298 in two ways. First, the two operate *independently* to justify a UGB expansion. Compliance with ORS 197.298 does not absolve the independent and separate requirement to apply the Goal 14 factors to a proposed UGB change. In *Residents of Rosemont,* two cities challenged Metro's decision to expand the Portland-area UGB in order to address a need for housing in a particular part of the metropolitan area. An issue on review was whether a subregional need for housing could qualify under the Goal 14 need factors as a basis for expanding the UGB without considering that need in the context of the overall regional need for housing. We held that it could not, at least in the context presented. We also concluded that compliance with the criteria in ORS 197.298 did not excuse the separate application of Goal 14 to the UGB amendment:

"Those priority concerns [in ORS 197.298] do not purport to be the exclusive considerations governing the location of UGBs, and ORS 197.298(3) does not purport to excuse compliance with Goal 14's requirements for the establishment or change of UGBs. ORS 197.298 specifically provides that *260 the priorities for UGB inclusion that it sets forth are '[i]n addition to any requirements established by rule addressing urbanization.' Metro contends that it is impossible to implement the requirements of ORS 197.296 and 197.298 *and* the requirements of Goal 14. Because of that, it asserts that the provisions must be read together. The problem with that argument, however, is that, because ORS 197.298 specifically provides that its requirements are *in addition* to the urbanization requirements of Goal 14, which are particularly directed to the

establishment and change of UGBs, it cannot be said that the statute was intended to supersede Goal 14."

173 Or.App. at 332–33, 21 P.3d 1108 (emphases in original). *See also* *1000 Friends of Oregon,* 174 Or.App. at 412–14, 26 P.3d 151 (compliance with ORS 197.298 in justifying a UGB change does not excuse the need to separately apply Goal 14, Factor 6 (retention of agricultural land), to the proposed change).

Subsequently, though, we have held that ORS 197.298 is to be applied in an *integrated* way with Goal 14. In **1034 *City of West Linn v. LCDC,* 201 Or.App. 419, 422, 119 P.3d 285 (2005), we reviewed an LCDC approval of another amendment to the Portland-area UGB by Metro. In that case, the petitioner argued that the particular UGB expansion was inconsistent with ORS 197.298 because lower-priority resource land had been added without determining that there was inadequate land of higher priority anywhere in the region. We agreed with LCDC that the locational factors of Goal 14 were relevant in determining whether land of a particular priority in ORS 197.298(1) is "inadequate to accommodate the amount of land needed." We reasoned that

"[t]he operative term is 'inadequate.' Whether there is adequate land to serve a need may depend upon a variety of factors. In particular, the adequacy of land may be affected by locational characteristics that must be taken into account under Goal 14. As LCDC correctly noted, ORS 197.298(1) expressly provides that the priorities that it describes apply '[i]n addition to any requirements established by rule addressing urbanization,' such as the locational factors described in Goal 14. As a result, the fact that other, higher priority land may exist *somewhere* adjacent to the UGB does not necessarily mean that that land will be '[ ]adequate to accommodate the amount of land needed,' if *261 using it for an identified need would violate the locational considerations required by Goal 14. In other words, the statutory reference to 'inadequate' land addresses suitability, not just quantity, of higher priority land."

City of West Linn, 201 Or.App. at 440, 119 P.3d 285 (emphasis in original). In *Hildenbrand v. City of Adair Village,* 217 Or.App. 623, 634, 177 P.3d 40 (2008), we summarized the holding in *City of West Linn* and stated that determining "whether there is 'inadequate' land to serve a need depends on not only the constraints identified by ORS 197.298(3), but also the criteria for locating an urban growth boundary expansion under Goal 14."

This relationship between the overlapping policies in Goal 14 and ORS 197.298—that the policies are to be applied separately as well as together—creates, at the very least, some awkwardness in their application. Complete integration of the policies is inconsistent with their independent viability. What might reconcile that tension, however, is if ORS 197.298 is not completely conflated with Goal 14—only partially integrated with the goal—in its application, and if Goal 14 is separately and fully applied to the candidate land identified under ORS 197.298 in order to determine if that land is suitable for inclusion in the UGB. We examine that possibility next.

2. *Integration of Goal 14 and ORS 197.298*

We turn, then, to the adequacy assessment under ORS 197.298(1), specifically the factors used to determine when priority "land * * * is inadequate to accommodate the amount of land needed." Petitioners contend that a jurisdiction can use lower-priority land for its land needs only when higher-priority land is not available to accommodate the need because of one of the limitations in ORS 197.298(3) (specific type of identified need, urban services unavailability due to topographical or physical constraints, needed to provide services to higher-priority land). The Goal 14 locational factors, according to petitioners, must be applied in the process of selecting among alternative locations in the same priority class. Respondents disagree and argue that all of the Goal 14 locational factors are used to determine if priority land is *262 "inadequate to accommodate the amount of land needed" under ORS 197.298.

The parties agree, and we concur, that any necessary UGB amendment process for purposes of land development begins with the identification of buildable land that is contiguous to the existing boundary. ORS 197.296(6)(a) makes this step explicit for housing needs, requiring the locality to "[a]mend its urban growth boundary to include sufficient buildable lands to accommodate housing needs." For this and other purposes, ORS 197.295(1) defines "buildable lands" as "lands in urban and urbanizable areas that are suitable, available and necessary for residential uses * * * [including] both vacant land and developed land likely to be redeveloped." LCDC has further defined "suitable and available" buildable lands to **1035 exclude land that is severely constrained by natural hazards under Goal 7; subject to natural resource protection measures under Goals 5, 15, 16, 17, or 18; severely sloped; within a floodplain; or to which public facilities "[c]annot be provided." OAR 660–008–0005(2).

The adequacy assessment under ORS 197.298(1), then, applies to land that could be developed. The candidate land, whether exception land or different types of agricultural land, must be "buildable." So, evaluating whether candidate land is "inadequate" under ORS 197.298(1) requires considering qualities other than whether the land is buildable.

City of West Linn established that Goal 14 is applied in the prioritization of land under ORS 197.298(1) to determine if land of a particular priority "is inadequate to accommodate the amount of land needed." 201 Or.App. at 440, 119 P.3d 285. However, petitioners read *City of West Linn* too narrowly in confining the Goal 14 analysis in ORS 197.298(1) to the selection of land within a single priority class of lands, rather than as general criteria on the inadequacy of land within that priority class to meet the need and allow resort to lower-priority land.

Rather, the question becomes whether all of the Goal 14 locational factors are used to disqualify higher-priority land under ORS 197.298(1), or whether a more limited sorting occurs that leaves land available for the potential application of ORS 197.298(3). Based on the text of both policies—including*263 a comparison of the more specific locational criteria in ORS 197.298(3) with their Goal 14 analogues, and the textual dynamic within ORS 197.298 between subsections (1) and (3)—we conclude that the legislature likely intended the latter option.

In the context of expanding a UGB to include lower-priority land, ORS 197.298(3) states more specific limitations than the analogous factors in Goal 14 do: Factor 3 of Goal 14 requires consideration of the "[o]rderly and economic provision for public facilities and services," but

ORS 197.298(3)(b) prefers higher-priority land over resource land unless "[f]uture urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints." Goal 14, Factor 4, directs consideration of the "[m]aximum efficiency of land uses within and on the fringe of the existing urban area," whereas ORS 197.298(3)(c) inhibits urbanization of lower-priority land unless "[m]aximum 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."

The particular limitations in ORS 197.298(3)(b) and (c) have no practical effect if the broader and less restrictive Goal 14 factor counterparts must be used to determine whether to include lower-priority land under ORS 197.298(1). If land is "inadequate" under Factor 3 because the relative cost of delivery of public facilities and services to the area is high, then the more specific limitation in ORS 197.298(3)(b)—permitting an inadequacy conclusion only when public services cannot be extended because of topographic or physical constraints—has no independent force. Because ORS 197.298(3) relates "only to the inclusion of land that comes within the priority concerns described in [ORS 197.298(1)]," *Residents of Rosemont*, 173 Or.App. at 332, 21 P.3d 1108, it follows that ORS 197.298(1) must use different kinds of limitations to determine inadequacy than those set out in ORS 197.298(3). Otherwise, ORS 197.298(3) is redundant or incapable of application. We are constrained to construe ORS 197.298 in a way that gives effect to all of its terms. "As a general rule, we assume that the legislature did not intend any portions of its enactments to be meaningless surplusage." *State v. Stamper*, 197 Or.App. 413, 417, 106 P.3d 172, *rev. den.*, 339 Or. 230, 119 P.3d 790 (2005); *see also* ORS 174.010 ("In the construction *264 of a statute, * * * where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.").

[2] It follows, then, that the more specific limitations in ORS 197.298(3) displace the application of their more generic and flexible Goal 14 counterparts in the application of ORS 197.298(1). That displacement gives meaning to ORS 197.298(3), which reads that it—as opposed to other factors—is applied to **1036 determine "if land of higher priority is * * * inadequate to accommodate the amount of land estimated in subsection (1)." That explicit requirement precludes the application of any analogous, but less restrictive, suitability criteria under ORS 197.298(1) to make that same determination, *i.e.*, whether higher-priority land "is inadequate to accommodate the amount of land needed." That limited use of Goal 14 in applying ORS 197.298(1) avoids the complete conflation of Goal 14 and ORS 197.298 and allows for the sequential application of ORS 197.298(3).

Instead, the Goal 14 locational factors that are applied under ORS 197.298(1) and *City of West Linn* are those that are *not* the counterparts to the ORS 197.298(3) factors: Factor 5 ("Environmental, energy, economic and social consequences") and Factor 7 ("Compatibility of the proposed urban uses with nearby agricultural activities"). The application of Goal 14, Factors 5 and 7, at this point parallels the separate considerations for determining the location of a UGB amendment that are required by the Goal 2 exception criteria that are incorporated into Goal 14; that parallel reinforces the logic of a limited use of Goal 14 as part of the application of ORS 197.298. Those Goal 2 considerations are:

"(3) The long term environmental, economic, social and energy consequences resulting from the use of the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

"(4) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts."

*265 OAR 660–015–0000(2), Part II.[FN10] Thus, those specific Goal 2 exception criteria and their Goal 14 factor counterparts (Factors 5 and 7) are the relevant Goal 14 considerations in assessing the adequacy of land in a priority class under ORS 197.298(1).

FN10. The remaining exception criteria are less relevant in determining where a UGB should be expanded. The first criterion goes to the reasons for expanding the UGB and is satisfied through the general application of Goal 14, particularly Factors 1 and 2. OAR 660–004–0010(1)(d)(B)(i) (reasons factor for UGB change under former Goal 14 "satisfied by compliance with the seven factors of Goal 14"). The second criterion requires consideration of "[a]reas which do not require a new exception." In the case of a Goal 14 exception, that area is the land already in the UGB. *See* 243 Or.App. at 272, 259 P.3d at 1040.

[3] Based upon the text and context of ORS 197.298, we conclude that not all of the Goal 14 locational criteria are applied under ORS 197.298(1) to determine if priority land "is inadequate to accommodate the amount of land needed." Instead, only the consequences and compatibility factors of Goal 2, Part II, and Goal 14 are applied. Whether the priority land is inadequate due to the unavailability of public facilities and services or because of land use efficiencies is determined by the separate application of ORS 197.298(3). Thus, we agree with petitioners' general claim that LCDC improperly applied ORS 197.298(1) in approving the city's resort to lower-priority land because of the relatively higher costs of providing a particular public facility or service to the higher-priority area.

C. *Step Three: Determine which candidate lands should be included under Goal 14*

Goal 14 is independently applied, then, *after* land has been prioritized under ORS 197.298 as adequate to accommodate the identified need. ORS 197.298 operates, in short, to identify land that *could* be added to the UGB to accommodate a needed type of land use. Thereafter, Goal 14 works to qualify land that, having been identified already under ORS 197.298, *should* be added to the boundary. This works in two ways—both to make choices among land in the lowest rung of the priority scheme and to justify the inclusion of the entire set of lands selected under ORS 197.298. Once candidate lands have been located under ORS 197.298 (*i.e.*, *266 the higher-priority lands that have been identified as adequate to satisfy part of a land need and any remaining lower-priority lands that exist in quantities sufficient to accommodate the remaining need), the location of the boundary changes is determined **1037 by the full and consistent application of the Goal 14 locational factors, the Goal 2 exception criteria to those candidate lands, and relevant plan and ordinance criteria.

It is at this point in the analysis that cost efficiencies in the provision of public facilities and services become relevant. Considerations of Goal 14, Factor 3 (provision of public facilities and services) and Factor 4 (efficiency of land uses), at this point—in combination with the other Goal 14 locational factors—may prompt the discarding of candidate land identified under ORS 197.298, and the selection of land otherwise consistent with the Goal 14 factors.

That application of all of the provisions in Goal 14 to the resulting UGB change is required under *Citizens Against Irresponsible Growth* and *1000 Friends of Oregon.* The application of Goal 14 to the land that results from the prioritization of ORS 197.298 allows the separate and full use of both policies in justifying a UGB change that is contemplated by the priorities statute ("[i]n addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities") and our holdings in *Residents of Rosemont* and *1000 Friends of Oregon.*

With those principles in mind, we turn to petitioners' remaining contentions.

V. JUSTIFICATION FOR THE PROPOSED CHANGES

A. *Standards of review*

We begin with our standards of review. ORS 197.650(1) provides that we review the LCDC order "in the manner provided in ORS 183.482." That part of the Administrative Procedures Act sets out the standards of review of a contested case order and provides:

"(a) The court may affirm, reverse or remand the order. If the court finds that the agency has erroneously *267 interpreted a provision of law and that a correct interpretation compels a particular action, the court shall:

"(A) Set aside or modify the order; or

"(B) Remand the case to the agency for further action under a correct interpretation of the provision of law.

"(b) The court shall remand the order to the agency if the court finds the agency's exercise of discretion to be:

"(A) Outside the range of discretion delegated to the agency by law;

"(B) Inconsistent with an agency rule, an officially stated agency position, or a prior agency practice, if the inconsistency is not explained by the agency; or

"(C) Otherwise in violation of a constitutional or statutory provision.

"(c) The court shall set aside or remand the order if the court finds that the order is not supported by substantial evidence in the record. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding."

ORS 183.482(8).

[4] We recently explained that the requirements that an agency correctly 33 interpret the law, explain inconsistencies, and have evidentiary support for the decision implies that LCDC must " 'demonstrate in [its] opinion[ ] the *reasoning* that leads the agency from the *facts* that it has found to the *conclusions* that it draws from those facts.' " *1000 Friends of Oregon v. LCDC,* 237 Or.App. 213, 225, 239 P.3d 272 (2010) (*Woodburn*) (quoting *Drew v. PSRB*, 322 Or. 491, 500, 909 P.2d 1211 (1996)) (emphasis in *Drew*). *See also City of Roseburg v. Roseburg City Firefighters,* 292 Or. 266, 271, 639 P.2d 90 (1981) (stating the test as "whether there is a basis in reason connecting the inference [of compliance with the decisional standard] to the facts from which it is derived"). In connection with substantial evidence review, we do not review the city's decision for evidentiary support. Rather, "[o]ur role is to determine whether [LCDC] applied the correct legal test *268 in deciding whether [the city's] decision is supported by substantial evidence." **1038 *Citizens Against Irresponsible Growth*, 179 Or.App. at 21, 38 P.3d 956.[FN11]

FN11. In *City of West Linn,* we concluded, based on *1000 Friends of Oregon v. LCDC (Lane County),* 305 Or. 384, 404–05, 752 P.2d 271 (1988), that an LCDC order approving a legislative UGB change under ORS 197.650 "implicates the substantial evidence standard that is described in [ORS 183.482]." 201 Or.App. at 428, 119 P.3d 285. More precisely, LCDC reviews UGB and periodic review submissions for "compliance with the statewide planning goals." ORS 197.628(1). Goal 2, in turn, requires that land use decisions have an "adequate factual base." LCDC's review of a legislative UGB change for an "adequate factual base" is synonymous with the requirement that a decision be supported by substantial evidence. Substantial evidence review of an LCDC periodic review order may directly occur when the commission requests and obtains new evidence for the periodic review submission and then makes factual findings on that enhanced record. *See* OAR 660–025–0160(5) (allowing supplement to periodic review record).

[5] Finally, the focus of our review is on the issues presented on appeal that have been preserved before LCDC. As we said in *Marion County v. Federation For Sound Planning*, 64 Or.App. 226, 237, 668 P.2d 406 (1983), "[a] petitioner seeking judicial review under the terms of [ORS 197.650] must base the arguments on the objections (or comments) filed with DLCD; those objections will therefore frame the issues on appeal." [FN12] This requires objectors before LCDC to make an explicit and particular specification of error by the local government. ORAP 5.45(1) requires preservation of error in a lower court in order to consider the error on appeal. We apply that preservation requirement to administrative proceedings. *Veselik v. SAIF*, 177 Or.App. 280, 288, 33 P.3d 1007 (2001), *rev. den.*, 334 Or. 121, 47 P.3d 484 (2002); *see also VanSpeybroeck v. Tillamook County*, 221 Or.App. 677, 690, 191 P.3d 712 (2008) (applying preservation requirements in proceedings to review LUBA orders). A party's claim of error by LCDC *269 in its periodic review order, therefore, is limited to the commission's resolution of objections raised in the periodic review proceedings.

FN12. Moreover, under ORS 197.633(2), LCDC is obliged to "adopt rules for conducting periodic review." The rules require persons who object to a work task submittal to file written

objections with DLCD that "[c]learly identify an alleged deficiency in the work task 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." OAR 660–025–0140(2)(b). OAR 660–025–0150(4)(d)(B) imposes that same specification of error requirement when an appeal is taken to LCDC from DLCD decisions on periodic review task completions. Objections that do not meet that standard "will not be considered by the director or commission." OAR 660–025–0140(3). If no objections are received, "the work task shall be deemed approved." OAR 660–025–0150(3)(a). Standing to appeal an LCDC periodic review order is limited to "[p]ersons who submitted comments or objections" to the agency. ORS 197.650.

B. *The commission's defense*

We turn—at long last—to petitioners' contentions about the deficiencies in LCDC's order and findings in light of the specific objections and exceptions they filed with the agency. Petitioners' assignment of error contends that (1) LCDC erroneously interpreted ORS 197.298, Goal 14, *former* ORS 197.732(1)(c)(B) (2005), *amended by* Or. Laws 2007, ch. 71, § 68, *renumbered as* ORS 197.732(2)(c)(B) (2007) ("[a]reas which do not require a new exception cannot reasonably accommodate the use"), and Goal 2, Part II(c), OAR 660–004–0020 (an administrative rule detailing the requirements for a "reasons" exception to a goal); (2) LCDC made a decision not supported by substantial evidence; and (3) LCDC acted inconsistently with an official agency position in adding agricultural land rather than other lands. Although petitioners' contentions are framed with respect to the exclusion of particular exception and higher-priority resource lands from the area of the proposed UGB change, their arguments attack the *manner* in which the city and LCDC applied ORS 197.298. Petitioners complain that the city defined the needed land—higher-density residential land—too specifically under Step One so that ORS 197.298(1) was applied to allow the exclusion of some land that could be used for low-density residential needs and that lands were excluded under Step Two because of a single deficiency rather than an overall adequacy assessment based on balancing all of the considerations. Moreover, petitioners argue that various locational factors in Goal 14 were not considered as part of Step Three **1039 in evaluating the alternatives for the UGB expansion.

In its brief, LCDC offers a broad justification for its order and joins the city's more specific defenses. LCDC explains that the city identified neighborhood activity centers as a form of land need to which the prioritization scheme of ORS 197.298(1) was then applied, and that the commission was correct in approving the exclusion of exception areas and higher-priority resource lands that could not accommodate *270 NACs. LCDC further argues that, under the Goal 2 exceptions criteria, a broad test should be employed under ORS 197.298 to determine whether candidate lands are "inadequate to accommodate the amount of land needed." LCDC reasons that (1) ORS 197.298 is administered "[i]n addition to" Goal 14; (2) Goal 14 includes the "reasons" exception criteria in Goal 2; (3) ORS 197.298(1) incorporates the exceptions criterion in Goal 2 that "[a]reas that do not require a new exception cannot reasonably accommodate the use"; and, therefore, (4) the statute allows a broad assessment of whether land is "inadequate to [reasonably] accommodate" an identified land need.

LCDC's first defense—that the city appropriately identified a quantity of needed NAC land and applied ORS 197.298(1) to that quantified need—fails because that is not what the city did. The city did determine that the NAC mixed-use category of land use would use less land than the

traditional low-density residential development for housing needs. But the city did not quantify the amount of any needed mixed-use category of commercial and residential land uses and then apply the ORS 197.298(1) priorities to that quantified mixed-use need. To recall, ORS 197.298(1) is applied to determine if land of a particular priority "is found to be inadequate to accommodate the *amount of land* " determined to be needed. (Emphasis added.) Here, the city quantified the need for categories of residential, commercial, industrial, parkland, and other land uses and then applied the priorities to those quantitative needs. However, the city used the defined qualities of an NAC (*e.g.*, size, location to downtown, and urban form) as a basis to rule out higher-priority land under ORS 197.298(1), and, in doing so, proved the wrong point.

LCDC's argument that its order is justified because of the need for land for NACs is not supported by the order's reasoning or result. First, the order is unclear on the specifics of the identified need under ORS 197.298—whether the need is for residential land in general; higher-density residential land; mixed-use land for specified residential, commercial, and parkland needs; or NACs. The order upholds the exclusion of the Westside Road exception area from the UGB amendment under ORS 197.298(3)(b) (unavailability of services due to topographic or other physical constraints), rather than because the area is unsuitable for use as an NAC. *271 Another part of the order approves exclusion of the Bunn's Village exception area under ORS 197.298(3)(b) as well as under ORS 197.298(1) for its unsuitability for "pedestrian- and transit-oriented development in a neighborhood activity center." LCDC determined that the Booth Bend Road exception area "cannot reasonably accommodate the identified need," but purports to identify the need as one for a "compact, pedestrian-friendly urban area." The city's failure to include the Old Sheridan Road exception area into the boundary change was approved because "this area cannot reasonably accommodate the identified need," yet that approval was made without any elaboration on the nature of that identified need. The Riverside North area was not included because "this area cannot reasonably accommodate residential use." If ORS 197.298 is applied to address separate types of land needs, then the amount of each of those land needs must be quantified, and the land supply examined to see if it is "inadequate to accommodate [each] amount of land needed."

[6] Second, the order, in fact, approves the inclusion of some of the lower-priority agricultural land (Norton Lane, West Hills South, and part of Fox Ridge North) ahead of some exception areas even though those agricultural areas were not designated as NACs. Thus, the adopted justification for the UGB amendments as well as the actual inclusion of agricultural land for general residential**1040 use suggests that lower-priority land was not added solely to meet the need for an identified quantity of land for mixed-use development. The adopted order fails to explain why the failure of an exception area to accommodate the need for an NAC justifies its exclusion from the expansion area when lower-priority land is being added to accommodate a less specific need for residential land. As we held in *Woodburn*, 237 Or.App. at 224–26, 239 P.3d 272, when an LCDC order fails to explain its reasoning for finding consistency with the standards for a UGB expansion, the order lacks substantial reason and becomes inadequate for judicial review. The failure of LCDC to consistently identify the needed categories and quantities of land uses—the fundamental premises of its justification of the UGB change under ORS 197.298—requires the same conclusion here.

LCDC's second point—that the "[a]reas that do not require a new exception cannot reasonably accommodate the use" criterion in the Goal 2 exception standards can be used *272 to rule out higher-priority land under ORS 197.298(1), presumably no matter how the need for residential land is described—also does not withstand scrutiny. As noted earlier, Goal 14 requires that a UGB change "follow the procedures and requirements as set forth in the Land Use Planning goal (Goal 2) for goal exceptions." The standards for such an exception include a determination that "[a]reas which do not require a new exception cannot reasonably accommodate the use." But that criterion applies to land that does not require an exception to Goal 14, *i.e.*, land already within the UGB or specially designated land in unincorporated communities outside of a UGB. *VinCEP v. Yamhill County*, 215 Or.App. 414, 425, 171 P.3d 368 (2007) ("areas which do not require a new exception" criterion under Goal 14 are "lands within urban growth boundaries and areas for which a Goal 14 exception has already been taken"). The exception standard requires an evaluation of whether land inside of a UGB can be developed in a way that eliminates or minimizes the need to expand a UGB. The criterion is not a factor to distinguish among lands that do require an exception to Goal 14—the exception and resource lands outside the UGB that could qualify for inclusion within the boundary.[FN13] So the second exception criterion, by its terms, is not relevant to classify exception and resource lands outside the existing UGB as suitable for growth.[FN14]

FN13. DLCD understood that the second exception criterion did not require an alternatives analysis of lands outside the existing UGB. In its decision on petitioners' objections in the first LCDC proceeding, the department noted:
"It is not clear that [the alternative lands exception criterion] distinguishes between Goal 3 exception lands and resource lands outside of a UGB. Both require that the city follow the exceptions process for a UGB amendment and can be said to 'require a new exception.' The department understands this standard to mean that a UGB amendment is needed only if lands inside a UGB or rural lands for which an exception to Goal 14 has been taken cannot reasonably accommodate the use."

FN14. The reference to the Goal 2 exception requirements in Goal 14 was eliminated in the revision to Goal 14 adopted in 2005. In its place, the goal now requires that,
"[p]rior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary."

In addition, OAR 660–004–0010(1)(c)(C) now provides that,
"[w]hen a local government changes an established urban growth boundary applying Goal 14 as amended April 28, 2005, a goal exception is not required unless the local government seeks an exception to any of the requirements of Goal 14 or other applicable goals[.]"

*273 The order under review approves the city's decision not to include the North Fox Ridge Road resource area in the UGB because, "pursuant to Goal 2, the city did not need to consider lands under ORS 197.298 that could not reasonably accommodate its identified need." In other

parts of the order, the exclusions are justified under a generic "reasonably accommodate" standard (presumably tied to Goal 2), rather than the more discrete accommodation standards of ORS 197.298(1) and (3). In those respects, LCDC erred in applying the wrong standards and misconstrued the applicable law. ORS 183.482(8)(a).

We must next determine if those Step One and Step Two errors compel a different result under ORS 183.482(8)(a) (allowing remedy**1041 if "the agency has erroneously interpreted a provision of law and * * * a correct interpretation compels a particular action"). We turn then to petitioners' specific contentions about the application of ORS 197.298. LCDC and the city defend the LCDC order by arguing that the exclusions are justified under ORS 197.298, no matter how the residential land need is defined—whether as a need for higher-density residential land or for land suitable for an NAC.

C. *Application of ORS 197.298*

Petitioners claim that LCDC erred in endorsing the exclusion of three exception areas—Old Sheridan Road, Riverside North, and Booth Bend Road—that should have been added to the boundary under ORS 197.298. They reason that those areas were excluded because they were unsuitable for medium-density and high-density housing, but that such a specification of need is inappropriate for the application of ORS 197.298. Rather, petitioners argue, the statute should have been applied to residential land needs as a whole. Moreover, the quantity of needed low-density residential land (341 acres) exceeded the buildable land added through the included exception areas, so petitioners reason that the other exception areas should have been brought into the boundary to meet low-density residential land needs. Finally, petitioners claim that there is no substantial evidence that the excluded exception areas could not accommodate some *274 medium-density or high-density housing. More specifically, petitioners contest LCDC's findings on the excluded exception areas as well as the three excluded lower-quality resource lands tracts (West Hills, Fox Ridge Road North, and the area north of McMinnville Airport).

1. *Old Sheridan Road exception area*

In its findings on ORS 197.298(1), the city evaluated this exception area under factors that it also applied to other exception areas (annexation potential, ability to develop with adequate internal transportation circulation, limited traffic access from Highway 18, consistency with compact urban form, and public safety issues). As stated earlier, considerations of the *general availability* of public facilities and services are immaterial as part of the Step Two application of ORS 197.298. The remaining determinations by the city are relevant under ORS 197.298(1) (comparative long-term environmental, economic, social and energy (EESE) consequences resulting from the use at the proposed site). The city's decision to exclude the Old Sheridan Road exception area was based upon a balancing of those determinations.

Petitioners objected to DLCD that the city's findings failed to establish that the Old Sheridan Road exception area could not accommodate a portion of the city's residential land needs. More specifically, petitioners claimed that the city findings showed that the comparative costs of providing city facilities and services to the area varied, depending upon the service, but were not prohibitive. Petitioners disputed that there was evidence in the record to support the city's

findings that Old Sheridan Road provided the sole access to the area and that the area was distant from existing public utilities and schools.

DLCD did not resolve those objections under ORS 197.298(1). Instead, DLCD concluded that it "agrees with the city's findings that transportation facilities cannot reasonably be provided to this area under ORS 197.298(3)(b)." Again, ORS 197.298(3)(b) allows resort to lower-priority land if "[f]uture urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints." LCDC appeared to affirm on that basis, largely because Highway 18 is a limited access highway.

*275 On review, petitioners argue that ORS 197.298(3)(b) allows resort to lower-priority land only if a package of future urban services could not be reasonably provided. Petitioners contend that LCDC's findings failed to evaluate the entire suite of urban services in excluding the Old Sheridan Road exception area and that the deficiency in the provision of transportation facilities was not due to topographical or other physical constraints. Moreover, petitioners claim that there is no substantial evidence to support the finding of unavailable transportation facilities because local streets could be extended**1042 to the area. Respondents counter that LCDC approved the exclusion of Old Sheridan Road, in part, because lack of access to Highway 18 required prohibitively expensive road improvements to the area and congestion in other access points to the highway.

We disagree with petitioners' contention that a composite of urban services must to be considered under ORS 197.298(3)(b). Although the term "urban services" is not defined in the statute, a related term, "urban facilities and services" is defined under Goal 11 to include "police protection; sanitary facilities; storm drainage facilities; planning, zoning and subdivision control; health services; recreation facilities and services; energy and communication services; and community governmental services." OAR 660–015–0000(11). That definition does not include water supply systems or roads. Goal 12 separately deals with transportation facilities, a utility that is neither "urban," being necessary to both rural and urban land uses, nor a "service." ORS 197.298(3), by its plain text, refers only to those "urban services" that could be constrained "due to topographical or other physical constraints." Thus, the text of the provision refers to a service that is urban in character and that can be physically constrained in its provision. What is a constrained urban service is a matter of proof in a particular UGB amendment proceeding, but it surely does not mean the full panoply of urban facilities and services described in Goal 11.

[7] We do agree, however, with petitioners' contention that inefficiencies in the provision of roads to a potential urbanizing area is not sufficient to exclude that area under ORS 197.298(3)(b). Transportation facilities are not an "urban service" under the statute. It may be that LCDC's *276 order also implicitly rests upon excluding the Old Sheridan Road exception area from the category of candidate lands under ORS 197.298(1). As noted earlier, however, any inefficiency in the provision of urban services and facilities is not material to the analysis under ORS 197.298(1). LCDC erred in approving the exclusion on either of those bases; it should have addressed whether the city's findings were otherwise factually and legally sufficient under ORS 197.298(1).

2. *Riverside North exception area*

Petitioners next contend that the basis for excluding the Riverside North exception area—unsuitability for residential use due to "noise and odor associated with the adjacent sewage treatment plant, industrial use, and railroad"—was insufficient under ORS 197.298(3)(a) because residential use is not a "[s]pecific type[ ] of identified land need[ ]" under that statutory provision, but a more generic need that is subject to the priorities of ORS 197.298(1). Petitioners argue that LCDC's findings are deficient in failing to assess whether the Riverside North exception area could be used to satisfy nonresidential land needs, in general, or for industrial uses, in particular, thereby allowing redesignation of existing industrial land within the UGB for residential uses. Petitioners finally assert that the city's decision to exclude Riverside North was inconsistent with its decision to include the Riverside South exception area, and that, in approving both actions, LCDC acted "inconsistently with official agency position or practice" and without substantial evidence.

[8] [9] Respondents argue that the incompatibility of any proposed residential use of the subarea with nearby industrial and institutional uses is a legitimate consideration in applying ORS 197.298(1). Based on the Step Two analysis noted earlier (that EESE considerations under Goal 2 and Goal 14, Factor 5, are applied under ORS 197.298(1)), we agree with respondents. We also agree with respondents' further contention that LCDC did not misconstrue the applicable law or fail to support its decision by substantial reason in not requiring redesignation of industrial land within the existing UGB for residential uses in order to add Riverside North for industrial purposes. Finally, petitioners' assertion that LCDC made inconsistent determinations on *277 the Riverside South and Riverside North areas was not preserved, because petitioners never asserted to DLCD that the city was constrained to treat both areas in the same way.

**1043 3. *Booth Bend Road exception area*

[10] Again, the city adopted findings on the considered exception areas, including the Booth Bend Road exception area, that evaluated those areas under ORS 197.298(1) based upon a balancing of factors that included the area's potential for annexation, internal transportation circulation, urban form, public safety, the overall cost-effectiveness of the provision of urban facilities, and compatibility with adjacent uses, including agricultural uses. The city excluded the Booth Bend Road exception area because of limited potential for annexation, the cost-ineffectiveness of necessary road and sanitary sewer improvements, the lack of supportive neighborhood services and facilities, and incompatibility with adjacent agricultural uses.

Before LCDC, petitioners disputed the factual accuracy of some of the city's findings. LCDC overruled those objections because "this area is problematic since it would be an isolated extension of the UGB across the highway, making walking to nearby destinations difficult[,]" such that it could not "reasonably accommodate the need for a compact, pedestrian-friendly urban area."

On review, petitioners argue that that specification of need is not a "[s]pecific type[ ] of identified land need[ ]" under ORS 197.298(3)(a) and, to the extent that the need arises as a consequence of the application of Goal 14, Factor 4 (efficiency of land uses on the fringe of

urban areas), that consideration was not balanced with other Goal 14 factors in determining suitability under ORS 197.298(1). Moreover, petitioners assert that excluding the Booth Bend Road exception area because of its isolated location (south of Highway 18) is inconsistent with the inclusion of other areas south of the highway (Three Mile Lane and Lawson Lane areas). Respondents counter that the city's findings appropriately considered urban form and conflicts with agricultural land in its ORS 197.298(1) analysis.

*278 We agree with petitioners that the application of ORS 197.298(1) requires more than the consideration of pedestrian circulation. LCDC erred in failing to address whether the city's findings about other ORS 197.298(1) considerations were sufficient and were supported by the record. The city's evaluation of the cost-effectiveness of the provision of public facilities and services is immaterial to the analysis under ORS 197.298(1) during Step Two. In the same way, considerations of urban form under Goal 14, Factor 4, are more appropriately deferred to Step Three, during the full application of Goal 14 to candidate lands identified under the priorities statute.

4. *West Hills resource land area*

Following the initial remand of the MGMUP amendments by LCDC, the city analyzed resource areas with poorer soils for potential inclusion within the UGB. The city determined that an area in the West Hills west of Fox Ridge Road and Redmond Hill Road (exception areas included in the UGB in the initial LCDC proceedings) would be unsuitable. The findings in support of that conclusion identified a land need for medium- and high-density housing. The city reasoned that the sloped topography of the subarea would increase the cost of construction "anywhere from $5,000 to $15,000 per lot in additional development costs, depending on site-specific conditions"; the area was more likely to be developed with single-family residences; additional water distribution facilities and transportation access would be expensive; the area was too far from commercial areas for feasible higher-density residential development; and development would be incompatible with nearby farm and forestry operations and with a compact urban form. The city concluded that the area should be excluded from the boundary change under ORS 197.298(3).

In their DLCD objections, petitioners agreed with the city's rationale for excluding the more steeply sloped portions of the subarea, but claimed that the more gently sloped portions adjacent to the current UGB would be suitable to accommodate identified land needs. Petitioners disagreed with the city's limitation of the identified need to higher-density residential use and with the city's adopted rationale *279 for exclusion that relied upon the expense of water service, the feasibility and likelihood of higher-density housing in the area, and the expense of road **1044 extension and distance from commercial areas. After reiterating much of the city's findings, LCDC concluded that

"1000 Friends objects to the exclusion of this area, contending that the city erred in its findings and that the area can accommodate specific types of land needs * * *. Specifically, that this higher priority area can accommodate low-, medium-, or high-density housing even with the constraints of slope, water service costs, transportation difficulties, and should therefore be included. The Commission finds that the city established both that the West Hills area could not

reasonably accommodate the city's identified need and that under ORS 197.298(3)(b), the city could not reasonably provide water, a future urban service, due to the topographical constraint."

On review, petitioner argues that LCDC's determination applies only to the more steeply sloped part of the resource area and not to the more gently sloped area adjacent to the existing UGB. Petitioners further assert that the findings do not identify which land need could not be accommodated, that the reference in the findings to the effects of inclusion of the territory on nearby agricultural land is inappropriate under ORS 197.298(1), and that water services can be extended to the lower portions of the resource area. Respondents claim that the city findings and LCDC restatement of those findings applied to the entire resource area and were sufficient under ORS 197.298(1).

[11] We agree with petitioners in part. The city findings identified a need for higher-density housing. We concluded earlier that ORS 197.298(1) could be applied to prioritize land to satisfy that particular need. The city considered some relevant factors under ORS 197.298(1), including compatibility with adjacent agricultural land, in evaluating the resource area. However, LCDC relied upon the city's findings that applied Goal 14, Factor 3 ("[o]rderly and economic provision for public facilities and services"), in determining suitability under ORS 197.298(1). Because that factor is applied under Goal 14 to evaluate, but not determine, candidate *280 lands (Step Three in the analysis), LCDC erred in its application of ORS 197.298 to the city's findings. Petitioners have not otherwise shown that LCDC incorrectly applied ORS 197.298 or misunderstood the substantial evidence test in approving the city's findings on this issue.

5. *Area north of Fox Ridge Road*

A portion of the area north of Fox Ridge Road (Tax Lot 700) was added to the UGB. Petitioners argue that an additional corridor of land in this area should have been included (Tax Lots 100, 200, 300, and 400). The city determined that Tax Lot 100 and portions of Tax Lot 200, although within the boundaries of the Northwest NAC, should be excluded from the UGB because of limited connectivity with the existing road system and "the steep slopes in the southern portions of these two properties leave only perhaps a 200–foot wide buildable corridor extending across tax lots 700, 200 and 100." The city concluded that those properties should not be included in the boundary "as permitted by ORS 197.298(3)(a)."

In their DLCD objections, petitioners complained that the city failed to address the potential inclusion of Tax Lots 300 and 400 and that the city's factual findings on the soil composition, road connectivity, and buildable lands in the resource area were not supported by the record. LCDC reiterated the city's findings, concluding that,

"[f]or the reasons cited above, the city concluded that the needs identified in the MGMUP cannot be reasonably accommodated by the areas of Class III and Class IV soils within tax lot R4513–00100 or the northern portion of tax lot R4418–00200. The city, therefore, did not include these lands in its expanded UGB, purportedly under ORS 197.298(3)(a). The Commission concludes that the city erred in excluding the lands under ORS 197.298(3)(a). However, pursuant to Goal 2, the city did not need to consider lands under ORS 197.298 that could not reasonably accommodate its identified need."

After noting petitioners' objections "to the exclusion of tax lot 100, the northern portion of tax lot 200, and land west of tax lot 100 from the proposed UGB" and their assertion that the *281 city's findings on the soil composition**1045 of Tax Lots 100 and 200 were wrong, LCDC decided that

"[t]he Commission concludes that the city has established that the excluded lots will have limited future connectivity, are constrained by slope that leaves a limited building corridor, and would create an island of agricultural activity and cut off tax lots 1100 and 1000 from existing farm operations."

On review, petitioners claim that LCDC's findings addressed only part of the area they argued should have been included and failed to address Tax Lots 300 and 400. Petitioners also contend that the reasons for excluding two of the tax lots—road connectivity and cutting off farm parcels—are insufficient if the entire area is included. Respondents argue that LCDC affirmed the city's findings on the unsuitability of Tax Lots 100 and 200 under ORS 197.298 based on a number of relevant considerations (topography, relation to existing and future development, connectivity, and effect on agricultural operations) and that LCDC did not err in its construction of applicable law or application of the substantial evidence test in reaching those determinations.

[12] We agree with petitioners that LCDC failed to address their core contention—that the city did not evaluate, in its adopted findings, whether a larger area of properties north of Fox Ridge Road, with lower-class soils, could reasonably accommodate the city's identified need for residential land instead of the lower-priority land added for that purpose, and that such an evaluation was necessary under ORS 197.298(1).[FN15] LCDC should have determined whether the city's rationale for excluding Tax Lots 100 and 200 was based upon consequences and compatibility considerations relevant under ORS 197.298(1) and whether that rationale was legally sufficient without consideration of a larger area. *282 Instead, LCDC sustained the city's determination "pursuant to Goal 2," using a broader and incorrect "reasonably accommodate" standard in the application of ORS 197.298. And, LCDC did not deal with petitioners' contention that the city's findings were insufficient under ORS 197.298(1) because the city did not address whether the consequences and compatibility concerns about bringing Tax Lots 100 and 200 into the boundary should have been mitigated by including a differently configured area. That determination was necessary to LCDC's conclusion that the city's findings demonstrated its compliance with ORS 197.298(1).

FN15. On remand of the original UGB decision, DLCD directed the city to "identify areas with class 3 and 4 agricultural soils and either (1) include them in the UGB instead of areas with class 1 and 2 soils, if any, or (2) explain why they should not be included based on the standards in ORS 197.298(3)." The city identified the properties with Class III and IV soils that were within one mile of its 1981 UGB. It is not clear whether Tax Lots 300 and 400 fit within that parameter. The "discussion areas" map of alternative lands attached to petitioners' opening brief appears to exclude Tax Lots 300 and 400.

6. *Other resource land areas*

After the remand, the city considered including in the UGB three lower-quality agricultural tracts near the municipal airport: a 197–acre tract north of the airport that is bordered by farmland on three sides; a smaller 35–acre tract on Highway 18 that is situated south of the air museum, and surrounded by the existing UGB except along an access road; and a large tract east of the airport. The city made collective findings on those properties under ORS 197.298, although some of the collective findings appear to be specific to a particular, but unidentified, property (*e.g.*, "[t]his property is also immediately adjacent to the airport approach zone for Runway 17," "[t]his land * * * would be bordered by actively farmed land on three of its four sides"). The findings note concerns with the effects of high-density housing on flight safety and use of adjacent agricultural land as the bases for excluding the properties from the boundary. The city concluded:

"For the above noted reasons, the City concludes that specific types of land needs as identified in the MGMUP cannot be reasonably accommodated on the lands north and east of the McMinnville Municipal Airport, on which are found predominantly Class III or Class IV soils. The City, therefore, has not included these **1046 lands in its expanded urban growth boundary, as permitted by ORS 197.298(3)(a)."

In their DLCD objections, petitioners complained that the city findings made collective assessments about differently situated properties and that the smaller tract next to the museum could be used to satisfy low-density residential land needs. LCDC, after taking administrative notice of the *283 airport master plan, concluded that "[d]evelopment of these lands at urban residential densities would be incompatible with the long range plans for the airport, * * * and would potentially threaten the airport's viability." The commission reiterated some of the city's collective findings that were written as particular to one property. After noting petitioners' concern that the small tract adjacent to the air museum was not analyzed in the findings, LCDC concluded that "the city established that the area cannot reasonably accommodate an identified need due to safety issues related to the airport."

On review, petitioners argue that the smaller 35–acre parcel, which is composed of Class III soils, has particular priority under ORS 197.298(1)(b) (giving second priority to exceptions lands and "resource land that is completely surrounded by exception areas"). Petitioners claim that the city and LCDC did not address that property in particular, instead they lumped it with two other properties that have different compatibility issues. Finally, petitioners argue that, if the basis for excluding this parcel is its unavailability for high-density residential use, that basis does not excuse its potential use for low-density residential needs. Respondents counter that airport safety concerns are relevant issues under ORS 197.298(1) in the application of Goal 14, Factor 3 (orderly and economic provision of services), Factor 4 (maximum efficiency of land uses), and Factor 5 (EESE consequences).

LCDC's findings on this tract are inadequate for judicial review. As noted earlier, the ORS 197.298(1) consequences and compatibility factors apply differently, depending upon whether the quantified land need is for land to be used for low-density residential, mixed-use, or higher-density residential uses. The findings do not explain why the tract was evaluated for higher-density residential land needs alone. Moreover, the findings set out common compatibility

concerns caused by proximity to a runway and flight paths for properties located in different areas and, presumably, with different compatibility issues. As such, the findings lack substantial reason because they do not articulate the ORS 197.298 evaluation for the smaller 35–acre parcel.

*284 Finally, petitioners claim that they called the city's attention to other potential higher-priority resource lands (the Riverside area, land south of the airport, and land south of Three Mile Lane and west of Booth Bend Road), but that those sites were not evaluated, contrary to the then applicable version of OAR 660–004–0020(2)(b)(C),[FN16] a rule applicable to UGB changes made under the older version of Goal 14. Petitioners argue that LCDC erred in failing to remand the decision to the city for that consideration.

FN16. OAR 660–004–0020 was amended in 2011. Those amendments are not relevant to the contentions on review.

The above-cited rule set policy on how to comply with the reasons exception criterion in Goal 2, Part II(c), that "[a]reas which do not require a new exception cannot reasonably accommodate the use." That rule stated that

"[s]ite specific comparisons are not required of a local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described with facts to support the assertion that the sites are more reasonable by another party during the local exceptions proceedings."

As we noted earlier, however, that exception criterion does not apply to evaluating land outside a UGB—all of which required a new exception to Goal 14 as applicable here—for inclusion in the boundary. Instead,**1047 it requires determining if land already inside the UGB—land which does not require a new exception—can reasonably accommodate the need. As such, OAR 660–004–0020(2)(b)(C) did not require the city to evaluate any particular alternative site proposed by petitioners.

Instead, the city applied particular criteria *(e.g.*, within one mile of the 1981 UGB, composition of Class III or IV soils, and within prescribed geographic boundaries) to inventory the lands to be studied. Petitioners did not object to the city or LCDC that those inventory criteria were unlawful or that they had been misapplied to petitioners' suggested alternative resource lands areas. Thus, the commission did *285 not err in failing to require the city to study those areas for inclusion.

D. *Application of Goal 14 locational factors*

Petitioners' first set of contentions relate to Step Two—the application of Goal 14 in determining whether the quantity of land in the priority class is inadequate under ORS 197.298(1). Petitioners claim that, in separately applying the locational factors of Goal 14 to the areas proposed to be added to the UGB, the city and LCDC erred in failing to consider all of the available exception lands collectively and consistently and did not explain how the locational factors—in particular, Factors 3 (public facilities and services), 4 (efficiency of land uses), and 7

(compatibility with agricultural activities)—were balanced to include some exception lands and not others. They assert that Factor 7 was not applied at all in the evaluation of the available exception areas, but was instead applied only to the already included territory.

Respondents protest that those arguments were not made to LCDC and that the commission is not obliged to determine on its own whether those particular deficiencies in the local decision existed. As we said before, petitioners' contentions must be particularly raised before LCDC in order to merit review in this court. Petitioners generally asserted below—in the midst of dozens of more specific objections—that "the city has not conducted a coordinated land priority analysis around the entire UGB perimeter." That is insufficient to raise the specific objection that the city failed to completely consider any particular Goal 14 factor in its evaluation of whether exception lands could reasonably accommodate an identified land need.

Petitioners next argue that LCDC erred in approving the city's Goal 14 evaluation of both the low-value farmland that was excluded from the UGB and the high-value farmland that was included. Petitioners assert that the city and LCDC erred in failing to consider Factor 3 (public facilities and services) in comparing alternative lower-quality resource lands, made no findings about the availability of public services to the Airport North and the Fox Ridge Road North resource areas, and inconsistently evaluated the public services factor in comparing the West Hills resource area *286 with the higher-quality Southwest and Grandhaven areas. According to petitioners, LCDC and the city further erred in not balancing Factor 4 (efficiency of land uses) with other factors in evaluating alternative resource lands, instead subsuming that consideration in the application of ORS 197.298, and in applying Factor 4 to land outside of the "existing urban area." Petitioners also complain that Factor 6 (retention of agricultural lands) was applied in a cursory manner to available resource lands and that LCDC made no findings on that complaint.

Some of those contentions were preserved; others were not. Before the agency, petitioners cited ORS 197.298 and Goal 14 as the bases for their contention that the city erred in excluding certain exception areas and higher-priority resource land. Much of the argument was framed around whether those properties could reasonably accommodate an identified land need, a contention apparently rooted in the requirements of ORS 197.298. As we concluded earlier, the relevant Goal 14 factors in the sorting of suitable higher-priority land under ORS 197.298(1) are Factor 5 (EESE consequences) and Factor 7 (compatibility with agricultural activities) and their analogues in the Goal 2 exception criteria. We earlier determined the legal sufficiency of the city's consideration of exception lands and higher-priority resource lands under ORS 197.298(1); petitioners' restated Goal 14 **1048 contentions about the excluded exception and higher-priority resource lands raise no different and relevant claims.

Petitioners' remaining contentions concern Step Three, the application of Goal 14, Factor 7 (compatibility of proposed urban uses with agricultural lands) to the lands considered for inclusion in the boundary. The city's Factor 7 findings from 2003 on the Norton Lane, Three Mile Lane, Southwest, Northwest, and Grandhaven areas described adjacent agricultural land uses in general terms ("actively farmed land," "active farm use," "agricultural farm use," "actively farmed agricultural land," and "large-parcel farm operations") before concluding that,

"[t]he Council concludes that the proposed expansion areas will not create compatibility conflicts between uses. Much *287 of the existing UGB is adjacent to resource lands that are currently in agricultural uses. Expansion of the UGB would not create new uses that would create new types of compatibility issues."

Before LCDC, among other assertions, petitioners argued that the city's findings on the application of Factor 7 to four of those areas were (1) incomplete because the findings did not consider the particular agricultural activities of nearby land and compare compatibility conflicts among the considered resource lands; and (2) inaccurate because the findings do not examine the boundaries of the redrawn resource lands areas that were altered following remand. In its order, LCDC reiterated the city's findings and affirmed, without further analysis, that the city properly applied Factor 7. We agree with petitioners that LCDC erred in not requiring additional findings on Factor 7. The existing findings were not sufficiently descriptive of nearby agricultural uses to allow comparison among the candidate sites and were inaccurate as to the redrawn boundaries of the resource areas. We reject petitioners' remaining Goal 14 contentions.

VI. CONCLUSIONS

We conclude that the commission erroneously interpreted ORS 197.298 by failing to require that the city first separately quantify its needs for low-density residential land, higher-density residential land, and mixed-use land (Step One) and then apply ORS 197.298(1) and (3) to each of those quantified needs (Step Two), and in permitting the city to exclude land from further consideration under ORS 197.298(1) for immaterial reasons. Further, correct application of ORS 197.298 would compel different actions by the commission in its evaluation of the city's justification for excluding particular exception and resource areas under ORS 197.298. Thus, a remand is appropriate under ORS 183.482(8)(a)(B) (allowing remand to an agency for "further action under a correct interpretation of the provision of law").

On remand, LCDC should respond to petitioners' contentions by making additional findings or taking appropriate action in its review of the city's submissions to (1) determine what particular and quantified land use needs are to be accommodated by any additional land to be added to *288 the McMinnville UGB; (2) apply ORS 197.298 to determine the land available to accommodate those quantified land use needs; (3) apply Goal 14 to justify the inclusion of suitable land in any amended UGB; and (4) take any other necessary action under a correct interpretation of the governing standards, including a determination of whether the city's submission, "on the whole, conform[s] with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature" under ORS 197.747.

Reversed and remanded.

244 Or.App. 239, 259 P.3d 1021

Exhibit H

FILED: January 2, 2014

IN THE COURT OF APPEALS OF THE STATE OF OREGON

1000 FRIENDS OF OREGON,
FRIENDS OF MARION COUNTY, LOLITA CARL,
KATHLEEN CARL, DIANE MIKKELSON,
and MARION COUNTY FARM BUREAU,
Petitioners,

v.

LAND CONSERVATION AND DEVELOPMENT COMMISSION;
CITY OF WOODBURN; and MARION COUNTY,
Respondents.

Land Conservation and Development Commission
11WKTASK001802

A148592

Argued and submitted on March 15, 2013.

Mary Kyle McCurdy argued the cause and filed the briefs for petitioners.

Patrick M. Ebbett, Senior Assistant Attorney General, argued the cause for respondent Land Conservation and Development Commission. With him on the brief were John R. Kroger, Attorney General, and Anna M. Joyce, Solicitor General.

N. Robert Shields argued the cause for respondent City of Woodburn. With him on the joint brief was Gloria M. Roy for respondent Marion County.

Before Armstrong, Presiding Judge, and Nakamoto, Judge, and Egan, Judge.

ARMSTRONG, P. J.

Reversed and remanded for reconsideration.

ARMSTRONG, P. J.

Under Oregon's land use laws, local governments may (and, in some cases, must) engage in periodic review of their comprehensive land use plans. *See* ORS 197.628 to 197.636. As a result of a periodic-review process, the City of Woodburn amended its urban growth boundary (UGB) to include additional land--409 gross acres or about 362 net buildable acres--for industrial use. The city submitted that amendment to the Land Conservation and Development Commission (LCDC) for review. ORS 197.626(1)(b). LCDC approved the city's amendment of its UGB. Petitioners sought judicial review of LCDC's order of approval. We concluded that LCDC's order was inadequate for judicial review and, accordingly, reversed the order and remanded the case to LCDC for reconsideration. *1000 Friends of Oregon v. LCDC*, 237 Or App 213, 239 P3d 272 (2010) (*Woodburn I*). LCDC has now completed that reconsideration and issued a new order approving the city's UGB expansion.

Petitioners again seek judicial review.[1] Petitioners challenge two aspects of LCDC's order: its approval of the amount of industrial land in the UGB amendment and its approval of the inclusion of particular high-value farmland within the UGB as industrial land. Petitioners contend that the city included more industrial land within its UGB than will be developed within the 20-year planning period and that LCDC did not

[1] In the initial judicial review proceeding in this court, the petitioners were 1000 Friends of Oregon, Friends of Marion County, Lolita Carl, Kathleen Carl, Diane Mikkelson, Carla Mikkelson, and Marion County Farm Bureau. In this judicial review proceeding, the petitioners are the same except that Carla Mikkelson does not appear.

adequately explain why that inclusion is consistent with Statewide Land Use Planning Goals 9 and 14 and other rules. Alternatively, petitioners challenge the city's inclusion within the UGB of high-value farm land, which by law has the lowest priority for urbanization. Petitioners assert that, by approving the inclusion of that land, LCDC made a decision that erroneously interpreted the law and is not supported by substantial evidence. Because we conclude that LCDC again did not adequately explain why the city's expansion of its UGB to include an additional 409 acres for industrial use is consistent with pertinent law, we reverse the order and remand for reconsideration. Accordingly, we do not reach the second issue--*viz.*, the inclusion of high-value farmland within the city's UGB.

In the late 1990s, the city began the periodic-review process to update its comprehensive plan and other planning documents. As part of that periodic-review process, the city completed various work tasks and, as relevant here, decided in 2005 to expand its UGB to include 409 gross acres for industrial uses. To support the need for that expansion, the city relied on work performed at its direction by consultant ECONorthwest. That work included an economic-opportunities analysis (EOA)--*see* OAR 660-009-0015 (requiring cities with areas within the UGB to perform an economic-opportunities analysis comparing the demand for land for industrial and other employment uses to the existing supply of such land); an economic development strategy--*see* OAR 660-009-0020 (requiring cities with areas within the UGB to adopt policy stating the economic-development objectives for the planning area, based on the

economic-opportunities analysis required by OAR 660-009-0015); and a site-requirements analysis.[2]

The city justified the number of acres of industrial land that it added to its UGB using a "target-industries" approach developed through the work of ECONorthwest. Put simply, the target-industries approach considers a local government's employment-growth projections and goals for employment, and establishes a framework for attracting the kind of employers that could reasonably be expected to support the kind and amount of employment growth to which the local government aspires. Given the site needs of those particular employers, the local government identifies potentially available land both within and outside its UGB and selects a group of sites and an amount of land that it believes will accommodate the employers that it seeks to attract. The target-industries approach differs from an "employees-per-acre" approach, under which a local government simply projects employment growth and divides that growth by a statistically accepted number of employees per acre of land in order to arrive at the number of acres needed to support employment growth.

In the target-industries approach developed here, the city aimed to promote economic growth by pursuing development that would create higher-paying jobs to attract new residents who would both live and work in Woodburn. To facilitate that goal, the city identified high-wage target industries that it believed might locate in Woodburn

[2] The pertinent Oregon Administrative Rules in this case are those that were in effect when the city amended its UGB on November 2, 2005. Accordingly, all references to the OARs in this opinion are to the rules in effect on that date.

because of its location on I-5 between Portland and Salem. The city then identified the site and building requirements and preferences of the targeted industries. The city also adopted an employment-growth forecast. In light of academic and federal population estimates and forecasts, the city predicted a 20-year employment-growth rate of 3 percent, leading to a projected increase of 8,374 jobs. Ultimately, the city determined that, to further its economic-development strategy and accommodate the volume of job growth that it projected, it needed 42 total industrial sites, 23 of which were available on land within the existing UGB and 19 of which it decided to provide by expanding its UGB into its Southwest Industrial Reserve (SWIR).

In the Woodburn UGB Justification Report, to which LCDC referred in its original order and its order on remand, the city explained the reasons that it needed the additional sites:

> "Goal 14, Land Need factor (2), recognizes that changes to a UGB may be based on demonstrated need for employment opportunities.
>
> "* * * * *
>
> "The employment land needs analysis in ECONorthwest's 'Site Requirements for Woodburn Target Industries' (October 2003) concluded that about 370 acres would need to be developed for basic employment uses to accommodate a mid-range need of 7,140 new employees between 2000 and 2020, <u>based on employee-per-acre ratios</u>. However, *to attract targeted industries*[,] *Woodburn must provide choice among and an adequate inventory of suitable sites. Under the site suitability method, it is possible that some sites may not fully develop during the planning period, either because a portion of the site will be held for future development or because a reserved site will not be selected by a targeted industry.* * * * [T]he proposed Plan includes measures to ensure that * * * such parcels cannot be re-designated for commercial use.

> "Woodburn's employment land needs are designed to meet ORS 197.712 and the Goal 9 Rule (OAR Chapter 660, Division 009) requirements that cities 'identify the types of sites that are likely to be needed by industrial and commercial uses which might expand or locate in the planning area.' <u>To be clear, industrial site needs are not based on floor-area ratios or employee per acre ratios.</u>"

(First and third emphasis in original; second emphasis added; footnotes omitted.)

Petitioners objected to the UGB amendment, and LCDC considered those objections. Petitioners contended, among other things, that the city had included more industrial land within its amended boundary than was needed to accommodate projected industrial job growth or the needs of its target industries and, accordingly, more industrial land than the city expected to develop over the 20-year planning period, in violation of Goal 9, the land use planning goal that addresses economic development. *Woodburn I*, 237 Or App at 222. Petitioners further argued that the city's target-industries approach "inflate[d]" the number of acres that needed to be included within the UGB to accommodate industrial job growth and did not address the demonstrated need for any additional industrial land to be included in the proposed UGB expansion as required by Goal 14, the land use planning goal that addresses urbanization. *Id.*

LCDC approved the city's expansion of its UGB. LCDC reasoned as follows in rejecting petitioners' objections:

> "[The city's UGB Justification Report] identif[ied] the total number of sites required for all the site size needs, and [found] 42 total sites needed for all targeted industries. According to 1000 Friends, this is an oversupply of sites that leads to more land than is justified. *However, the city has designated these sites* to provide for the required short-term supply as well as *to provide market choice among sites. The Commission finds that this is a key component of a successful industrial development strategy, and is*

> *required by OAR 660-009-0025*. In addition, the objection states that the city acknowledges that 'not all of the industrial land proposed for inclusion is expected to develop by 2020.' This is due to the fact that industrial users often choose to purchase a site larger than their immediate need in order to ensure that they have adequate land for future expansion, and the statement referred to by the objector is recognition of that fact. Additionally, OAR 660-009-[0]025(2) specifies that plans must designate serviceable land suitable to meet the site needs identified in Section (1) of this rule. Except as provided for in Section (5) of this rule, the total acreage of land designated must at least equal the total projected land needs for each industrial or other employment use category identified in the plan during the 20-year planning period.
>
> " * * * * *
>
> "In conclusion, the Commission finds that Woodburn's plans for economic development comply with the Goal 9 and Goal 14 rules. The city's employment projection and land needs assessment are reasonable, for the reasons explained in these findings and more particularly described in the Woodburn UGB Justification Report."

Woodburn I, 237 Or App at 222-23 (internal quotation marks omitted; some bracketed material added; emphasis in *Woodburn I*). Petitioners sought judicial review of LCDC's approval of the city's UGB amendments. As we characterized petitioners' arguments in our original opinion, they contended that the city had included more land in the UGB than it would need during the 20-year planning period in violation of Goals 9 and 14, and that LCDC's justification for affirming that inclusion--*i.e.*, that the inclusion is required by OAR 660-009-0025 to provide market choice among sites--is not allowed under Goals 9 or 14. *Id.* at 223-24.

We concluded that LCDC's order did not provide an adequate basis for us to review petitioners' contentions. We noted that, "although LCDC discusse[d] Goal 9 and its implementing rules and conclude[d] that the UGB amendment complies with both

Goals 9 and 14, LCDC provided essentially no reasoning as to that conclusion with respect to Goal 14. In particular, LCDC offered no explanation concerning the reasons that the need factors of Goal 14 are satisfied under the circumstances of this case." *Id.* at 223.

With respect to Goal 9, we stated that LCDC's "mere reference to 'market choice' [was] insufficient to explain the reason that the city's UGB expansion is consistent with that goal." *Id.* at 225. We acknowledged that LCDC might have been correct that some forms of "market choice" would be consistent with Goal 9, but rejected the proposition that *all* "forms and degrees" of market choice would be. *Id.* We concluded that, "given the variety of the industries that the city targeted and the diversity and multiplicity of the sites that the city designated, it [was] incumbent on LCDC to cogently explain the reasons that the degree of market choice employed by the city * * * is consistent with the requirements of Goal 9 and OAR 660-009-0025." *Id.* at 226.

With respect to Goal 14, we observed that "a local government is not permitted to establish [a UGB] containing more land than the locality needs for future growth." *Id.* (internal quotation marks omitted). We noted that LCDC had provided only a summary conclusion that the city's UGB amendment was consistent with Goal 14; LCDC had not referred to or explained how the city had satisfied the Goal 14 need factors. *Id.* We concluded that LCDC's treatment was insufficient to explain why including more land than was expected to be developed during the planning period was consistent with Goal 14. *Id.*

In addition, we noted that compliance with Goal 9 does not necessarily establish compliance with Goal 14. *Id.* Accordingly, and because petitioners had asserted that the UGB amendment violated both goals, LCDC had to explain why the amendment was consistent with both the economic development principles of Goal 9 and the urbanization requirements of Goal 14. *Id.*

In conclusion, we stated:

> "[B]ecause LCDC did not adequately explain the reasons that the UGB amendment--which included more industrial land than will be developed during the planning period so that the city could provide for market choice among sites--was consistent with Goals 9 and 14, its order failed to respond to petitioners' objections and [was] inadequate for judicial review * * * concerning the propriety of the UGB amendment."

Id. at 226-27.

On remand, LCDC circulated a draft revised order to the parties and considered written and oral arguments. On March 16, 2011, LCDC issued a revised order again approving the city's amendment of its UGB. LCDC's analysis rests on two foundations: first, what it characterized as a "close correlation" between the need for industrial land calculated using the employees-per-acre approach and the need for industrial land determined using the target-industries approach, and second, the city's analysis of population, employment, target industries, and site requirements, which LCDC concluded provided a factual and analytical base to establish that the city's decision was consistent with Goal 14, Goal 9, and ORS 197.712 (setting out comprehensive plan requirements). For the reasons explained below, we conclude that

1 LCDC's analysis is not supported by substantial reason.[3]

2 LCDC began its analysis by comparing the projected land need (in

[3] We note that our standard of review of LCDC orders like the one in this case has changed since we decided *Woodburn I*. In 2011, after LCDC issued its revised order in this case and after petitioners had sought judicial review of that order, the legislature amended ORS 197.650 (and other statutes, including ORS 197.633, which includes the standard of review LCDC is to apply to local government actions) at the request of DLCD to alter the standards of review that both LCDC and this court will apply in, among other things, periodic review proceedings. Or Laws 2011, ch 469; *see also* Or Laws 2011, ch 469, § 9 (making amendment effective on passage, June 23, 2011). In so doing, the legislature intended to streamline, in a coordinated way, the process of review--before both LCDC and this court--of local government decisions on UGB amendments. *See* Audio Recording, Senate Committee on Environment & Natural Resources, HB 2031, May 24, 2011, at 52:14 (statement of Bob Rindy, Policy Analyst and Legislative Coordinator, DLCD), https://olis.leg.state.or.us (accessed Dec 19, 2013); Audio Recording, Senate Floor Debate, HB 2031, June 8, 2011, at 56:10 (statement of Senator Dingfelder, carrier of the bill), http://olis.leg.state.or.us (accessed Dec 19, 2013); Staff Measure Summary, Senate Committee on Environment and Natural Resources, HB 2031, June 7, 2011. As pertinent here, under the 2011 amendments, the standard of review described in ORS 197.651(10)--which is substantively akin to our standard of review of Land Use Board of Appeals orders--replaced the standard derived from the Administrative Procedures Act, which we had generally applied when reviewing an LCDC order such as the one in this case. *See* ORS 197.650(1) (2009) (providing, in part, that LCDC orders "may be appealed to the Court of Appeals in the manner provided in ORS 183.482"); *see also Woodburn I*, 237 Or App at 223-27 (applying that standard; reasoning that, to be adequate for judicial review, LCDC's order had to demonstrate substantial reason).

Here, as noted above, before the 2011 amendments became effective, LCDC conducted its post-remand review of the city's actions and issued its revised order--which noted that "[j]udicial review is pursuant to the provision[s] of ORS 183.482 and 197.650"--and petitioners sought judicial review of that order. In light of that unique posture, we conclude that the former standard of review in ORS 197.650(1) (2009) applies. That understanding is consistent with what we understand to be the legislature's intent in adopting Oregon Laws 2011, chapter 469, as a coordinated package of legislation that would streamline review of local government decisions regarding their UGBs. *See also 1000 Friends of Oregon v. LCDC*, 244 Or App 267-68, 259 P3d 1021 (2011) (applying pre-2011 standard of judicial review where the case was pending before the effective date of the 2011 amendments and our decision issued thereafter).

1 buildable acres) based on employment projections and an employee-per-acre calculation-

2 -*viz.*, 311 acres--with the projected land need based on the target-industries approach used

3 by the city--*viz.*, 362 acres. LCDC stated that "the relatively close correlation" between

4 those two numbers "provide[d] important corroboration for the city's ultimate decision

5 concerning the amount of land needed for industrial and office uses."[4] Generally, LCDC

6 wrote:

7 "The more a city's land need for employment based on its analysis of
8 economic opportunities and sites diverges from what would be predicted
9 based solely on forecasted population and employment growth and
10 employee-per-acre ratios, the more thoroughly the city will need to
11 substantiate its economic opportunities analysis and resulting site needs. In
12 effect, the population and employment projections (Goal 14, factor 1),

[4] Petitioners contend that, on remand, LCDC impermissibly added the projected land need for "office" employment to the projected land need for "industrial" employment to support its conclusion that the city added a permissible amount of industrial land to its UGB. As we explain below, we conclude that the prong of LCDC's analysis that relies upon that calculation does not meaningfully support its conclusion. Accordingly, we need not address petitioners' argument that LCDC impermissibly added "office" and "industrial" land needs together. We note, however, that LCDC argues on judicial review that the city's "target industries" included both "industrial industries" (*e.g.*, printing and publishing, electronics fabrication) and "non-industrial industries" (*e.g.*, nondepository credit institutions, health services). And the city relied on the projected employment and site needs of all the targeted industries--both "industrial" and "non-industrial"--to justify the expansion of its UGB to include more land for industrial use. It is not readily apparent to us why the targeting of *nonindustrial* employers justifies inclusion within the UGB of any land for *industrial* use. Moreover, the site requirements analysis provided by ECONorthwest provides limited support for the conclusion that the targeted employers require industrial-zoned land. In the site-requirements analysis, ECONorthwest specifically described the site needs for most of the target industries (there is no specific description of the site needs of the industry identified as Industry #36 "Electronics - Fab Plants"--the industry that purportedly needs lot sizes of 100 to 300 acres). As to the four "non-industrial industries," the site requirements analysis indicated that those employers could locate on commercially zoned land. And, even the description of the needs of some of the "industrial industries" (*e.g.*, printing & publishing, wholesale trade) mentions no particular zoning need for the pertinent employer.

> serve as an elastic constraint on a community's projected land needs based on the aspirations and opportunities (Goal 14, factor 2 and Goal 9), as documented through an EOA and through site requirements. The further the two diverge, the stronger the substantiation required that future opportunities are real (in the sense of land need under Goal 14, factor 1) and not speculative."

Here, according to LCDC, the two numbers (311 and 362) are "relatively close," and so LCDC determined that the population and employment projections "support a conclusion that the city's UGB expansion for industrial and office uses contains an amount of land that is reasonably related to both its forecasted growth (Goal 14, factor 1) and its employment opportunities (Goal 14, factor 2, and Goal 9)."

LCDC did not explain why a close correlation between projected land need based on an employee-per-acre ratio and projected land need based on a target-industries analysis "corroborates" the number projected by the target-industries analysis. Moreover, although LCDC indicated that a local government with a target-industries-based number that is "more" divergent from the employee-per-acre-based number will need to provide "more" thorough substantiation of its EOA and site needs, it gave no content to that analysis: how much more "divergence" requires how much more substantiation? Here, the numbers diverge by more than 16 percent. Would 20 percent no longer be considered "close"? Most importantly, LCDC did not explain why the relationship between the two numbers, in any case, should relieve it from reviewing--or local governments from explaining--why the amount of land proposed to be added to the UGB is consistent with the goals and other law just as carefully as it would if the correlation were not "close." We are not persuaded that the purportedly "close correlation" in this case provides

analytical support for LCDC's conclusion that the city added a legally permissible amount of industrial land to its UGB. Accordingly, we turn to the other justifications for approval of the UGB expansion in LCDC's order on remand to determine whether they support the conclusion that LCDC reached.[5]

In its order on remand, LCDC concluded that the city's analysis of population, employment, target industries, and site requirements provided a factual and analytical base to establish that the city's decision was consistent with Goal 14, Goal 9, and ORS 197.712. LCDC thoroughly reiterated the steps undertaken by the city and its consultant in order to arrive at the conclusion that, under a target-industries analysis and to support the economic opportunities that the city wished to offer, the city needed to add 409 gross acres of land for industrial use. The city indeed engaged in a lengthy process,

[5] In its brief in this judicial review proceeding, LCDC identifies the "close correlation" approach as LCDC's "analytic framework" for evaluating this case. LCDC noted that DLCD Director Richard Whitman acknowledged that there was a "certain element of professional judgment by the experts advising the city as to whether [these] sites are necessary to achieve these employment opportunities" and that such an approach "appear[ed] to give to a consultant" a "degree of discretion" that might lead to "discomfort." Accordingly, Whitman explained, "[t]hat's why we looked at the employee-per-acre approach as a check on that to see if the numbers were in fairly close alignment * * *." In its brief, LCDC conceded that, given the "close correlation" between the employee-per-acre number and the target-industries number, "LCDC did not closely scrutinize the substantiation behind the city's stated needs. Instead, it accorded the city a fair amount of deference." Aside from the "close-correlation" comparison, however, LCDC's brief does not identify how it reasoned that the city's land need complied with the law. LCDC's brief does point to LCDC's reliance on the city's "exhaustive and comprehensive assessment of the site needs of its target industries," but we do not understand LCDC to argue that that reliance provides independent reasoning. Although LCDC appears to argue that the only analytical underpinning for the order on remand was the "close correlation" calculation, we nonetheless have reviewed the other justifications in LCDC's order to determine whether they provide substantial reason for its decision.

resulting in a voluminous record, in this periodic-review process. Similarly, LCDC, in its order on remand, recounted in detail the steps that the city took in engaging in and documenting its process. LCDC also walked through applicable goals and other legal provisions, and concluded that the city's expansion of its UGB was consistent with each. What is lacking, however, is a meaningful explanation of *why* the steps taken by the city satisfy those legal standards. Instead, LCDC recounted all the steps that the city took and then concluded--without analysis--that those steps are factually and analytically supported, and are consistent with the law.

LCDC's discussion of Goal 14, factor 2, is illustrative:

> "The city's population and employment forecasts provide context for the city's determination of its need for employment opportunities under Goal 14, factor 2 * * *. The commission finds that there is a reasonable relationship between the city's estimate of 8,374 new jobs during the 2000-2020 planning period and the amount of land it has determined is needed for employment opportunities based on its analysis of economic opportunities, target industries and suitable sites. The commission concludes that for these reasons, and the reasons set forth in the department's response to the written argument of the parties (dated January 7, 2011 and expressly incorporated by this reference) that the amount of land the city has added to its UGB is consistent with both Goal 9 and Goal 14. The city has not added more land than needed during the 20-year planning period. Nor, despite some contradictory statements in the city's planning documents, has it added land in order to provide for 'market choice' (as explained in more detail below). Instead, the amount of land included in the UGB expansion is based on a reasonable projection of what target industries the city is most likely to succeed in attracting or having expand during the planning period, and the site requirements of those industries (the types of sites companies in those industries typically require in order to locate in a community). Finally, * * * the commission also finds that the city's estimate of land need is reasonably related to its projections of population and employment growth during the planning period.
>
> "The commission further finds that the city has demonstrated compliance with Goal 14, factor 2 * * * through its analysis of target industries and

suitable sites needed to provide employment opportunities that are reasonably likely to generate the employment needed for the city's current and projected future population. In this instance, the target industries methodology the city used is appropriate and complies with * * * Goal 14, factor 2. Using an employees-per-acre methodology is not required to demonstrate compliance with * * * Goal 14, factor 2, and the city did not use it to demonstrate total land need. The city's decision to use a targeted industries methodology instead of an employees-per-acre [methodology] is permissible under Goal[ ] * * * 14. As explained above, the city's decision to plan for employment opportunities rather than projected employment based on population growth does not mean that the city added more land than it needs for employment during 2000-2020.

"Goal 9 and Goal 14, factor 2, and the commission's Goal 9 rule (OAR 660-009-0025(2)(2005)) require the city to plan for an amount of land in each site category that at least equals the projected land needs for each category during the 20-year planning period. The city projected land needs by size class--tied to the particular requirements of its target industries, and demonstrated a need for approximately 409 gross acres of land after accounting for sites within the prior UGB. The commission finds that the city's analysis complies with Goals 9 and 14, as well as OAR 660-009 (2000).

"* * * * *

"The city's decision * * * complies with Goal 14, factor[ ] 2 * * *. Goal 14 requires that 'Establishment and change of urban growth boundaries shall be based on the following: (1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and (2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2). In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need.'

"* * * * *

"The city complied with Goal 14, factor 2 by identifying its employment opportunities through an economic opportunities analysis, and by establishing the site requirements for target industries needed to accomplish the 20-year economic strategy and associated city policies.

> "The commission finds that the city identified a reasonable set of site requirements for its target industries. The portfolio of sites chosen by Woodburn is a reasonable estimation, based on expert opinion, for the city to rely on as to its employment opportunities and corresponding land needs for the planning period.
>
> "The commission finds that the city's use of target industries to identify employment need over the planning period is consistent with the city's population and employment projections. Employment forecasts inform policy decisions and afford local governments the ability to plan a future different from historical trends."

That discussion, while lengthy, does not include reasoning. It includes findings of fact (including facts about what the city or its consultant did during the periodic-review process) and statements of law or policy. It also includes conclusions that the facts in this case satisfy the law. It does not include the reasoning that led LCDC from the facts to its conclusion.

We have extracted each proposition included in LCDC's discussion and categorized it as follows:

- Employment forecasts inform policy decisions and allow local governments the ability to plan a future that differs from historical trends. (statement of policy)
- The city's population and employment forecasts provide context for the city's determination of employment need. (statement of policy)
- The city's estimate of land need is reasonably related to the city's projections of population and employment growth. (conclusion)
- To demonstrate compliance with Goal 14, factor 2, a local government need not use an employees-per-acre methodology, but may use a target-industries

methodology. (statement of law)

- The city did not use an employees-per-acre approach; it used a target-industries approach. (finding of fact)
- The city's decision to use a target-industries approach was permissible under Goal 14, factor 2. (conclusion)
- The city's determination of employment need was based on its analysis of economic opportunities, target industries, and suitable sites. (finding of fact)
- The city's analysis of target industries and sites needed to support employment opportunities and future population demonstrate compliance with Goal 14, factor 2. (conclusion)
- The city's decision to plan for employment opportunities *(i.e.*, use the target-industries approach) rather than projected employment based on population *(i.e.*, use the employees-per-acre approach) does not mean that the city added more land than needed during the employment period. (conclusion)
- The amount of land that the city included in the UGB expansion was based on a reasonable projection of the target industries that the city is most likely to attract or have expand during the planning period and the site requirements of those industries. (conclusion)
- The city identified a reasonable set of site requirements for its target industries. (conclusion)
- The "portfolio" of sites that the city chose was based on expert opinion and is a

reasonable estimate of what the city will need to provide the land needed to support the employment opportunities that it has chosen. (finding of fact; conclusion)

- The city has demonstrated compliance with Goal 14, factor 2, through its target-industries and site-needs analysis. (conclusion)
- A local government must plan for an amount of land that will meet at least the projected land need for each category during the planning period. (statement of law)
- The city projected land needs by class size tied to the needs of its target industries. (statement of fact)
- The city took into account sites within the existing UGB. (statement of fact)
- The city demonstrated a need for 409 gross acres of land. (conclusion)
- The city's analysis complies with Goals 9 and 14 and OAR 660-009. (conclusion)
- The city complied with Goal 14, factor 2, by identifying its employment opportunities through its EOA and by establishing the site requirements that its target industries would need to accomplish the city's economic strategy. (conclusion)
- The city did not add more land to the UGB than it will need during the 20-year planning period. (conclusion)
- The city did not add land to the UGB in order to provide market choice. (conclusion)

To the extent that LCDC intended to base its conclusion that the city's actions complied with Goal 14, factor 2, on the proposition that the city had engaged in a particular process, that is insufficient. If it were sufficient, local governments could establish compliance with Goal 14, factor 2, simply by verifying that they had engaged in the correct process, regardless of their conclusions. Substantial reason requires, at the least, an explanation of why the process in which a local government engaged *and* the results that it reached are consistent with the law.

In addition, LCDC incorporated into its discussion of Goal 14, factor 2, "the reasons set forth in the department's response to the written argument of the parties." We have examined that response and conclude that it fails to supply LCDC's order with substantial reason. The response relies on the same two foundations described above: (1) the "close correlation" between the amount of land actually added to the UGB and the amount that would have been added using an employees-per-acre approach ("[E]ven under the employee per acre method of estimating future land need, the approximately 360 net acres of land that the city has added to its UGB for industrial and office uses * * * is reasonably related to the amount of land shown to be needed under a traditional employee per acre methodology.") and (2) the city engaged in "steps [that] are a permissible means of complying with Goals 9 and 14[.]" As we have explained, those foundations do not provide substantial reason.

We have carefully reviewed LCDC's entire order on remand, and we conclude that LCDC did not adequately explain the reasons that led it to conclude the

city's UGB amendment complied with applicable law. As noted, in light of that disposition, we do not address petitioners' arguments regarding the inclusion of certain high-value farmland within the UGB as industrial land.

Reversed and remanded for reconsideration.

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30 December 2008

TO: **Springfield City Council and Planning Commission**
FROM: **Bob Parker**
SUBJECT: **OPPORTUNITY AREAS FOR EMPLOYMENT SITES AND REQUIREMENTS FOR UGB ALTERNATIVES ANALYSIS**

This memorandum presents a brief description of state planning requirements for the modifications of Urban Growth Boundaries (UGBs). It also includes maps of lands outside the UGB, with a specific focus on 10 employment opportunity areas.

The objectives of this memorandum (and our January 12th meeting) are to provide the City Council and Planning Commission with:

- An overview of opportunity areas for employment
- Background information on the Alternatives Analysis

PRELIMINARY EVALUATION OF LANDS OUTSIDE THE SPRINGFIELD UGB

The draft economic opportunities and housing needs analyses both conclude that Springfield will need to expand its UGB to accommodate growth forecast for the 2010-2030 period. The exact acreage of the expansion is not yet known; it will depend on the types of land use efficiency measures the City adopts, as well as the specific areas that it chooses to expand into.

As a first step in the Alternatives Analysis, ECONorthwest worked with City staff to develop a series of maps showing characteristics of lands adjacent to the existing Springfield portion of the Metropolitan UGB.[1] The primary study area lands adjacent to the Springfield portion of the Metropolitan UGB. The following maps support this memorandum:

- Map 1: Aerial photo of study areas
- Map 2: Study area zoning (exceptions, marginal land, resource land)
- Map 3: Study area constraints

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[1] The evaluation does not consider lands inside the Eugene portion of the Metropolitan UGB, or lands west of Interstate 5.

- Map 4: Study area soil class
- Map 5: Study area national wetlands inventory and hydric soils

POTENTIAL AREAS FOR EMPLOYMENT

The EOA concludes the City will need to add employment sites to the UGB. Chapter 5 of the EOA identifies a need for larger sites (>5 acres), and some very large sites (three sites >50 acres). Chapter 5 of the EOA also identifies site characteristics that are specific to different industries. Because of the need for larger sites, and the more specific siting characteristics, planners often start the alternatives analysis by identifying potential employment sites.

At its November meeting, the Technical Advisory Committee identified the following employment opportunity areas. This was largely a brainstorming session to conduct a first-cut analysis.

1. North Gateway Area
2. Hayden Bridge Area
3. North Springfield Highway Area
4. Far East Springfield Area
5. Wallis Creek Road Area
6. West Jasper/Jasper Bridge Area
7. Clearwater Area
8. South of Mill Race Area
9. Seavey Loop Area
10. Goshen Area

The map on the following page shows the approximate location of the employment opportunity areas. The Stakeholder Committee will discuss the sites at our next meeting scheduled for January 5th. We will summarize the Committee's comments at the beginning of the January 12th worksession.

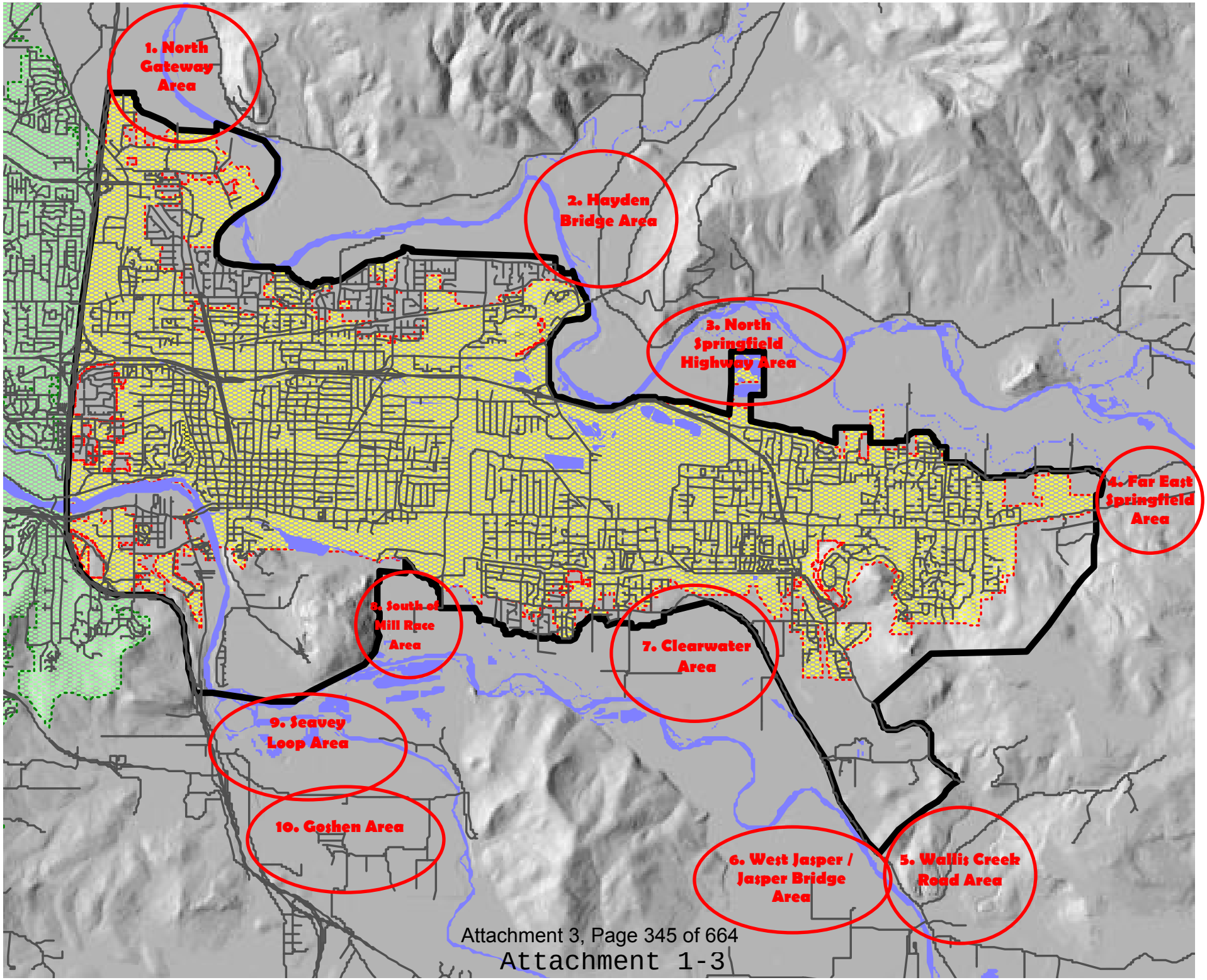
1. North Gateway Area
2. Hayden Bridge Area
3. North Springfield Highway Area
4. Far East Springfield Area
5. Wallis Creek Road Area
6. West Jasper / Jasper Bridge Area
7. Clearwater Area
8. South of Mill Race Area
9. Seavey Loop Area
10. Goshen Area

Table 1. Employment Opportunity Areas: Public Service Opportunities and Constraints

The following table summarizes public service opportunities and constraints based on information from the Springfield Technical Advisory Committee (TAC). The table is draft, and will be refined through additional discussions with staff and the TAC.

Area	Water	Wastewater	Stormwater	Transportation	Public Safety	Comments
1. North Gateway		May require pumping station Existing sewer in close proximity Potential higher cost than other areas	No developed system, wetlands, riparian areas and natural resources areas. Permitting required for new outfalls	No internal road network Access from existing farm roads Limited capacity at I-5/Beltline interchange Underpass/overpass provides potential access		Portions of the site are in the floodplain and floodway
2. Hayden Bridge		May require pumping across river, then Potential gravity flow Potential higher cost than other areas	No developed system Need to acquire base data	Access from Marcola Road Existing bridge in place		Some floodplain / floodway located west of Marcola Rd. Some steep slopes located east of Marcola Rd.
3. North Springfield Highway		May require a pump station for some areas – mostly gravity flow	wetlands, riparian areas and natural resources areas. Permitting required for new outfalls	Potential access to I-105 and High Banks Road		Portions of the site are in the floodplain and floodway
4. Far East Springfield		May require pumping station	Needs planning and infrastructure	Access from E. Main Street		Some steep slopes
5. Wallis Creek Road		Potential gravity flow area	Needs planning and infrastructure	Access from Jasper Rd. Existing bridge would likely need upgrade for increased traffic generation		Not a lot of floodplain area

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Area	Water	Wastewater	Stormwater	Transportation	Public Safety	Comments
6. West Jasper/ Jasper Bridge		May require pump station	Needs planning and infrastructure	Access from Jasper Road		Large portion of rural residential / commercial land
7. Clearwater		Potential gravity flow area Existing sewer in close proximity New sewer extension planned along Jasper Road	Needs flood study Needs planning and infrastructure	Access from Jasper Road		Some floodplain along existing UGB Large portions without floodplain
8. South of Mill Race		Existing sewer in close proximity Potential gravity flow area	Needs flood study Needs planning and infrastructure Limited discharge opportunities	Access to S. 28th St. & S. M St.		Existing SUB well fields in place Mostly publicly owned land
9. Seavey Loop	No existing water service	Need sewer extension from Glenwood Upgrades to existing pump station Potential gravity flow area	Needs flood study Needs planning and infrastructure Limited discharge opportunities	Limited capacity at I-5/30th Street interchange Need for rail and river crossings Opportunities for rail access		Opportunities for parkland at river confluence area School capacity may be limited
10. Goshen		Potential gravity flow area Potential higher cost than other areas	Needs planning and infrastructure			

Table 2. Employment Opportunity Areas: Site Characteristics and Suitability

The following table summarizes the suitability for development by building type in each of the employment opportunity areas. The table also presents the site characteristics (identified in the economic opportunities analysis (EOA)) that make the opportunity area suitable. The building types identified in the EOA are: Warehousing and Distribution (W&D), General Industrial (GI), Office (Off.), Retail (Ret.), and Other Services (OS). The EOA identified need for sites 5 acres and larger in each of these building types.

Area	Suitability by Building Type					Site Characteristics that make the site suitable	Comments
	W &D	GI	Off.	Ret.	OS		
1. North Gateway	●	●	●	○	●	Potentially 50+ acre site(s) Located near I-5 interchange Relatively flat Surrounding uses compatible with warehousing and industrial uses Visible from I-5 or arterial streets	Potential demand for land in the North Gateway area (according to Jack Roberts) Willing multiple owners (according to Jack Roberts)
2. Hayden Bridge	⊘	⊘	●	○	●	Sites 5+ acres Access to arterial streets Slopes less than 15% Surrounding uses are compatible with office, retail, and other service uses Visible from arterial or collector streets	High amenity area presents opportunities for corporate head quarters or other commercial
3. North Springfield Highway	⊘	⊘	●	○	○	Sites 5+ acres Type of street access Slopes less than 15% Surrounding uses are compatible with office, retail, and other service uses	
4. Far East Springfield	⊘	⊘	●	○	○	Sites 5+ acres Access to arterial streets Areas with slopes less than 15% Surrounding uses are compatible with office, retail, and other service uses Visible from arterial or collector streets	

Area	Suitability by Building Type					Site Characteristics that make the site suitable	Comments
	W &D	GI	Off.	Ret.	OS		
5. Wallis Creek Road	⊘	●	○	⊘	⊘	Potentially 50+ acre site(s) Type of street access Slopes less than 15% Surrounding uses are compatible with industrial, office, retail, and other service uses	
6. West Jasper/ Jasper Bridge	⊘	●	○	⊘	⊘	Potentially 50+ acre site(s) Type of street access Slopes less than 15% Surrounding uses are compatible with industrial, office, retail, and other service uses	
7. Clearwater	⊘	⊘	○	○	○	Sites 5+ acres Access to collector and neighborhood streets Slopes less than 15%	
8. South of Mill Race	⊘	⊘	○	○	○	Sites 5+ acres Access to collector and neighborhood streets Slopes less than 15% Surrounding uses are compatible with office, retail, and other service uses	
9. Seavey Loop	●	●	○	⊘	○	Potentially 50+ acre site(s) Located near I-5 interchange Relatively flat Surrounding uses compatible with warehousing, industrial, office, and other service uses Rail access	Opportunity for denser industrial development Commercial firms have expressed interest in this area (according to Jack Roberts)

Area	Suitability by Building Type					Site Characteristics that make the site suitable	Comments
	W &D	GI	Off.	Ret.	OS		
10. Goshen	●	●	⊘	⊘	⊘	Potentially 50+ acre site(s) Located near I-5 interchange Relatively flat Surrounding uses compatible with warehousing, industrial, office, and other service uses	May meet regional industrial land need

Note: ● Highly suitable ○ Somewhat suitable ⊘ Unsuitable

POLICY CONTEXT FOR ALTERNATIVES ANALYSIS

This section provides a brief overview of statewide planning goal 14 (Urbanization) and related statutes and administrative rules that govern UGB expansions. These include Goal 14, ORS 197.298, and OAR 660-024. .

Goal 14: Urbanization

The purpose of goal 14 is:

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

The goal requires that incorporated cities establish UGBs. Moreover, any UGB amendments must be a collaborative process that involves cities and counties and must be adopted by both the city and the county.

Goal 14 requires change of urban growth boundaries be based on the following:

(1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and

(2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories.

Goal 14 includes two other need provisions that are relevant: (1) "in determining need, local governments may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need"; and (2) "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." In summary, needs can include land characteristics and cities must consider whether needs can be met within the existing UGB before expanding the UGB.

This is germane to the first steps in the Alternatives Analysis. For example, the City could choose to identify certain areas such as lands with steep slopes or lands in federal ownership as not meeting identified needs.

Priority of lands

ORS 197.298 establishes a priority of lands for consideration in UGB expansions:

> (a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan. (Springfield does not have urban reserve areas; therefore, this does not apply).
>
> (b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land.

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> Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.
>
> (c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247. (Lane County is a marginal land county; therefore, this applies to Springfield).
>
> (d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both.

In short, there are three priorities that apply to Springfield. First priority is exception areas or non-resource lands, and may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland. Second priority is marginal land. Third priority is resource land.

Goal 14 provides some additional guidance on boundary locations 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.

These factors provide direction on selection of lands within the priority scheme and also outline some reasons why lower priority lands may be part of an expansion area if they may better address these factors than lands in higher priority categories. The ORS 197.298 priority scheme is relatively rigid, but the Goal 14 factors allow some flexibility. ORS 197.298 and Goal 14 allow some exceptions to the priority scheme based on "special" needs. For example, if a city identifies a need for lower cost housing that can only be developed on flat land, then that may be a reason to include some resource lands before, or together with, exceptions lands. Such an exception would require additional justification and must be supported by solid technical analysis.

Division 24: The Urbanization Rule

In 2006, the Land Development and Conservation Commission adopted amendments to the Urbanization Rule (OAR 660-024) that were intended to clarify the process of amending UGBs. We have referred to this rule, and some of the safe harbors it establishes, in work on the housing and economic elements.

Subsection 0050 clarifies the procedures for land inventories and local government response to land deficiencies. OAR 660-024-0050(4) requires cities to amend UGBs in response to land deficiencies:

> "If the inventory demonstrates that the development capacity of land inside the UGB is inadequate to accommodate the estimated 20-year needs… the local

> government must amend the plan to satisfy the need deficiency, either by increasing the development capacity of land already inside the city or by expanding the UGB, or both, and in accordance with ORS 197.296 where applicable. Prior to expanding the UGB, a local government must demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB. Changes to the UGB must be determined by evaluating alternative boundary locations consistent with OAR 660-024-0060."

Based on the Economic and Housing Elements, preliminary land needs have been identified. In the draft Urbanization Element presented to the Committee, the findings of the buildable lands inventory and land needs analysis are that some of the need will be met within the UGB, but that additional buildable land will be needed.

Boundary Location Alternatives Analysis

OAR 660-024-0060 requires cities conduct an "Alternatives Analysis" when considering a UGB amendment. The alternatives analysis (the part of the UGB review process that we are now moving into) requires all lands adjacent to the existing UGB be reviewed (e.g., a ring around the UGB). Relevant sections of OAR 660-024-0060 specify the following:

> (1) When considering a UGB amendment, a local government must determine which land to add by evaluating alternative boundary locations. This determination must be consistent with the priority of land specified in ORS 197.298 and the boundary location factors of Goal 14, as follows:
>
> > (a) Beginning with the highest priority of land available, a local government must determine which land in that priority is suitable to accommodate the need deficiency determined under 660-024-0050.
> >
> > (b) If the amount of suitable land in the first priority category exceeds the amount necessary to satisfy the need deficiency, a local government must apply the location factors of Goal 14 to choose which land in that priority to include in the UGB.
> >
> > (c) If the amount of suitable land in the first priority category is not adequate to satisfy the identified need deficiency, a local government must determine which land in the next priority is suitable to accommodate the remaining need, and proceed using the same method specified in subsections (a) and (b) of this section until the land need is accommodated.
> >
> > (d) Notwithstanding subsection (a) through (c) of this section, a local government may consider land of lower priority as specified in ORS 197.298(3).
> >
> > (e) For purposes of this rule, the determination of suitable land to accommodate land needs must include consideration of any suitability characteristics specified under section (5) of this rule, as well as other provisions of law applicable in determining whether land is buildable or suitable.
>
> …

(3) 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.

(4) In determining alternative land for evaluation under ORS 197.298, "land adjacent to the UGB" is not limited to those lots or parcels that abut the UGB, but also includes land in the vicinity of the UGB that has a reasonable potential to satisfy the identified need deficiency.

(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.

(6) The adopted findings for UGB adoption or amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis. If the analysis involves more than one parcel or area within a particular priority category in ORS 197.298 for which circumstances are the same, these parcels or areas may be considered and evaluated as a single group.

(7) For purposes of Goal 14 Boundary Location Factor 2, "public facilities and services" means water, sanitary sewer, storm water management, and transportation facilities.

(8) The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:

(a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the UGB;

(b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the UGB; and

(c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

Exhibit J

CITY OF SPRINGFIELD, OREGON
225 FIFTH STREET • SPRINGFIELD, OR 97477 • PH: (541)726-3610 • FAX: (541)726-3689

UGB / Commercial Industrial Buildable Lands (CIBL) Stakeholder Committee

Meeting Minutes

Monday, January 22nd, 2009
6:00pm – 8:00pm
Springfield City Hall
225 Fifth Street, Springfield, OR
Library Meeting Room

These minutes summarize the discussion of the Committee. A record of the full discussion is provided on the city's website along with other materials from this and past Committee meetings.

I. Attendance:

Stakeholders: Brianna Huber, Mike Kelly, George Grier, Lee Beyer, Kari Westlund, Johnny Kirschenmann, Naomi Campollo, Dave Marra, Doug McKay, Dan Egan, Guy Weese, Steven Yett, Philip Farrington, Don Oldenburg.

Staff: David Reesor; Linda Pauly; Bob Parker; Beth Goodman; Bill Grile; John Tamulonis; Mark Metzger

II. Greetings / Routine Business

1. Roll Call
2. Review of Minutes – Minutes approved as written
3. Public Testimony – None noted

III. Review of Employment and Residential lands Opportunity Area

Bob Parker presented a 15 minute summary of the input from the City Council, Planning Commission and Technical Advisory Committee concerning the ten "Opportunity Areas" using the memorandum, "Summary of Input from Council/Planning Commission…" that was included in the meeting packet. Areas 9 and 10 were grouped together for the discussion and map.

Shown below are a few key statements made about each Opportunity Area:

Area 1: North Gateway Area

The primary constraints are transportation related. Stacking at the Gateway/Beltline intersection is an issue that has repercussions for the I-5 interchange as well as local traffic.

Area 2: Hayden Bridge Area

There may be deed restrictions on land in the area limiting additional land division. There may be wetland constraints in the area as well.

Area 3: North Springfield Highway Area

There are concerns about the accuracy of floodplain mapping for the area. It is likely that there are serious floodplain and floodway issues in this area. Improvements are planned for the Hwy 126/52nd Street interchange that may improve access to Hwy 126 from Area 3. Area 3 drains to Cedar Creek which has been noted to be at capacity already.

Area 4: Far East Springfield Area

Cedar Creek drainage capacity is also a constraint for this area. There are also steep slope constraints affecting parts of the area.

Area 5: Wallace Creek Road Area

Slope issues make this area a better candidate for residential development than employment uses.

Area 6: West Jasper/Jasper Bridge Area

Floodplain issues and the complications of crossing the Willamette River with urban services are significant constraints.

Area 7: Clearwater Area

The TAC raised a question about whether the rail line which runs parallel to Jasper Rd. would limit access to the site. The area was thought to be a better candidate for residential development than employment uses.

Area 8: South of Millrace Area

Transportation access to the area is limited to South 28th at this time. SUB's Willamette wellfield in the southwest corner of Area 8 may complicate development for employment uses, depending on the type of use and the chemicals used. .

Area 9 Seavey Loop and Goshen Area

Areas 9 and 10 were combined for discussion as per direction from the last meeting. TAC members suggested that a separate wastewater treatment facility may be required to serve the area. The rail line may limit transportation access to the area. The 30th Ave/I-5 interchange is scheduled for improvement. The improvements may enhance access to this area.

General Discussion about the Opportunity Area Summary

Committee members asked about how they could recommend/prioritize opportunity areas without knowing in more detail how much of each area is free of constraints. Staff indicated that the Committee, at this step in the process, is to provide feedback of a general nature that identifies both opportunities and constraints for each site. The prioritization process helps staff to focus their attention as they continue to refine their analysis potential expansion area. Staff will work in

the coming months to more carefully calculate the extent of known constraints on each site and to gather additional information from Public Works on the serviceability of each site.

Concerns were expressed that identifying potential expansion areas that might trigger speculative buying of land in agricultural areas. Such speculation could drive land prices up and make in doing so, take them out of agricultural production by making them too expensive.

Prioritization of Employment Opportunity Areas

The Committee first considered the prioritization of sites offered by the TAC and discussed their own priority areas. Discussion led to recommendations for first tier (high priority) second tier (middle priority) and third tier (low priority) sites.

After extensive discussion staff summarized the Committee prioritization for employment uses and asked for confirmation that the priority list was accurate. The list is shown below

Priority Employment Opportunity Areas

High Priority	North Gateway (Area 1); Seavey Loop/Goshen (Areas 9/10)
Middle Priority	South of Millrace (Area 8); Hayden Bridge (Area 2); North Springfield Highway (Area 3)
Low Priority	Far East Springfield (Area 4); Wallace Creek Road (Area 5); West Jasper/Jasper Bridge (Area 6); Clearwater (Area 7)

Prioritization of Residential Lands

The Committee asked for clarification about "next steps" and how the Residential Lands Study will be integrated with the CIBL work. Staff reiterated that the Committee's work will give staff focus for refining the opportunity site analysis and in doing so, these broad areas would shrink. Following this time of more detailed staff analysis, a public workshop (or other similar public outreach) would be conducted to seek landowner and general public feedback on the opportunity areas. The process would culminate in a joint meeting of the Committee and the Springfield Planning Commission to look at a refined opportunity area recommendation.

Staff provided some background on the work of the Residential Lands Committee which last met in 2007. The Residential Committee established the assumptions and definitions to be used in identifying an inventory of residential buildable lands. These were reviewed and approved by the Planning Commission and City Council. Work on the Residential Lands study has been delayed while Lane County sought to compile a "coordinated population estimate" which includes an assumed rate of growth for each city in the county. This growth rate estimate is essential to projecting the land supply that will be needed to meet future housing needs.

City staff first proposed an average annual growth rate of 1.7% based on the average annual growth rate that had actually occurred since the 1999 Eugene-Springfield Residential Lands Study was adopted. Based on that rate of growth a preliminary land need of about 1000 acres was estimated.

More recently, the Council chose to adopt the new "safe harbor" population projection of about 1.1% in hopes of reducing exposure to appeal and expediting the approval process.

Staff indicated that they hope to return to the Committee at its February 26th meeting with a more definitive residential land need estimate.

Staff emphasized that for this meeting, the focus of discussion of potential residential sites and their priority should be kept at a broad level as has been the case with the employment lands.

Priority Residential Opportunity Lands**

Higher Priority	Far East Springfield (Area 4); Wallace Creek Road (Area 5); West Jasper/Jasper Bridge (Area 6); Clearwater (Area 7)
Lower Priority	North Gateway (Area 1); North Springfield Highway (Area 3); South of Millrace (Area 8); Seavey Loop/Goshen (Areas 9/10)

**The Committee engaged in a round-robin discussion of their priority residential lands but did not come to consensus/closure as it did with the employment lands. It was recognized that some of the high priority employment lands had some potential for residential development because of their size and or constraints. Some of the higher value residential areas listed on the table are burdened with significant constraints. This table is a broad interpretation of the input provided by Committee members. No attempt was made to differentiate between "high, medium and low priority."

Closing Remarks

Committee members expressed a desire to have more specific direction for discussion. Provide more direction for members so that they can provide more specific input. Members also asked for a more specific description of the "next steps" in the process and the role that the Committee will be asked to play.

Chairperson Egan expressed his strongly held opinion that cheesecake should be provided in celebration of the Committee's work at the February 26 meeting.

IN THE BOARD OF COUNTY COMMISSIONERS, LANE COUNTY, OREGON

ORDINANCE NO. PA 1290	IN THE MATTER OF AMENDING THE LANE COUNTY RURAL COMPREHENSIVE PLAN TO CONTINUE APPLYING CERTAIN INVENTORIES, POLICIES AND FINDINGS OF THE EUGENE SPRINGFIELD METROPOLITAN AREA GENERAL PLAN TO THOSE SPECIFIED LANDS REMOVED FROM THE METRO PLAN BY ORDINANCE NO. PA 1281 AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES.

WHEREAS, through Ordinance No. PA 1281, the partners of the Eugene-Springfield Metropolitan Area General Plan (Metro Plan) have jointly modified the boundaries of the Metro Plan; and

WHEREAS, on lands being removed from the Metro Plan pursuant to Ordinance No. PA 1281, policies and applicable findings related to inventoried Goal 5 resources are required to provide necessary protections and policy guidance; and

WHEREAS, the previously adopted Goal 5 inventories, policies and findings contained in the Metro Plan for Riparian Areas, Wetlands, Wildlife Habitat, Mineral and Aggregate Resources and Open Space provide necessary protections and policy direction for those Goal 5 resources on lands that are being removed from the Metro Plan; and

WHEREAS, Lane County and the City of Springfield have agreed to provide opportunity to the City to review and be a decision maker on proposed Post Acknowledgment Plan Amendments (PAPAs) to the Rural Comprehensive Plan for areas within sensitive ground water 2 year time of travel zones as depicted in the Springfield Drinking Water Protection Plan more specifically identified in Exhibit B; and

WHEREAS, necessary Rural Comprehensive Plan findings and policies must exist to provide decision makers a reasonable basis to formulate decisions pertaining to such PAPAs, which may potentially impact sensitive ground water sources; and

WHEREAS, findings and policies currently exist within the Metro Plan and Rural Comprehensive Plan, which the City of Springfield finds will be appropriate to address aforementioned need; and

WHEREAS, the proposal was reviewed at a joint public hearing with the Lane County Planning Commission, the City of Springfield Planning Commission and the City of Eugene Planning Commission on July 19, 2011, and August 16, 2011; and

WHEREAS, the proposal was also reviewed at a joint public hearing with elected officials of Lane County, the City of Springfield and the City of Eugene on March 13, 2012; and

WHEREAS, evidence exists in the record indicating that the proposal meets the requirements of Lane Code and applicable state law; and

WHEREAS, the Board of County Commissioners is now ready to take action.

NOW, THEREFORE, the Board of County Commissioners of Lane County ordains as follows:

Section 1. The Goal 5 policies of the Rural Comprehensive Plan are amended as reflected in Exhibit A attached and incorporated herein by this reference to;

A. Continue applying the acknowledged Goal 5 inventories, policies and findings of the Eugene-Springfield Metropolitan Area General Plan (Metro Plan) to all lands removed from the Metro Plan by Ordinance No. PA 1281; and

B. Incorporate additional findings and policies contained within the Metro Plan and the Lane County Rural Comprehensive Plan to continue providing a basis for future decisions made by the City and County regarding PAPA applications within sensitive ground water time of travel zones as depicted in the Springfield Drinking Water Protection Plan and more specifically identified in Exhibit B attached and incorporated herein by this reference.

Section 2. The prior policies, plan and zone diagram designations repealed or changed by this Ordinance remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

Section 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such section shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

FURTHER, although not part of this Ordinance, the Board of County Commissioners adopts findings in support of this action as set forth in Exhibit "E" to Ordinance No. PA 1281, incorporated here by this reference.

ENACTED this 4th day of June, 2013.

Sid Leiken, Chair
Lane County Board of Commissioners

Recording Secretary for this Board Meeting

APPROVED AS TO FORM
Date 1/9/13 Lane County
OFFICE OF LEGAL COUNSEL

4. The County shall protect the sites of hydroelectric resources through conditional or special use provisions of its resource zones. Sites for which a license has been applied for with federal and state authorities, or for which water impoundments of more than 100 acre – feet are proposed, or which will generate power in excess of 75 KW, shall be shown on the Plan as a special designation, an Exception to applicable LCDC Goals taken if necessary, and aspecial zoning district applied. At that time, the Goal 5 rule conflict analysis shall also be carried out.

5. For additional energy policies see Goal 3.

Water Resources

1. State policy normally promotes multiple use of surface waters throughout Lane County. Under such policy, use conflicts can and do occur. As the first step in addressing this problem, the County urges the Oregon Water Policy Review Board and the Department of Environmental Quality to update the existing water basin plans and establish priorities among the various beneficial uses for specific water areas. The economic, social, environmental and energy consequences of each use should be considered in establishing priorities and resolving any identified conflicts. Lane County will cooperate to the maximum extent practicable in such a program.

2. The County supports congressional reauthorization of upper Willamette basin reservoirs, to reflect actual use priorities. To the extent practicable, the County will cooperate with the Corps of Engineers in resolving existing use conflicts and accommodating the needs of competing uses.

3. Adequacy of water supply, particularly those relying on groundwater sources, shall be a major concern in reviewing major land use changes. For t h e purpose of applying this policy, major land use change shall be any application reviewed by the Hearings Official or the Planning Commission.

4. The primary means of evaluating groundwater resources for land use planning purposes shall be through t h e land division review process. The Little Butte Volcanics, Eugene Formation, Fisher Formation, Spencer Formation, Flourney Formation, Alluvium and Older Dunes geological units shall be designated as quality and/or quantity limited aquifers. As such the provisions of Chapter 13, Lane Code (Land Divisions) regarding areas so designated will apply.

5. Land use designations in the Comprehensive Plan and implementing zoning shall be commensurate with groundwater aquifer capacities.

Lands Removed from the Eugene- Springfield Metropolitan Area General Plan

1 For those lands located outside of the City of Springfield's Urban Growth Boundary that were removed from the Eugene-Springfield Metropolitan Area General Plan (Metro Plan) by Ordinance No. PA 1281, the above listed RCP Goal 5 policies shall not apply. Instead, the Goal 5 inventories, policies and findings of the Metro Plan for Riparian Corridors, Wetlands, Wildlife Habitat, Mineral and Aggregate Resources and Open Space shall continue to be applicable to those lands by this policy to the same extent they were applicable when those lands were included in the Metro Plan.

2 In reviewing Post Acknowledgment Plan Amendment (PAPA) applications for lands located within sensitive 2- Year Time of Travel Zones identified in the Springfield Drinking Water Protection Plan and further specifically depicted on Exhibit B of Ordinance No. PA 1290 the following Metro Plan and Lane County Rural Comprehensive Plan findings and policies shall be considered:

1. Metro Plan, The Fundamental Principles Chapter of the Metro Plan including Metropolitan Goals, Environmental Resources, paragraphs 1, 2, 3 and 4,
2. Metro Plan, Metropolitan Goals, Public Facilities, paragraph 1,
3. Metro Plan, Environmental Resources Element, Agricultural Lands (Goal 3), Policies 1-4,
4. Metro Plan, Environmental Resources Element, Riparian Corridors Wetlands and Wildlife Habitat (Goal 5), Policy 8,
5. Metro Plan, Environmental Resources Element, Mineral and Aggregate Resources (Goal 5), findings 12, 13, 14,
6. Metro Plan, Willamette River Greenway, River Corridors and Waterways Element, Goal and Policies D5, D6 and D 10,
7. Metro Plan, Public Facilities and Services Element, Policy G3,
8. Metro Plan, Public Facilities and Services Element, Services to Development with the Urban Growth Boundary: Water, Findings 11, 12 and 13 Policies 9, 10, 11 and 12,
9. Metro Plan, Public Facilities and Services Element, Locating and Managing Public Facilities Outside the Urban Growth Boundary, Finding 36,
10. Lane County Rural Comprehensive Plan, Goal 5 Open Spaces, Scenic and Historic Areas and Natural Resources, Mineral and Aggregate Resources, Policies 1-11,
11. Lane County Rural Comprehensive Plan, Goal 5 Open Spaces, Scenic and Historic Areas and Natural Resources, Water Resources, Policies 1-4,
12. Lane County Rural Comprehensive Plan, Goal 6 Air, Water and Land Resources, Water Quality, Policies 1-7

WELLHEAD PROTECTION AREAS

Time of Travel Zones (Feb 2008 Delineations) and UGB-MetroPlan Boundaries

City of Springfield and Springfield Utility Board

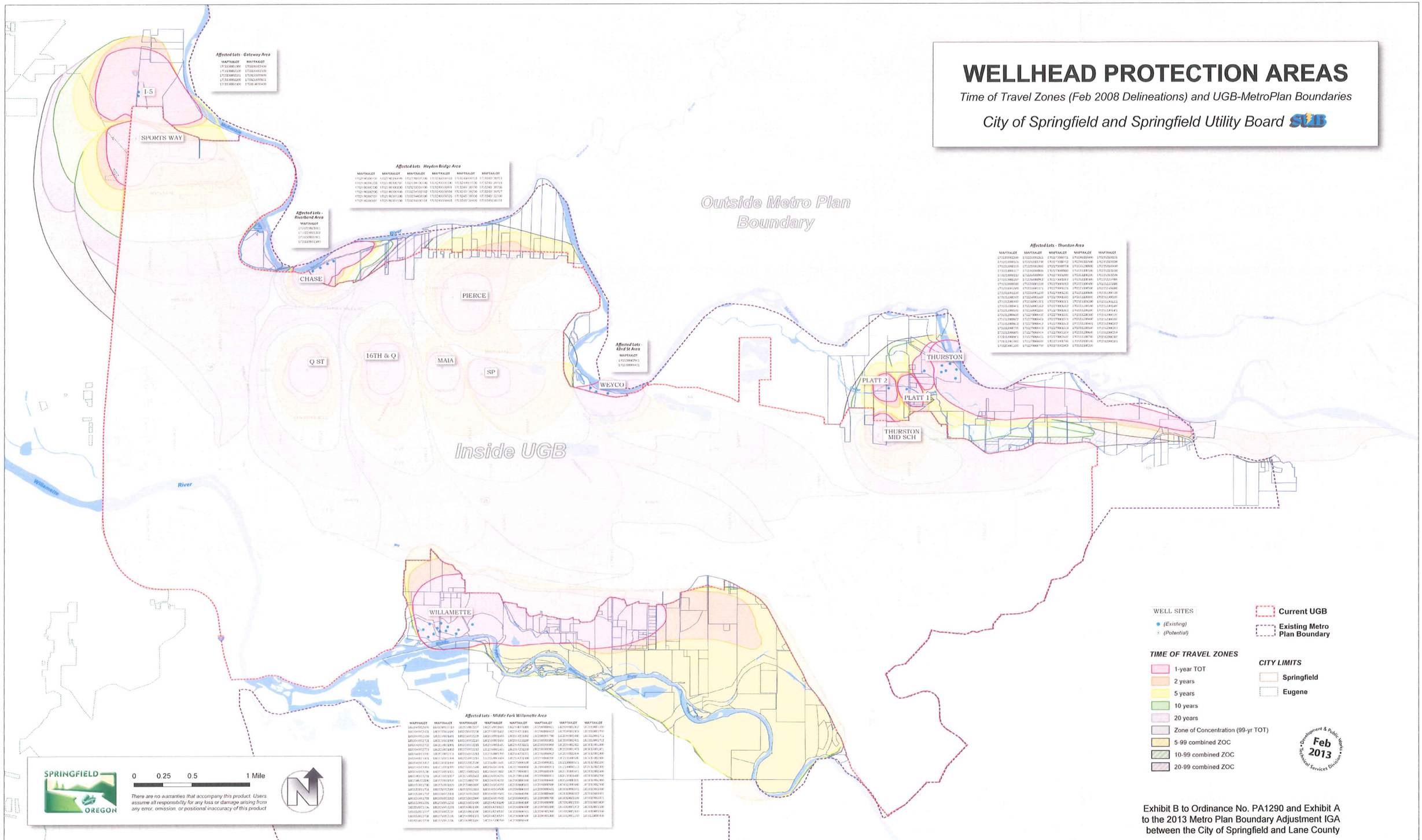


Exhibit B to Ordinance No. PA1290 and Exhibit A to the 2013 Metro Plan Boundary Adjustment IGA between the City of Springfield and Lane County

Oregon's Statewide Planning Goals & Guidelines

GOAL 14: URBANIZATION

OAR 660-015-0000(14)

(Effective April 28, 2006)

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

Urban Growth Boundaries

Urban growth boundaries shall be established and maintained by cities, counties and regional governments to provide land for urban development needs and to identify and separate urban and urbanizable land from rural land. Establishment and change of urban growth boundaries shall be a cooperative process among cities, counties and, where applicable, regional governments. An urban growth boundary and amendments to the boundary shall be adopted by all cities within the boundary and by the county or counties within which the boundary is located, consistent with intergovernmental agreements, except for the Metro regional urban growth boundary established pursuant to ORS chapter 268, which shall be adopted or amended by the Metropolitan Service District.

Land Need

Establishment and change of urban growth boundaries shall be based on the following:

(1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and

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

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

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

Boundary Location

The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:

(1) Efficient accommodation of identified land needs;

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

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

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

Urbanizable Land

Land within urban growth boundaries shall be considered available for urban development consistent with plans for the provision of urban facilities and services. Comprehensive plans and implementing measures shall manage the use and division of urbanizable land to maintain its potential for planned urban development until appropriate public facilities and services are available or planned.

Unincorporated Communities

In unincorporated communities outside urban growth boundaries counties may approve uses, public facilities and services more intensive than allowed on rural lands by Goal 11 and 14, either by exception to those goals, or as provided by commission rules which ensure such uses do not adversely affect agricultural and forest operations and interfere with the efficient functioning of urban growth boundaries.

Single-Family Dwellings in Exception Areas

Notwithstanding the other provisions of this goal, the commission may by rule provide that this goal does not prohibit the development and use of one single-family dwelling on a lot or parcel that:

(a) Was lawfully created;

(b) Lies outside any acknowledged urban growth boundary or unincorporated community boundary;

(c) Is within an area for which an exception to Statewide Planning Goal 3 or 4 has been acknowledged; and

(d) Is planned and zoned primarily for residential use.

Rural Industrial Development

Notwithstanding other provisions of this goal restricting urban uses on rural land, a county may authorize industrial development, and accessory uses subordinate to the industrial development, in buildings of any size and type, on certain lands outside urban growth boundaries specified in ORS 197.713 and 197.714, consistent with the requirements of those statutes and any applicable administrative rules adopted by the Commission.

GUIDELINES

A. PLANNING

1. Plans should designate sufficient amounts of urbanizable land to accommodate the need for further urban expansion, taking into account (1) the growth policy of the area; (2) the needs of the forecast population; (3) the carrying capacity of the planning area; and (4) open space and recreational needs.

2. The size of the parcels of urbanizable land that are converted to urban land should be of adequate dimension so as to maximize the utility of the land resource and enable the logical and efficient extension of services to such parcels.

3. Plans providing for the transition from rural to urban land use should take into consideration as to a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.

4. Comprehensive plans and implementing measures for land inside urban growth boundaries should encourage the efficient use of land and the development of livable communities.

B. IMPLEMENTATION

1. The type, location and phasing of public facilities and services are factors

which should be utilized to direct urban expansion.

2. The type, design, phasing and location of major public transportation facilities (i.e., all modes: air, marine, rail, mass transit, highways, bicycle and pedestrian) and improvements thereto are factors which should be utilized to support urban expansion into urbanizable areas and restrict it from rural areas.

3. Financial incentives should be provided to assist in maintaining the use and character of lands adjacent to urbanizable areas.

4. Local land use controls and ordinances should be mutually supporting, adopted and enforced to integrate the type, timing and location of public facilities and services in a manner to accommodate increased public demands as urbanizable lands become more urbanized.

5. Additional methods and devices for guiding urban land use should include but not be limited to the following: (1) tax incentives and disincentives; (2) multiple use and joint development practices; (3) fee and less-than-fee acquisition techniques; and (4) capital improvement programming.

6. Plans should provide for a detailed management program to assign respective implementation roles and responsibilities to those governmental bodies operating in the planning area and having interests in carrying out the goal.

LANFEAR
CONSULTING
LLC

MEMORANDUM

Date: January 29, 2014

To: Bill Kloos
From: Thom Lanfear TL
Subject: Zoning Research
Map 18-03-11 Taxlot 700

Taxlot 700 on Assessment and Taxation Map 18-03-11 lies east of the right-of-way of McVay Highway and west of the SPRR right-of-way within the original Donation Land Claim #59. The northern portion is within the urban growth boundary of Springfield and the Metro Plan boundary. The southern portion is within the Rural Comprehensive Plan of Lane County; however, a small central portion of the taxlot was within the Metro Plan boundary from 1980 to 2013.

Taxlot 700 was initially zoned C-2 at the time of adoption of Ordinance 223 in 1966. Due to its' inclusion in the Metro Plan boundary during the 1980's, this area did not undergo a change in zoning in 1984 when the Rural Comprehensive Plan (RCP) was developed. While the southern portion of taxlot 700 was included in the Developed and Committed Lands exception 412-1 and given a RR-5 designation in February 1984, the C-2 area outside of the urban growth boundary but within the Metro Boundary remained unchanged.

The official zoning map is now in error where it shows a zoning of SG for the portion of taxlot 700 within the RCP and outside of the former Metro Boundary. This area should reflect the RR-5 zoning applied when the County included the area in the developed and committed exception area 412-1 in the Board Order 89-1-25-10. The area formerly within the Metro Plan boundary should reflect the only zoning ever applied to the property, which is the C-2 zone designation adopted in Ordinance 223 on July 27, 1966. The C-2 area of taxlot 700 connects the northern area within the urban growth boundary with the rural residential area found in the southern portion of taxlot 700.

Exhibits

1. Real Property Tax Lot Record Map & Tax Lot 1803110000700
   Map 18-03-11 Taxlot 700 is described as: All that part of DLC #59 Notification #3286 in Section 2, 3, 10, & 11, Township 18 South, Range 3 West, lying east of the County Road, except the right of way belonging to S.P. Co. Except: That portion in T. L. 2300 on Map 18-03-11-3.

2. Maps of DLC #59 T18S R03W
   These maps illustrate the shape and positioning of DLC # 59 within Section 11.

3. Current Assessment & Taxation Map 180311

541 WILLAMETTE ST. SUITE 402 EUGENE, OREGON 97401 541-345-8139 TLANFEAR@PACINFO.COM

4. 1975 Assessment & Taxation Maps
   180301 & 180302
   1803034 & 180304
   1803101 & 1803104
   180311 & 18031122
   1803113 & 180312
   These maps illustrate the taxlot boundaries in the area as configured in 1975.

5. Ordinance No. 223
   This Ordinance adopted July 27, 1966 applied the first zoning to Section 11 of Township 18 South Range 3 West. Zoning was applied by metes and bounds descriptions. Taxlot 700 appears to fall within the description of Area A on Page 2 of the Ordinance.

6. Zoning Map 180311
   This map is the zoning map used in the planning department during the early 1970's.

7. Zoning Map 180311 (portion)
   This is an enlargement of the top left corner of the 1970's zoning map that identifies the specific placement of C-2 zoning on taxlot 700 on August 25, 1966.

8. Ordinance No. 604
   This Ordinance applied SG zoning to the area east of the railroad and south of the Middle Fork Willamette River in 1976.

9. Current Zoning Maps
   These maps show the SG zoning in error on the southern portion of taxlot 700 and the gap in zoning within the former Metro Plan boundary.

10. Ordinance No. 856
    This Ordinance adopted developed and Committed Lands findings for area within the Metro Plan boundary in 1982. Taxlot 700 was not included in the area closest to the property which was Area 13A.

11. Developed and Committed Findings Exception 412-1
    These findings for Board Order 89-1-25-10 include a listing for taxlot 700 including all 2.73 acres. The associated map clearly illustrates the Exception Area boundaries within taxlot 700 extending north to the Metro Plan boundary as it was located at the time (1989).

12. Ordinance No PA 884
    This Ordinance adopted the Developed and Committed Lands findings for Exception Area 412-1 in 1984 which applied RR-5 zoning to taxlot 700 to the area outside of the Metro Plan boundary.

13. Official Plan Map Plot #412 (1984)
    This Map reflects the Developed and Committed Lands area for taxlot 700 adopted in 1984. It clearly shows the gap on the west side of the river between the urban growth boundary and the Metro Plan boundary.

14. Draft Plot Map 412 (portion)
    This map was the map formerly adopted as the zoning map in Ordinance No. PA 884. It shows taxlot 700 within the boundaries of the RR-5 zone extending to the Metro Area Boundary.

Real Property Tax Lot Record

Lane County Assessment and Taxation
Print Date: Dec 18, 2013

In preparation of these records, every effort has been made to offer the most current, correct, and clearly expressed information possible. Nevertheless, inadvertent errors in information may occur. In particular but without limiting anything here, Lane County disclaims any responsibility for typographical errors and accuracy of this information. The information and data included on Lane County servers have been compiled by Lane County staff from a variety of sources, and are subject to change without notice to the User. Lane County makes no warranties or representations whatsoever regarding the quality, content, completeness, suitability, adequacy, sequence, accuracy, or timeliness of such information and data.

In 2011, Assessment and Taxation was awarded an economic development grant which facilitated the scanning of the approximately 160,000 then-existing tax lot records. The scanning took place between February and June 2012.

The legal descriptions contained herein are for tax lot purposes only.

Included in this report:

1. A listing of documents affecting ownership and/or property boundary changes.
2. The scanned tax lot record image and any legal description changes made since .

Map & Tax Lot	1803110000700	**Current Parcel/Account**	**Current TCA**
Status	Active	0663532	01901

Document #	Type	Date	Effective Year	Tax Lot Acres
	Description Card			2.73

Comments:

EXHIBIT 1

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR LANE COUNTY, OREGON

663 532

18215
OLD NUMBER

CODE NO.

MAP NO. 18.03.11	TAX LOT NO. 12 of Sec.11	SECTION 10 11	TOWNSHIP 18 S.	RANGE 3W W.M.	AERIAL PHOTO
ACCOUNT	NUMBER 700				

LOT NO.	BLOCK NO.	ADDITION	CITY

INDENT EACH NEW COURSE TO THIS POINT	LEGAL DESCRIPTION	DEED RECORD DATE OF ENTRY	DEED RECORD DEED NUMBER	ACRES REMAINING
	2-293-4		PCM No ref.	No.
	All that part of D. L. C. #59, Notif. #3286 in Sections 2, 3, 10 & 11, Township 18 South, Range 3 West, lying East of the County Road, except the right of way belonging to the S. P. Co.	1885 1914 1923 1927	VS/P49 V105/P221 V137/P79 V152/P584*	
	Containing			3.0
	Except: That portion in T. L. 2300 on map 18-03-11-3.			
	Acreage corrections 1970			
	Containing more or less			2.73

*Desciption does not read as above but is included therein.

** Notice - Please place an 8 in front of DLC Number when searching for specific DLC corner records. Example NE Corner DLC 37 will be 837010**

T18S R03W

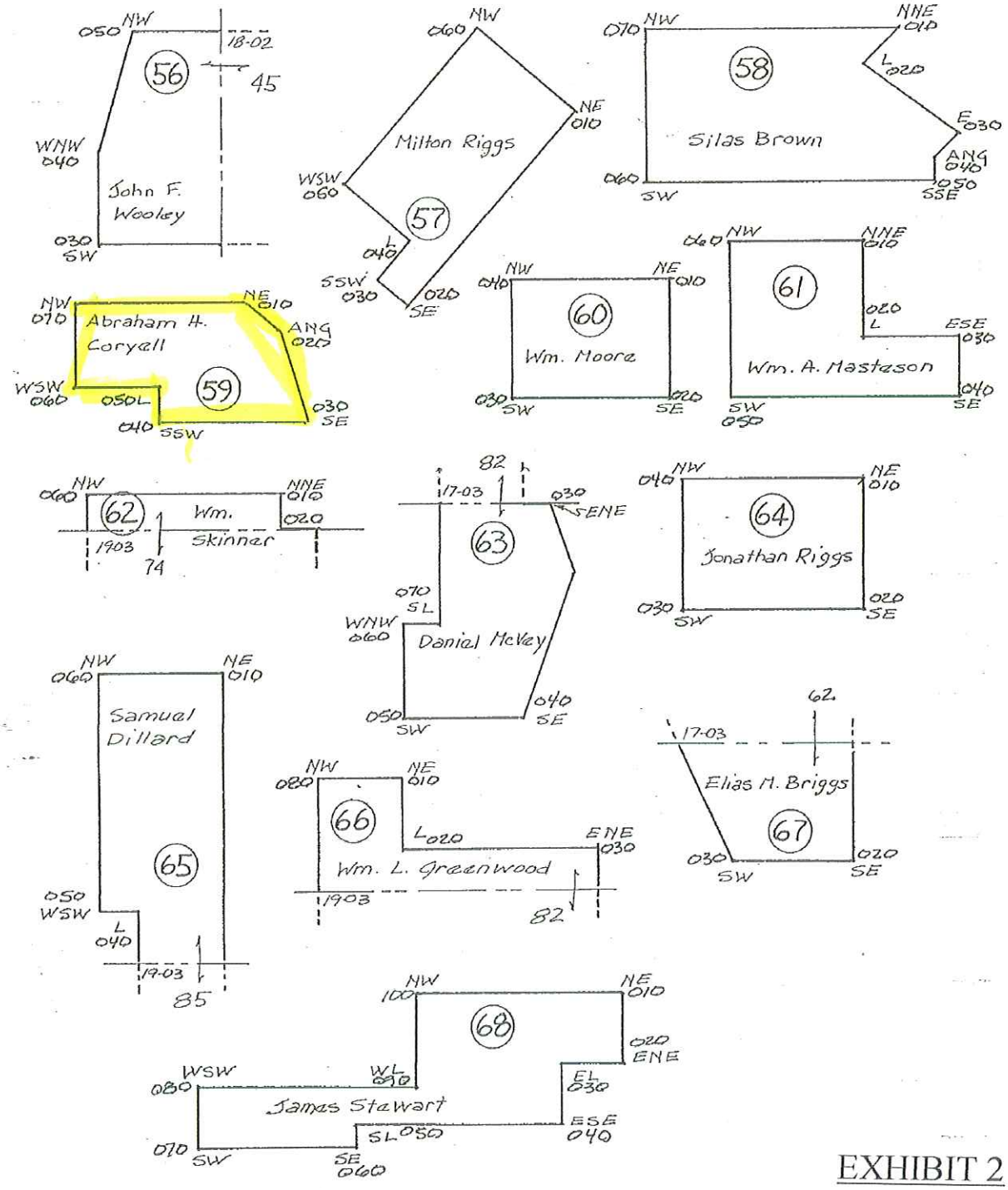
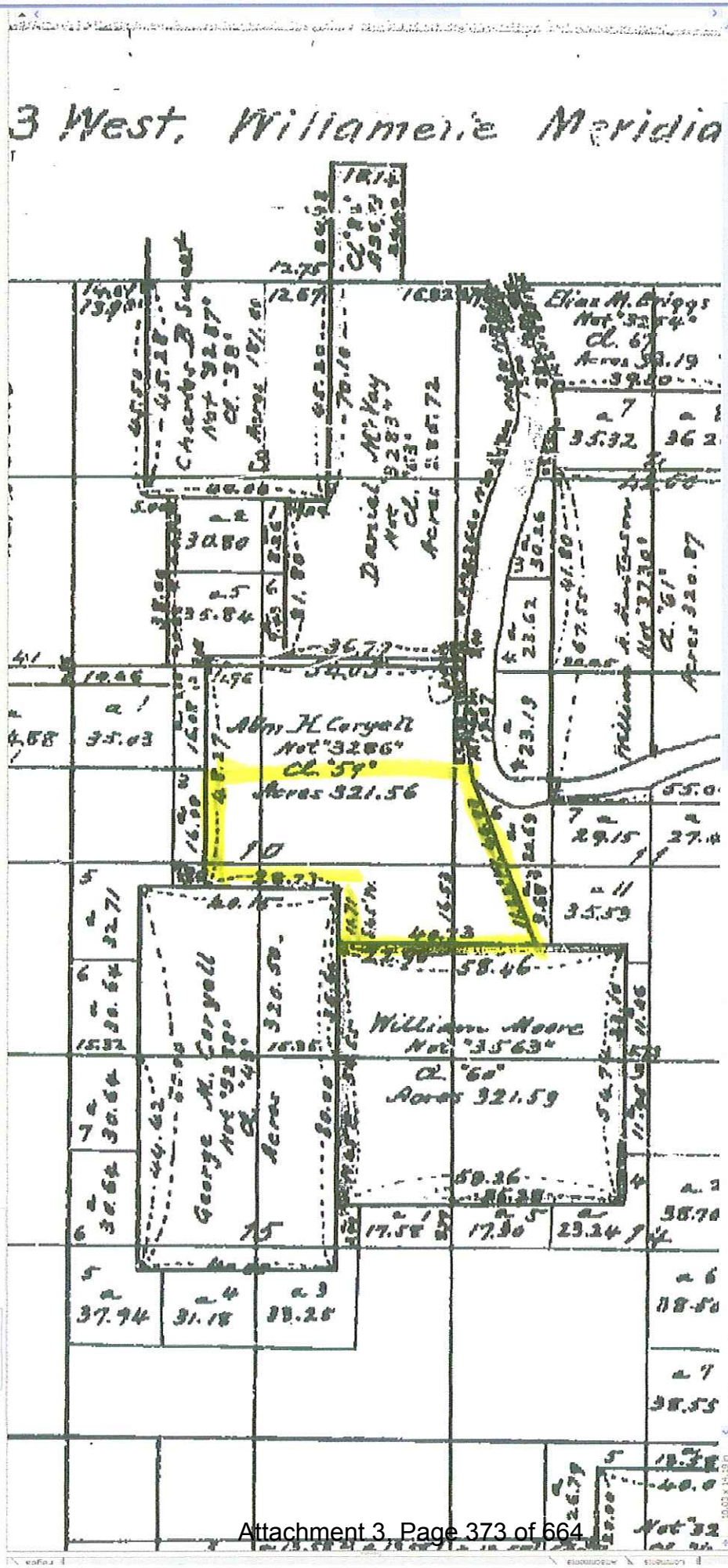


EXHIBIT 2

NOT TO SCALE


3 West, Willamette Meridia
Elias M. Briggs
Chamber
Daniel McKay
Albert H. Coryell
Acres 321.56
William Moore
Acres 321.59
George H. Coryell
Acres

FOR ASSESSMENT AND TAXATION ONLY

SECTION 11 T.18S. R.3W. W.M.
Lane County
1" = 400'

18031100

GIS DATA
5/5/2010 4:03:53 PM : lcatpg

CANCELLED:
100
1606
1700
900

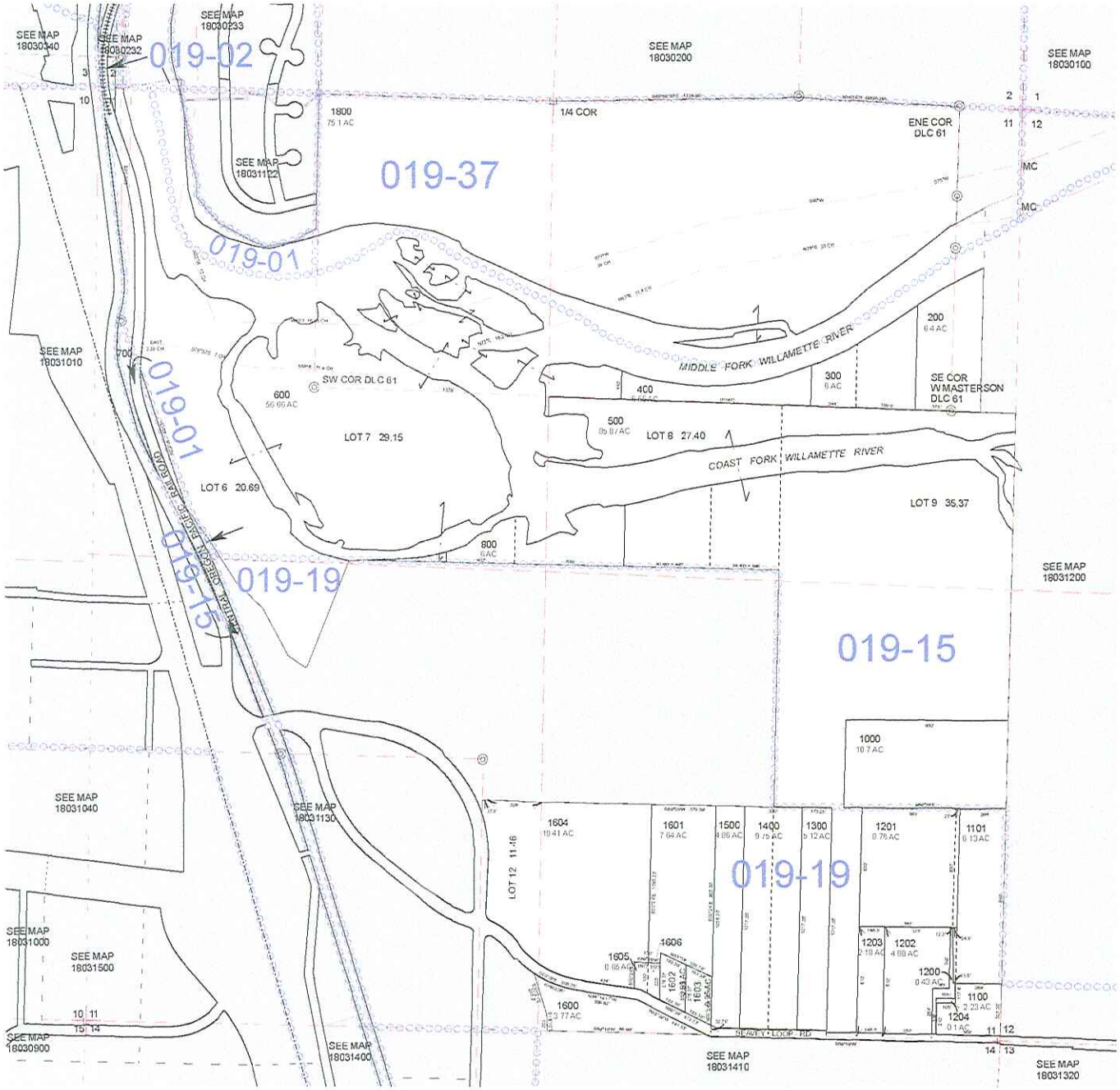
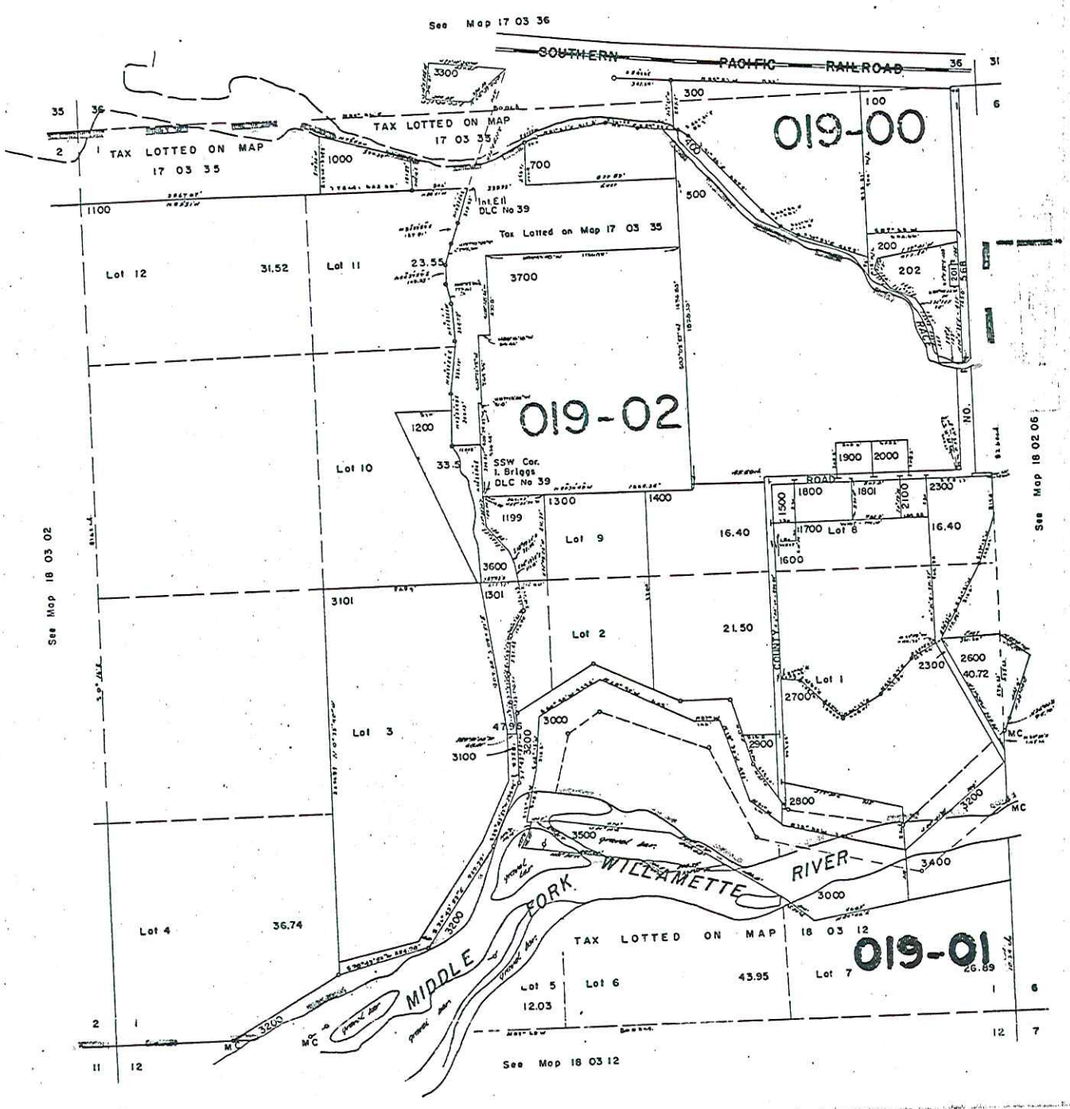


EXHIBIT 3

18031100

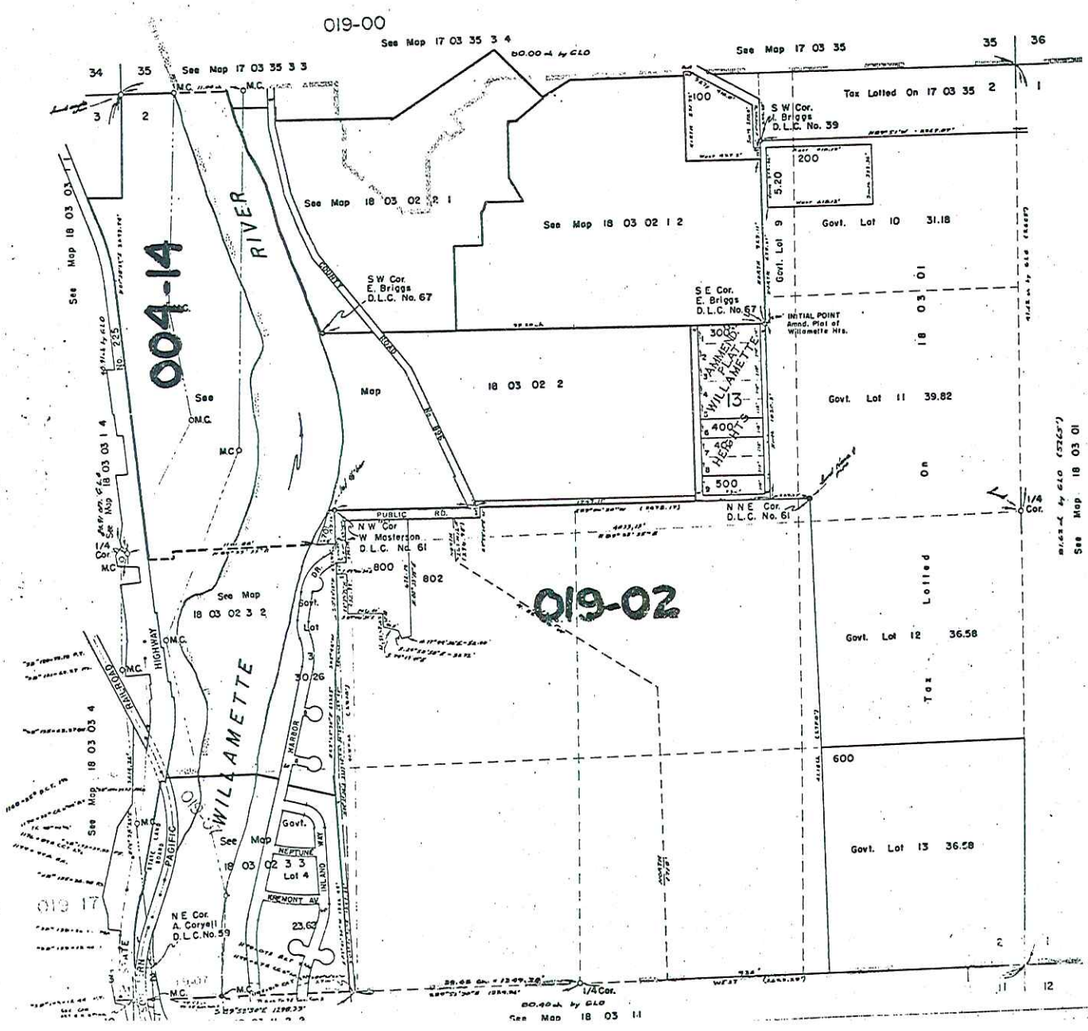
18 03 01

Section 1 T.18S. R.3W.W.M.
LANE COUNTY
1"=400'



18 03 02
& INDEX

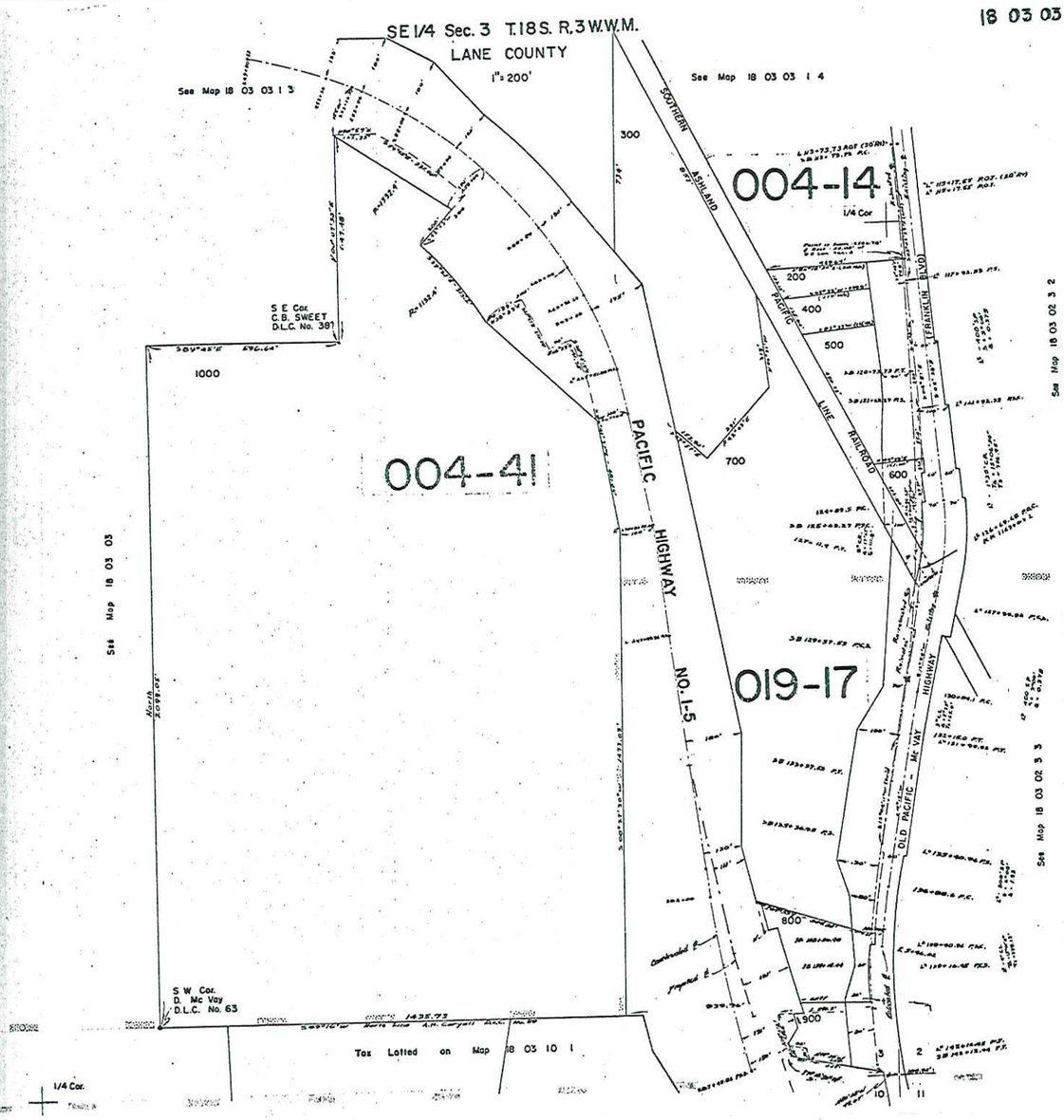
Section 2 T.18S. R.3W.W.M.
LANE COUNTY
1"=400'



Attachment 3, Page 375 of 664

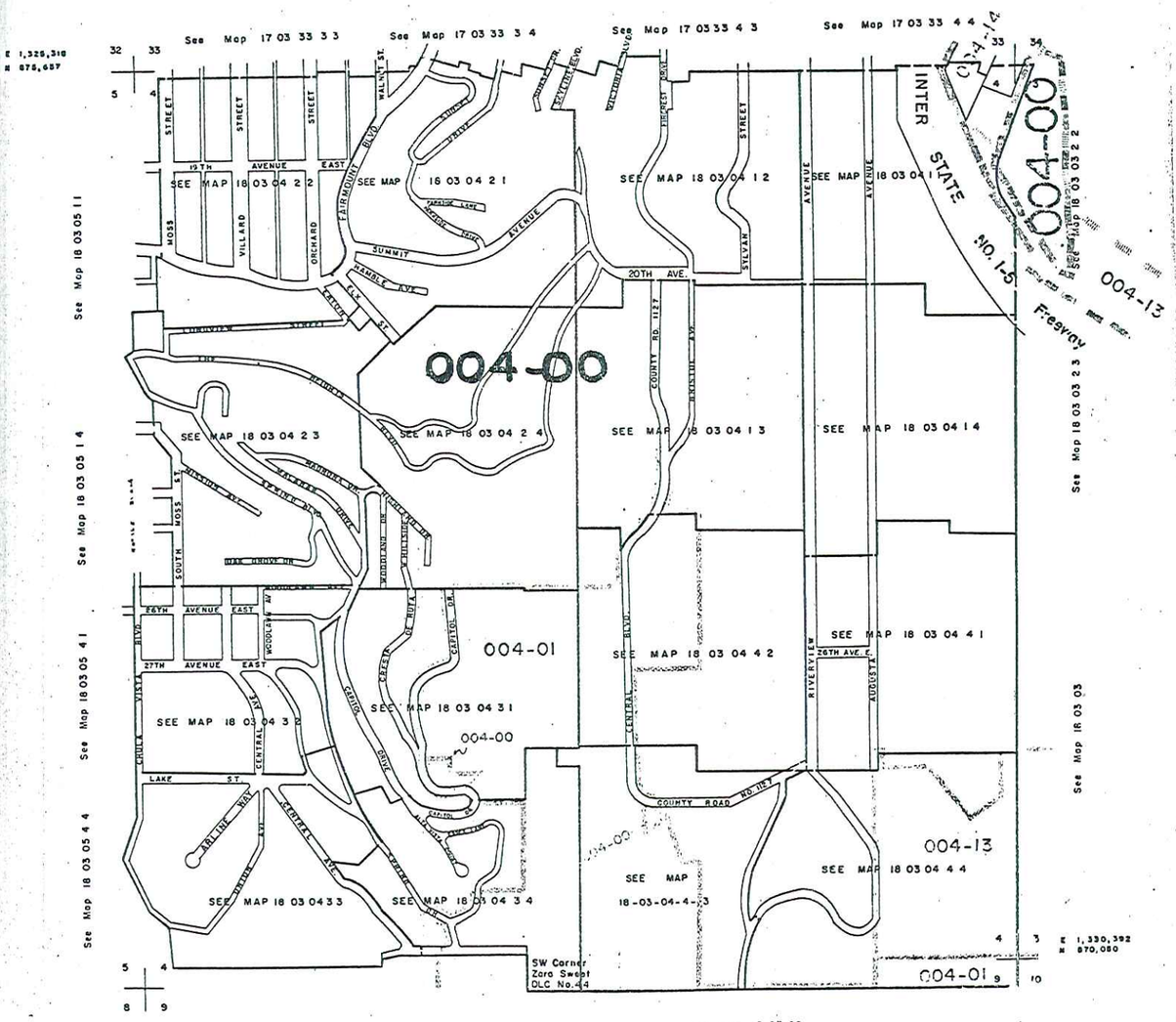
EXHIBIT 4

SE 1/4 Sec. 3 T.18S. R.3W.W.M.
LANE COUNTY
1"=200'



Section 4 T.18S. R.3W.W.M.
LANE COUNTY
1"=400'

18 03 04
INDEX
EUGENE

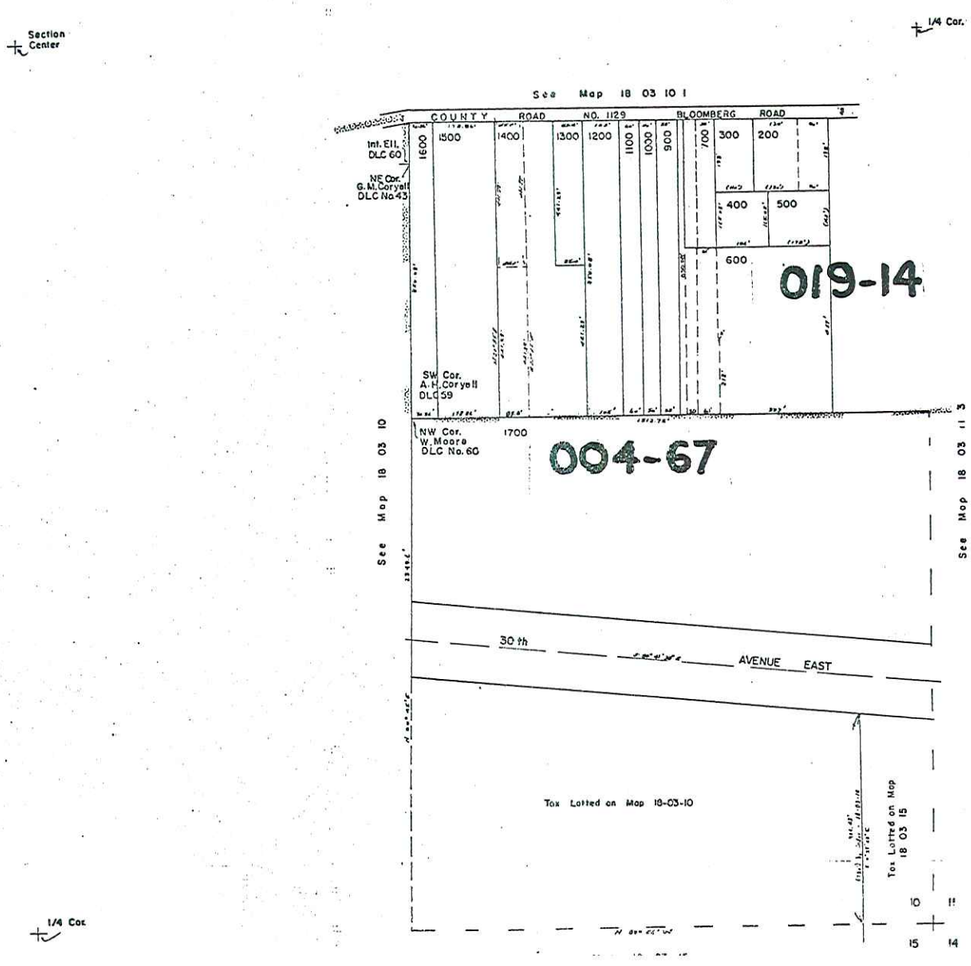


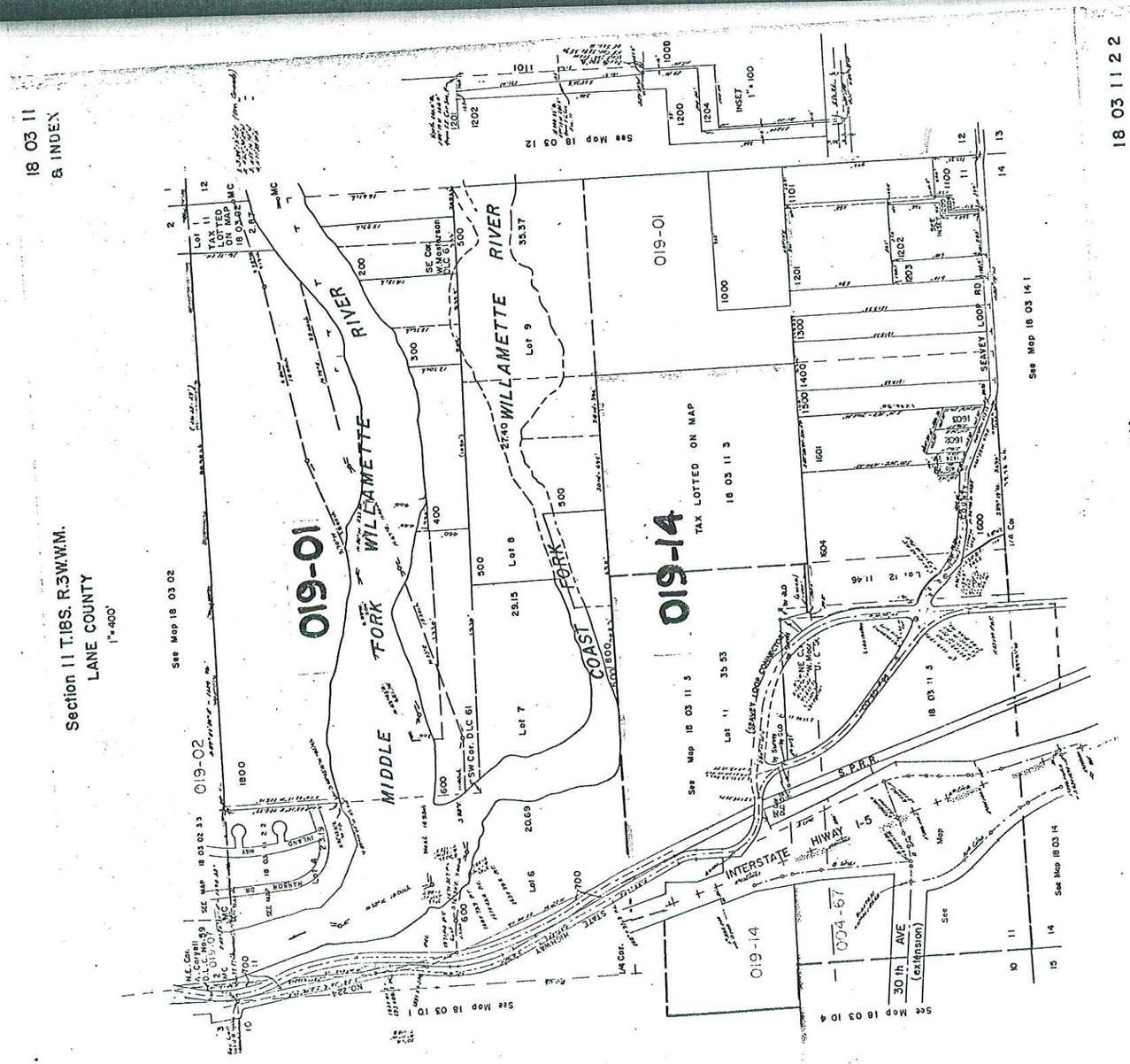
18 03 10 1

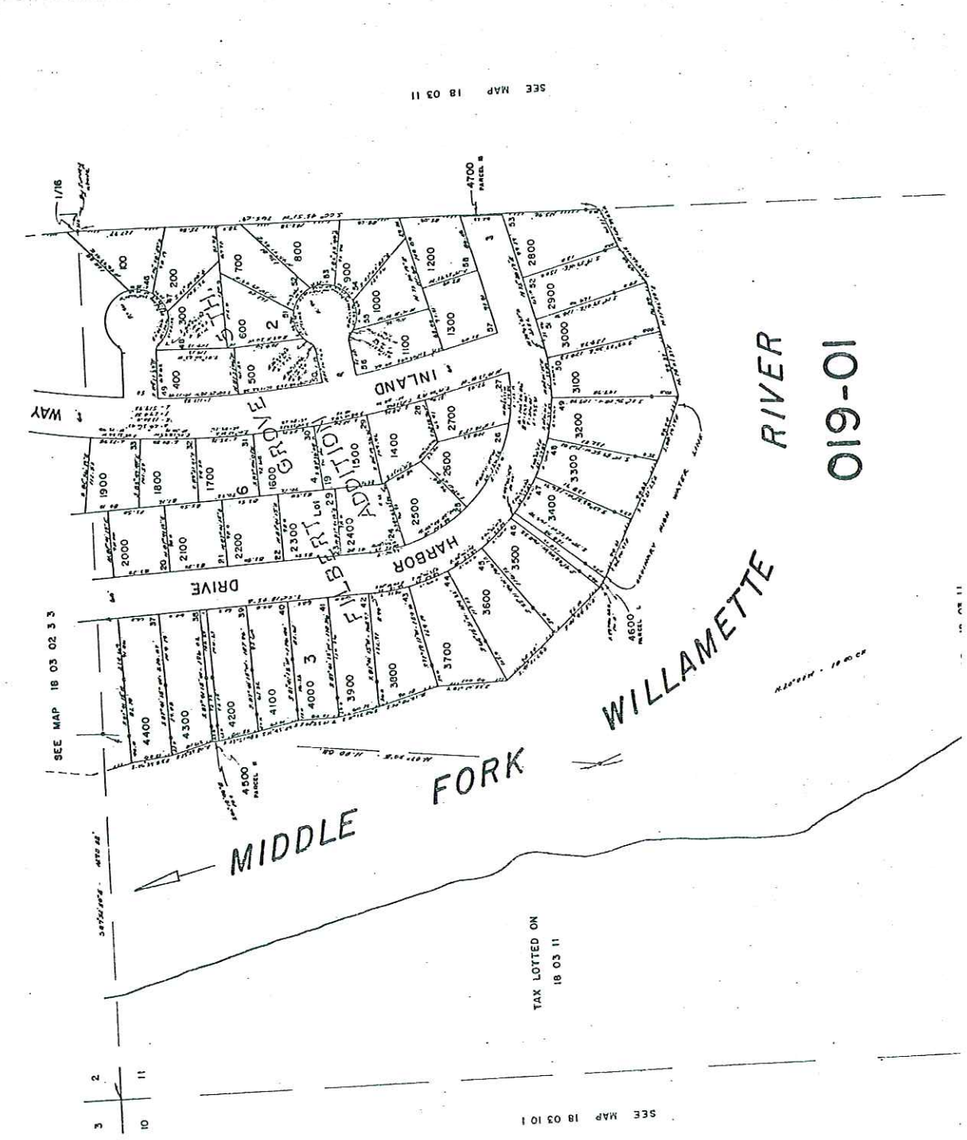
N.E. 1/4 Sec. 10 T 18 S. R. 3 W.W.M.
LANE COUNTY
1" = 200'

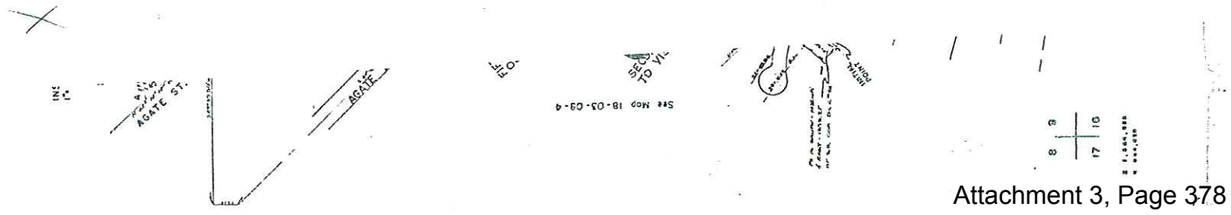
SE 1/4 Sec. 10 T. 18 S. R. 3 W.W.M.
LANE COUNTY
1" = 200'

18 03 10 4



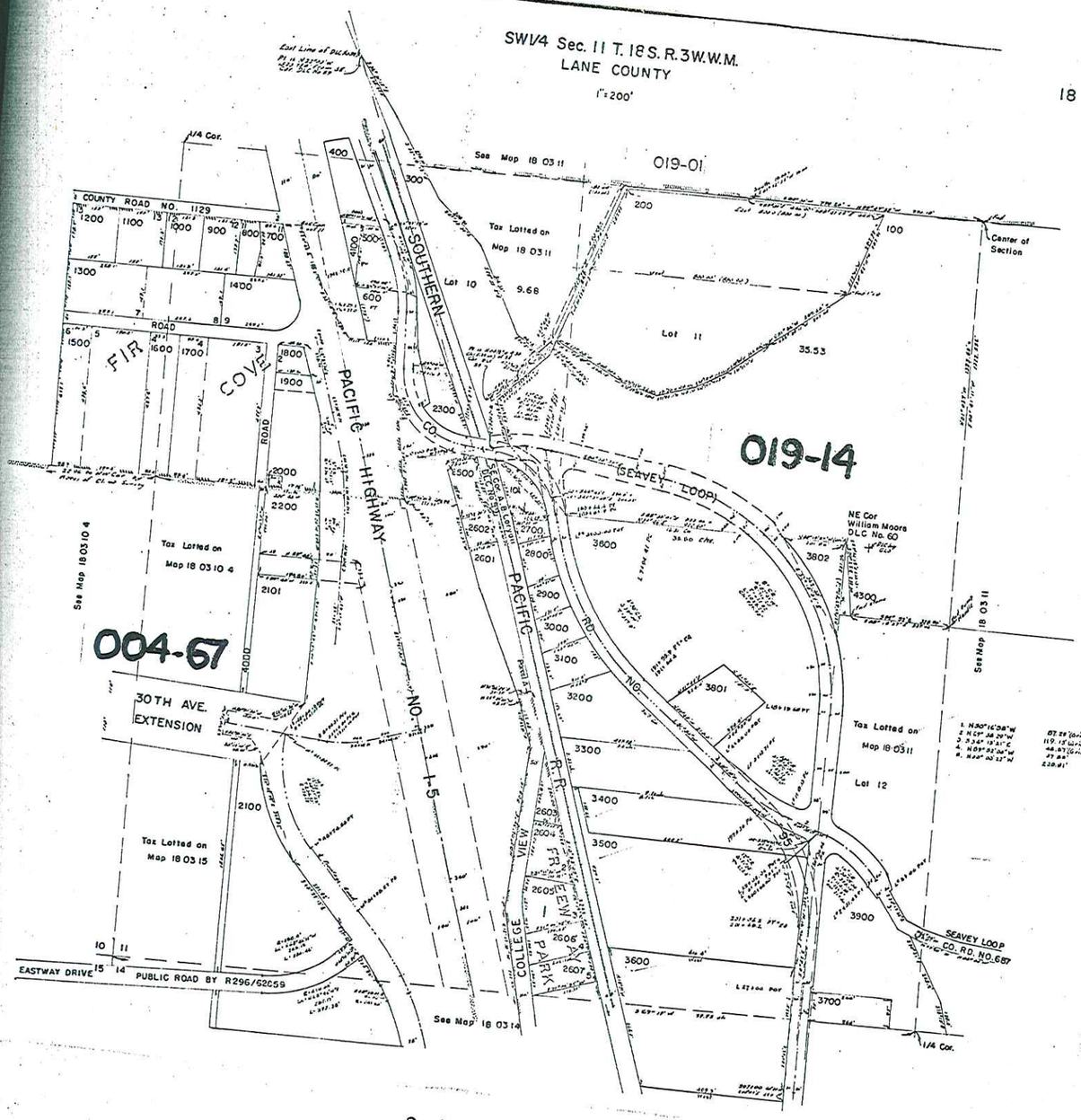

18 03 11
& INDEX
Section 11 T.18S. R.3W.W.M.
LANE COUNTY
1"=400'
019-01
019-02
019-14
MIDDLE FORK WILLAMETTE RIVER
COAST FORK WILLAMETTE
INTERSTATE HIWAY I-5
S.P.R.R.
30th AVE (extension)
SEAVEY LOOP RD
TAX LOTTED ON MAP 18 03 11 3
See Map 18 03 12
See Map 18 03 14 1
See Map 18 03 10 1
See Map 18 03 10 4
See Map 18 03 02


18 03 11 2
NW1/4 NW1/4 Sec. 11 T.18S. R.3W.W.M.
LANE COUNTY
1"=100'
SEE MAP 18 03 11
SEE MAP 18 03 10 1
SEE MAP 18 03 02 3 3
MIDDLE FORK WILLAMETTE RIVER
019-01
HARBOR DRIVE
INLAND
TAX LOTTED ON 18 03 11


AGATE ST.
See Map 18-03-09-4

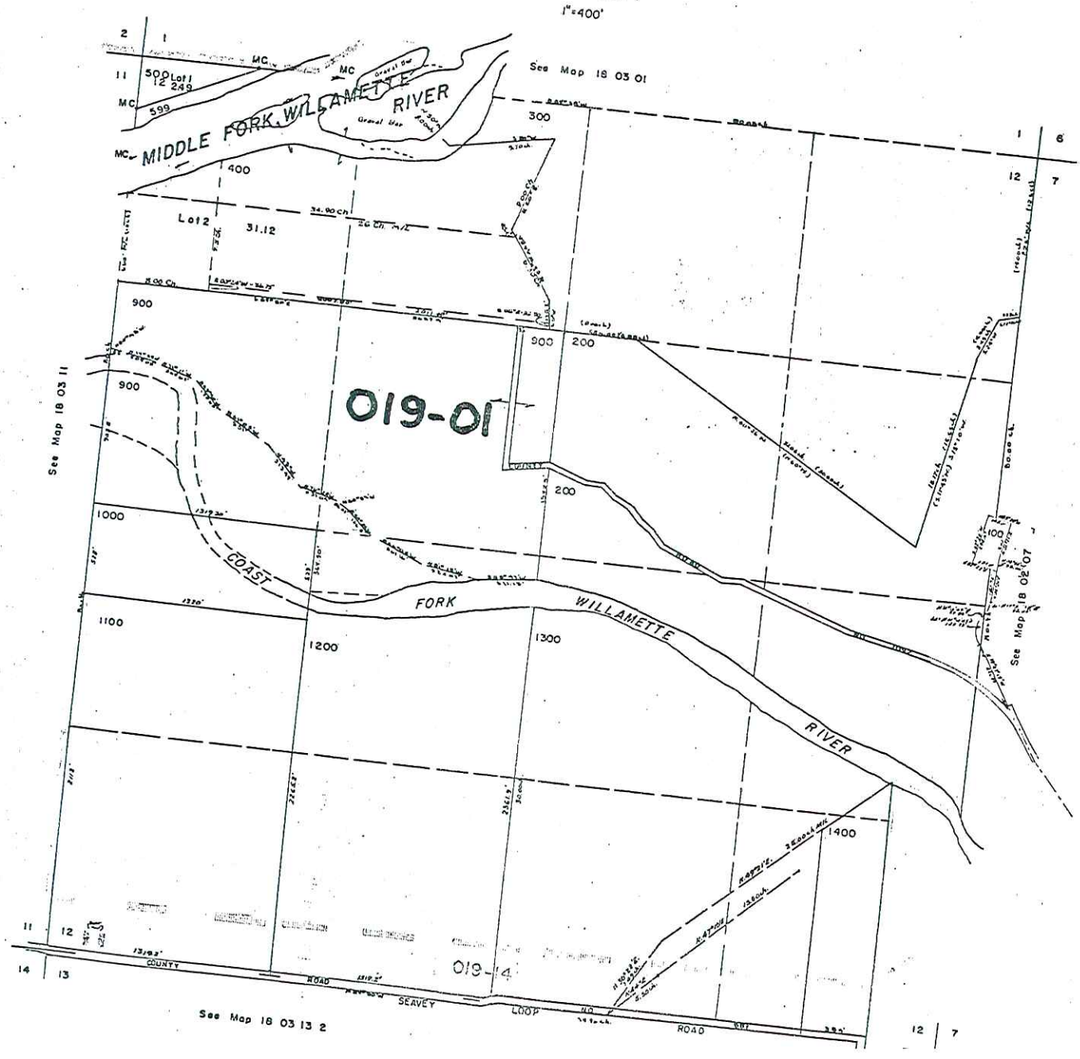
SW1/4 Sec. 11 T. 18S. R. 3W.W.M.
LANE COUNTY
1"=200'

18 03 11 3



Section 12 T. 18S. R. 3W.W.M.
LANE COUNTY
1"=400'

18 03 12



WEDNESDAY THE 27TH DAY OF JULY, 1966

No. 80-[illegible]

FILED
AT ..... O'CLOCK ..... M
JUL 27 1966
IRA RANDOLPH, Director of the
Dept. of Records and Elections of Lane County
BY ..... DEPUTY

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

LANE COUNTY ZONING AND LAND USE ORDINANCE NO. 223	Adopting a Comprehensive Plan and Zoning Certain Land in Sections 6, 7, 8, 17, 18, 19, 20, 30, 31, Twp 18S, R2W, W.M., Sections 1, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, Twp 18S, R3W, W.M., to AGT Agriculture, Grazing, Timber Raising District; AGT-TP Agriculture, Grazing, Timber Raising-Trailer Park District; RA Suburban District; C-2 Neighborhood Commercial District; C-3 Commercial District; M-1 Limited Industrial District; M-2 Light Industrial District; M-3 Heavy Industrial District; PR Public Reserve District; and Establishing Special Setback Requirements.

The Board of County Commissioners of Lane County ordains as follows:

The following described land, to-wit:

Area to be zoned to AGT, Agriculture, Grazing, Timber Raising District

Beginning at the intersection of 30th Avenue and the Eugene city limits line in Section 8 of Twp. 18 South, Range 3 West; thence follow said city limits line northerly and easterly to the intersection with 29th Street and the north line of Section 9 of Twp. 18 South, Range 3 West; thence Easterly along the north line of said Sections 9 and 10 of Twp. 18 South, Range 3 West to the east line of Section 10, Twp. 18 South, Range 3 West; thence Easterly to the left bank of the middle fork of the WillametterRiver; thence Easterly along said left bank about four miles to the east line of Section 8, Twp. 18 South, Range 2 West; thence Southerly along said section line to a point 1700 feet south of the north line of Section 20, Twp. 18 South, Range 2 West, said point being the present Pleasant Hill zoning boundary; thence Westerly and Southerly along said boundary to the left bank of the coast fork of the Willamette River; thence Southerly along said left bank to the south line of Section 31, Twp. 18 South, Range 2 West; thence Westerly along the south line of Section 31 and the south line of Sections 36 and 35 to the Southern Pacific Railroad tracks; thence Northerly along said tracks to the east-west centerline of said Section 35; thence Westerly along the east-west centerline of Sections 35, 34, 33, 32, and 31 to the north-south centerline of Section 31 in Twp. 18 South, Range 3 West; thence Northerly along the north-south centerline of Section 31 to a point 300 feet south of Fox Hollow Road; thence Northerly parallel to and 300 feet from Fox Hollow Road being the present zoning boundary to the north line of the South 1/2 of the South 1/2 of Section 20; thence easterly to the east line of Section 20; thence Northerly along said east line to the northeast corner of said section; thence Easterly along the south line of Section 16 to the 1/4 corner on the south line; thence North to the 1/4 corner on the north line of said section; thence West to the city limits line; thence Easterly and Northerly along said city limits line to the Point of Beginning.

EXCEPT the following described area presently zoned AGT-TP, Agriculture, Grazing, Timber Raising-Trailer Park District.

Beginning at a point on the east line of the Washington I. Riggs D.L.C. No. 40 in Section 13, Twp. 18 South, Range 3 West, W.M., said point being 589.16 feet north 0° 47' East of the most southerly southeast corner of said claim; run thence along the said east line of Claim No. 40 North 0° 47' East 437.59 feet; thence North 53° 36' West 402.76 feet; thence North 33° 06' 20" West 287.09 feet; thence North 04° 14' 20" West 208.31 feet; thence North 89° 55' West 419.60 feet; thence South 00° 05' West 261.13 feet; thence South 60° 05' West 57.74 feet; thence South 0° 05' West 487.00 feet; thence South 79° 13' East 438.00 feet; thence South 0° 47' West 165.00 feet; thence South 79° 13' East 542.72 feet to the Point of Beginning

EXHIBIT 5

in Lane County, Oregon, and

ALSO EXCEPT Areas A, B, C, D, and E hereinafter described:

AREA A: Area to be zoned to C-2 Neighborhood Commercial District

Beginning at the point of intersection of the north right-of-way line of Bloomberg Road (County Road No. 1129) and the west right-of-way line of Interstate Highway No. 5; run North 17° 41' 30" West 683.01 feet; thence South 78° 20' West along the right-of-way line of said highway 30 feet more or less; thence North 31° 03' 10" West 531.73 feet; thence South 74° 55' West 129.12 feet; thence South 17° 41' 30" East 171.11 feet; thence North 74° 24' East 14 feet more or less; thence South 11° 40' East 728 feet more or less to a point on a line 197.60 feet north of and parallel to the north right-of-way line of Bloomberg Road; thence North 89° 43' 18" East to a point 213.67 feet South 89° 43' 18" West of the west right-of-way line of Interstate Highway No. 5; thence South 23° 45' East 118.94 feet; thence South 04° 15' East 97.50 feet; thence North 89° 55' East 91.9 feet; thence South 19° 51' East 40 feet; thence South 89° 55' West 10 feet more or less; thence South 179.7 feet; thence West 40 feet more or less; thence South 169.1 feet; thence East 195 feet more or less; thence South 730 feet more or less; thence North 89° 40' East 185 feet more or less to the west right-of-way line of Interstate Highway No. 5; thence Northerly and Westerly along said right-of-way 800.2 feet more or less to the point of intersection of the north line of Fir Cove Road and the West right-of-way line of Interstate Highway No. 5; thence North 17° 41' 30" West 319 feet more or less to the north line of Bloomberg Road said point also being the Point of Beginning in Lane County, Oregon.

ALSO to be zoned to C-2 Neighborhood Commercial District

Beginning at a point at the intersection of the north right-of-way line of County Road No. 95, more commonly known as Franklin Boulevard, and the west right-of-way line of the Southern Pacific Railroad; run thence north 23° 37' West 449.97 feet more or less; thence Southerly and Easterly along the easterly and northerly right-of-way line of said County Road to the Point of Beginning in Lane County, Oregon.

ALSO to be zoned to C-2 Neighborhood Commercial District

Beginning at the southeast corner of the A. H. Coryell D.L.C. No. 59 in Twp. 18S, R3W, W.M. run thence Northerly along the west right-of-way line of the Southern Pacific Railroad 153 feet; thence South 72° 18' 30" West 104.09 feet; thence Southerly along the east right-of-way line of Interstate Highway No. 5, 875 feet more or less; thence due East to the west right-of-way line of the Southern Pacific Railroad 40 feet more or less; thence Northerly along said railroad right-of-way line 768 feet more or less to the Point of Beginning in Lane County, Oregon.

AREA B: Area to be zoned to C-3 Commercial District

Beginning at the southeast corner of the William Moore Donation Land Claim No. 60, Twp. 18S, R3W, W.M. run thence South 89° 36' 40" along the South line of said D.L.C. 310.38 feet to the Easterly margin of Interstate No. 5; thence following the said Easterly margin North 17° 41' 30" West 1771.28 feet to a point opposite and 100.00 feet Easterly of centerline Station L^2 348 ± 00; thence North 12° 47' 35" West 702.57 feet to a point opposite and 160.00 feet Easterly of centerline station L^2 341 ± 00; thence North 03° 06' 55" East 508.14 feet to a point opposite and 340.50 feet Easterly of centerline Station L^2 336±25; thence Easterly 40 feet more or less to the West right-of-way of the Southern Pacific Railroad; thence Southeasterly along said right-of-way line 2950 feet more or less; thence Southerly 100 feet more or less to the Point of Beginning in Lane County, Oregon.

AREA B: Area to be zoned to PR Public Reserve District

Beginning at the intersection of Interstate Highway No. 5 and the Southern Pacific Railroad in Section 14, Twp. 18 South, Range 3 West 1920 feet more or less southeasterly from the southeast corner of the W. Moore D.L.C. No. 60; thence Northwesterly from said point along the west right-of-way line of the Southern Pacific Railroad 770 feet more or less; thence West 440 feet; thence Southeasterly along the east right-of-way line of Interstate Highway No. 5 to the point of intersection of said right-of-way line with the west right-of-way line of the Southern Pacific Railroad, said point also being the Point of Beginning in Lane County, Oregon.

AREA C- Area to be zoned to C-3 Commercial District

Beginning at the northwest corner of Lot 1 in Block 1 of the Coshen Plat as [illegible] 312 [illegible] Block 1 of the Coshen Plat as [illegible] thence Easterly 210 feet; thence northerly [illegible] thence Easterly 15 feet; thence [illegible] 04° 00' East [illegible] Easterly 15 feet [illegible] 343 [illegible] Easterly 242 feet; thence South 03° 17' East 240 feet; thence Westerly 243 [illegible] of the [illegible] said line 15 feet; thence westerly 60 feet; thence [illegible] 1828 feet north of the southeast corner of Lot [illegible] Block 3 of the Coshen Plat; thence South 07° 40' East 332 feet; thence [illegible] along the east right-of-way line of Interstate Highway No. 5, 190 feet more or less; thence South 85° 0' West 550 feet; thence Westerly 770 feet [illegible] to the [illegible] corner of Lot 8, Block 3 of the Coshen Plat; 25 feet more or less; thence Northerly 1134 feet to the Point of Beginning in Lane County, Oregon.

AREA C- Area to be zoned to C-3 Commercial District

Beginning at the point of intersection of the north right-of-way line of "A" Street, as recorded in the Coshen Plat in Book W, Pages 349 & 512 in Lane County, Oregon and the east right-of-way line of Pacific Highway U.S. 99; thence [illegible] Northerly 400 feet more or less along the right-of-way line of said Highway to the intersection of the south [illegible] right-of-way line of the Old Willamette Highway; thence Easterly along the south right-of-way line of the Old Willamette Highway 65.[illegible] feet; thence [illegible] right-of-way line of Interstate Highway No. 5, 369.78 feet more or less; thence South 86° 59' 10" East 136 feet; thence North 4° 00' West 32 feet more or less; thence South 85° 53' West 270.8 feet; thence Southerly 120.68 feet; thence South 85° 53' West 340.55 feet; thence Northerly 15 feet more or less to the most northerly boundary of the Coshen Plat as recorded in the Lane County Oregon [illegible] thence said boundary 344.9 feet to the point of beginning in Lane County, Oregon.

ALSO to be zoned to C-3 Commercial District

Beginning at the intersection of the east line of Highway 99 and the south line of County Road 406; thence run South 65° 00' East 610 feet along the south line of County Road 406; thence South 15° 25' West 430.8 feet to a point about 350 feet from the west line of Interstate No. 5 when measured at right angles thereto; thence Southeasterly parallel to and 350 feet from the west right-of-way of Interstate Highway No. 5, 936 feet when measured at right angles thereto; thence North 65° 0' West 180 feet to the east line of Highway No. 99; thence North 3° 30' West along said [illegible] 1150.3 feet to the Point of Beginning in Lane County, Oregon.

ALSO to be zoned to C-3 Commercial District

Lots 2, 3, 6 & 7, Block 1 and Lots 2, 3, 6 & 7, Block 2 of the Coshen Plat as platted and recorded in Book W, Pages 349 & 512, Lane County, Oregon Plat Records.

ALSO to be zoned to C-3 Commercial District

Beginning at the southwest corner of the W. Riggs D.L.C. No. 40; run thence North 51.5 feet; thence Northwesterly along the east right-of-way of the Southern Pacific Railroad 222 feet more or less to the west line of Old Highway No. 99; thence Easterly 9 feet on the west right-of-way line; thence South 32° 06' East along said right-of-way line 308.16 feet to the south line of D.L.C. No. 40; thence Westerly 84.70 feet to the Point of Beginning in Lane County, Oregon.

ALSO to be zoned to PR Public Reserve District

Glendora Tracts in Section 14 of Twp. 18 South, Range 3 West, Lots 1, 4, 5, 6, 7 & 8 of Block 3 as recorded in Book 12, Page 21, in the Lane County, Oregon Plat Records, and the Northerly 1/2 of Lots 9 and 10 in said plat described as follows:

Beginning at a point on the East line of Lot 9 of Block 3 in said plat, 20 feet North of the Southeast corner of said lot; run thence North 120 feet to the South line of Lot 6 of said plat; thence West along said South line 90 feet; thence North to a point 136.83 feet from the South right-of-way line of Interstate Highway No. 5; thence West 90 feet; thence South 38 feet; thence Southeasterly along a straight line to the Point of Beginning in Lane County, Oregon.

ALSO to be zoned to C-3 Commercial District

Beginning at the southwest corner of Lot 11, Block 3 in Glendora Tracts as recorded in Book 12, Page 21 in the Lane County, Oregon Plat Records; run thence East 395.01 feet; thence South 219.45 feet to the northerly right-of-way line of the Old Willamette Highway; thence North 89° 11' 30" West, 256.68 feet; thence Northwesterly along the east line of U.S. 99, 273.84 feet to the Point of Beginning in Lane County, Oregon.

ALSO to be zoned to C-3 Commercial District

Beginning at a point on the West line of Lot 10 of Block 3 in said Plat South 38 feet from the Northwest corner of said lot; run thence South 125 feet more or less to the North right-of-way line of the Old Willamette Highway; thence South 89° 11' 30" East 180 feet; thence North 20 feet; thence Northwesterly along a straight line from said point to the Point of Beginning in Lane County, Oregon.

AREA C: Area to be zoned to M-2 Light Industrial District

Goshen Plat in Section 23 of Twp. 18 South, Range 3 West, W.M. Block 3, Lots 2, 3, 6 & 7 as recorded in Book W, Page 349 & 512 in Lane County, Oregon Plat Records.

ALSO to be zoned to M-2 Light Industrial District

Beginning at a point on the south right-of-way line of "D" Street in Goshen, Oregon at its intersection with Pacific Highway U.S. 99, thence North 86° 30' East 200 feet; thence Southerly along a line parallel to said Highway 400 feet; thence Westerly along a line parallel to said "D" Street 200 feet; thence Northerly along the east right-of-way line of Pacific Highway U.S. 99, 400 feet to the Point of Beginning in Lane County, Oregon.

AREA C: Area to be zoned to M-3 Heavy Industrial District

Beginning at a point South 89° 40' West 729.3 feet and North 0° 49' East 2395.8 feet from the southeast corner of the Bethany Spiawn D.L.C. No. 42, thence North 89° 05' 10" West to a point 1373 feet west of the west line of the Southern Pacific Railroad right-of-way; thence North 00° 59' 45" East 1791.5 feet; thence Easterly to a point 458 feet west of the west right-of-way line of the Southern Pacific Railroad; thence northerly parallel to the Southern Pacific Railroad 307 feet; thence Easterly 458 feet to the west right-of-way line of said railroad; thence South 3° 30' East 2192.2 feet; thence North 89° 05' 10" West 1353 feet more or less to the Point of Beginning in Lane County, Oregon.

ALSO to be zoned to M-3 Heavy Industrial District

Beginning at the southeast corner of the Silas Severin D.L.C. No. 41 in Twp. 18 South, Range 3 West; run thence North 26° 07' East 416.7 feet; thence Northerly parallel to Pacific Highway U.S. 99, 670 feet more or less to a point 400 feet south of the south line of "D" Street in Goshen; thence Westerly 580 feet more or less to the east right-of-way line of Pacific Highway U.S. 99; thence South 3° 30' East 1958.56 feet to the intersection of Pacific Highway U.S. 99 and the north line of County Road 906; thence South 65° 00' East 378.61 feet; thence North 25° 00' East 240.5 feet; thence North 65° 00' West 121.43 feet; thence North 0° 35' 405.02 feet to the Point of Beginning in Lane County Oregon.

ALSO to be zoned to M-3 Heavy Industrial District

Beginning at a point on the westerly right-of-way line of the Southern Pacific Railroad 722.04 feet North 03° 30' West from a point on the southerly line of the Milton Riggs D.L.C. No. 57, Twp. 18 South, Range 3 West of the Willamette Meridian; thence North 65° 00' West 457.88 feet; thence North 12° 55' East 622.80 feet; thence North 65° West 235 feet more or less to the East right-of-way line of County Road No. 893, commonly known as Hampton Road; thence North 25° 00' East 899 feet to the intersection of said County Road and the West right-of-way line of the Southern Pacific Railroad; thence South 3° 30' East 1826.60 feet to the Point of Beginning in Lane County, Oregon.

AREA C: Area to be zoned to PR Public Reserve District

Beginning at the northwest corner of Lot 1 in Block 5 of the Goshen Plat as recorded in Book W, Pages 349 & 512 in the Lane County, Oregon Plat Records; run thence Easterly 233 feet more or less to the most easterly boundary of said Plat; thence North 03° 52' West along said easterly boundary 240 feet; thence North 87° 00' East 493.6 feet more or less to the west right-of-way of Interstate Highway No. 5; thence Southeasterly along said right-of-way line 480 feet more or less; thence South 87° 20' West 666 feet to a point on the east line of Lot 5, Block 5 of the Goshen Plat 48.28 feet south of the northeast corner thereof; thence Southerly 111.72 feet along the west line of Second Street to the north line of "C" Street; thence Westerly along the north line of "C" Street 167 feet; thence Northerly 334 feet along the centerline of the 14 foot north south alley in Block 5 to the Point of Beginning in Lane County, Oregon.

ALSO to be zoned to PR Public Reserve District

Beginning at the southwest corner of the Washington Riggs D.L.C. No. 40 in Twp. 18 South, Range 3 West, W.M.; run thence Southerly along the east line of the Southern Pacific Railroad to the intersection of said line with the west line of the Pacific Highway U.S. 99; thence Northerly along the West line of said Highway to a point north 89° 16' East of said D.L.C. No. 40; thence South 89° 16' West to the Point of Beginning in Lane County, Oregon.

ALSO to be zoned to PR Public Reserve District

Beginning at the southwest corner of the Washington Riggs D.L.C. No. 40 in Twp. 18 South, Range 3 West, W.M.; run thence West along the south line of Section 14, Twp. 18 South, Range 3 West 176 feet; thence South 549.4 feet to a point which is 1045.0 feet east and 549.4 feet south of the quarter corner on the south line of said Section 14; thence West 312.9 feet; thence Southerly 269 feet to a point 818.4 feet south and 732.1 feet east of the quarter section corner on the south line of said Section 14; thence Westerly 590.2 feet; thence North 00° 59' 45" East 594 feet; thence Westerly 411.9 feet to a point 270 feet west of a north-south centerline of Section 23; thence North 224.4 feet to the south line of Section 14;

thence South 89° 55' West 760 feet; thence Northeasterly 478 feet; thence Northerly 1765 feet along a line 770 feet west from the north-south centerline of said Section 14 to the Westerly right-of-way line of Interstate Highway No. 5; thence Southeasterly along said right-of-way line to the intersection of said right-of-way line and the westerly right-of-way line of the Southern Pacific Railroad; thence Southeasterly along the westerly right-of-way line of the Southern Pacific Railroad to the southwest corner of D.L.C. No. 40 being the Point of Beginning in Lane County, Oregon.

AREA D: Area to be zoned to AGT-TP Agriculture, Grazing, Timber Raising-Trailer Park District

Beginning at a point on the southerly line of the Washington Riggs D.L.C. No. 40 in Twp. 18 South, Range 3 West of the W.M. 147.08 feet South 88° 43' East from the re-entrant corner in said claim and running thence South 88° 43' on said line 272.03 feet; thence North 208.71 feet; thence North 88° 43' West 292.03 feet; thence South 208.71 feet to the Point of Beginning in Lane County, Oregon.

AREA E: Area to be zoned to M-2 Light Industrial District

Beginning at a point on the east line of the West 1/2 of the John F. Wooley D.L.C. No. 56 in Twp. 18 South, Range 3 West, W.M. at its intersection with the northerly right-of-way line of the Willamette State Highway No. 58; thence run along said east line North 0° 02' East 726.0 feet; thence North 60° 00' 30" West parallel with the northerly line of said Highway No. 58 right-of-way 346.26 feet; thence South 0° 02' West 726.00 feet to a point on the Northerly right-of-way line of said Highway No. 58; thence South 60° 00' 30" East 346.26 feet to the Point of Beginning in Lane County, Oregon.

Special Structure and Building Setback Requirements

The following special setback requirements which are exceptions to setback requirements of the Lane County Zoning and Land Use Ordinance No. 4 are hereby established:

All structures or buildings shall hereafter be located, moved, erected, constructed, or structurally repaired or altered or added to so that no portion thereof shall extend nearer than the distances hereafter shown when measured from and at right angles to the centerline of the below-named streets:

30th Avenue from Interstate 5 to the Eugene city limits: 125 feet from the centerline.

Franklin Boulevard (old Highway U.S. 99) from the McVey Overcrossing (opposite the confluence of the Middle and Coast Forks of the Willamette River) to the south line of Section 35, T18S, R3W, W.M.: 50 feet from the centerline.

Willamette Highway U.S. 58 from the Goshen Interchange to the Coast Fork of the Willamette River: 125 feet from the centerline.

and are subject to the regulations provided therefor in Lane County Zoning and Land Use Regulation Ordinance No. 4, as amended, known as the "Zoning Plan of the County of Lane, State of Oregon", pursuant to O.R.S. Chapter 215.

Approved and recommended for enactment by the affirmative vote of the Lane County Planning Commission this 28th day of June, 1966, after giving due notice of public hearing and holding a public hearing on the 28th day of June, 1966.

John B. Leahy
Chairman

Howard W. Dufford
Secretary

Enacted this 27 day of July, 1966.

Jean Rice
Chairman of the Board of County Commissioners of Lane County

Ruby Thistler
Recording Secretary of the board at the meeting at which this ordinance was enacted

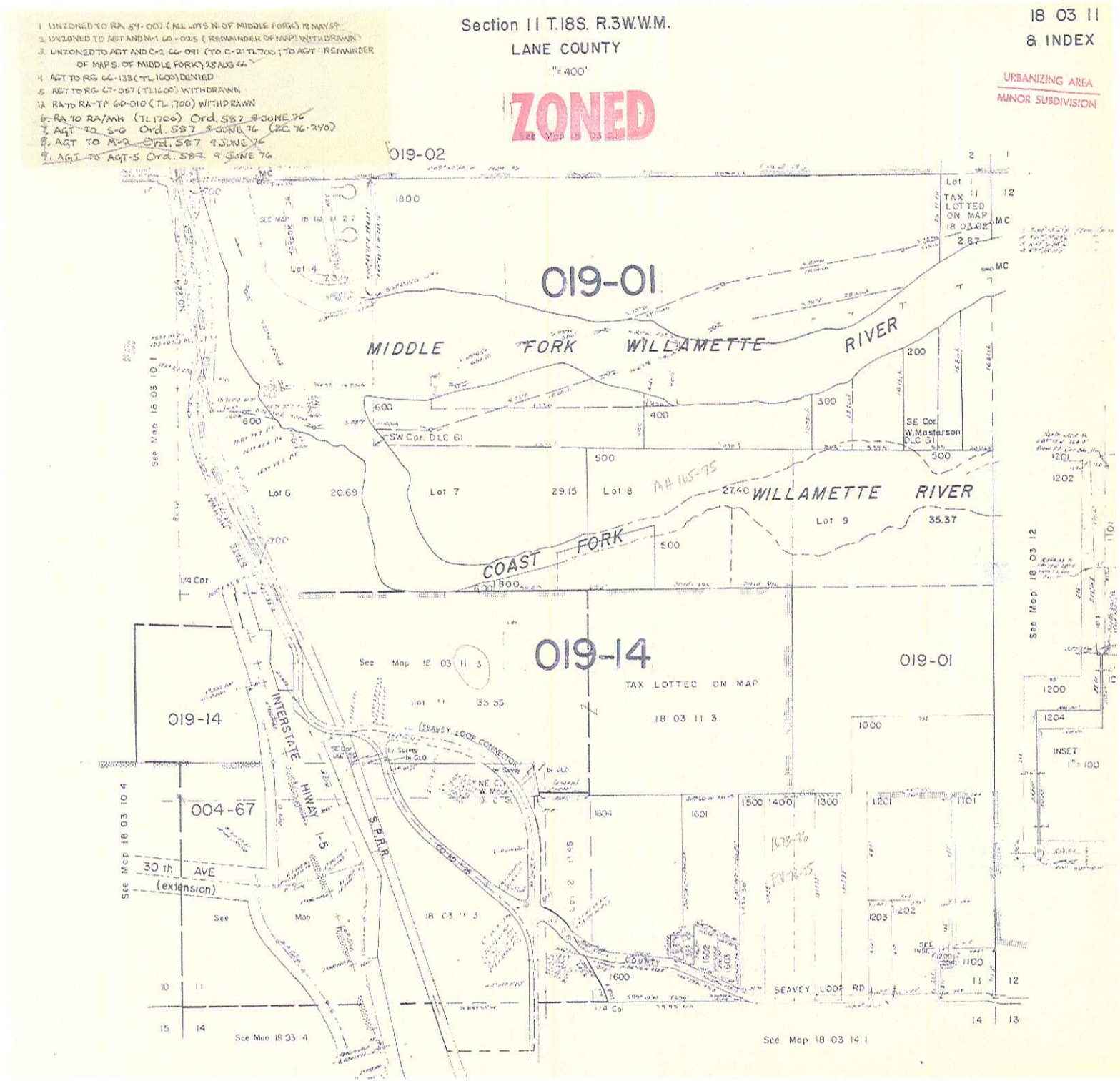

Section 11 T.18S. R.3W.W.M.
LANE COUNTY
1"=400'
18 03 11
& INDEX
URBANIZING AREA
MINOR SUBDIVISION
ZONED
1 UNZONED TO RA 59-007 (ALL LOTS N. OF MIDDLE FORK) 12 MAY 59
2 UNZONED TO AGT AND M-1 60-025 (REMAINDER OF MAP) WITHDRAWN
3 UNZONED TO AGT AND C-2 66-091 (TO C-2: TL 700; TO AGT: REMAINDER OF MAP S. OF MIDDLE FORK) 25 AUG 66
4 AGT TO RG 66-133 (TL 1600) DENIED
5 AGT TO RG 67-057 (TL 1600) WITHDRAWN
12 RA TO RA-TP 60-010 (TL 1700) WITHDRAWN
6 RA TO RA/MH (TL 1700) Ord. 587 9 JUNE 76
7 AGT TO S-G Ord. 587 9 JUNE 76 (ZC 76-240)
8 AGT TO M-2 Ord. 587 9 JUNE 76
9 AGT TO AGT-S Ord. 587 9 JUNE 76
019-02
019-01
MIDDLE FORK WILLAMETTE RIVER
COAST FORK WILLAMETTE RIVER
019-14
TAX LOTTED ON MAP
18 03 11 3
019-01
019-14
004-67
INTERSTATE HIWAY I-5
S.P.R.R.
30 th AVE
(extension)
SEAVEY LOOP RD
SEAVEY LOOP CONNECTOR
INSET
See Map 18 03 10 4
See Map 18 03 14 1
See Map 18 03 12
See Map 18 03 10 1
SW Cor. DLC 61
SE Cor W. Masterson DLC 61
1/4 Cor
Lot 1
TAX LOTTED ON MAP 18 03 02
Lot 4
Lot 6
Lot 7
Lot 8
Lot 9
20.69
29.15
27.40
35.37
35.55
2.87
23.55
10.24

EXHIBIT 6

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1 UNZONED TO RA 59-007 (ALL LOTS N. OF MIDDLE FORK) 18 MAY 59

2. UNZONED TO AGT AND M-1 60-025 (REMAINDER OF MAP) WITHDRAWN

3. UNZONED TO AGT AND C-2 66-091 (TO C-2: TL 700; TO AGT: REMAINDER OF MAP S. OF MIDDLE FORK) 25 AUG 66

4. AGT TO RG 66-133 (TL. 1600) DENIED

5. AGT TO RG 67-057 (TL 1600) WITHDRAWN

1A RA TO RA-TP 60-010 (TL 1700) WITHDRAWN

~~6. RA TO RA/MH (TL 1700) Ord. 587 9 JUNE 76~~

~~7. AGT TO S-G Ord. 587 9 JUNE 76 (ZC 76-240)~~

~~8. AGT TO M-2 Ord. 587 9 JUNE 76~~

~~9. AGT TO AGT-S Ord. 587 9 JUNE 76~~

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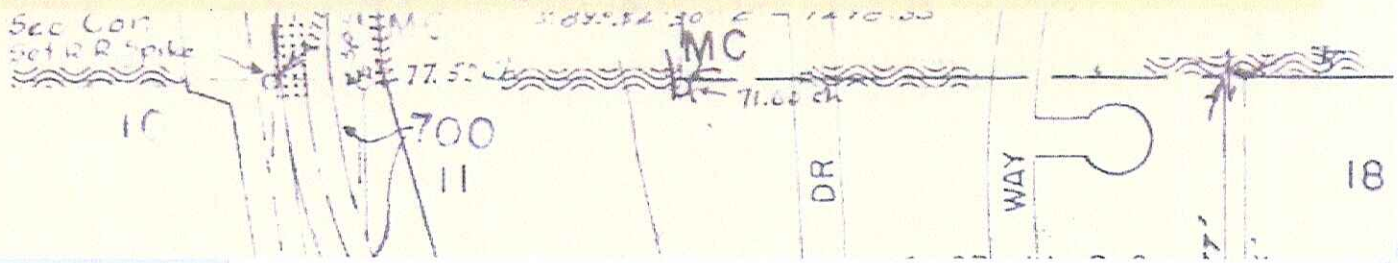


EXHIBIT 7

REEL 87 PAGE 796

FILED
AT ..... O'CLOCK ..... M
DEC - 2 1976
D. M. PEARFOLD, Director of the
Dept. of Records and Elections of Lane County
BY ..... Deputy

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

LANE COUNTY ZONING AND LAND USE ORDINANCE NO. 604	) Rezone certain land in Sections 1, 11 and 12, Township 18 South, Range 3 West; Sections 6, 8, and 9, Township 18 South, Range 2 West, W.M., from Agriculture, Grazing, Timber Raising (AGT) District or Farm-Forestry 20 (FF-20) District to Sand, Gravel and Rock Products (S-G) District

The Board of County Commissioners of Lane County ordains as follows:

Under authority of the applicable sections of ORS and Chapters 10 and 12 of Lane Code, the land described on Exhibit "A", attached hereto and incorporated herein by reference and depicted on the attached maps, is hereby rezoned from Agriculture, Grazing, Timber Raising (AGT) District or Farm-Forestry 20 (FF-20) District to Sand, Gravel and Rock Products (S-G) District.

Enacted this 1st day of December, 1976.

Robert C. Wood
Chairman, Lane County Board of Commissioners

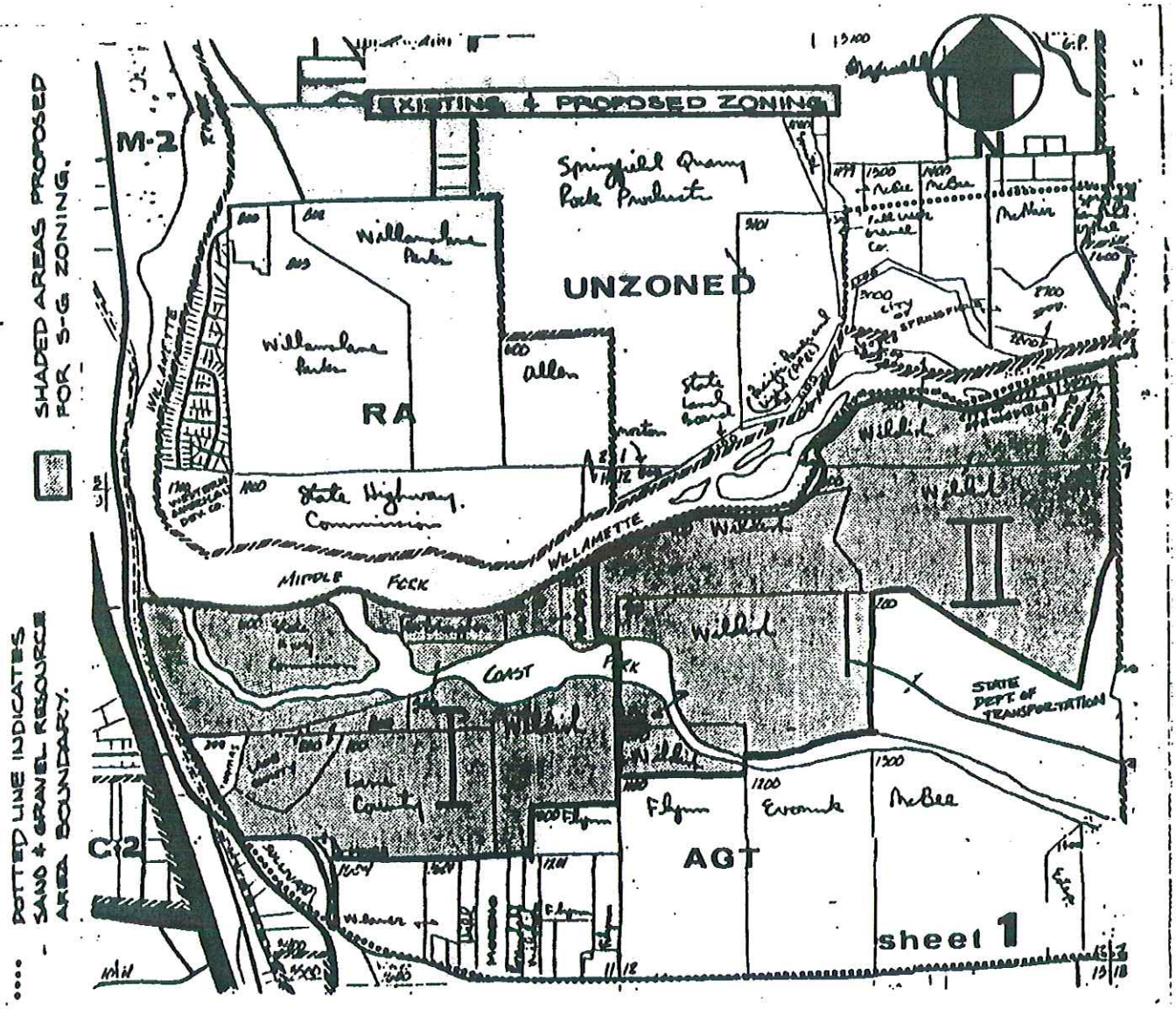
Rachael C. Lawrence
Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM
DATE 11/8/76 Lane County
Helen B. Kaufman
OFFICE OF LEGAL COUNSEL

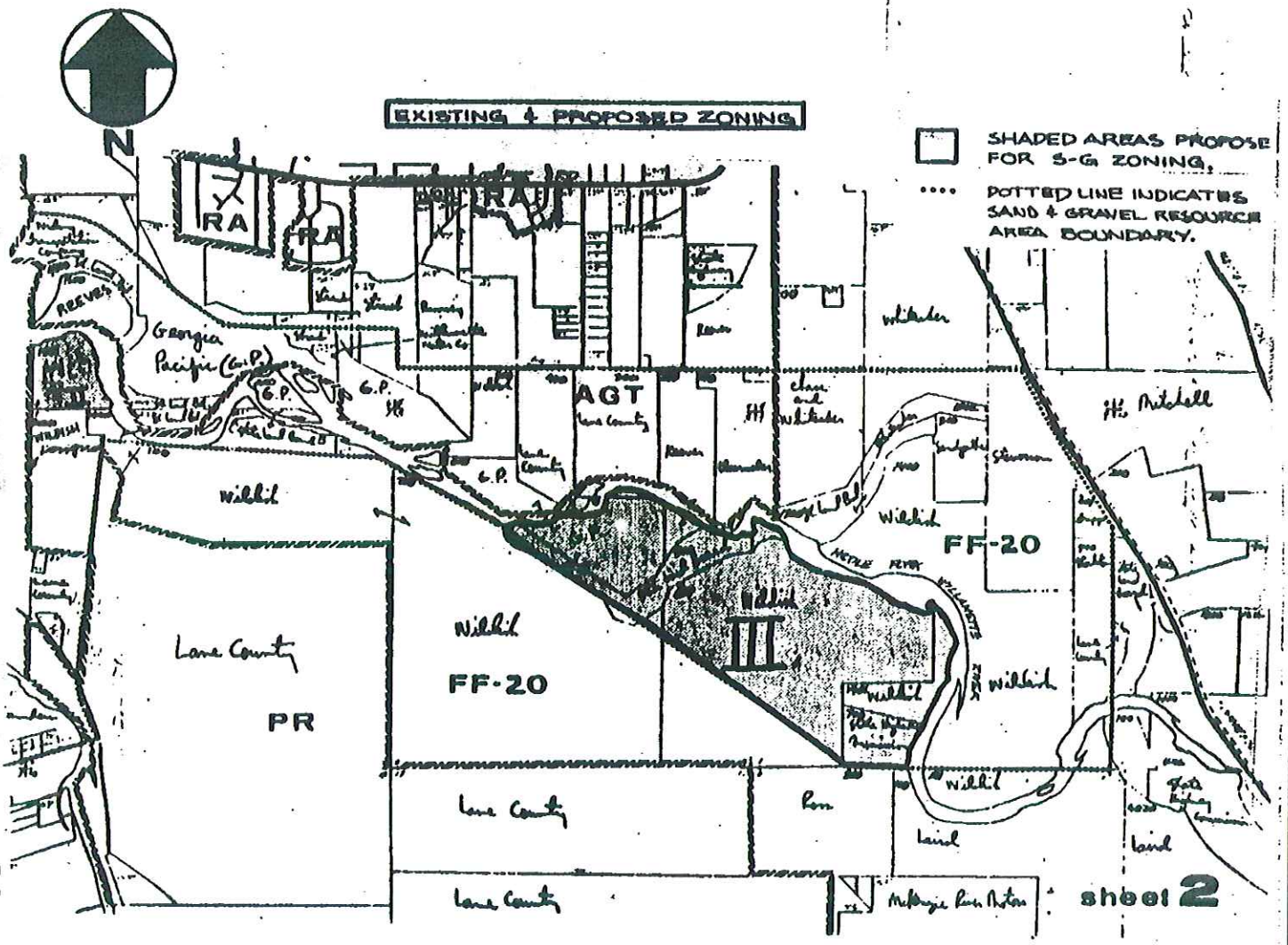
After public hearing this 12th day of October 1976, the rezoning cited in the hereinabove ordinance was approved by the Lane County Planning Commission and is recommended for enactment.

Acting Secretary, Lane County Planning Commission

EXHIBIT 8



Ordinance No. 604
LCPC by Initiation, ZC 76-240



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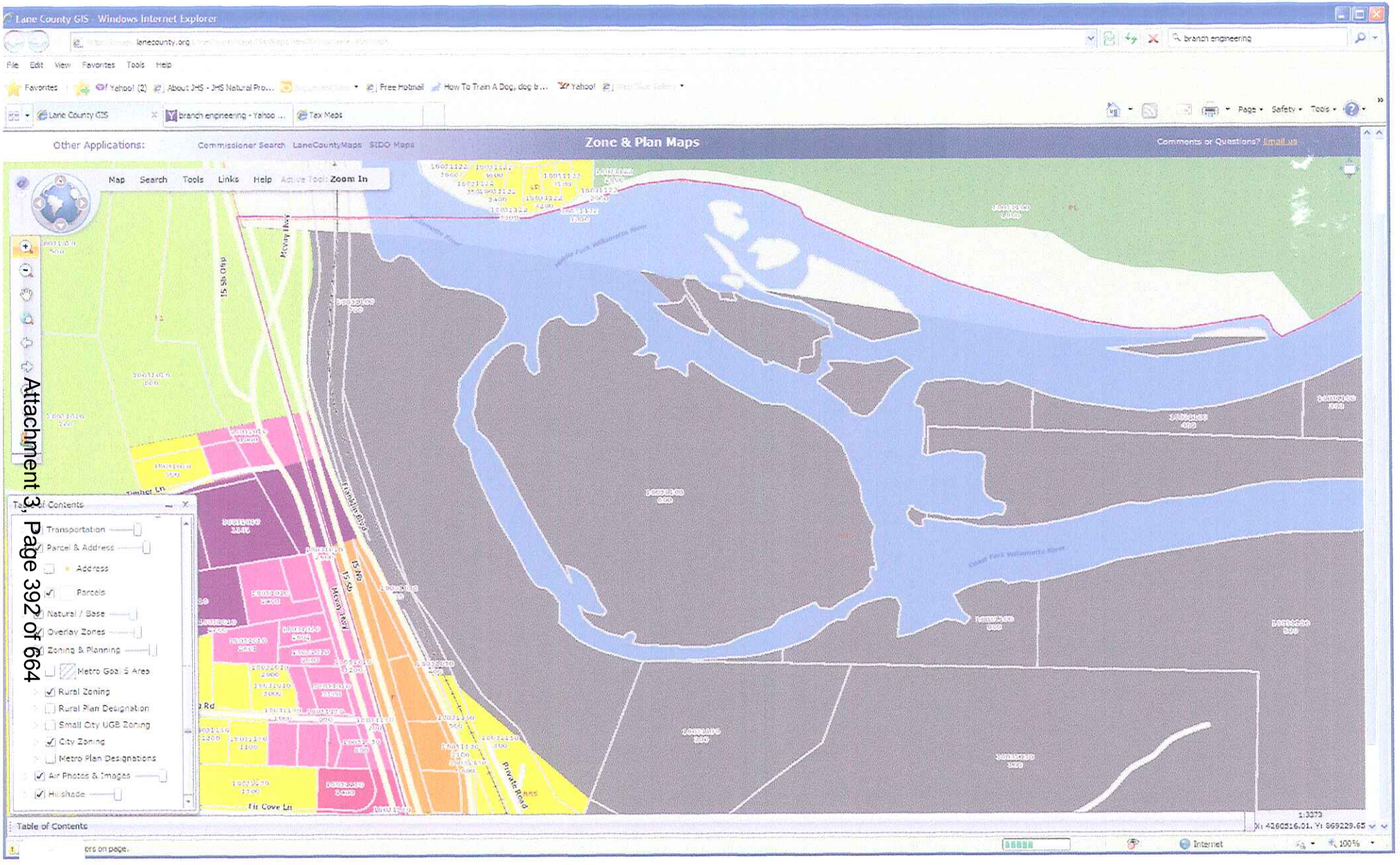
LCPC by Initiation, ZC 76-240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Other Applications:
Commissioner Search
LaneCountyMaps
SIDO Maps
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Comments or Questions?
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Links
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Active Tool: Zoom In
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Rural Plan Designation
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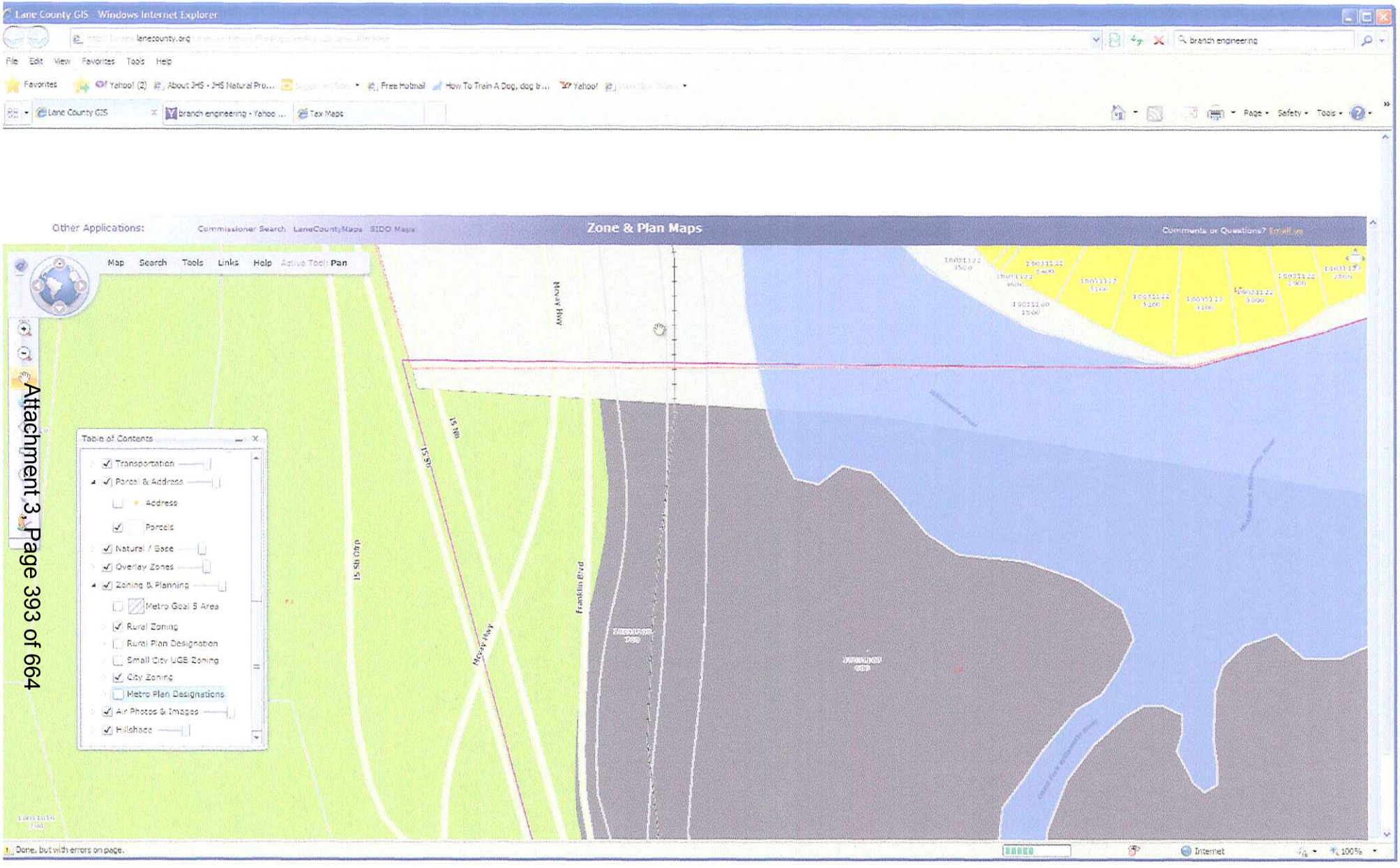
City Zoning
Metro Plan Designations
Air Photos & Images
Hillshade
Franklin Blvd
Moore Hwy
Fir Cove Ln
Private Road
Timber Ln

EXHIBIT 9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City Zoning
Metro Plan Designations
Air Photos & Images
Hillshade
McKay Hwy
Franklin Blvd
Mcvay Hwy
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REC. 112 PAGE 1316

FILED
AT.....O'CLOCK.....M
FEB 08 1982
D.W. ...NFOLD, Director of General Services of Lane County
BY Gladys Deichl
DEPUTY

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

O R D I N A N C E N O. 856	)	IN THE MATTER OF AMENDING THE EUGENE-SPRINGFIELD METROLOLITAN AREA GENERAL PLAN, AN ELEMENT OF THE GENERAL PLAN FOR LANE COUNTY

WHEREAS, the Board of County Commissioners adopted the Eugene-Springfield Metropolitan Area General Plan on August 27, 1980 (Ordinance No. 9-80) and amended said Plan on October 15, 1980 (Ordinance No. 9-80A); and

WHEREAS, the Oregon State Land Conservation and Development Commission reviewed the Eugene-Springfield Metropolitan Area General Plan for compliance with Statewide Goals and on September 24, 1981 granted Lane County, along with the City of Eugene and the City of Springfield, a 150-day continuance in order to complete necessary revisions to the Plan; and

WHEREAS, the Board of County Commissioners has received from the Lane County Planning Commission a resolution dated December 8, 1981, of record herein, recommending certain amendments to the Eugene-Springfield Metropolitan Area General Plan; and

WHEREAS, the Board of County Commissioners has received and considered the Eugene-Springfield Metropolitan Area General Plan, as adopted on August 27, 1980 and revised on October 15, 1980; proposed Metropolitan Plan Amendments (Copy attached hereto and indicated as Revised Appendix "B"); and public testimony and correspondence relating hereto; and

WHEREAS, the Board of County Commissioners has performed its public hearing and other duties in accordance with applicable law, including conducting public hearings with the Eugene and Springfield City Councils, and, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY ORDAINS AS FOLLOWS:

That the Eugene-Springfield Metropolitan Area General Plan as adopted and amended by Ordinance No.'s 9-80 and 9-80A, respectively (copy attached hereto and indicated as Appendix "A"), as amended by further action of the Board (text and diagram changes attached and indicated as Revised Appendix "B"), and also including exceptions to Statewide Goals No. 3 and 4 as presented in Appendix "C", and findings in support of the amendments contained in Appendix "D", be ADOPTED.

EXHIBIT 10

Further intended that the following documents (Working Papers), on file in the Lane County Planning Division Offices, be recognized as supportive technical information used in the preparation of the Plan Amendments: Agricultural Lands Addendum, Forest Land Revision, Natural Resource Areas, Noise, Groundwaters, Economy Addendum, Emergency Medical Services, River Road/Santa Clara Facilities Plan, Willamette River Greenway Addendum, Natural Resource Areas: Conflict Resolution for Significant Areas.

This Ordinance shall take effect thirty (30) days from enactment hereof.

ENACTED this 3 rd day of February, 1982.

Scott Fieuallen
Chairman, Board of County Commissioners

Jean S. Andreasen
Recording Secretary for this Meeting of the Board

After public hearing of December 8, 1981, the amendment cited in the hereinabove Ordinance was considered by the Lane County Planning Commission.

Lee Miller
Secretary, Lane County Planning Commission

APPROVED AS TO FORM
DATE 12/14/81
Weldwalter
OFFICE OF LEGAL COUNSEL

In the Matter of Amending the Eugene-Springfield Metropolitan Area General Plan, An Element of the General Plan for Lane County

November 1981

METROPOLITAN PLAN UPDATE

EXCEPTIONS

I. INTRODUCTION

II. AIRPORT

III. LANE COMMUNITY COLLEGE CAMPUS

IV. OTHER "BUILT UPON OR COMMITTED" LANDS

1. Clearwater Lane, Area No. 1
2. East Thurston, Areas No. 2A, 2B, 2C
3. North 74th Street, Area No. 3
4. Chapman Drive, Area No. 4
5. River Loop No. 1, Area No. 5
6. Willamette Valley Dog Kennel, Area No. 6
7. Royal Avenue, Area No. 7
8. Bonnie Heights Area No. 8
9. Oak Hill Drive, Area No. 9
10. Willow Creek Road, Area Nos. 10A & 10B
11. Gimpl Hill Road, Area Nos. 11A & 11B
12. Bailey Hill Road, Area No. 12
13. Bloomberg Road, Area Nos. 13A & 13B

Lane Council of Governments
125 E. 8th Avenue
Eugene, Oregon 97401

This is one in a series of working papers prepared to bring the Metropolitan Plan into compliance with the Oregon Land Conservation and Development Commission's statewide planning goals - particularly Goal 2, "Land Use Planning", Goal 3, "Agricultural Lands" and Goal 4 "Forest Lands".

Appendix C

A. INTRODUCTION

Statewide planning goals, as adopted and interpreted by the Oregon Land Conservation and Development Commission (LCDC), require comprehensive plans to protect resource (agricultural and forest) lands in rural areas. Within the Metropolitan Plan area, rural lands outside the urban growth boundary are included.

A separate Metropolitan Plan working paper (April 1978) and addendum (October 1981) address statewide Goal 3, "Agricultural Lands." Agricultural lands are defined in LCDC Goal 3:

> Agricultural Land - in western Oregon is land of predominantly Class I, II, III, and IV soils as identified in the Soil Capability Classification System of the United States Soil Conservation Service, and other lands which are suitable for farm use taking into consideration soil fertility, suitability for grazing, climatic conditions, existing and future availability of water for farm irrigation purposes, existing land use patterns, technological and energy inputs required, or accepted farming practices. Lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands, shall be included as agricultural land in any event.

A revision (October 1981) to the April 1978 Metropolitan Plan working paper addresses statewide Goal 4, "Forest Lands." In that revised working paper, forest lands are defined as follows:

1. All lands having soil capability (based on site index conversion to cubic foot site class rating 2-5) for production of commercial Douglas Fir forest, and

2. All forested lands as indicated in the inventory of vegetative cover types described in the "Vegetation/Wildlife Habitat" Working Paper, L-COG, April 1978.

The inventory identifies forest land based on multiple values including:

1)	commercial	6)	soil protection
2)	wildlife habitat	7)	scenic resources
3)	fish habitat	8)	livestock grazing
4)	recreation use	9)	other urban uses
5)	watershed protection		

Based upon statewide land use planning requirements and based upon the definitions and inventories referenced above, agricultural and forest resource lands must be designated for resource use. Once the plan designation is determined, the land must be zoned to protect the resource.

Designation of any non-resource use on rural lands outside the urban growth boundary is subject to the "exceptions" requirements of LCDC statewide Goal 2, "Land Use Planning."

On May 3, 1979, the LCDC adopted as policy, a March 10, 1978 Information Paper on the "Exceptions" Process. That paper states:

Simply stated, the Exceptions Process is a method for describing how the land use requirements of certain Statewide Goals have been balanced against local land use needs, as those needs apply to specific situations. In some situations, the specific requirements of certain Statewide Planning Goals may conflict with one of the community's site specific land use needs. The Exceptions Process provides the flexibility to deal with those kinds of conflicts.

The Exception itself is the documentation of a city or county's conclusion that "it is not possible to apply" a particular goal to certain land areas. That conclusion must be based on a justified need for a use, not otherwise allowed by a goal, to be located in a specific area. The conclusion must be well supported by compelling reasons and facts, as outlined in question 4.

It must be clearly understood that the Exceptions Process is not to be used to indicate that a jurisdiction disagrees with a goal or does not wish to comply with a specific goal.

The exceptions process and requirements for exceptions have evolved from Goal 2 interpretations established by LCDC decisions and policy and have been further defined by court cases and decisions of the Land Use Board of Appeals (LUBA).

Three levels of test are covered in the exceptions process:

1. "Built Upon" - This level of exception is based upon actual development. Detailed findings of fact are necessary to reach a conclusion that resource lands are "built upon." Factors for making those findings are discussed under number 2 below. If a specific "built upon" are is accompanied by findings of fact sufficient to conclude the specific area cannot be used for resource purposes, those findings need not be included as part of the Plan, but must be subject to public review.

2. "Committed" - This level of exception if based upon commitment to non-resource use determined by the following factors:

   a) actual level of development and use,
   b) adjacent uses,
   c) parcel size and ownership patterns on neighboring properties,
   d) neighborhood and regional characteristics,
   e) natural boundaries, and
   f) other relevant factors

   As with "built upon" lands, detailed findings of fact are necessary to reach a conclusion that resource lands are "committed" to non-resource use. A key finding must be made, based on the factors above, that the "committed" lands cannot be used for resource purposes. Any combination of the above factors may be sufficient to support that key finding.

   "The existence of small parcels, some with dwelling units, in an area of agricultural or forest land simply does not justify a conclusion that the area is somehow committed to non-farm and non-forest uses." 1000 Friends vs. Clackamas County and City of Sandy and Metropolitan Service District vs. Clackamas County LUBA No. 80-075, p. 15. If a specific "committed" area is accompanied by findings of fact sufficient to conclude the specific

area cannot be used for resource purposes, those findings need not be included as part of the Plan, but must be integrated into the Plan adoption procedures and must be subject to public review.

3. "Need" - This level of exception is the most strict and requires application of the more detailed exceptions process. Compelling reasons and specific findings of fact are needed to justify an exception at this third level. These findings of fact must address four key issues outlined in Goal 2:

   a) Need - Document why these other uses (other than agriculture or forest) should be provided for. Facts and assumptions used as the basis for determining need must be set forth,

   b) Alternatives - Examine what alternative locations within the area could be used for the proposed non-resource uses. A map showing the location of alternative areas considered which would not require an exception (if any) must be included; the selected site must be identified on the map.

   c) Consequences - Discuss what the long-term environmental, social, economic and energy consequences to the public and the area would be of not applying the resource goal or of permitting the alternative use. The characteristics of each alternative area, the advantages and disadvantages of using each area for a use not consistent with the goal and the impacts of loss of the area for another use must be described. The reasons why the selected area is the best site available to meet the need must be listed.

   d) Compatibility - Describe how the proposed uses are compatible with other adjacent uses. The adverse effects of the proposed uses on adjacent land uses must be described.

If compelling reasons and specific findings of fact addressing the factors above justify a conclusion the lands are "needed" for non-resource use, a more stringent exceptions process must be followed than is required for the "built upon" or "committed" lands.

1. The proposed exception must be communicated widely to citizens, affected governments and the LCDC field representative in determining:

   a) the need for those uses and reasons for exception to the goal, and
   b) the physical extent of the proposed exception area.

   The communication must include "adequate" notice and time for review and comment on the proposed exception.

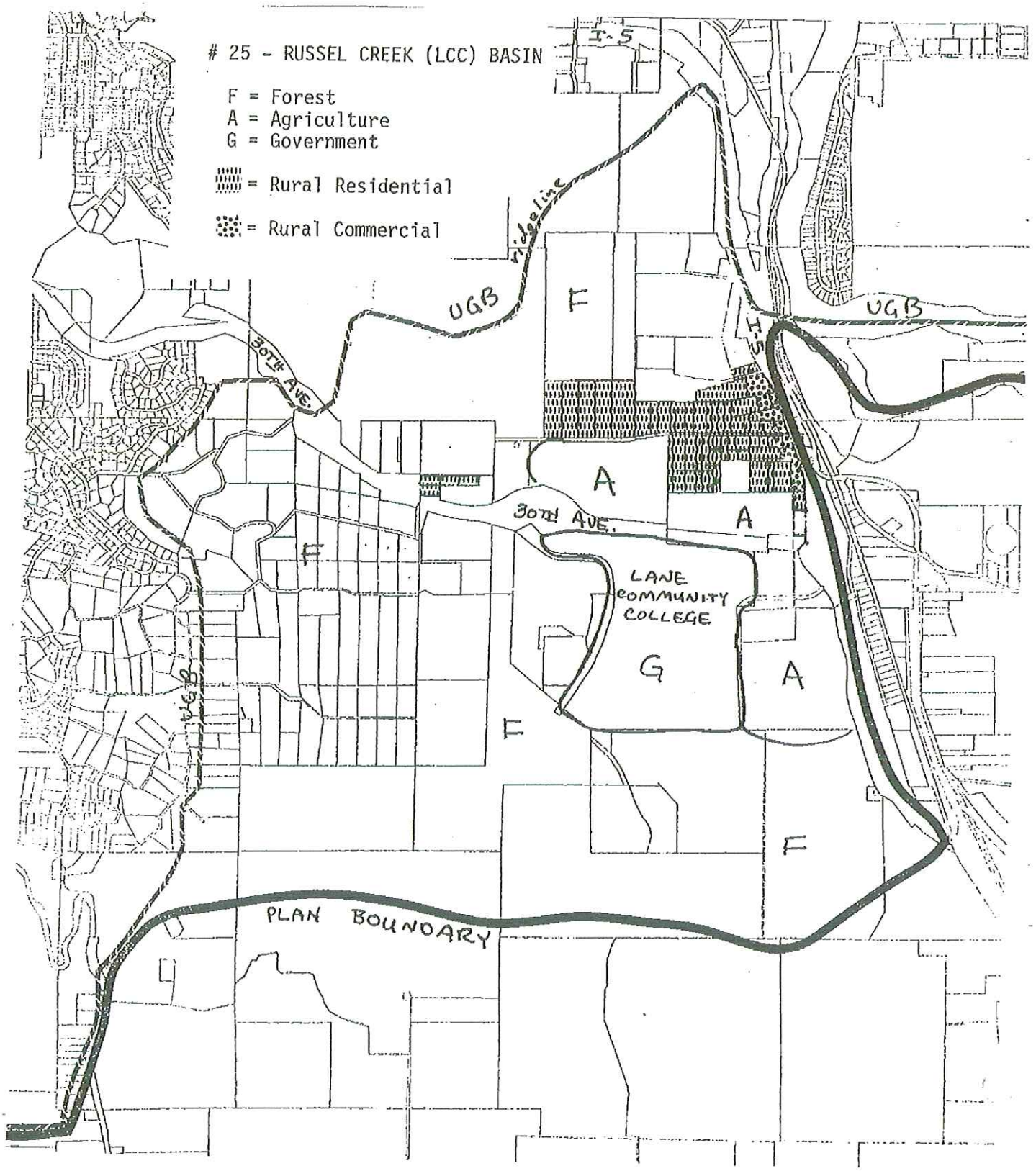
2. Notice of public hearings incorporating the proposed exception into the Plan must describe the proposed exception, including a summary of issues and area involved in the proposal.

3. Specific opportunity must be provided at public hearings for comment on the proposed exception.

4. If the "need" exception is justified, compelling reasons and facts must be documented (referenced and appended) in the Plan.

5. The exception takes effect when the comprehensive plan or plan amendment is adopted locally.

6. LCDC will review the adequacy and accuracy of the findings of fact and procedures for exceptions under a request for acknowledgment of compliance with Goal 2 when the comprehensive plan or plan amendment is submitted by local government.


# 25 - RUSSEL CREEK (LCC) BASIN
F = Forest
A = Agriculture
G = Government
= Rural Residential
= Rural Commercial
I-5
Ridgeline
UGB
F
UGB
30TH AVE.
H-5
A
30TH AVE.
A
F
LANE COMMUNITY COLLEGE
G
A
UGB
F
F
PLAN BOUNDARY

Bloomberg Road, Area Nos. 13A and 13B

This proposed "built upon or committed" exception is located east of Eugene in Township 18, range 3, Sections 10 and 11. McVay Road borders on the east and extends west along Bloomberg Road (See Maps IV-13A and IV-13B, subject property is outlined).

Findings of Fact:

1. This area is located on agricultural soil capability classification III and VI related soils. This area is defined as "agricultural land" in the Metropolitan Plan agricultural inventory.

2. This area is not defined as "forest land" in the Metropolitan Plan forestry inventory.

3. Surrounding land uses are mainly agricultural with a number of the adjacent parcels being vacant (See Maps IV-13A and IV-13B and Tables IV-13A and IV-13B).

4. Forty-seven of the 60 tax lots included in this request, as well as the majority of the surrounding adjacent parcels, are zoned in Lane County as Agricultural, Grazing, and Timber (AGT) the remaining 13 tax lots located along McVay Highway, are zoned in Lane County as Neighborhood Commercial District (C-2) (See Maps IV-13A and IV-13B and Tables IV-13A and IV-13B for further details).

5. The following services are available to this area:

   a. Public water is provided by Willamette Water Corp. under contract with Eugene Water and Electric Board.

   b. Bloomberg Road and McVay Highway are paved.

   c. Sewage disposal is provided by individual subsurface sewage disposal systems.

   d. Police protection is provided by the Lane County Sheriff's Office.

   e. School facilities and services are provided by Springfield School District No. 19 except for the extreme western portion which is served by Eugene School District No. 4J.

   f. Fire protection is provided by the Goshen Rural Fire District.

6. The ownership pattern is fragmented (See Maps IV-13A and IV-13B and Tables IV-13A and IV-13B for ownerships within the "built upon and committed" area and surrounding adjacent parcels).

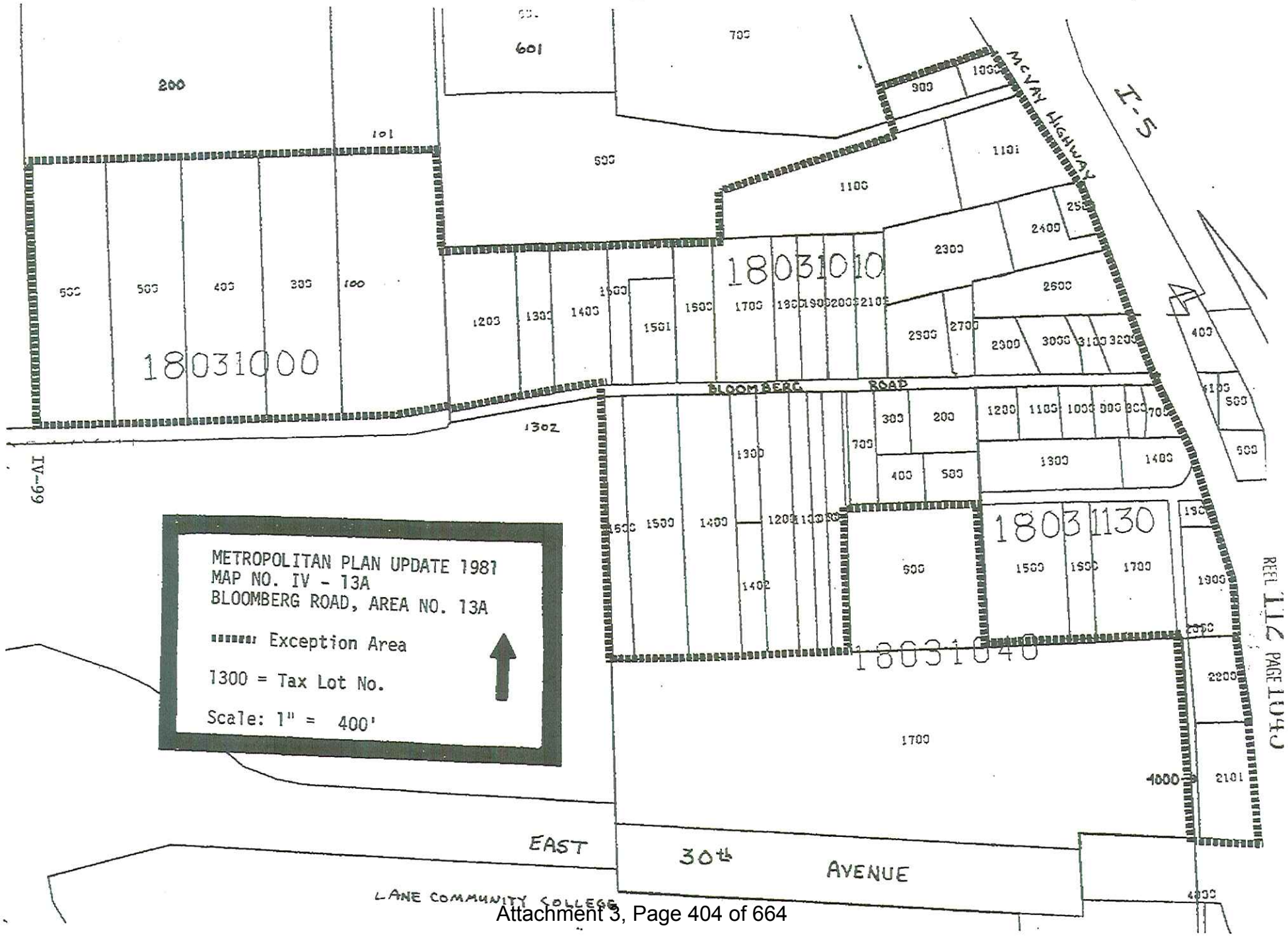
7. Parcel sizes are small ranging from 0.2 to 5 acres (See Maps IV-13A and IV-13B and Tables IV-13A and IV-13B for further details).

8. Predominate use of parcels within this area is single-family residential; 38 of the 66 tax lots have single-family dwellings located on them; 20 are vacant and 8 have retail commercial uses on them.

9. The small lot size, the pattern of ownership, the current state of development for single-family residential use, and the commitment to rural residential living through subdivision and fragmented public and private service delivery and improvements render this area unsuitable for resource (agricultural) use; lots in this are could not be logically combined with adjacent, surrounding parcels to form economic farming or forest management units.

Recommendation

The tax lots stipulated as "built upon or committed" and zoned AGT in Tables IV-13A and IV-13B should be designated "rural residential" in the Metropolitan Plan, and those tax lots zoned C-2 in Table IV-13A should be designated "rural commercial".



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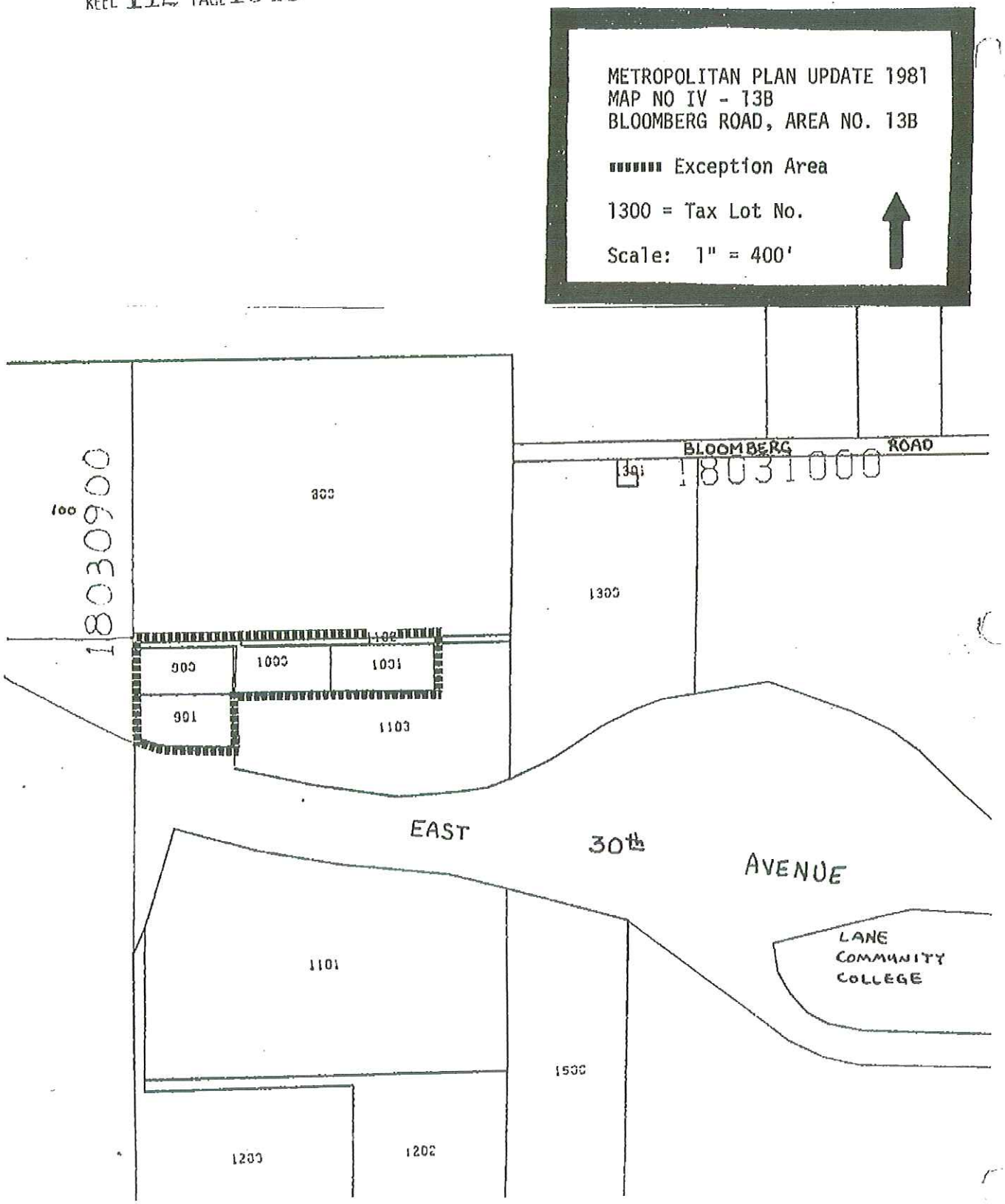
METROPOLITAN PLAN UPDATE 1981
MAP NO IV - 13B
BLOOMBERG ROAD, AREA NO. 13B
Exception Area
1300 = Tax Lot No.
Scale: 1" = 400'
BLOOMBERG ROAD
18031000
18030900
100
300
1300
900
1000
1001
901
1103
EAST 30th AVENUE
LANE COMMUNITY COLLEGE
1101
1500
1200
1202

TABLE IV-13A

BLOOOMBERG RD., AREA #13A - EXCEPTIONS

MAPLOT	LAND USE(S)	USE CODE	PCL	SCL	IMPR$	ACRES	ZN3	OWNER NAME(S)
18 03 10 00 00100	1111	S	431	150	$66,710	5.00	AGT	WALD JAMES & WANDA
18 03 10 00 00300	1111	S	431	160	$86,470	5.08	AGT	JONES DONALD W & HAZEL S
18 03 10 00 00400	1111	S	431	150	$54,550	5.24	AGT	CHRUSZCH TONY & BERTHA
18 03 10 00 00500	1111	S	431	150	$54,850	4.98	AGT	BERKEY VICTOR H & DELORAS J BERKEY VICTOR S & V A
18 03 10 00 00600	1111	S	431	140	$52,630	5.40	AGT	CHAMBERLAIN DONALD R & MARY CUNNINGHAM DONALD O & C J
18 03 10 10 00900			131	130	$27,980	0.79	AGT	
	1111	S				0.40		
	1111	S				0.39		CHURCH EARL T + ZELDA F TR
18 03 10 10 01000	1111	S	221	130	$53,010	0.41	C2	ATKINSON LARKIN J & IDA L JACOBSON DANIEL C & EDITH
18 03 10 10 01100	9100	V	220	000	$000	4.57	AGT	TROUTMAN DALLAS & JOY E
18 03 10 10 01101			221	701	$982,590	2.39	C2	
	6379	O				0.42		
	9100	V				1.96		TROUTMAN DALLAS C & JOY E
18 03 10 10 01200			131	130	$46,190	2.88	AGT	
	1111	S				1.68		
	9100	V				1.17		SINGLER JOSEPH G & MARY R DEPT OF VETS
18 03 10 10 01300	9100	V	131	307	$080	1.31	AGT	WILLEMS GREG ALAN & PAULA K

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TABLE IV-13A

BLOOMBERG RD., AREA #13A - EXCEPTIONS

MAPLOT	LAND USE(S)	USE CODE	PCL	SCL	IMPRS	ACRES	ZN3	OWNER NAME(S)
18 03 10 10 01400	9100	V	130	000	$000	2.12	AGT	VIDMAR ALBERT & ELIZABETH N
18 03 10 10 01500	9100	V	130	000	$000	1.18	AGT	HOUGARDY ALBERTA CHARLOTTE
18 03 10 10 01501	1111	S	131	140	$30,290	1.17	AGT	HOUGARDY ALBERTA CHARLOTTE
18 03 10 10 01600	1111	S	131	130	$13,700	1.42	AGT	LORICKE JOSEPH C
18 03 10 10 01700	1111 9100	S V	131	130	$33,110	2.16 0.96 1.20	AGT	MURRAY EDWARD + ETHEL E
18 03 10 10 01800	1111	S	131	130	$26,260	0.92	AGT	MARTIN CARL D & DOROTHY E
18 03 10 10 01900	1111	S	131	130	$37,000	0.95	AGT	JONES EARL L & FLORENCE C BROWN MARY ALICE B
18 03 10 10 02000	1111	S	131	130	$19,840	1.07	AGT	JONES EARL L + FLORENCE C BROWN MARY ALICE B
18 03 10 10 02100	9100	V	130	000	$000	1.09	AGT	BARTHELEMY EDWARD N & M M
18 03 10 10 02300	9100	V	130	000	$000	2.32	AGT	BARTHELEMY EDWARD N & M M
18 03 10 10 02400	1111 1300	S Q	221	411	$69,960	1.23 0.79 0.45	C2	KINYON ROBERT R
18 03 10 10 02500	5530	R	221	444	$59,310	0.44	C2	SANDELMAN SANFORD UNION OIL CO OF CA

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TABLE IV-13A

BLOOMBERG RD., AREA #13A - EXCEPTIONS

MAPLOT	LAND USE(S)	USE CODE	PCL	SCL	IMPR$	ACRES	ZN3	OWNER NAME(S)
18 03 10 10 02600			221	444	$53,140	1.89	C2	
	5530	R				0.43		
	9400	V				0.32		
	9100	V				1.13		
								CHEVRON USA INC
18 03 10 10 02700	1111	S	131	130	$23,270	0.56	AGT	
								BRISTOW KENNETH W & ROSIE
18 03 10 10 02800			131	140	$37,680	1.23	AGT	
	1111	S				0.57		
	9100	V				0.66		
								GRANTHAM JOE E & ROSA LEE
18 03 10 10 02900	1111	S	131	130	$21,270	0.77	AGT	
								PEERSON JOHN & VIOLET
18 03 10 10 03000	1111	S	131	130	$17,980	0.71	AGT	
								PEERSON JOHN A & VIOLET E
18 03 10 10 03100	1111	S	221	140	$23,830	0.34	C2	
								OAKES CLINTON MAX
18 03 10 10 03200	5530	R	221	444	$13,620	0.59	C2	
								DEMOTT MABEL J & RALPH MID OIL CO
18 03 10 40 00200	1111	S	131	130	$20,270	1.08	AGT	
								SANFORD CHARLES & MARJORIE
18 03 10 40 00300	1111	S	131	140	$40,740	0.56	AGT	
								RODIN JOANNE
18 03 10 40 00400	1111	S	131	150	$47,510	0.57	AGT	
								EKBERG CHESTER J & ORVILLA
18 03 10 40 00500	1111	S	131	140	$28,660	0.67	AGT	
								METEER HAROLD B & GLADYS B
18 03 10 40 00700	1111	S	131	130	$24,700	0.79	AGT	
								MCGUIRE SPENCER T & CLARA

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TABLE IV-13A

BLOOOMBERG RD., AREA #13A - EXCEPTIONS

MAPLOT	LAND USE(S)	USE CODE	PCL	SCL	IMPR$	ACRES	ZN3	OWNER NAME(S)
18 03 10 40 00900	1111	S	131	130	$22,060	1.23	AGT	LUND DONALD D + DOVA A ROSSI WALTER F & S L
18 03 10 40 01000			131	307	$5,700	0.96	AGT	
	6379	O				0.48		
	8040	A				0.48		LUND DONALD D + DOVA A ROSSI WALTER F & S L
18 03 10 40 01100			131	140	$42,050	1.23	AGT	
	1111	S				0.60		
	8040	A				0.62		BRAINARD DAVID E & SARAH J
18 03 10 40 01200			131	130	$21,980	2.10	AGT	
	1111	S				1.04		
	8040	A				1.06		MOYER MYRNE STACEY GEORGE F & P G
18 03 10 40 01300	1111	S	131	140	$51,840	0.83	AGT	GANDY JUANITA & A W
18 03 10 40 01400			131	130	$42,540	3.49	AGT	
	1111	S				0.87		
	8040	A				2.62		BROWN CALVIN B & JUNE L
18 03 10 40 01402	9100	V	130	000	$000	0.85	AGT	GANDY A W JR & JUANITA S
18 03 10 40 01500			131	130	$17,980	3.66	AGT	
	1111	S				1.81		
	8040	A				1.84		PARTRIDGE BEVERLY
18 03 10 40 01600			131	130	$17,980	1.45	AGT	
	1111	S				0.68		
	8040	A				0.76		HOWARD GALEN & KATHLEEN W
18 03 11 30 00700	5530	R	221	444	$18,930	0.32	C2	POWELL CLOYD C & JEANETTE

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TABLE IV-13A

BLOOMBERG RD., AREA #13A - EXCEPTIONS

MAPLOT	LAND USE(S)	USE CODE	PCL	SCL	IMPR$	ACRES	ZN3	OWNER NAME(S)
								DODSON FRED L & MARY N
18 03 11 30 00800	1120	D	221	242	$24,950	0.24	C2	
								DODSON FRED L & MARY N
18 03 11 30 00900	1111	S	131	140	$33,680	0.43	C2	
								DENTON MARVIN L & LINDA L
18 03 11 30 01000	9100	V	130	000	$000	0.44	C2	
								GRAY EDGAR L + D K
18 03 11 30 01100	1111	S	131	150	$38,780	0.56	AGT	
								GRAY EDGAR L + D K
18 03 11 30 01200			131	150	$67,740	0.56	AGT	
	1111	S				0.28		
	5999	R				0.28		
								DOORN WIM & CORNELIA
18 03 11 30 01300	9100	V	130	000	$000	1.80	AGT	
								WHEELER CLIFFORD D & MAXINE DODSON FRED L & MARY N
18 03 11 30 01400	5530	R	221	444	$25,710	0.83	C2	
								WHEELER CLIFFORD D & MAXINE DODSON FRED L & MARY N
18 03 11 30 01500	6379	O	131	307	$2,510	2.81	AGT	
								LORICKE MARY C & HIRAM W
18 03 11 30 01600	9100	V	130	000	$000	0.91	AGT	
								LORICKE MARY C
18 03 11 30 01700	9100	V	130	000	$000	2.77	AGT	
								LORICKE HIRAM W & MARY C
18 03 11 30 01800	1111	S	221	130	$25,700	0.18	C2	
								MCCOWN CHARLES E
18 03 11 30 01900			221	140	$43,160	1.20	C2	
	8040	A				0.69		

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TABLE IV-13A

BLOOOMBERG RD., AREA #13A - EXCEPTIONS

MAPLOT	LAND USE(S)	USE CODE	PCL	SCL	IMPR$	ACRES	ZN3	OWNER NAME(S)
	1111	S				0.50		LEWIS ORLEY I 1-6 ETAL 5-6
18 03 11 30 02000	6999	O	221	499	$9,080	0.04	C2	POWELL CLOYD C & JEANNETTE KINYON ROBERT R
18 03 11 30 02101	9100	V	130	000	$000	1.67	AGT	PONDEROSA INVEST CO 59% BARTZAT A M 29% WALLS MARGARET 12%
18 03 11 30 02200	8040	A	220	000	$000	1.16	AGT	PONDEROSA INVEST CO 59% BARTZAT A M 29% WALLS MARGARET 12%
18 03 11 30 04000	9100	V	001	000	$000	0.36	AGT	PONDEROSA INVEST CO 59% BARTZAT A M 29% WALLS MARGARET 12%

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TABLE IV-13A

BLOOMBERG RD., AREA #13A, SURROUNDING AREA

MAPLOT	LAND USE(S)	USE CODE	PCL	SCL	IMPR$	ACRES	ZN3	OWNER NAME(S)
18 03 10 00 00101	9100	V	431	000	$000	7.01	AGT	THE MURPHY COMPANY THE MURPHY COMPANY
18 03 10 00 00200	9100	V	430	000	$000	53.28	AGT	WEISETH WARREN M & FAYE WEISETH WARREN M & FAYE
18 03 10 00 00700	9100	V	420	000	$000	241.59	AGT	OSU FOUNDATION 1-2 U OF O DEV FUND 1-2 OSU FOUNDATION 1-2 U OF O DEV FUND 1-2 OSU FOUNDATION 1-2 U OF O DEV FUND 1-2
18 03 10 00 01302	6719	G	420	000	$000	50.52	AGT	LANE CO SCHOOL DIST 4-J MORGAN-FOLKER CO 2-5 ETAL STIMAC TERRY M 1-5 TEMPLEMAN NELSON B 1-5 VON SEEGER LAWRENCE L 1-5 LANE CO SCHOOL DIST 4-J MORGAN-FOLKER CO 2-5 ETAL STIMAC TERRY M 1-5 TEMPLEMAN NELSON B 1-5 VON SEEGER LAWRENCE L 1-5
18 03 10 10 00600	1111 9100	S V	431	150	$65,050	11.80 0.67 11.19	AGT	VON OHLEN CECIL R + B M
18 03 10 10 00700	1111 9100	S V	431	170	$141,120	11.52 0.67 10.83	AGT	ROBERTS NORENE E & GALE M
18 03 10 10 00800	6719	G	430	000	$000	7.39	AGT	OREGON STATE OF
18 03 10 40 00600	8040	A	430	000	$000	5.13	AGT	DEMOTT MABEL J BAIRD
18 03 10 40 01700	8040	A	430	000	$000	27.16	AGT	

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TABLE IV-13A

BLOOMBERG RD., AREA #13A, SURROUNDING AREA

MAPLOT	LAND USE(S)	USE CODE	PCL	SCL	IMPR$	ACRES	ZN3	OWNER NAME(S)
								ZELLNER GEORGE L & EMILY K.

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TABLE IV-13B

BLOOMBERG RD.,AREA #13B- EXCEPTIONS

MAPLOT	LAND USE(S)	USE CODE	PCL	SCL	IMPRS	ACRES	ZN3	OWNER NAME(S)
18 03 10 00 00900	1111	S	121	150	$57,060	0.94	AGT	CARTER JAMES D & KAY L
18 03 10 00 00901	9100	V	120	000	$000	1.02	AGT	CARTER JAMES D & KAY L
18 03 10 00 01000	9100	V	120	000	$000	1.13	AGT	HILL GEORGE D & LORRAINE A
18 03 10 00 01001	1111	S	121	130	$33,200	1.01	AGT	HILL ERIKA
18 03 10 00 01102	9100	V	120	000	$000	0.35	AGT	BRINK RAY C & LEE ONA BLUM LEWIS S

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TABLE IV-13B

BLOOMBERG RD.,AREA #13B- SURROUNDING AREA

MAPLOT	LAND USE(S)	USE CODE	PCL	SCL	IMPR$	ACRES	ZN3	OWNER NAME(S)
18 03 10 00 00800	6719	G	420	000	$000	21.34	AGT	EUGENE CITY OF
18 03 10 00 01103	9100	V	420	000	$000	5.96	AGT	MURPHY TED R BLUM LEWIS S

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IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

89-1-25-10

) IN THE MATTER OF ADOPTING
) SUPPLEMENTAL DEVELOPED AND
) COMMITTED FINDINGS IN SUPPORT OF
) ORDINANCE NO. PA 884 FOR:
) PLOT 074, EXCEPTION #1
) PLOT 075, EXCEPTION #1
) PLOT 176, EXCEPTION #2
) PLOT 403, EXCEPTION #2
) PLOT 412, EXCEPTION #1
) PLOT 417, EXCEPTION #1
) PLOT 417, EXCEPTION #2
) PLOT 430, EXCEPTION #1
) PLOT 437, EXCEPTION #1
) PLOT 437, EXCEPTION #3
) PLOT 448, EXCEPTION #1
) PLOT 448, EXCEPTION #2
) PLOT 542, EXCEPTION #2
) PLOT 542, EXCEPTION #3
) PLOT 1010, EXCEPTION #1

FILED
AT ..... O'CLOCK ..... M
JAN 26 1989
County Clerk
For Lane County, Oregon
BY Lisa Morello
DEPUTY

WHEREAS, on February 29, 1984 the Board of County Commissioners of Lane County adopted Ordinance No. PA 884, which applied Rural Comprehensive Plan designations and zoning districts; and

WHEREAS, the Board of Commissioners of Lane County adopted the following supplemental findings for Ordinance No. PA 884 and the following ordinances changing the application of the Rural Comprehensive Plan designations and zoning districts applied by ORD No. PA 884:

- Order No. 84-6-19-16, "Supplemental Findings in Support of ORD No. PA 884," adopted June 19, 1984; and
- Ordinance No. PA 888, "IN THE MATTER OF ADOPTING AN ORDINANCE FOR AMENDMENTS TO LANE COUNTY'S RURAL COMPREHENSIVE PLAN (ERRORS AND OMISSIONS/CORRECTIONS), adopted July 17, 1984; and
- Order No. 84-9-11-23, "Supplemental Findings in Support of ORD No. PA 884, adopted September 11, 1984; and
- Ordinance No. PA 891, "IN THE MATTER OF AMENDING ORDINANCE 887 TO CHANGE THE PLAN AND ZONE DESIGNATION ON VARIOUS PARCELS OF PROPERTY TO BRING THIS ELEMENT OF THE RURAL COMPREHENSIVE PLAN INTO COMPLIANCE WITH THE STATEWIDE PLANNING GOALS AND ADOPTING A SAVINGS AND SEVERABILITY CLAUSE," adopted September 12, 1984; and

EXHIBIT 11

WHEREAS, LCDC acknowledged the Lane County Rural Comprehensive Plan (including the ordinances and orders mentioned above) on September 13, 1984; and

WHEREAS, on March 29, 1988, the Oregon Supreme Court remanded to LCDC its acknowledgment of the Lane County Rural Comprehensive Plan for reconsideration of five issues, including additional justification for developed and committed exception areas; and

WHEREAS, LCDC met on June 2, 1988 and adopted an In-Order-To-Comply directing Lane County to provide, among other things, additional justification for developed and committed exception areas designated and zoned by the Lane County Rural Comprehensive Plan; now, therefore, be it

ORDERED that the attached Supplemental Findings set forth in Exhibit "A" (Plot 074, 075), Exhibit "B" (Plot 176), Exhibit "C" (Plot 403), Exhibit "D" (Plot 412), Exhibit "E" (Plot 417), Exhibit "F" (Plot 417), Exhibit "G" (Plot 430), Exhibit "H" (Plot 437), Exhibit "I" (Plot 437), Exhibit "J" (Plot 448), Exhibit "K" (Plot 448), Exhibit "L" (Plot 542), Exhibit "M" (Plot 542), Exhibit "N" (Plot 1010), are hereby adopted in support of Ordinance No. PA 884.

DATED this 25 day of January, 1989.

Chair, Lane County Board of Commissioners

APPROVED AS TO FORM
Date 1-13-89 lane county
OFFICE OF LEGAL COUNSEL

12/27/74, they would be included in an approved and recorded partition map; and, that parcels without an approved and recorded partition map were created before 12/27/74.

v. Using the Lane County computer drawn map with the year built data and the partition and subdivision data plotted on it, the total number of parcels not included in an approved and recorded partition or subdivision, and being vacant or having a residence without built-upon data prior to 12/27/74 is: 9. It is assumed that these parcels were created prior to 12/27/74 for the same reasons as stated in the second reason in iv. above.

b) 2 parcels were created after the adoption of the 12/27/74 goal adoption date based upon use of the boundaries and dates of partitions and subdivisions which have been plotted onto the computer drawn map of the exception area and identification of the parcels included in this category which were created after 12/27/74.

12. GOAL COMPLIANCE HISTORY

0 parcels were created via application of the Goal 2 Developed and Committed Lands Exceptions process. This number was determined by examining the files for partitions and subdivisions created in 1980 or later to verify if developed-and-committed findings were included in these files as part of the basis for approving the partitions or subdivisions. It is assumed the Developed and Committed Lands Exceptions process was not followed for partitions and subdivisions created before 1980.

13. DEVELOPED AND COMMITTED RATIONALE

The result of all of this development is that land within this exception area is unsuitable for agricultural or forest uses because of the following factors:

- small tract sizes (as determined by dividing the acreage of the exception area: 59.97 by the # of parcels in the exception area: 44 = an average parcel size of 1.36 acres;
- fragmented ownerships unlikely to consolidate (contiguous ownerships are identified on map with struances);
- close proximity to residential development;
- the residential pattern of development: 36 residences in the exception area;
- the residential development is generally clustered around Interstate Highway 5 and Seavey Loop Road serving the exception area;
- the development within the exception area is clustered within a large group;
- a natural feature Coast Fork - Willamette River separates the exceptio area from adjacent resource land making it difficult for the development to spread and/or making it difficult for parcels within

the exception area to be combined with adjacent resource lands;
- any agricultural or forest uses within the exception area appear to be accessory to the residential use of the parcels because of the residential use of the parcels and their small sizes.

Background data in Lane County's Working Papers support the policy direction that clustered small parcels in fragmented ownerships in close proximity to residential development and/or developed with residences cannot reasonably be considered suitable for the continuation of commercial farm and forest uses.

"to qualify, an area must consist of at least four tracts (not parcels - see definition of 'tract' below*) which are contiguous to one another, a majority of which have been built upon. However, individual isolated commercial and industrial activities, regardless of the number of tracts involved, are considered for D&C status. Public facilities such as schools, are also considered. In most cases, all tracts must be 10 acres or less in size, unless other factors render larger tracts unsuitable for resource use and/or committed to development." Source: Lane County Developed and Committed Working Paper, August 1983.

Refer to the original findings sheet for this exception area for the specific details on the number of tracts, total acreage, average tract size, number of residences, number of other uses, number of vacant tracts, and development pattern.

*'Tract' refers to a lot within an approved and recorded subdivision plat, or a parcel within an approved and recorded partition map, or a parcel within an approved minor subdivision, or undivided/unpartitioned land under the same ownership. Contiguous units of the last type shall be considered a single tract.

DEVELOPED AND COMMITTED EXCEPTION FINDINGS

DATA SHEET

Map: 18-03-11 Plot: 412

Name: Franklin Blvd. Exception Number: 1

The following were adopted by the corresponding ordinances in support of this developed and committed exception area.

- Developed + Committed Lands Working Papers; adopted by Lane County Ordinance #PA 883.
- Plan Diagram Maps; adopted by Lane County Ordinance # PA 884.
- Zoning Maps; adopted by Lane County Ordinance # PA 884.
- Summary Exception Sheet; Plot: 412, Exception Number: 1; adopted by Lane County Ordinance # PA 884.
- Supplemental Findings; adopted by Lane County Order # 84-6-19-16.

The following are additional data resources used to generate supplemental findings in support of this exception area:

- GIS Exception Plot No. 412
- GIS Exception Listing No. 412-1
- Aerial Photo Map Number: 18-03-11
- SCS Soil Survey Map Number: 91
- USGS Topographical Quadrangle Map: Eugene
- Lane County Tax Codes for Public Service Districts; 004-67,019-01, 019-14,019-15,019-19,

  School District: Eugene #4J, Springfield #19
  Fire District: Goshen R.F.P.D; May Carry Fire Patrol
  Water District: None

DATA FOR EXCEPTION AREA DC-4121, MAPLOT ORDER 12:31 WEDNESDAY, DECEMBER 28, 1988 1

OWNER	MAPLOT	PCL	SCL	UNITS	YBLT	ZONE4	FRM	FOR	CACRES	ATACRES
SOUTHERN PACIFIC CO	18031100 00700	120	0	.	0	RR5	0	0	1.8540	2.7300
PHILPOTT LOUIS L/MARJORI	18031100 01100	131	140	1	40	RR5	0	0	2.1383	2.2300
HARMON PATRICIA ANN	18031100 01200	130	0	.	0	RR5	0	0	0.4414	0.4300
HARMON PATRICIA ANN	18031100 01202	131	140	1	45	RR5	0	0	4.5646	4.8800
HARMON RAY G + EVA	18031100 01203	131	130	1	46	RR5	0	0	2.0825	2.1800
PHILPOTT LOUIS L + MARJO	18031100 01204	1	0	.	0	RR5	0	0	0.1307	0.1000
ROSENDAHL YVONNE	18031100 01300	131	130	1	24	RR5	1	0	5.1141	5.1200
STEC FRANK C & MAXINE L	18031100 01400	431	140	2	24	RR5	0	0	9.6950	9.7500
HILL WALDO E + JOSEPHINE	18031100 01500	131	130	1	40	RR5	0	0	4.8459	4.8600
STRAUB ROBERT W + PATRIC	18031100 01600	433	0	.	0	RR5	1	0	3.8997	3.7700
WEAVER SALLY	18031100 01602	131	252	2	69	RR5	0	0	1.0091	0.9500
WEAVER SALLEY C	18031100 01603	131	252	2	69	RR5	0	0	0.9064	0.9500
FREE RODNEY L & PATRICIA	18031100 01605	131	252	1	74	RR5	0	0	0.3100	0.3200
FREE RODNEY L & PATRICIA	18031100 01606	130	0	1	0	RR5	0	0	0.3213	0.3300
LAKE COUNTY	18031130 00100	431	307	2	0	SC	0	0	63.6056	63.2200
THOMAS A JOYCE	18031130 00101	131	130	1	35	RR5	0	0	0.4627	0.5900
THOMAS AUREVIA JOYCE	18031130 00300	131	0	1	0	RR5	0	0	3.4370	0.6200
THOMAS AUREVIA JOYCE	18031130 00300	131	0	1	0	RR5	0	0	3.4370	0.3100
THOMAS AUREVIA JOYCE	18031130 00300	131	130	1	10	RR5	0	0	3.4370	2.5300
BESSETT VIRGINIA L	18031130 00400	221	428	1	0	C3	0	0	0.6959	0.7800
MC GILLVREY SHIRLEY KAY	18031130 00500	221	454	1	55	C3	0	0	0.4902	0.4600
TEMPLAR CARL H & VIVIAN	18031130 00600	221	458	1	0	C3	0	0	0.4705	0.5600
DEDSON FRED L & MARY N	18031130 00700	221	421	2	62	C2	0	0	0.3257	0.0000
DODSON FRED L & MARY N	18031130 00800	220	0	2	0	C2	0	0	0.2443	0.3000
QUICK FRANK & DIANA	18031130 00900	221	140	1	30	C2	0	0	0.4388	0.5000
GRAY EDGAR L + D K	18031130 01000	211	428	1	84	C2	0	0	0.4486	0.5000
GRAY EDGAR L + D K	18031130 01100	221	150	1	42	RR5	0	0	0.5700	0.6400
MARTIN LYNN E & PATRICIA	18031130 01200	221	150	2	42	RR5	0	0	0.5620	0.6400
WHEELER CLIFFORD D & MAX	18031130 01300	130	0	.	0	RR5	0	0	1.8014	2.0000
WHEELER CLIFFORD D & MAX	18031130 01400	221	441	2	57	C3	0	0	0.8382	0.0000
LORICKE MARY C & HIRAM W	18031130 01500	131	307	1	0	RR5	0	0	2.8139	3.0500
LORICKE MARY C	18031130 01600	130	0	.	0	RR5	0	0	0.9195	1.0000
LORICKE HIRAM W & MARY C	18031130 01700	130	0	1	0	RR5	0	0	2.7777	3.0000
MCCOWN CHARLES E	18031130 01800	221	130	4	46	C2	0	0	0.1854	0.0000
MYRICK LLOYD	18031130 01900	221	140	2	0	C2	0	0	1.2031	1.4200
ALLEN ALFRED A 1-4	18031130 02000	221	499	.	0	C2	0	0	0.0423	0.0500
ALLEN ALFRED & J 3-5	18031130 02101	130	0	.	0	CR	0	0	1.6751	1.7600
ALLEN ALFRED & J 3-5	18031130 02200	220	0	.	0	CR	0	0	1.1633	1.3000
WINGARD GEORGE F 1/3	18031130 02300	120	0	1	0	RR5	0	0	0.7554	0.9200
SUNNY SERVICE STATIONS I	18031130 02500	221	444	1	63	C3	0	0	0.4364	0.0000
SUNNY SERVICE STATIONS I	18031130 02601	220	0	.	0	C3	0	0	0.8373	0.7800
SUNNY SERVICE STATIONS I	18031130 02602	221	456	1	72	C3	0	0	0.2182	0.2300
SARAH LAND CO	18031130 02603	220	0	.	0	C3	0	0	0.2467	0.0000
SHIRK FRANK B & JOANN	18031130 02604	221	456	2	67	C3	0	0	0.5471	0.0000
MOBIL OIL COMPANY	18031130 02604	1	0	2	0	C3	0	0	0.5471	0.0000
SARAH LAND CO	18031130 02605	220	0	.	0	C3	0	0	0.6737	0.0000
ROBERTS & WOODS INC	18031130 02606	221	457	1	69	C3	0	0	0.4805	0.0000
ROBERTS & WOODS INC	18031130 02607	220	0	.	0	C3	0	0	0.4954	0.0000
ROGERS RONALD J & DARLEN	18031130 02700	131	130	1	35	RR5	0	0	0.1714	0.2300
BLY IRENE E	18031130 02800	121	130	1	29	RR5	0	0	0.3513	0.3800
BUCKLEY BERDELL & RITA	18031130 02900	121	130	1	28	RR5	0	0	0.2977	0.3100
WILSON ELIZABETH M	18031130 03000	121	130	1	25	RR5	0	0	0.3581	0.4000
CASTLEBERRY ROBERT E & J	18031130 03100	121	140	1	35	RR5	0	0	0.5442	0.5700

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OWNER	MAPLOT	PCL	SCL	UNITS	YBLT	ZONE4	FRM	FOR	CACRES	ATACRES
BALDWIN AARON A & LORETT	18031130 03200	131	130	3	40	RR5	0	0	1.5187	1.53000
COBB LEE & CONNIE J	18031130 03300	321	704	1	81	M2	0	0	1.8704	1.99000
EL JAY INC	18031130 03400	320	0	1	0	M2	0	0	2.3305	2.26000
EL JAY INC	18031130 03500	321	780	1	0	M2	0	0	6.0432	5.60000
EL JAY INCORPORATED	18031130 03500	321	780	1	0	M2	0	0	6.0432	0.00000
EL JAY INC	18031130 03600	320	0	1	0	M2	0	0	5.7524	3.13000
EL JAY INC	18031130 03600	320	0	1	0	M2	0	0	5.7524	2.33000
BECK ELMUS C JR & HELEN	18031130 03700	131	140	1	64	RR5	0	0	0.6034	0.58000
EMERALD PEOPLES UTIL DIS	18031130 03800	430	0	2	0	RR5	0	0	10.2138	5.74000
EMERALD PEOPLES UTIL DIS	18031130 03801	130	0	1	0	RR5	0	0	1.0427	1.00000
STRAUB ROBERT W + PATRIC	18031130 03900	423	107	1	86	RR5	1	0	3.2822	3.10000
ERICKSON KENNETH M	18031130 04100	220	0	.	0	C3	0	0	0.1525	0.14000

N= 65

New tax lots:

Emerald People's Util. Dist. 18031130 00102 1.40 acres

Emerald People's Util. Dist. 18031130 03803 4.10 acres

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DATA FOR EXCEPTION AREA DC-4121, OWNER NAME ORDER

12:31 WEDNESDAY, DECEMBER 28, 1988

OWNER	MAPLOT	PCL	SCL	FRM	FOR	UNITS	YBLT	ZONE4	CACRES	ATACRES
ALLEN ALFRED & J 3-5	18031130 02101	130	0	0	0	.	0	CR	1.6751	1.7600
ALLEN ALFRED & J 3-5	18031130 02200	220	0	0	0	.	0	CR	1.1633	1.3000
ALLEN ALFRED A 1-4	18031130 02000	221	499	0	0	.	0	C2	0.0423	0.0500
BALDWIN AARON A & LORETT	18031130 03200	131	130	0	0	3	40	RR5	1.5187	1.5300
BECK ELMUS C JR & HELEN	18031130 03700	131	140	0	0	1	64	RR5	0.6034	0.5800
BESSETT VIRGINIA L	18031130 00400	221	428	0	0	1	0	C3	0.6959	0.7800
BLY IRENE E	18031130 02800	121	130	0	0	1	29	RR5	0.3513	0.3800
BUCKLEY BERDELL & RITA	18031130 02900	121	130	0	0	1	28	RR5	0.2977	0.3100
CASTLEBERRY ROBERT E & J	18031130 03100	121	140	0	0	1	35	RR5	0.5442	0.5700
COBB LEE & CONNIE J	18031130 03300	321	704	0	0	1	81	M2	1.8704	1.9900
DEDSON FRED L & MARY N	18031130 00700	221	421	0	0	2	62	C2	0.3257	0.0000
DODSON FRED L & MARY N	18031130 00800	220	0	0	0	2	0	C2	0.2443	0.3000
EL JAY INC	18031130 03400	320	0	0	0	1	0	M2	2.3305	2.2600
EL JAY INC	18031130 03500	321	780	0	0	1	0	M2	6.0432	5.6000
EL JAY INC	18031130 03600	320	0	0	0	1	0	M2	5.7524	3.1300
EL JAY INC	18031130 03600	320	0	0	0	1	0	M2	5.7524	2.3300
EL JAY INCORPORATED	18031130 03500	321	780	0	0	1	0	M2	6.0432	0.0000
EMERALD PEOPLES UTIL DIS	18031130 03800	430	0	0	0	2	0	RR5	10.2138	5.7400
EMERALD PEOPLES UTIL DIS	18031130 03801	130	0	0	0	1	0	RR5	1.0427	1.0000
ERICKSON KENNETH M	18031130 04100	220	0	0	0	.	0	C3	0.1525	0.1400
FREE RODNEY L & PATRICIA	18031100 01605	131	252	0	0	1	74	RR5	0.3160	0.3200
FREE RODNEY L & PATRICIA	18031100 01606	130	0	0	0	1	0	RR5	0.3213	0.3300
GRAY EDGAR L + D K	18031130 01000	211	428	0	0	1	84	C2	0.4486	0.5000
GRAY EDGAR L + D K	18031130 01100	221	150	0	0	1	42	RR5	0.5700	0.6400
HARMON PATRICIA ANN	18031100 01200	130	0	0	0	.	0	RR5	0.4414	0.4300
HARMON PATRICIA ANN	18031100 01202	131	140	0	0	1	45	RR5	4.[illegible]546	4.8800
HARMON RAY G + EVA	18031100 01203	131	130	0	0	1	46	RR5	2.0325	2.1800
HILL WALDO E + JOSEPHINE	18031100 01500	131	130	0	0	1	40	RR5	4.8459	4.8600
LANE COUNTY	18031130 00100	431	307	0	0	2	0	SG	63.6056	63.2200
LORICKE HIRAM W & MARY C	18031130 01700	130	0	0	0	1	0	RR5	2.7777	3.0000
LORICKE MARY C	18031130 01600	130	0	0	0	.	0	RR5	0.9195	1.0000
LORICKE MARY C & HIRAM W	18031130 01500	131	307	0	0	1	0	RR5	2.8139	3.0500
MARTIN LYNN E & PATRICIA	18031130 01200	221	150	0	0	2	42	RR5	0.5620	0.6400
MC GILLVREY SHIRLEY KAY	18031130 00500	221	454	0	0	1	55	C3	0.4902	0.4600
MCCOWN CHARLES E	18031130 01800	221	130	0	0	4	46	C2	0.1854	0.0000
MOBIL OIL COMPANY	18031130 02604	1	0	0	0	2	0	C3	0.5471	0.0000
MYRICK LLOYD	18031130 01900	221	140	0	0	2	0	C2	1.2031	1.4200
PHILPOTT LOUIS L + MARJO	18031100 01204	1	0	0	0	.	0	RR5	0.1307	0.1000
PHILPOTT LOUIS L/MARJORI	18031100 01100	131	140	0	0	1	40	RR5	2.1383	2.2300
QUICK FRANK & DIANA	18031130 00900	221	140	0	0	1	30	C2	0.4388	0.5000
ROBERTS & WOODS INC	18031130 02606	221	457	0	0	1	69	C3	0.4805	0.0000
ROBERTS & WOODS INC	18031130 02607	220	0	0	0	.	0	C3	0.4954	0.0000
ROGERS RONALD J & DARLEN	18031130 02700	131	130	0	0	1	35	RR5	0.1714	0.2300
ROSENDAHL YVONNE	18031100 01300	131	130	1	0	1	24	RR5	5.1141	5.1200
SARAH LAND CO	18031130 02603	220	0	0	0	.	0	C3	0.2467	0.0000
SARAH LAND CO	18031130 02605	220	0	0	0	.	0	C3	0.6737	0.0000
SHIRK FRANK B & JOANN	18031130 02604	221	456	0	0	2	67	C3	0.5471	0.0000
SOUTHERN PACIFIC CO	18031100 00700	120	0	0	0	.	0	RR5	1.8540	2.7300
STEC FRANK C & MAXINE L	18031100 01400	431	140	0	0	2	24	RR5	9.6950	9.7500
STRAUB ROBERT W + PATRIC	18031100 01600	433	0	1	0	.	0	RR5	3.8997	3.7700
STRAUB ROBERT W + PATRIC	18031130 03900	423	107	1	0	1	86	RR5	3.2822	3.1000
SUNNY SERVICE STATIONS I	18031130 02500	221	444	0	0	1	63	C3	0.4364	0.0000
SUNNY SERVICE STATIONS I	18031130 02601	220	0	0	0	.	0	C3	0.8373	0.7800

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DATA FOR EXCEPTION AREA DC-4121, OWNER NAME ORDER

12:31 WEDNESDAY, DECEMBER 28, 1988

OWNER	MAPLOT	PCL	SCL	FRM	FOR	UNITS	YBLT	ZONE4	CACRES	ATACRES
SUNNY SERVICE STATIONS I	18031130 02602	221	456	0	0	1	72	C3	0.21820	0.23000
TEMPLAR CARL H & VIVIAN	18031130 00600	221	458	0	0	1	0	C3	0.47050	0.56000
THOMAS A JOYCE	18031130 00101	131	130	0	0	1	35	RR5	0.46270	0.59000
THOMAS AUREVIA JOYCE	18031130 00300	131	0	0	0	1	0	RR5	3.43700	0.62000
THOMAS AUREVIA JOYCE	18031130 00300	131	0	0	0	1	0	RR5	3.43700	0.31000
THOMAS AUREVIA JOYCE	18031130 00300	131	130	0	0	1	10	RR5	3.43700	2.53000
WEAVER SALLEY C	18031100 01603	131	252	0	0	2	69	RR5	0.90640	0.95000
WEAVER SALLY	18031100 01602	131	252	0	0	2	69	RR5	1.00910	0.95000
WHEELER CLIFFORD D & MAX	18031130 01300	130	0	0	0	.	0	RR5	1.80140	2.00000
WHEELER CLIFFORD D & MAX	18031130 01400	221	441	0	0	2	57	C3	0.83820	0.00000
WILSON ELIZABETH M	18031130 03000	121	130	0	0	1	25	RR5	0.35810	0.40000
WINGARD GEORGE F 1/3	18031130 02300	120	0	0	0	1	0	RR5	0.75540	0.92000

N= 65

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SUMMARY OF YEARS BUILT FOR EXCEPTION AREA DC-4121

12:31 WEDNESDAY, DECEMBER 28, 1988

	YR_CAT		
	B-1900 OR NOT KNOWN	C-1901-1974	E-1980-1987
	N	N	N
DCAREA			
4121	33.00	29.00	3.00

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DATA	AREA	PERIF-LENGTH	TEST-AREA
4121	18.28	0.88	0.00
4121	103.52	3.82	0.00
4121G	2.53	0.44	0.00

TOTAL POLYGON AREA =		124.32	
NEGATIVE AREA =		0.00	
SLIVER AREA =		0.00	
TOTAL RETRACE LENGTH =			0.00
NUMBER OF POLYGONS =	3		
NUMBER OF POINTS =	97		

Acreage adjustment:

	124.32	
−	2.53	G area
	121.79	
−	63.22	18031130 - 00100
	58.57	
+	1.40	18031130 - 00102
	59.97	acres

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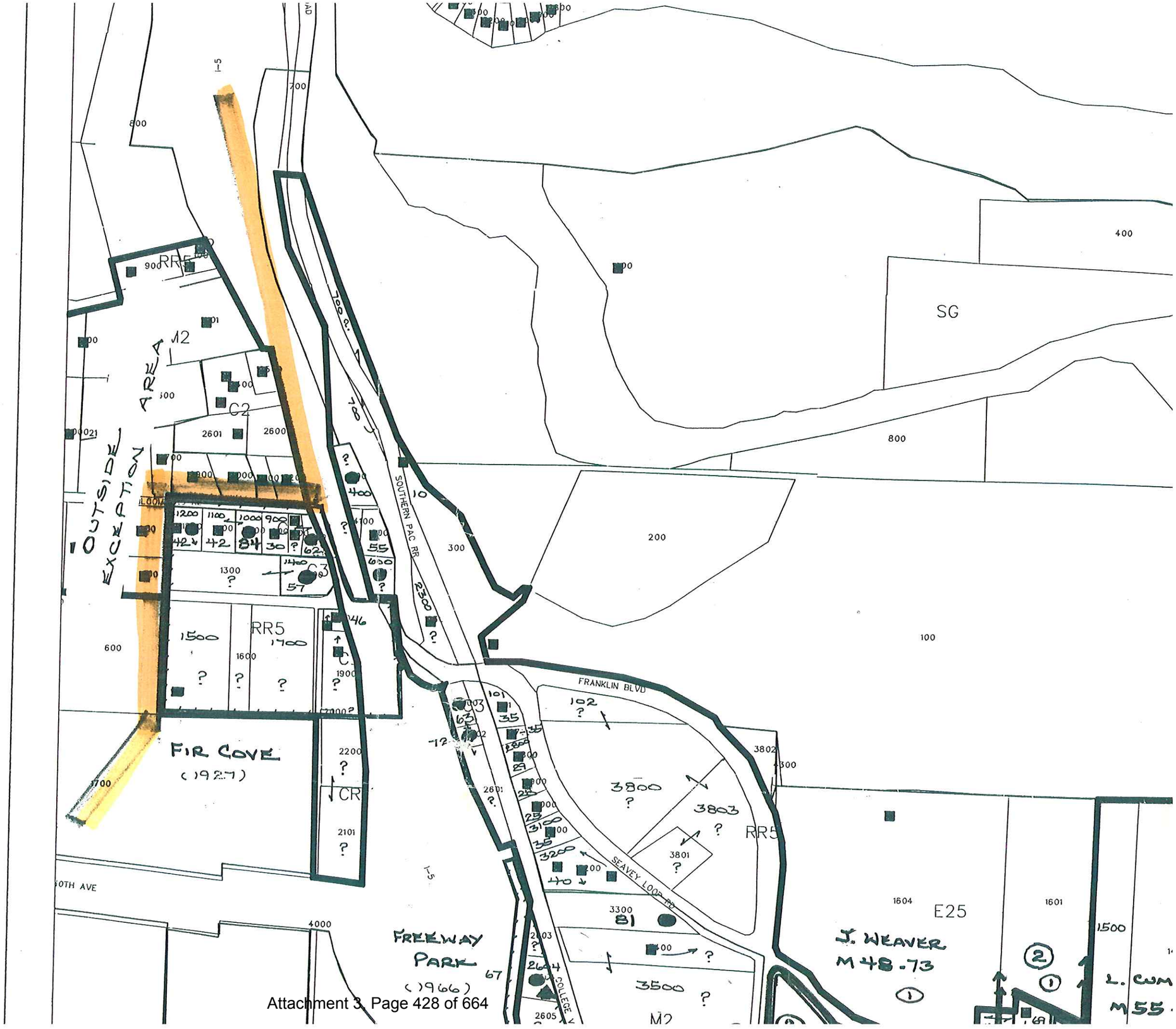
SEE SUPPLEMENTAL REEL # 7 FOR

ACCOMPANYING MAP

BOOK 138 PAGE 621


OUTSIDE EXCEPTION AREA
RR5
C2
C3
CR
FIR COVE
(1927)
FREEWAY PARK
(1966)
SOUTHERN PAC RR
FRANKLIN BLVD
SEAVEY LOOP RD
COLLEGE
SG
E25
J. WEAVER
M48.73
L. CUM
M55
M2
I-5

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

	)	IN THE MATTER OF APPLYING THE RURAL
	)	COMPREHENSIVE PLAN DESIGNATIONS AND
	)	RURAL COMPREHENSIVE PLAN ZONES TO
ORDINANCE NO. PA 884	)	RURAL LANE COUNTY OUTSIDE THE
	)	METROPOLITAN AREA GENERAL PLAN
	)	BOUNDARY, AND OUTSIDE ALL URBAN
	)	GROWTH BOUNDARIES, REPEALING PRIOR
	)	ZONING DISTRICTS AND PLAN DESIGNA-
	)	TIONS, AND ADOPTING A SAVINGS AND
	)	SEVERABILITY CLAUSE

WHEREAS, the plan designations and zoning districts applicable to rural Lane County are not in full compliance with the Statewide Goals, and

WHEREAS, the Oregon State Land Conservation and Development Commission has granted Lane County an extension of time to revise its designations and zones to bring them into conformity with the Statewide Planning Goals, and

WHEREAS, the Board of County Commissioners has received from the Lane County Planning Commission and the West Lane County Planning Commission recommended application of the new plan designations and zones, and

WHEREAS, the Board of County Commissioners has conducted a public hearing and is now ready to take action, now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY ORDAINS AS FOLLOWS:

1. The Plan Designation and Zones as set forth on the attached maps (Exhibit "A") are hereby applied to Rural Lane County outside the Metropolitan Area General Plan Boundary and outside all Urban Growth Boundaries as modified by the attached change request summary, Board of County Commissioners action column (Appendix "B").

2. With exception of the following:

(a) Rural Transportation Plan (Adopted by Ordinance No. 3-80).
(b) Willamette Greenway Plan (Adopted by Ordinance No. 783).
(c) Parks and Open Space Plan (Adopted by Ordinance No. 850).
(d) Solid Waste Management Plan (Adopted by Ordinance No. 771 and subsequent amendment).
(e) Coastal Resources Management Plan (Adopted by Ordinance No. 803) (Amended by Ordinance Nos. 862 and 876).

EXHIBIT 12

(f) Siuslaw River Dredged Material Disposal Plan (Adopted by Ordinance No. 749) (Amended by Ordinance Nos. 861 and 877).

(g) Housing Plan (Adopted by Ordinance 1-78).

the prior Plan and Zone designations are repealed. However, the prior Plan designations and zoning districts remain in full force and effect to authorize prosecution of persons who violate their provisions prior to the effective date of this Ordinance.

3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

4. The exceptions to Statewide Goals 3 and 4 are set forth in the attached Exhibit "B".

While not part of this Ordinance, the Board of County Commissioners adopt the Legislative Findings set forth in attached Exhibit "C" in support of this action.

Enacted this 29th day of February, 1984.

Chair, Lane County Board of Commissioners

Debbie E. Mohr
Recording Secretary for this Meeting of the Board

Effective date 3/29/84

ORDINANCE NO. PA 884 - LEGISLATIVE FINDINGS

Ordinance No. PA 884 is the implementation of the policies adopted in Ordinance No. PA 883. The support documents and Findings adopted in that Ordinance are, therefore, adopted as if fully set forth herein.

Major map changes, based upon a nonresource designation are supported by prior quasi-judicial or current Findings set forth on attached Exhibit "D".

The Diagrams and Zones reflect only one "need" exception arising from a prior quasi-judicial application. We, therefore, readopt the need exception set forth on attached Exhibit "E". Note that pursuant to CPR summary, the new designation is Destination Resort, rather than Commercial Zones. However, the exception to the Goal remains valid. The site review conditions are also readopted.

In addition, map changes occurring on the basis of a Marginal Lands designation are explained in the attached Exhibit "F".

All other changes to the maps from the original staff recommendation are supported by changes to the developed and committed exception and the information and Findings submitted with CPR requests. Because the amount of supporting information is very extensive, it is not possible to set out new Findings for each approval, nor is such analysis appropriate for a legislative Ordinance. However, the basis for the approval exists in the written attachments to the CPR's, public testimony and deliberation. This information is available on request.

EXHIBIT "C"

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. 84-6-19-16	)))	IN THE MATTER OF ADOPTING SUPPLEMENTAL FINDINGS IN SUPPORT OF ORDINANCE NO. PA 884

WHEREAS, on February 29, 1984, we adopted Ordinance No. PA 884 which applied Rural Comprehensive Plan Designations and Zoning Districts, and

WHEREAS, this Ordinance also adopted exceptions to certain Goals based upon the developed and committed exception process, and also designated certain areas nonresource lands, and

WHEREAS, DLCD Staff have identified certain deficiencies in the findings supporting these actions, now, therefore, be it

ORDERED that the attached Supplemental Findings set forth on Exhibit "A" for Developed and Committed areas and the Supplemental Findings set forth on attached Exhibit "B" for nonresource areas are hereby adopted in support of Ordinance No. PA 884.

Dated this 19th day of June, 1984.

Chair, Lane County Board of Commissioners

IN THE MATTER OF ADOPTING SUPPLEMENTAL FINDINGS IN SUPPORT OF ORDINANCE NO. PA 884

cnbjasf

RURAL COMP PLAN PROJECT
SUMMARY OF
SUPPLIMENTARY EXCEPTION FINDINGS

AS OF 6/21/84

PLOT & excpt #	MAP OR evaluatn	COMMTD findngs	DEVLPD findngs	recommendation	
015		X		ADOPT SUPPLEMENTAL FINDINGS	WLPC
021-1		X		ADOPT SUPPLEMENTAL FINDINGS	
021-2		X		ADOPT SUPPLEMENTAL FINDINGS	
023-1	X	X		ADOPT SUPPLEMENTAL FINDINGS	
026	X			NONE	
028-1		X		ADOPT SUPPLEMENTAL FINDINGS	
028-2	X	X		ADOPT SUPPLEMENTAL FINDINGS	
028-3	X	X		ADOPT SUPPLEMENTAL FINDINGS	
035-2		X		ADOPT SUPPLEMENTAL FINDINGS	
99A		X		ADOPT SUPPLEMENTAL FINDINGS	
117		X		ADOPT SUPPLEMENTAL FINDINGS	
121		X		ADOPT SUPPLEMENTAL FINDINGS	
134-1		X		ADOPT SUPPLEMENTAL FINDINGS	
141		X		ADOPT SUPPLEMENTAL FINDINGS	
162		X		ADOPT SUPPLEMENTAL FINDINGS	
165-2		X		ADOPT SUPPLEMENTAL FINDINGS	
166-1		X		ADOPT SUPPLEMENTAL FINDINGS	
173-2		X		ADOPT SUPPLEMENTAL FINDINGS	
175-1		X		ADOPT SUPPLEMENTAL FINDINGS	
175-2		X		ADOPT SUPPLEMENTAL FINDINGS	
182	X	X		ADOPT SUPPLEMENTAL FINDINGS	
185-2		X		ADOPT SUPPLEMENTAL FINDINGS	
199-1		X		ADOPT SUPPLEMENTAL FINDINGS	
200		X		ADOPT SUPPLEMENTAL FINDINGS	
203-1		X		ADOPT SUPPLEMENTAL FINDINGS	
203-2		X		ADOPT SUPPLEMENTAL FINDINGS	
222-2		X		ADOPT SUPPLEMENTAL FINDINGS	
229		X		ADOPT SUPPLEMENTAL FINDINGS	
230		X		ADOPT SUPPLEMENTAL FINDINGS	
236-2		X		ADOPT SUPPLEMENTAL FINDINGS	
237		X		ADOPT SUPPLEMENTAL FINDINGS	
252-1		X		ADOPT SUPPLEMENTAL FINDINGS	
254-3		X		ADOPT SUPPLEMENTAL FINDINGS	
255-1		X		ADOPT SUPPLEMENTAL FINDINGS	
255-2		X		ADOPT SUPPLEMENTAL FINDINGS	
256-2		X		ADOPT SUPPLEMENTAL FINDINGS	
260-1		X		ADOPT SUPPLEMENTAL FINDINGS	
264-1		X		ADOPT SUPPLEMENTAL FINDINGS	
264-4		X		ADOPT SUPPLEMENTAL FINDINGS	
265-1		X		ADOPT SUPPLEMENTAL FINDINGS	
270-2		X		ADOPT SUPPLEMENTAL FINDINGS	
271-1		X		ADOPT SUPPLEMENTAL FINDINGS	
280		X		ADOPT SUPPLEMENTAL FINDINGS	
281-1		X		ADOPT SUPPLEMENTAL FINDINGS	
281-2		X		ADOPT SUPPLEMENTAL FINDINGS	
281-4		X		ADOPT SUPPLEMENTAL FINDINGS	
282-1		X		ADOPT SUPPLEMENTAL FINDINGS	

282-2		X		ADOPT SUPPLEMENTAL FINDINGS
286-1		X		ADOPT SUPPLEMENTAL FINDINGS
287		X		ADOPT SUPPLEMENTAL FINDINGS
294-1		X		ADOPT SUPPLEMENTAL FINDINGS
297-1		X		ADOPT SUPPLEMENTAL FINDINGS
298-1		X		ADOPT SUPPLEMENTAL FINDINGS
298-2		X		ADOPT SUPPLEMENTAL FINDINGS
306-1		X		ADOPT SUPPLEMENTAL FINDINGS
309-1		X		ADOPT SUPPLEMENTAL FINDINGS
309-2		X		ADOPT SUPPLEMENTAL FINDINGS
310-2		X		ADOPT SUPPLEMENTAL FINDINGS
311		X		ADOPT SUPPLEMENTAL FINDINGS
320		X		ADOPT SUPPLEMENTAL FINDINGS
325		X		ADOPT SUPPLEMENTAL FINDINGS
335			X	ADOPT SUPPLEMENTAL FINDINGS
347-1			X	ADOPT SUPPLEMENTAL FINDINGS
347-2		X		ADOPT SUPPLEMENTAL FINDINGS
351		X		ADOPT SUPPLEMENTAL FINDINGS
352		X		ADOPT SUPPLEMENTAL FINDINGS
355		X		ADOPT SUPPLEMENTAL FINDINGS
361			X	ADOPT SUPPLEMENTAL FINDINGS
367			X	ADOPT SUPPLEMENTAL FINDINGS
370-2		X		ADOPT SUPPLEMENTAL FINDINGS
371-1		X		ADOPT SUPPLEMENTAL FINDINGS
371-2		X		ADOPT SUPPLEMENTAL FINDINGS
375-2		X		ADOPT SUPPLEMENTAL FINDINGS
379		X		ADOPT SUPPLEMENTAL FINDINGS
385-4		X		ADOPT SUPPLEMENTAL FINDINGS
390-2		X		ADOPT SUPPLEMENTAL FINDINGS
391-11		X		ADOPT SUPPLEMENTAL FINDINGS
392-1		X		ADOPT SUPPLEMENTAL FINDINGS
393		X		ADOPT SUPPLEMENTAL FINDINGS
398-1		X		ADOPT SUPPLEMENTAL FINDINGS
398-2		X		ADOPT SUPPLEMENTAL FINDINGS
400-1		X		ADOPT SUPPLEMENTAL FINDINGS
400-2		X		ADOPT SUPPLEMENTAL FINDINGS
402-1		X		ADOPT SUPPLEMENTAL FINDINGS
403-2		X		ADOPT SUPPLEMENTAL FINDINGS
412		X		ADOPT SUPPLEMENTAL FINDINGS
413-1		X		ADOPT SUPPLEMENTAL FINDINGS
413-2		X		ADOPT SUPPLEMENTAL FINDINGS
417-2		X		ADOPT SUPPLEMENTAL FINDINGS
419-1		X		ADOPT SUPPLEMENTAL FINDINGS
419-2		X		ADOPT SUPPLEMENTAL FINDINGS
419-4		X		ADOPT SUPPLEMENTAL FINDINGS
424		X		ADOPT SUPPLEMENTAL FINDINGS
428-2		X		ADOPT SUPPLEMENTAL FINDINGS
429-2		X		ADOPT SUPPLEMENTAL FINDINGS
433-1		X		ADOPT SUPPLEMENTAL FINDINGS
433-2		X		ADOPT SUPPLEMENTAL FINDINGS
434-3		X		ADOPT SUPPLEMENTAL FINDINGS
436-1		X		ADOPT SUPPLEMENTAL FINDINGS
437-1		X		ADOPT SUPPLEMENTAL FINDINGS
442-3		X		ADOPT SUPPLEMENTAL FINDINGS
449-1		X		ADOPT SUPPLEMENTAL FINDINGS
449-2		X		ADOPT SUPPLEMENTAL FINDINGS
456-1		X		ADOPT SUPPLEMENTAL FINDINGS
460-1		X		ADOPT SUPPLEMENTAL FINDINGS
461		X		ADOPT SUPPLEMENTAL FINDINGS
469-1		X		ADOPT SUPPLEMENTAL FINDINGS

471		X		ADOPT SUPPLEMENTAL FINDINGS
473-1		X		ADOPT SUPPLEMENTAL FINDINGS
478-1		X		ADOPT SUPPLEMENTAL FINDINGS
478-2		X		ADOPT SUPPLEMENTAL FINDINGS
481-1		X		ADOPT SUPPLEMENTAL FINDINGS
484-5		X		ADOPT SUPPLEMENTAL FINDINGS
485-1		X		ADOPT SUPPLEMENTAL FINDINGS
486-1		X		ADOPT SUPPLEMENTAL FINDINGS
488-1		X		ADOPT SUPPLEMENTAL FINDINGS
489-1		X		ADOPT SUPPLEMENTAL FINDINGS
490-1		X		ADOPT SUPPLEMENTAL FINDINGS
491-3		X		ADOPT SUPPLEMENTAL FINDINGS
492-1		X		ADOPT SUPPLEMENTAL FINDINGS
494-3		X		ADOPT SUPPLEMENTAL FINDINGS
495-1		X		ADOPT SUPPLEMENTAL FINDINGS
498-1		X		ADOPT SUPPLEMENTAL FINDINGS
501-2	X			NONE
501-3		X		ADOPT SUPPLEMENTAL FINDINGS
511		X		ADOPT SUPPLEMENTAL FINDINGS
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517-1		X		ADOPT SUPPLEMENTAL FINDINGS
518-2		X		ADOPT SUPPLEMENTAL FINDINGS
521-1		X		ADOPT SUPPLEMENTAL FINDINGS
525A		X		ADOPT SUPPLEMENTAL FINDINGS
530		X		ADOPT SUPPLEMENTAL FINDINGS
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533		X		ADOPT SUPPLEMENTAL FINDINGS
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539		X		ADOPT SUPPLEMENTAL FINDINGS
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542A	X	X		ADOPT SUPPLEMENTAL FINDINGS
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556		X		ADOPT SUPPLEMENTAL FINDINGS
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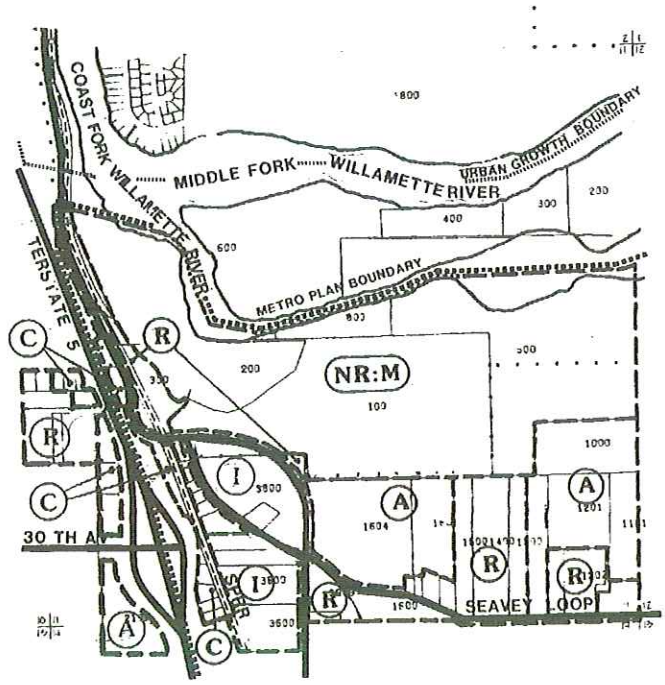
572-2		X		ADOPT SUPPLEMENTAL FINDINGS
578		X		ADOPT SUPPLEMENTAL FINDINGS
583		X		ADOPT SUPPLEMENTAL FINDINGS
591-2	X	X		ADOPT SUPPLEMENTAL FINDINGS
593		X		ADOPT SUPPLEMENTAL FINDINGS
597-1		X		ADOPT SUPPLEMENTAL FINDINGS
609		X		ADOPT SUPPLEMENTAL FINDINGS
610		X		ADOPT SUPPLEMENTAL FINDINGS
614		X		ADOPT SUPPLEMENTAL FINDINGS
619		X		ADOPT SUPPLEMENTAL FINDINGS
627-1		X		ADOPT SUPPLEMENTAL FINDINGS
627-2		X		ADOPT SUPPLEMENTAL FINDINGS
628-2		X		ADOPT SUPPLEMENTAL FINDINGS
629		X		ADOPT SUPPLEMENTAL FINDINGS
630		X		ADOPT SUPPLEMENTAL FINDINGS
631		X		ADOPT SUPPLEMENTAL FINDINGS
INDX-1				NA
INDX-2				NA
INDX-3				NA
INDX-4				NA
006-1	NA	NA	PORONLY	PA 913-84 SEA LION CAVES 95 AC REC. BY WLPC. (ONLY 25 MEET TEST)
007-4	NA	NA	NA	CHNG. TO NON-RES./DEV. SUP. FINDINGS

042		NA	NA	ERROR CORRECT MAPPING BY ORD. JUNE 27
056		NA	NA	TL 800 VACANT-RES. ZONE ON 2 SIDES
065-1		NA	NA	TL 601 CHANGE TO F2
066		NA	NA	TL'S 1402,1408,1407 S. OF RD., F2 & F1 ON ALL SIDES REC. F2
069		NA	NA	TL'S 3200,3300,3700,102,200,1500 TO F2 ADJACENT F1 & F2
157-1		NA	NA	TL 200 IS VACANT, ADJ. TO F1 & F2 REC. F2. TL 100 IS OK
157-2		NA	NA	TL'S 601,701 & 702 UNDER, PRED. FOREST MGMT. PLAN IN CPR FOR TL 601
164-2		NA	NA	TL 701 LAKE HILLS PUD, UNDEV. PORT. F2 UNLESS FINDINGS
188-1		NA	NA	IN VEN. UGB, CHG. MAP TO EXCLDE TL 900
199-2		NA	NA	THERE IS NO 199-2
201-1		NA	NA	TL 100 CURRENTLY IN FARM USE, CHG. TO E40
204-1		NA	NA	REZONE TL'S 600 & 601 TO F2
204-2		NA	NA	TL 402: 11.76 AC. BEING FARM. TL 403: 14.2 AC. ADJACENT
206		NA	NA	TL 500: 46.6 AC. - BERG CHG. TO E40
209		NA	NA	TL 2600: VAC. E40 ON 3 SIDES CHG. TO E40
223		NA	NA	CHG. TO E., TL 400 VACANT, ORCHARD
251		NA	NA	TL'S 1501,1600,1900 VAC. IN AG USE, CHG. TO E40
264-2		NA	NA	REZONE TL 2901 TO E30
270-1		NA	NA	TL 1200,1201,1300 & 1401 TO E40
281-3		NA	NA	CHG. TL 500,502,508 TO E30
300-1		NA	NA	TL 600,700 & 800, 2 DW F2 ADJ., REC. F2
300-2		NA	NA	POSSIBLE CHG. TO F2 - JUNE 27, 1984
301		NA	NA	SIX PARCELS ONLY 2 DEVELOPED
334-1		NA	NA	SUPL. FIND. NOT ADEQ. 1500 RES. ON 3 SIDES
334-3		NA	NA	POSSIBLE NON-RES. NEED FIND. (JIM SAUL)
356	NA	NA		LOT 100 SHOULD BE CHG. TO F2 ON JUNE 27, 1984
358-3		NA	NA	TL 505 IS VAC., NEXT TO F1 REZ. TO F2
363		NA	NA	TL 1500 VAC. & SEPERATE FROM REST. CHG. TO F2
369-1		NA	NA	TL 100 VAC. & SEPARATE FROM REST. CHG. TO F2
378		NA	NA	PARCEL 2 OF TL 401 VAC. CHG. TO F2
382-1		NA	NA	ADOPT NON-RES. & SUPL. FINDINGS
383		NA	NA	ADOPT NON-RES. & SUPL. FIND.(HEMENWAY)
385-3		NA	NA	CHG. NORTHERN MOST POR. OF TL 500,600 TO E25 (SEE MAP)
400-3		NA	NA	CHG. TL 1601 TO E30
419-5		NA	NA	CRAIG LP. SUBD. NOT COMM. CHG. TO F2: TL 126 SEE CPR 859
426-1		NA	NA	TL 300 & 600 VAC. 10 AC. SURROUNDED BY E25, CHG. TO E25
434-1		NA	NA	TL 700 N. OF MOSBY CK. CHG. TO E40
439		NA	NA	TL 1200 & 600 N. OF CLOVERDALE RD.-E40
441-2		NA	NA	PAR. 3 OF TL 501-F2 REMAIN. COMMITTED
447		NA	NA	TL'S 600,700 & 1701 VAC. CHG. TO E30 PER ADJ. USES
453-2		NA	NA	NOT COMMITTED SEE CERRO GORDO

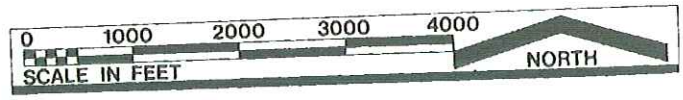
				NON-RES. FINDINGS
458		NA	NA	NON-RES. - THURMOND
463		NA	NA	NOT COMM.-SEE WOLF NON-RES. FINDINGS
464		NA	NA	NON-RES. - SEE CERRO GORDO
479-2		NA	NA	REZONE TL 1802 S. OF RD. TO E40
483-2		NA	NA	POR. OF TL 1800 S. OF POND CHG. TO F2
484-3		NA	NA	TL'S 1400,1500 & 1700 CHG. TO E25
493-1		NA	NA	TL 1300 ADJ. TO F2 & DISASSOC. REC. F2
522		NA	NA	CHG. TL 500,503,504,201 TO F2
531-1		NA	NA	REZONE TL 1300 TO F2
555-2		NA	NA	TL 1700 & 101 CHG. TO F2
596		NA	NA	TL 100,102,103,200,202 & 203 CHG. TO F2
597-2		NA	NA	TL 2000 CHANGE TO F2
603		NA	NA	TL 2200 (23 AC.) CHG. TO F2
604		NA		IN OAKRIDGE UGB - NO FURTHER ACTION NECESSARY
617		NA	NA	TL 1200, 1300, CHG. TO F2
628-1		NA	NA	TOKATEE GOLF COURSE TL 100 TAKE OUT

1010

425



413



lane county

OFFICAL PLAN MAP

PLOT#412

Twnshp Range Section

18 03 11 / ( )

ORIGINAL ORD. # PA 884 DATE 2/29/1984 FILE #

EXHIBIT 13

REVISION # ORD. # DATE FILE #

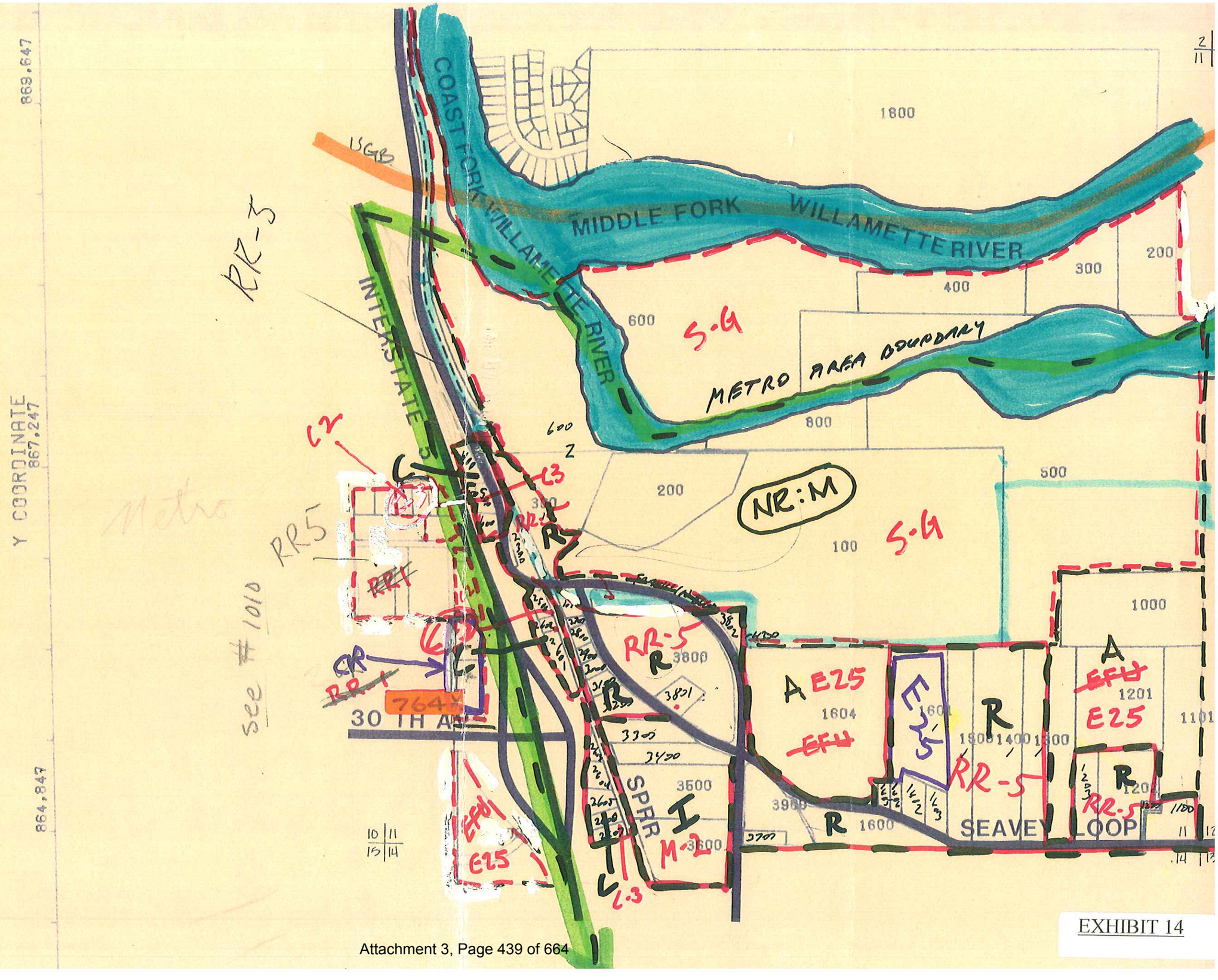

COAST FORK WILLAMETTE RIVER
MIDDLE FORK WILLAMETTE RIVER
INTERSTATE 5
30TH AVE
SEAVEY LOOP
SPAR
UGB
METRO AREA BOUNDARY
NR:M
RR-5
S-G
M-2
E25
EFU
Y COORDINATE
869.647
867.247
864.847

EXHIBIT 14

LAW OFFICE OF BILL KLOOS, PC

OREGON LAND USE LAW

375 W. 4th STREET, SUITE 204
EUGENE, OR 97401
TEL (541) 954-1260
FAX (541) 343-8702
E-MAIL BILLKLOOS@LANDUSEOREGON.COM

February 17, 2010

City of Springfield and Lane County Planning Commissions
City of Springfield Planning Department
225 Fifth Street
Springfield, Oregon 97477

Re: Springfield 2030 Refinement Plan

Dear Planning Commissioners:

We represent the Willamette Water Company in the Springfield 2030 Refinement Plan proceedings and submit this letter and attached exhibits for entry into the record. The Willamette Water Company supports Concept 1, which proposes to expand the Springfield urban growth boundary (UGB) to include 235 suitable acres for employment use (420 total acres) in the Seavey Loop/Goshen area.

The Willamette Water Company

The Willamette Water Company is a Public Utilities Commission (PUC) regulated, quasi-municipal utility established in 1972. It currently serves domestic, commercial, industrial and public/institutional customers in the greater Goshen area. A map of the Willamette Water Company service area is attached hereto as Exhibit A. The current service area for the Willamette Water Company is heavily in commercial and industrial use, with non-residential customers accounting for approximately 70 percent of water usage and sales revenue. Its top customers include the BPA Alvey electrical substation, Emerald Peoples Utility District, JCI Fabricators and Cone Lumber.

The existing water distribution system in the Seavey Loop/Goshen area is robust. It is composed of approximately 40,000 feet of ductile iron main pipeline, varying from 20 inches to 6 inches in diameter. A map showing the diameters of the Willamette Water Company's water system is attached as Exhibit B. Ductile iron pipe provides a service life of over 90 years. The approximate age of the current system is 32 years. The system currently has 171 service meters, ranging in size from ¾ inch to 8-inch. There are also 47 fire hydrants, which are utilized by the Goshen Fire Department. A map showing the hydrant and valve locations for the Willamette Water Company's system is attached as Exhibit C. The system is gravity fed by the Eugene Water and Electric Board's Bloomberg Reservoir, with an overflow elevation of 700 feet.

The Willamette Water Company currently has a 4 CFS water right on the McKenzie River. While this water right is ample to supply the projected 40 year demand in the current service area, Willamette Water has applied for an additional 34 CFS water right on the McKenzie River to supply safe drinking water to an expanded service territory in the southern Willamette Valley. The current population of approximately 23,000 in this expanded service area is projected to

grow to about 51,000 over the next 40 years. This population increase, combined with poor water quality and low water production in the area, will result in a high demand for a source of clean, treated surface water. The Willamette Water Company is positioned to fulfill this need.

As is evident from the above, Willamette Water Company has existing infrastructure in place to provide water service to the Seavey Loop/Goshen area under consideration for inclusion into the City of Springfield's UGB.

The Seavey Loop/Goshen Area Contains the Only Exception Lands Dedicated to Employment Use and is the Highest Priority Land for Inclusion into the UGB.

As staff has explained throughout the HB 3337 process, Goal 14 and the Oregon Revised Statutes prescribe a precise hierarchy regarding the priority of land types that can be included within a proposal to expand an urban growth boundary.

ORS 197.298 sets out both the priority and the permitted exceptions for including lands within an urban growth boundary.[1] The highest priority land for consideration is land designated urban

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1 ORS 197.298 **Priority of land to be included within urban growth boundary** provides:

"(1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:

"(a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.

"(b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.

"(c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247 (1991 Edition).

"(d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both.

"(2) Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.

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

"(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."

reserve land. Since the City of Springfield has no urban reserve land, the city must move to the next highest priority land as prescribed by ORS 197.298(1)(b). The second priority land is land that is adjacent to the UGB that is acknowledged as an exception area or as nonresource land.

Of the areas under consideration for UGB expansion, the Seavey Loop/Goshen area is the only area that includes exception land planned for employment uses and is the area that has the highest concentration of exception land of all types. In short, if any area is brought into the City of Springfield to meet the identified employment land need, it must be land in the Seavey Loop/Goshen area.

While ORS 197.298(3)(c) allows for a city to include land of lower priority in conjunction with land of higher priority for the purposes of maximizing land use efficiency, the statute does not readily allow a city to skip higher priority lands to include lower priority lands instead. This point was made clear in DLCD's recent order to the City of Bend regarding its proposed UGB expansion. That order is attached hereto as Exhibit D (The full 156 page order is provided with the original of this letter; copies include only the cover page). In that order, DLCD concluded that the methodology and approach used by the City of Bend improperly excluded a substantial amount of land planned and zoned as exception lands in favor of including large amounts of lower priority lands. Exhibit D, page 115 of 156. As the LCDC order for Bend demonstrates, the hurdle for bypassing higher priority lands altogether in favor of lower priority lands is extremely high.

The Joint Planning Commissions should recommend that the Springfield City Council and the Lane County Commissioners include all of the acknowledged exception lands in the Seavey Loop/Goshen area, as well as those lower priority lands that will provide for maximum efficiency in providing services to those exception lands, in the new City of Springfield UGB.

Concept 1 is an efficient and defensible approach to fulfilling the City's employment land needs.

The Commercial and Industrial Buildable Lands Study/Goal 14 Analysis (CIBL) indicates that the City of Springfield needs an additional 640 acres of employment land to meet its needs over the next twenty years. With the guidance of the technical committee, staff and EcoNorthwest have developed three concepts as to how this need can be met. These three concepts are presented in the staff report.

The Willamette Water Company urges the Planning Commissioners to recommend adoption of Concept 1. It represents an efficient and defensible approach to fulfilling the City's employment land needs.

As noted above, the Seavey Loop/Goshen area represents the only area for consideration that includes exception land planned and zoned for employment (commercial and industrial) use and contains the largest area of exception land under consideration. It is the highest priority land for consideration and must be brought into the city if the city expands at all. The question is, how much land should be brought in?

The three concepts contain two different proposals for UGB expansion into the city. Concepts 2 and 3 envision bringing in a total of 260 acres to acquire 90 acres suitable for development. Those concepts include only exception lands in the Seavey Loop/Goshen area, which results in a jigsaw puzzle configuration of parcels.

Concept 1 envisions bringing in a total of 420 acres to provide 235 acres suitable for employment land use. Consistent with the principles set forth by ORS 197.298(1) and (3), Concept 1 includes lower priority lands entirely surrounded by exception lands or areas that will allow for the maximum efficiency of land uses in order to provide facilities and services to the exception lands in the area. As you can see from the graphic for Concept 1, it fills in the gaps of the puzzle.

Because the City of Springfield must include the Seavey Loop/Goshen area in any UGB expansion, it represents responsible planning and governance to do it in the most efficient manner possible. The way to do that is by recommending that the City Council and County Commissioners adopt Concept 1. It represents an efficient and defensible decision.

One final point should be made about the Seavey Loop/Goshen area. Map 9 from the staff report, entitled "Study Area Summaries," at page 647 of the staff report indicates that the Seavey Loop/Goshen area (Area 9/10) consists of 1,791 acres/399 tax lots. While the initial study area may have been that large, the Willamette Water Company is concerned that persons may believe that the entire area is under consideration for UGB expansion. It is not. There is no way the city could justify bringing in the large areas of farmland on the eastern portion of the study area.

Only the areas envisioned by the three proposed concepts represent defensible UGB expansion decisions, and of the three, Concept 1 is the best.

The Public Facilities and Services Analysis in the Staff Report is Misleading. There are Existing Water and Fire Services Available in the Seavey Loop/Goshen Area.

The staff report for this hearing contains information prepared by the public works staff regarding the Goal 14 Boundary Location Factor 2, which requires consideration of the orderly and economic provision of public facilities and services. That information is misleading.

The information provided in the staff report assumes that it is the City of Springfield and the Springfield Utility Board that is to provide the public facilities and services. So, for example, the Seavey Loop/Goshen area is identified as having no existing water service. See Section F-28, Staff Report p. 656. As this letter explains above, that is a factually incorrect statement.

Importantly, the assumption made in the city's analysis – that the city can and should limit its review of public facilities and services to those that it provides – is not defensible. Again, the DLCD's order in the Bend case provides guidance on this issue. In the Bend proceeding, the city established review criteria that required lots to be serviceable by "city" water and sanitary services and is within the regional stormwater plan service area. DLCD commented that the

serviceable criteria was permissible "except for the limitation to *city* facilities" for the sanitary systems. See Exhibit D, page 118, Table 3. A notation referring to the analysis for the sanitary facilities was made for the water and stormwater facilities.

In short, the appropriate consideration is whether public facilities and services can be provided to an area in an orderly and economic manner, not whether "city" facilities and services can be provided. Here, the Joint Planning Commissions and the local governments should know that the Seavey Loop/Goshen area considered for inclusion into the Springfield UGB already has existing water and fire services.

As discussed above and shown in Exhibits A through C, the Willamette Water Company has the existing infrastructure in place to provide water to the entire area considered for inclusion into the UGB. The Planning Commissioners should understand that water is not a "constraint" for the Seavey Loop/Goshen Area (see Staff Report p. 656, F-28), and will not be "difficult" to provide water services to (see Staff Report p. 661, F-33).

The case is the same for fire and life safety issues. Attached hereto as Exhibit E is a diagram showing the Goshen Fire Department service area. That diagram shows that the Seavey Loop/Goshen areas considered for inclusion into the City of Springfield are currently provided with fire and emergency services. There is no reason why these services could not be continued into the near-term future. There is no basis to conclude that fire services are constrained or difficult to provide for this area.

It is also worth noting that the staff report discusses the fact that Springfield fire services will need to expand to serve the southern Glenwood area as it develops. Any expansion plans that include the full Glenwood area can readily incorporate services to the Seavey Loop/Goshen area. In the mean time, public fire and emergency services already exist for the area and can efficiently be continued into the near-term future.

We urge the Joint Planning Commissions to recommend adoption of Concept 1 to the Springfield City Councilors and Lane Planning Commissioners.

Thank you for your consideration.

Sincerely,

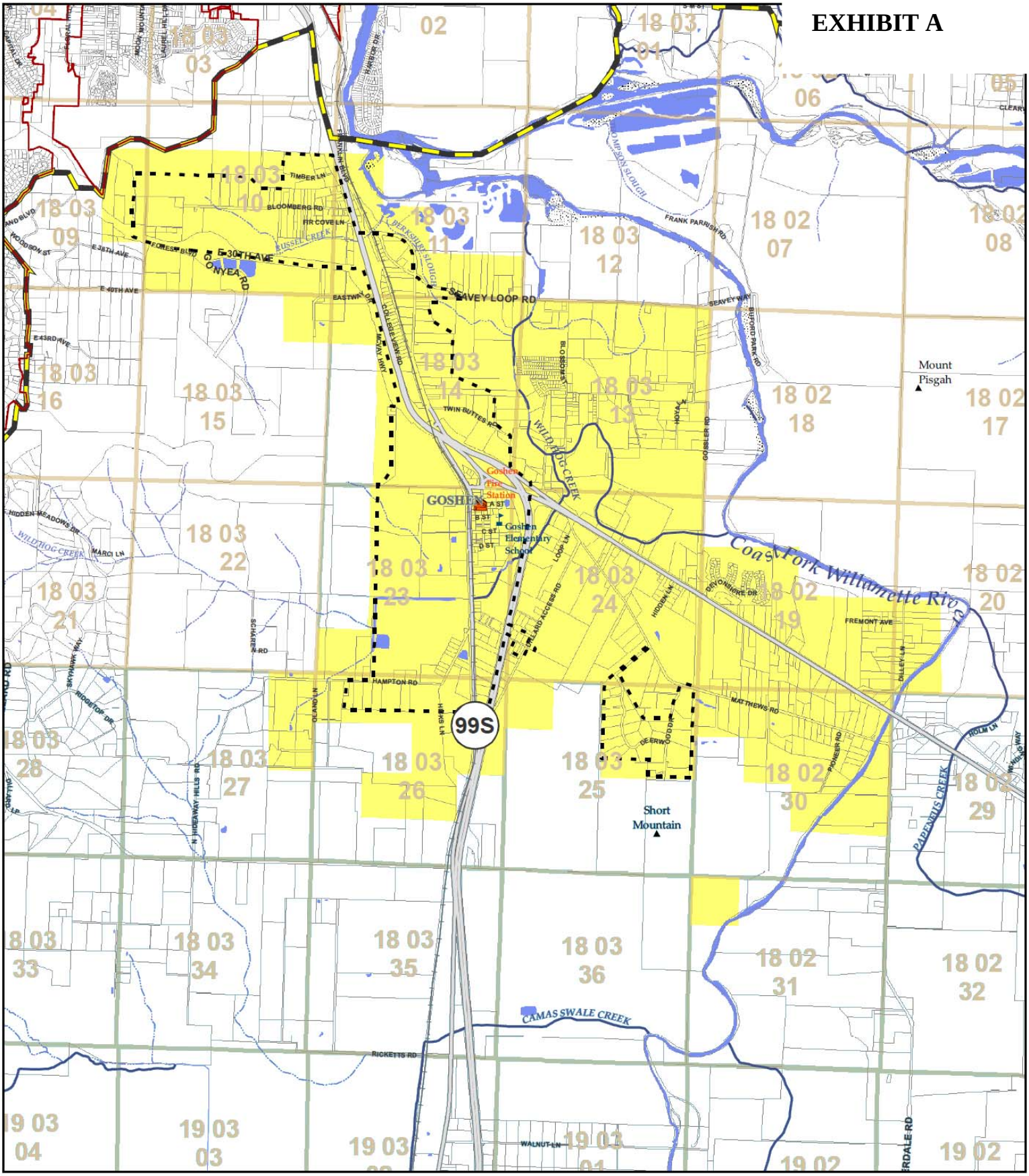
Bill Kloos

Exhibits

Exhibit A	Map – Willamette Water Company Service area
Exhibit B	Willamette Water Company Pipe Size Map
Exhibit C	Willamette Water Company Hydrant and Valve Location Map

Exhibit D	DLCD Order 001775 – Report on Bend and Deschutes County's Amendment to the Bend Urban Growth Boundary (cover only, full copy provided to staff)
Exhibit E	Map showing the Goshen Fire Department Service Area

EXHIBIT A



Willamette Water Company

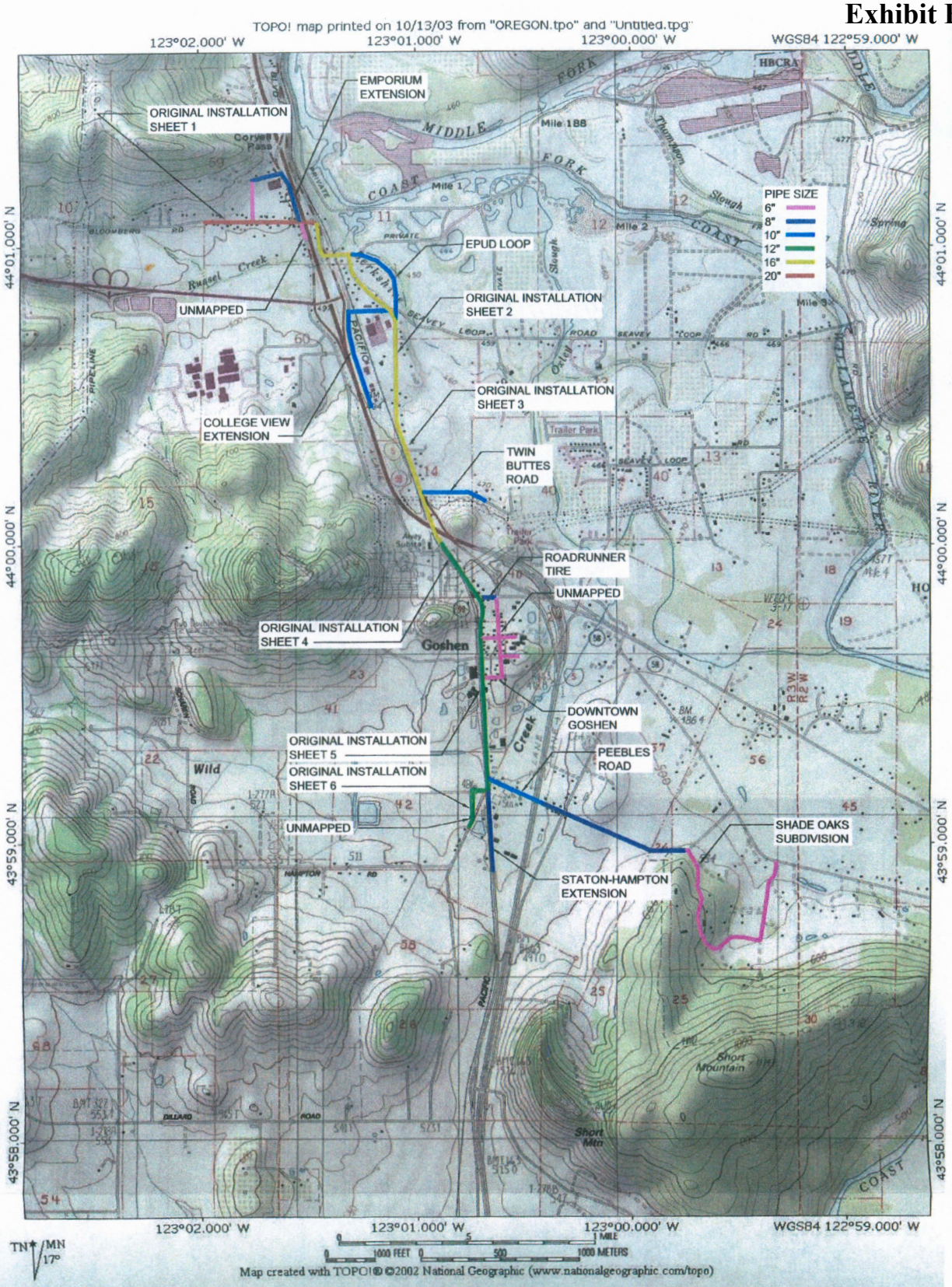
Willamette Water Co. Service Area

Existing Water Right

Rivers and Streams

Artificial

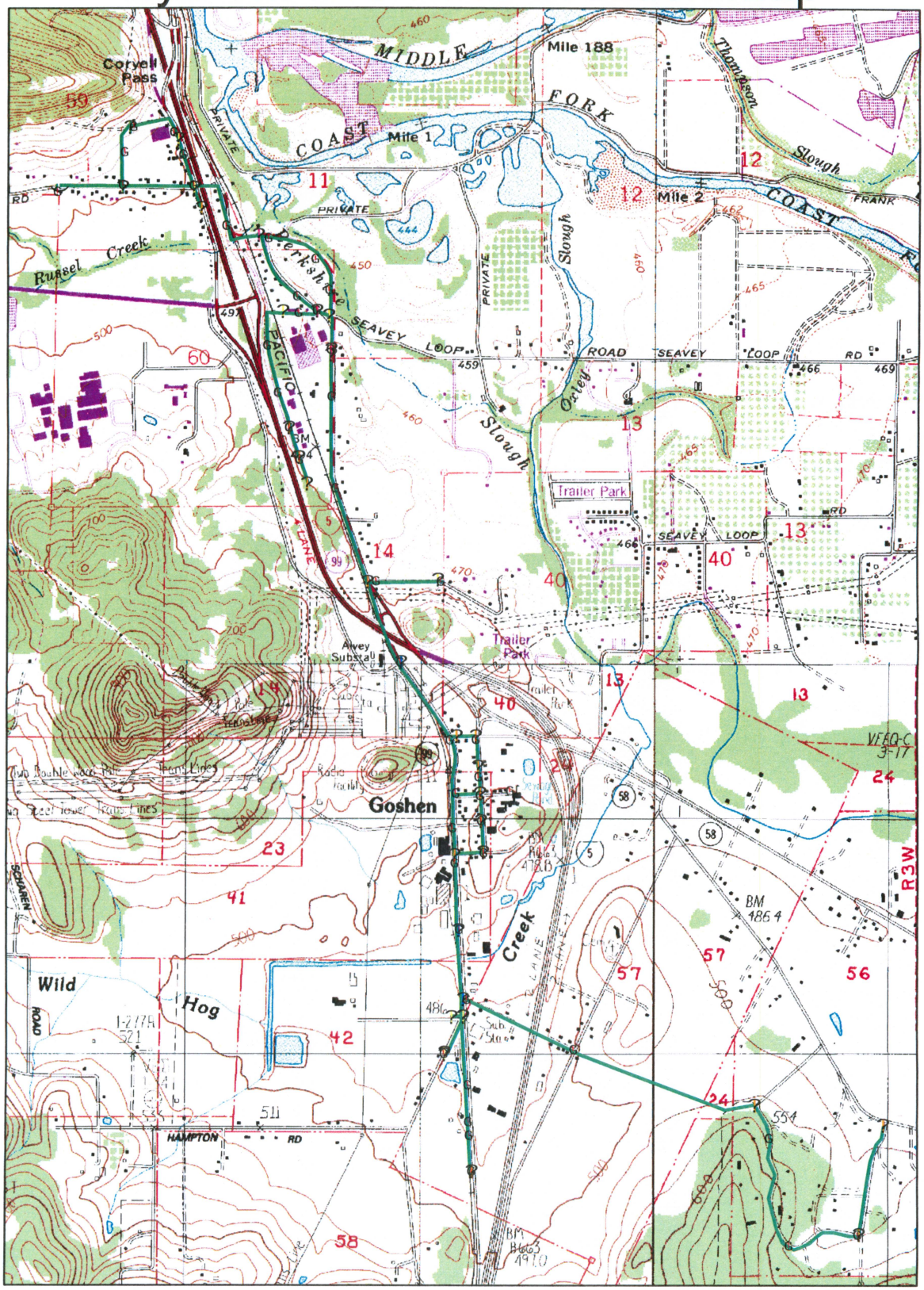
Exhibit B



Goshen Water Distribution System

Hydrant and Valve Location Map

EXHIBIT C



0 0.3 0.6 1.2 Miles

- Hydrants
- 6" valves
- 8" Valves
- 10" Valves
- 12" Valves
- 16" Valves
- 20" main connection
- System Mainline

Intended map use is for approximate valve locations and reference purposes only and should not be used for mainline locating. The map producer assumes no responsibility or liability for map accuracy or item location discrepancies.

DEPARTMENT OF LAND CONSERVATION & DEVELOPMENT

REPORT ON BEND AND DESCHUTES COUNTY'S AMENDMENT TO THE BEND URBAN GROWTH BOUNDARY

DLCD ORDER 001775

January 8, 2010

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I. EXECUTIVE SUMMARY

The City of Bend is nationally recognized as a high-quality, desirable place to live and work. Bend is the seventh largest city in Oregon, and is one of the fastest growing communities in the state. Over the next twenty years, close to forty thousand new residents are expected in the city. Planning for the homes and jobs that current and future citizens will need is an important responsibility, and the decisions made now will have long-term consequences for the city and region.

The city and Deschutes County have made a substantial effort to plan for the future of the area in their decisions on the Bend urban growth boundary (UGB). The UGB establishes where the city will grow over the next twenty years. Setting this boundary and planning for the lands inside of it directly influences what types of housing are likely to be built, what employment opportunities the city is prepared for, and the future costs of public facilities. It also has important long-term consequences for where people live and work in the region, and the extent to which they need to drive to get from homes to jobs to shopping and other destinations.

This is a decision by the Director of the Oregon Department of Land Conservation and Development about whether the City of Bend and Deschutes County's UGB expansion complies with state land use laws. The decision is to remand the UGB expansion (along with a related amendment to the city's public facilities plan) back to the city and county for revisions needed for the decisions to conform with state requirements.

The director agrees with the city and county that a UGB expansion is needed, but the size of the expansion is over four square miles larger than the amount of land the local governments determined is needed. The director also agrees with the city and county that they have appropriately shown a need for land for a new university site and for a large-site general industrial area. However, the local governments need to complete technical work to document that lands for these important future uses can't be found within the existing city limits.

The director also determines that the city has not done an adequate job of planning for needed housing for current and future residents of Bend and the region. The city has documented a real need for more affordable housing, and for housing for people who work in Bend – to reverse the trend of workers leaving the city to find affordable housing. However, the city's planning for future residential development does not lay the groundwork for these types of housing to be developed in Bend.

State land use laws require cities to work to encourage growth to occur on vacant and underutilized lands within urban areas before expanding into rural areas. Bend has taken tentative steps in this direction, but its indefinite plans do not demonstrate that the city will meet its housing needs over the next twenty years.

Finally, the city and county decisions regarding where to expand the Bend UGB fail to explain (adequately) why certain lands are included, while others are not. An important aspect of this decision is the location of future sewer system investments, and the Director agrees that the planning for those system improvements is an important consideration in deciding where to locate the boundary. However, the findings and technical work supporting the decision are conflicting in some aspects, and do not appear to provide decision-makers with an adequate basis for making decisions about the long-term cost implications of expanding the boundary in particular locations.

The Department of Land Conservation and Development has committed a substantial amount of staff time and funding to working with the city and county to plan for the community's future. This decision is designed to help move that effort forward, and the department will continue to offer its assistance as Bend plans for its future.

II. BACKGROUND AND DESCRIPTION OF UGB PROPOSAL

The City of Bend adopted an 8,462-acre UGB expansion and supporting plan and code amendments on January 5, 2009. (See Figure 1, UGB Map, on the following page.) Deschutes County co-adopted the same UGB expansion along with its own supporting plan and code amendments on February 11, 2009. The city and county decisions were submitted to the department for review on April 16, 2009. In its submittal to the department, the city summarized its proposal as follows:

> The adopted UGB amendment is substantially different from previous submittals dated June 11, 2007 and October 8, 2008. Lands proposed to be included to the west and north are exception lands. Lands proposed to be included to the northeast and due east are a combination of exception and resource lands; lands to the south and southeast are exception lands. [Notice of Adoption of an UGB Amendment form dated April 16, 2009]

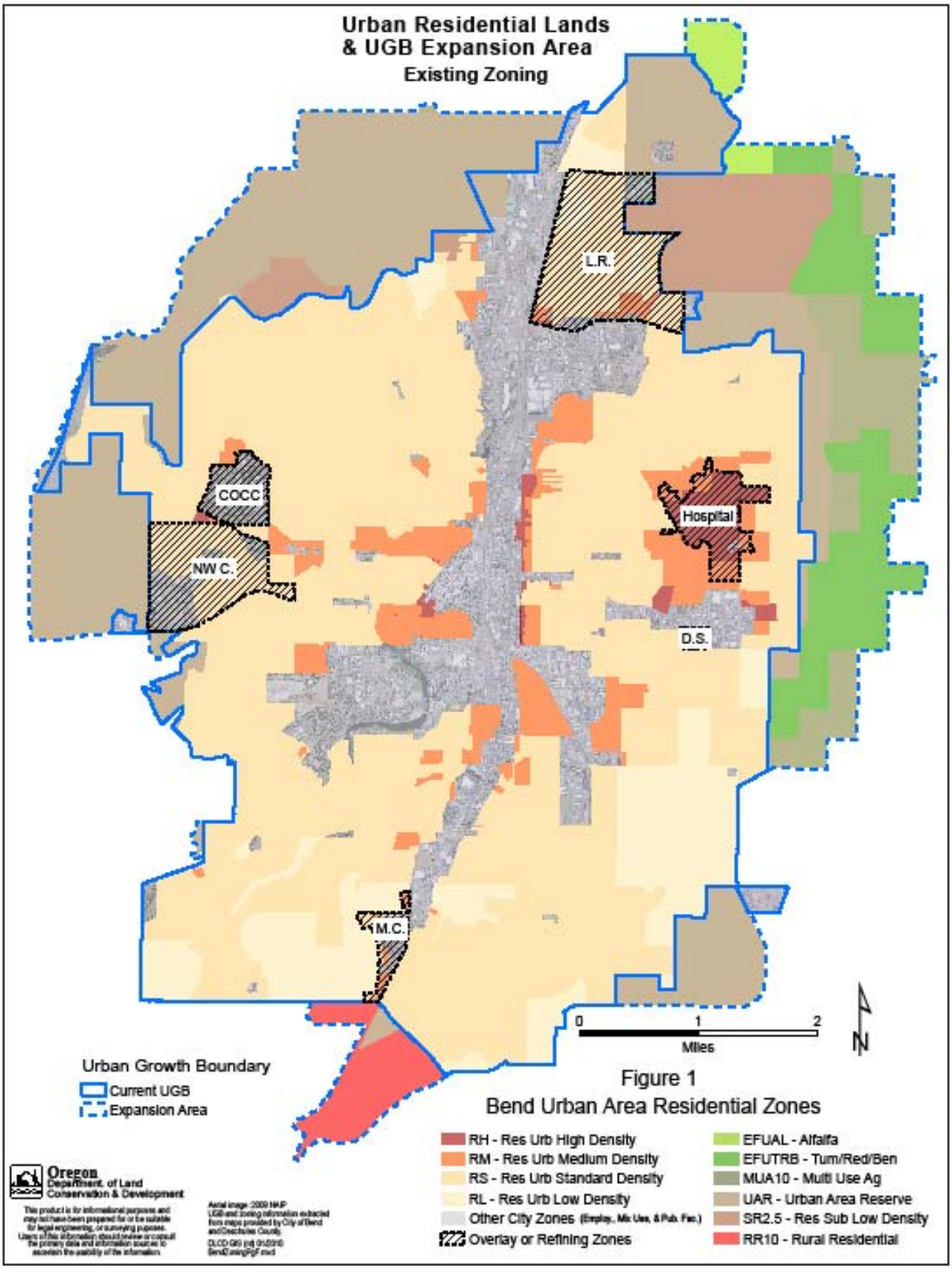
A. Background

The city began review of its need for additional land for housing in 2004, and later added an evaluation of its employment land needs as part of its UGB review. On June 11, 2007, the city submitted a notice of a proposed 4,884-acre UGB expansion to the department through a 45-day post-acknowledgement plan amendment notice. The notice also included a 14,775-acre urban reserve proposal, which was withdrawn from further consideration shortly thereafter. Following joint public hearings by the city and county planning commissions, it was decided locally that further work was needed on the UGB expansion proposal.

On October 8, 2008, the city submitted notice of a revised UGB expansion proposal that included 8,943 acres, 83 percent larger than the June 11, 2007 proposal. A joint planning commission hearing occurred on October 27, 2008, followed the next day by an adoption recommendation by the Bend Planning Commission. The Bend City Council and Deschutes County Board of Commissioners held a joint public hearing on the proposal on November 24, 2008 and considered certain changes to it. The written public hearing record remained open until December 1, 2008. After deliberation during December, 2008, the city council adopted the proposal on January 5, 2009.[1]

The Deschutes County Planning Commission forwarded its recommendation on November 13, 2008 and Board of Commissioners co-adopted the UGB expansion and

[1] The Bend City Council approved Ordinance NS-2111 related to amendments to sewer and water public facility plans involved with the UGB proposal, Ordinance NS-2112 related to justification of the UGB expansion and amendments to the Bend Area General Plan, and Ordinance NS-2113 concerning UGB-related amendments to the Bend Development Code.


Urban Residential Lands
& UGB Expansion Area
Existing Zoning
L.R.
COCC
NW C.
Hospital
D.S.
M.C.
0
1
2
Miles
N
Urban Growth Boundary
Current UGB
Expansion Area
Figure 1
Bend Urban Area Residential Zones
RH - Res Urb High Density
RM - Res Urb Medium Density
RS - Res Urb Standard Density
RL - Res Urb Low Density
Other City Zones (Employ., Mix Uses, & Pub. Fac.)
Overlay or Refining Zones
EFUAL - Alfalfa
EFUTRB - Turn/Red/Ben
MUA10 - Multi Use Ag
UAR - Urban Area Reserve
SR2.5 - Res Sub Low Density
RR10 - Rural Residential
Oregon
Department of Land
Conservation & Development

related amendments to the county comprehensive plan and county zoning code on February 11, 2009.[2]

The city provided notice and submittal of the UGB expansion to the department on April 16, 2009. The submittal contained an approximately 14,000-page record, including the adopted ordinances NS-2112 and NS-2113. The submittal did not include Ordinance NS-2111, which adopted an amended public facility plan, although a copy of Ordinance NS-2111 was included in the April 16, 2009 submittal materials.

The 21-day objection period for the April 16, 2009 submittal ended on May 7, 2009, with 27 parties filing objections. Also on May 7, 2009, the department sent the city notice that the submittal was incomplete. The city responded to the department's notice on June 5, 2009.

On June 12, 2009, the city provided notice and submittal of its adoption of the public facility plans related to the UGB expansion, including the notice of adoption for Ordinance NS-2111. This submittal started a second 21-day objection period. This second objection period ended on July 6, 2009 with nine objecting parties, including some who had objected during the objection period for the UGB submittal.

The department determined that the city's submittals were complete on August 28, 2009, and consolidated the record for review in the manner of periodic review. This began the department's 120-day review period to prepare a decision on the consolidated submittal. The 120-day review period was extended to January 8, 2010 by agreement of the city, in response to a request from the department on December 15, 2009.

B. Summary of the UGB expansion

The UGB expansion adds 8,462 acres to the existing 21,247-acre Bend UGB, an approximately 40 percent increase. The expansion includes 2,866 acres for housing needs and related uses and 2,090 acres for employment needs and related uses, for a total land need of 4,956 acres. [R. at 1054, 1057-1058] The amendment includes 5,475 acres considered "suitable" and available for development, leaving a theoretical "surplus" of 519 acres. [R. at 1054] In addition to the 519-acres, the UGB amendment includes 2,987 acres considered unsuitable for satisfying housing and employment land needs.

Of the 5,475 acres considered "suitable" and available for development, 4,069 acres are exception lands, which (under state law) are the highest priority lands for UGB expansions. ORS.197.298. The remaining 1,407 acres are resource (farm) lands, which are the lowest priority lands for UGB expansions. [R. at 1058] The findings do not indicate the land priority of the 3,506 acres of land that have been included in the UGB expansion, but that are either unsuitable for housing and employment land, or are

[2] The Deschutes County Board of Commissioners approved Ordinance No. 2009-01, related to co-adoption of the proposed Bend UGB and associate comprehensive plan policies and Ordinance No. 2009-02, related to the county zoning map and zoning ordinance text for areas within the Bend UGB.

"surplus" according to the findings. These 3,506 acres represent 41.4 percent of the UGB expansion area.

In 2008, the population living within the prior UGB was reported to be 76,551. The city's 2028 planning year population is projected to be 115,063. [R. at 1302]

The city's housing needs analysis identifies a need for 16,681 new dwelling units over the 20-year planning period, of which 11,159 dwelling units would be accommodated in the prior UGB. [R. at 1070-1071, 1083] According to the decision, this leaves the need for 5,522 new dwelling units to expand on 941 net acres of expanded UGB area.[3] [R. at 1080, 1082]

The city projects that non-shift employment in 2028 will include 60,607 jobs citywide, of which 29,602 will be new employees. [R. at 1108, 1140] 2,090 acres of land were included in the UGB expansion to provide the sites necessary for this expanded employment base.

[3] Second homes and vacant homes are not included in these housing needs numbers.

III. OBJECTIONS AND ANALYSIS

A. Organization of Review

Due to the size of the submittals included in this proceeding, the large number of objections provided by objectors and the range of issues subject to objections, the department has consolidated its review of objections by major compliance topics. This review starts in section III.E.

Sections III.B and C address the status of the objectors, determining whether they meet the legal requirements for objections, and whether their objections meet the requirements for valid objections. Section III.D addresses objections to Department of Land Conservation and Development's jurisdiction to review a portion of the submittal – the City of Bend's adoption of Ordinance NS-2111, adopting amended public facilities plans that relate to and are used as one basis for the city and county decisions on the Bend UGB.

Starting with Section III.E, review of each consolidated compliance topic includes (a) a summary of the applicable legal requirements relating to that set aspect of the decisions, (b) a summary of the local government actions, (c) a summary of relevant objections and previous department comments, and (d) the director's analysis and conclusions. The analysis and conclusions in each section are collected together and repeated in the report's final section, which contains the director's conclusions and decision. In the event of any conflict between the conclusions in Section III. and the conclusions in Section IV, those in Section IV will control.

B. Objectors and Status

Persons who participated at the local level orally or in writing during the local process leading to the final decision may file an objection to the local government's UGB expansion with the department, which then must review the expansion decision or refer it to the Land Conservation and Development Commission (LCDC) for review. Pursuant to OAR 660-025-0140(2), to be valid, objections must:

(a) Be in writing and filed with the department's Salem office no later than 21 days from the date the notice of the submittal to the department was mailed by the local government;
(b) Clearly identify an alleged deficiency in the UGB expansion, 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.

On May 7, 2009, the 21-day objection period for the city's April 16, 2009 submittal ended with the following 26 parties filing timely objections with the department. The

parties listed all participated at the local level according to materials submitted to the department, with the exception of Mr. and Mrs. Harold Simpson, as set forth in more detail in the next subsection. This list presents objectors in roughly the same order that they were received by the department.

1. Swalley Irrigation District
2. Tony Aceti
3. Terry L. Anderson
4. Toby Bayard
5. Bend-La Pine School District
6. Bend Metro Park and Recreation District
7. Brooks Resources Corporation
8. Richard and Jelinda Carpenter, Jack McGilvary (trustee)
9. Central Oregon LandWatch
10. Cindy Shonka
11. Edward J. Elkins, Doris E. Elkins
12. Fred and Katy Boos
13. Hillary Garrett
14. E. M. Holiday
15. Mark Anderson
16. Barbara I. McAusland
17. Tony and Cyllene King
18. Miller Tree Farm, LLC (Charlie Miller)
19. Newland Communities
20. Oregon Department of State Lands
21. Paul J. Shonka
22. Rose and Associates, LLP
23. Shevlin Sand and Gravel, Inc.
24. Mr. and Mrs. Harold Simpson
25. Keith Spencer
26. Tumalo Creek Development, LLC

On July 6, 2009, the 21-day objection period for the city's June 12, 2009 submittal ended with the following nine parties filing timely objections with the department. The parties listed all participated at the local level according to materials submitted to the department. This list presents objectors in roughly the same order that they were received by the department.

1. Toby Bayard
2. Hunnel United Neighbors
3. Newland Communities
4. Swalley Irrigation District
5. Anderson Ranch
6. Central Oregon LandWatch
7. J. L. Ward Company
8. Rose and Associates, LLC

9. Tumalo Creek Development

C. Validity of Objections

Objections must satisfy the requirements of OAR 660-025-0140(2) in order to be valid and considered by the director. This rule states:

> Persons who participated at the local level orally or in writing during the local process leading to the final decision may object to the local government's work task submittal. To be valid, objections must:
> (a) Be in writing and filed with the department's Salem office no later than 21 days from the date the notice was mailed by the local government;
> (b) Clearly identify an alleged deficiency in the work task 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.

Some objectors have provided numerous or multiple objections covering a range of compliance issues, while others focus on a single objection. All of the objectors listed in section III.B filed their objection(s) in a timely matter, satisfying the requirements of OAR 660-025-0140(2)(a).

The objection of Mr. and Mrs. Harold W. Simpson (dated May 1, 2009) does not establish a clearly identified deficiency in the submittal as required by OAR 660-025-0140(2)(b). The objector attached a letter dated December 15, 2008, which apparently was originally sent by another party to the city, but after the City of Bend closed the public record on the matter on December 1, 2008. The objectors have not demonstrated that they participated orally or in writing at the local level as required by OAR 660-025-0140(2)(d). The Simpsons' objections are not valid.

The objection of Keith Spencer (dated April 23, 2009) does not establish a clearly identified deficiency in the submittal, as required by OAR 660-025-0140(2)(b). As a result, Mr. Spencer's objections are not valid.

The remaining objectors provided one or more valid objections. However, as set forth in more detail in the director's analysis section later in this report, specific objections may be found to be invalid based on criteria in OAR 660-025-0140(2)(b) or OAR 660-025-0140(2)(c).

Objections not addressed in the analysis sections of this report are denied.

D. DLCD Jurisdiction

Objector Swalley Irrigation District (Swalley) contends that the Land Use Board of Appeals (LUBA or the Board), and not this department has jurisdiction over the city's submittal. Swalley rests the objection upon (1) the "tardiness" of the city's submittal, and (2) the contention that the submittals are not and do not arise from UGB amendments within the department's jurisdiction under ORS 197.825(2)(c)(A). Swalley objects that in order to invoke the exception to LUBA jurisdiction under ORS 197.825(2)(c)(A), a local government submittal to the department must occur closer to the time of adoption than occurred in this matter. Swalley objects that the city's submittal is not timely for purposes of ORS 197.825(2)(c)(A) because it occurred after the time for filing a LUBA appeal or intervention. Objector Swalley contends this is because transfers to LUBA can only occur within certain statutory limits, citing ORS 197.830(9). Objector Swalley expounds that under ORS 197.825(2)(c)(A), the director can only transfer a matter to LUBA within the 21-day period in which a notice of intent to appeal a land use decision may be filed under ORS 197.830(9). Swalley argues "DLCD director's transfer authority is only exercisable and thus necessarily must occur in the LUBA 21 day appeal period." [Swalley Objection 1, at 14]

a. Legal Standard

Under ORS 197.825, LUBA has exclusive jurisdiction to review any land use decision of a local government with specific statutory exceptions.[4] One exception to the exclusive jurisdiction of the board is for certain matters submitted to the department. ORS 197.825(2) provides in part:

> The jurisdiction of the board:
> * * * * * *
> (c) Does not include a local government decision that is:
> (A) Submitted to the Department of Land Conservation and Development for acknowledgment under ORS 197.251, 197.626 or 197.628 to 197.650 or a matter arising out of a local government decision submitted to the department for acknowledgment, unless the Director of the Department of Land Conservation and Development, in the director's sole discretion, transfers the matter to the board[.]"

ORS 197.825(2)(c)(A) excludes submittals pursuant to ORS 197.626, which provides:

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[4] ORS 197.825(1) provides:

> Except as provided in ORS 197.320 and subsections (2) and (3) of this section, the Land Use Board of Appeals shall have exclusive jurisdiction to review any land use decision or limited land use decision of a local government, special district or a state agency in the manner provided in ORS 197.830 to 197.845.

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

The commission adopted OAR 660-025-0040[5] to implement its exclusive jurisdiction under the statute and OAR 660-025-0250[6] to provide for transfers of matters to LUBA.

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[5] OAR 660-025-0040 provides:

> (1) The commission, pursuant to ORS 197.644(2), has exclusive jurisdiction to review the evaluation, work program, and all work tasks for compliance with the statewide planning goals and applicable statutes and administrative rules. Pursuant to ORS 197.626, the commission has exclusive jurisdiction to review the following land use decisions for compliance with the statewide planning goals:
> (a) If made by a city with a population of 2,500 or more inside its urban growth boundary, amendments to an urban growth boundary to include more than 50 acres;
> (b) If made by a metropolitan service district, amendments to an urban growth boundary to include more than 100 acres;
> (c) plan and land use regulations that designate urban reserve areas.
> (2) The director may transfer one or more matters arising from review of a work task, urban growth boundary amendment or designation or amendment of an urban reserve area to the Land Use Board of Appeals pursuant to ORS 197.825(2)(c)(A) and OAR 660-025-0250.

[6] OAR 660-025-0250 provides:

> (1) When the department receives an appeal of a director's decision pursuant to OAR 660-025-0150(4), the director may elect to transfer a matter raised in the appeal to the Land Use Board of Appeals (board) under ORS 197.825(2)(c)(A).
> (2) Matters raised in an appeal may be transferred by the director to the board when:
> (a) The matter is an urban growth boundary expansion approved by the local government based on a quasi-judicial land use application and does not require an interpretation of first impression of statewide planning Goal 14, ORS 197.296 or 197.298; or
> (b)(A) The matter alleges the work task submittal violates a provision of law not directly related to compliance with a statewide planning goal;
> (B) The appeal clearly identifies the provision of the task submittal that is alleged to violate a provision of law and clearly identifies the provision of law that is alleged to have been violated; and
> (C) The matter is sufficiently well-defined that it can be separated from other allegations in the appeal.
> (3) When the director elects to transfer a matter to the board, notice of the decision must be sent to the local jurisdiction, the appellant, objectors, and the board within 60 days of the date the appeal was filed with the department. The notice shall include identification of the matter to be transferred and explanation of the procedures and deadline for appeal of the matter to the board.
> (4) The director's decision under this rule is final and may not be appealed.

b. Summary of Local Actions

The city submitted notice of the city's and county's adoption of four ordinances to the department on April 16, 2009. Those four ordinances were the city's ordinances adopting the amended UGB and amending the city's development code in certain respects (Ordinances Nos. NS-2112 and NS-2113), and the county's ordinances co-adopting the amended UGB and making certain amendments to the county's comprehensive plan map and text for the lands within the UGB expansion area. [R. at 1050-1051 (city ordinance NS 2112 - UGB); R. at 1836-1844 (city ordinance NS 2113 – development code); [county ordinance 2009-1 – UGB map and DCC and TSP map]; [county ordinance 2009-2 – zoning map and certain DCC amendments]. The city did *not* submit ordinance NS 2111, amending the city's Public Facilities Plan element of its General Plan, to the department on April 16, 2009 (although the city included a copy of this ordinance, which the city adopted immediately before the UGB amendment ordinance, in the record for the submittal of the UGB ordinance (NS 2112), and the city submitted a separate notice of adoption of the Public Facilities Plan on January 9, 2009). However, on June 12, 2009, following LUBA's decision in *Swalley Irrigation District v. City of Bend*, __ Or LUBA __ (LUBA Nos. 2009-012, 2009-013, 2009-31 and 2009-032 , May 8, 2009) and order in *Swalley Irrigation District v. City of Bend*, __ Or LUBA __ (LUBA Nos. 2009-010, 2009-011, and 2009-020, May 8, 2009) the city separately submitted ordinance NS 2111 to the department, and provided notice to the objectors, as required by OAR 660-025-0175(3) and (4) and OAR 660-025-0130 and -0140.

c. Analysis

The director concludes that this objection is not well-taken. Nothing in ORS 197.830(9) addresses department transfers to LUBA. Nothing in ORS 197.825(2)(c)(A) or its statutory context prescribes a time frame in which the director must act to transfer some or all of a local government submittal to LUBA. In construing ORS 197.825(2)(c)(A), the department may not insert what the legislature has omitted – in this circumstance a 21-day time frame that constrains the director's statutory authority to otherwise transfer a matter to LUBA. ORS 174.010. Nor can the director read ORS 197.830(9) as context in such a manner as to give no effect to ORS 197.825(2)(c)(A) in the circumstances presented here. *Id*.

The director notes that LUBA had not issued its orders on the jurisdictional issues at the time of Swalley's objections. Swalley Objection 1, at 4. LUBA has subsequently ruled on substantively the same jurisdictional arguments presented in this objection. The Board held, "ORS 197.825(2)(c)(A) and ORS 197.626, and the implementing rules adopted by DLCD make clear that after the City of Bend submitted NS-2112 and NS-2113 to DLCD for review under the statutes governing periodic review, LUBA ceased to have jurisdiction over those submitted decisions or over matters arising out of those submitted decisions unless the director of DLCD transfers matters to LUBA pursuant to OAR 661-025-0250(2)." *Swalley Irrigation District*, __ Or LUBA __ (LUBA Nos. 2009-012, 2009-013, 2009-31 and 2009-032 , May 8, 2009) (Slip op at 8). The Board also has dismissed challenges to County Ordinances 2009-01 and 2009-02 submitted to the department on

April 16, 2009. *Swalley Irrigation District v. City of Bend*, __ Or LUBA __ (LUBA Nos. 2009-33 and 2009-034, July 1, 2009).

Swalley also asserts that the City of Bend's ordinance NS-2111, adopting the city's water public facilities plans and the sewer public facilities plans as amendments to the city's comprehensive plan, is not itself an amendment of the city's UGB or "a matter arising out of" the city's UGB amendment. ORS 197.825(2)(c)(A). The director does not agree. The decision concerning where to expand its UGB relies heavily on the amendments to the public facilities plans as a factor in determining where to expand the UGB. See, e.g., R. at 1192 (Collection System Master Plan, and exclusion of exception lands to the southwest due to the feasibility of providing sewer service during the planning period). The city's 45-day notice also identified amendments to its Public Facilities Plan as being a part of its proposed adoption of an amended UGB. As a result, the director finds that Ordinance NS-2111 "arises out of" the city's UGB amendment, declines to transfer jurisdiction for review to LUBA, and determines that the director has jurisdiction to review the ordinance.

d. Conclusion

The director denies this objection. Consistent with LUBA's decisions and orders regarding jurisdiction over the city and county submittals, unless and until the matters are transferred to LUBA pursuant to OAR 661-025-0250(2), jurisdiction lies with the department.

E. Residential and Related Land Need

The City of Bend is the seventh largest city in Oregon, and from 2000 to 2005 the city grew rapidly—more rapidly than projected by the city at the last major update of its comprehensive plan (in 1998). [R. at 2116, 1059] Deschutes County completed a coordinated 20-year population forecast for the cities of Bend, Redmond and Sisters and the remainder of the county in 2004. [R. at 1981] That forecast projects the population of Bend to grow from 52,800 in 2000 to 109,389 in 2025. [R. at 1981] As the first step in its analysis of the capacity of its urban growth boundary (UGB), the city extrapolated the county's population forecast to 2028 (in order to have a 20-year forecast for its review of its UGB). The forecast includes a 2028 population for Bend of 115,063. [R. at 1067, 1301] [ORS 195.034(1)] The city initiated a process for formal analysis of its UGB capacity and the consideration of a potential UGB amendment on June 11, 2007 by mailing notice of its initial evidentiary hearing to the department. [R. at 1053] The city adopted an amendment to the UGB and supporting analysis and related comprehensive plan amendments on (January 5, 2009).

This section of the directors report and decision addresses whether the UGB amendment complies with applicable state laws that guide local governments in determining: (1) the amount of land needed inside a UGB over the 20-year period for housing and other land uses (except for employment-related land need, which is addressed in section III.F of this report), (2) how much of this land need could be provided on land already inside the UGB, and (3) how much of this land need can be met only through expansion of the current UGB. The final subsection addresses the relation between the city's UGB amendment and existing policies in the acknowledged Bend General Plan concerning needed housing.

The director's analysis and decisions are based on his evaluation of the city and county decisions and the objections to those decisions, as well as the information and findings provided in the submittal.

1. The Quantity of Land Required for Needed Housing

a. Legal standards

ORS 197.295–197.314, 197.475–197.492 and 197.660–197.670, Statewide Land Use Planning Goals 10 and 14, and OAR 660, divisions 8 and 24 are the applicable state laws.[1]

The fundamental requirement of these state laws is that cities over 25,000 in population must periodically demonstrate that their comprehensive plans provide for sufficient buildable lands within their urban growth boundary to accommodate needed housing for 20 years. A city meets this requirement by:

1. Forecasting what the population within the UGB will be in 20 years, usually relying on a coordinated population forecast adopted by the county; [ORS 195.036; 195.034; OAR 660-024-0030(3) and (4)]

2. Inventorying the supply of "buildable lands"[7] within the existing UGB and determining the capacity of those lands for additional residential development over the 20-year period under current zoning [ORS 197.296(3)(a)];

3. Determining what is "needed housing" (ORS 197.303[8] and OAR 660-024-0010(3)[9]) for the community by "housing type"[10] and density, and determining the number of

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[7] Under Statewide Land Use Planning Goal 10, the term "buildable lands – refers to lands in urban and urbanizable [lands within a UGB that still have rural zoning] areas that are suitable, available and necessary for residential use." See also, ORS 197.295(1) (same). The term is further defined by LCDC rule as:

> residentially designated land within the urban growth boundary, 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, 15, 16, 17, or 18;
>
> (c) Has slopes of 25 percent or greater;
>
> (d) Is within the 100-year floodplain; or
>
> (e) Cannot be provided with public facilities.

[OAR 660-008-0005(2); OAR 660-024-0010 (definitions for UGB management)]

[8] ORS 197.303 provides:

> (1) As used in ORS 197.307 * * * "needed housing" means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. * * * "[N]eeded housing" also means:
>
> (a) Housing that includes, but is not limited to, attached and detached single-family housing and multiple family housing for both owner and renter occupancy;
>
> (b) Government assisted housing;
>
> (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and
>
> (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions. * * * *

The housing types listed in the statute, namely "attached single family housing," "detached single family housing," and "multiple family housing" also are defined by LCDC rule. OAR 660-008-0005.

[9] OAR 660-024-0010(3) provides that:

> (3) "Housing need" or "housing need analysis" refers to a local determination as to the needed amount, types and densities of housing that will be:
>
> (a) Commensurate with the financial capabilities of present and future area residents of all income levels during the 20-year planning period;
>
> (b) Consistent with any adopted regional housing standards, state statutes regarding housing need and with Goal 10 and rules interpreting that goal; and

housing units needed and the amount of land needed for each needed housing type for the 20-year period; [ORS 197.296(3)(b)]

4. If a city determines that its housing need (third step) exceeds its UGB's capacity (second step), the city must first determine whether land inside the UGB can be rezoned to accommodate the additional need. If so, the city must also amend its land use regulations to add new measures that demonstrably increase the likelihood that lands within the existing UGB will accommodate the remaining need. If the city determines it must add lands to its UGB to meet some or all of its projected housing needs, it may do so only after demonstrating that those needs cannot reasonably be accommodated on land already inside the UGB. Statewide Land Use Planning Goal 14.[11]

5. As part of step 4, a city must determine the density and mix of needed housing types that must occur to meet projected overall housing needs for the 20-year planning period. If that planned density is greater than the actual density of development that has occurred within the UGB since the last periodic review (1998 in the case of Bend), the city must adopt measures to demonstrably increase the likelihood that future residential development in the UGB will occur at the density required to meet the projected housing needs. Similarly, if the overall mix of needed housing types during the 20-years planning period is different from the actual mix that has occurred within the UGB since the last periodic review (1998 for Bend [R. at 1074]), the city must adopt measures to demonstrably increase the likelihood that future residential development will occur in a manner that meets projected housing needs. [ORS 197.296(7)-(9)]

6. If the city determines that some or all of its additional need cannot be met by rezoning and other efficiency measures inside the current UGB (steps 4 and 5), the city must add land to its UGB to accommodate the remaining need. [See ORS 197.296(6)]

The needed housing statutes at ORS 197.295 to 197.314 and Statewide Land Use Planning Goal 10 require cities to *plan* for an adequate supply of land for needed housing. For the most part, they do not directly require cities to *ensure* that needed housing will be developed; that will depend on the market and other programs such as public and non-profit housing programs, tax incentives, and government subsidies.

(c) Consistent with Goal 14 requirements.

[10] The housing types that must be analyzed include, but are not limited to, owner and renter occupied: attached single-family housing, detached single-family housing, and multiple family housing, along with the other three housing types listed in ORS 197.303(1)((b)-(d)) (in footnote 2, above).

[11] Statewide Land Use Planning Goal 14 provides, in pertinent part, that: "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."

Two other important aspects of Goal 10 and the needed housing statutes and rules bear emphasis in this regard. They are: (a) that the Goal 10 rule requires cities and counties to consider the needs of the relevant *region* in arriving at a fair allocation of housing types within the UGB [OAR 660-008-0030]—in other words, the planning requirements of these laws apply regionally to some degree; and (b) ORS 197.296(7) not only requires planning—it requires "measures that demonstrably increase the likelihood that residential development will occur [at particular density levels, and in particular forms or types]." [ORS 197.296(7)] Such measures may include land use planning actions, but may also include financial incentives, density bonus incentives, redevelopment and infill strategies (such as urban renewal), authorization of new housing types, etc. [ORS 197.297(9)]

b. Summary of Local Actions

On January 5, 2009, the City of Bend adopted three ordinances. The first ordinance (Ordinance NS-2111) amended the city's Public Facilities Master Plan. [R. at 35]. The second ordinance (Ordinance NS-2112) amended the city's comprehensive plan map, including its map of its UGB, along with certain provisions of the urban area comprehensive plan text. [R. at 1050-1051] The third ordinance amends the city's development code in certain respects to implement ordinance NS-2112 (the UGB amendment). [R. at 1836-1837]

The city initiated the evaluation and amendment of its UGB in June of 2007. The first step was to develop an estimate of the total number of new housing units needed over the planning period (from 2008 to 2028). [R. at 1069] The city utilized some of the safe harbors set forth in OAR 660, division 24 in projecting the number of new households, and used a vacancy factor based on 2000 census data. [R at 1069] The total number of projected households, and thus the number of housing units, that the city found is needed for the 2008–2028 period is 16,681. [R. at 1070]

The city also produced several iterations of a buildable lands inventory (BLI), beginning in 2005, and updated several times through October of 2008. Based on the BLI, the city determined that there were 2,909 acres of vacant or redevelopable residential land within the UGB (prior to the expansion). [R. at 1071] The city then determined that buildable lands within the UGB had the capacity to accommodate 11,159 housing units (or 67 percent of the projected housing units needed for the 2008–2028 planning period) [R. at 1071-1072], leaving 5,522 units needed, to be accommodated by expanding the UGB.

The city prepared three alternate housing needs assessments: the "2709 Trend Forecast," the "Goal 10 Housing Need Forecast," and the "Transition Forecast." [R. at 1075-1078] The findings state that the Transition Forecast satisfies Goal 10. [R. at 1078] The Transition Forecast projects a need for 10,843 (65 percent) detached units and 5,838 (35 percent) attached units for the 2008–2028 planning period.[12] The city then derived a

[12] The city *adopted* a housing *type* mix of 65 percent detached and 35 percent attached, because this was the built mix in 2008. [R. at 1306-07] The city didn't adopt a separate housing *tenure* mix because it considered the housing type mix of 65 percent detached and 35 percent attached to be "a surrogate measure for tenure." [R. at 1306]

"need" for additional residential land in an expanded UGB totaling 941 acres, based on the projected 65/35 housing type mix, using the same allocation of planning designations for the new units that exists in the current UGB (52 percent RS, 35 percent RM, and 13 percent RH) [R. at 1079-1080] The city's estimate of land need reflects some projected increase in average density within these zones, from approximately four units per net acre within the existing UGB to approximately six units per net acre on the lands added to the UGB for residential purposes. [R. at 1080, 1081]

The city has taken several actions to increase the capacity for residential development within the existing UGB. [R. at 1083-1084] These include amendments to the Bend Development Code in 2006, as well as two new efficiency measure proposed in this amendment (beginning to *plan* for 500 units of attached housing in the Central Area Plan, and plan for 600 units of additional housing along transit corridors). [R. at 1085] These two new efficiency measures are reflected in amendments to Chapter 5 of the city's General Plan. [R. at 1085, note 48; see also R. at 1311 (transit corridor planning to be done prior to 2012, no date is provided for Central Area planning)]

The city also estimated land need for several other uses related to residential use. First, the city prepared a separate estimate of land needed for second homes. [R. at 1086-1088] The city estimates that 18 percent of the number of the total additional housing units projected as needed for the planning period from 2008 to 2028 will be needed for second homes, or an additional 3,002 units. The city also projected that these second-home units will develop at a net density of six units per acre, leading to a land need of 500 acres for second homes. The city estimated that 377 acres of land were consumed over the prior seven years by second home development. [R. at 1086]

The city also estimated land need for schools (192 acres) [R. at 1089], parks (474 acres) [R. at 1090], private open space and private rights-of-way and institutional uses (other than schools and parks). Based on data for the land area of these uses within the existing UGB, the city added 15 percent to the amount of land need for housing to account for these uses. [R. at 1091] Finally, the city added another 21 percent for land needed for streets and other public rights-of-way. [R. at 1092]

The city adopted a Framework Plan Map as part of its UGB expansion. The map identifies seven master plan areas. The General Plan states, "The framework plan functions somewhat like a general plan map by indicating general locations, land use types, and densities of a variety of future urban uses," [p. 1-5] and, "* * * Owners of large parcels will be required to demonstrate how projects will be developed after annexation in ways that are consistent with the illustrations of the framework plan and the identified land need." [p. 1-6]

The following table, which is a copy of table III-14 from the city's findings, summarizes the amount of land the city found was needed for expansion of its UGB for residential and other non-employment purposes during the 2008-2028 planning period. [R. at 1092]

Table 1. Summary of UGB Expansion Needed for Housing and Related Uses (2028)

Acres for new housing units	941
Acres for public schools	192
Acres for public parks and trails	474
Acres for second homes	500
Subtotal	2,107
Acres for other land uses (institutional, private open space, private ROW)	442
Acres for public rights of way	316
Estimate of Total Acres Needed	2,886

The city also included almost 3,000 acres of land in the UGB expansion that are not identified as being needed for housing or employment, or any other land need. [R. at 1054] While it appears that the city considers these acres to be unsuitable for any urban land needs, the city does not explain why these additional lands are included within the UGB if they cannot serve an urban need for land. There are no findings addressing these lands other than the two sentences at R. 1054.

c. Objections

The following subsection summarizes and paraphrases objections filed relating to the amount of land in the UGB expansion area for residential and other non-employment uses. The department also commented on these issues in letters to the city dated October 24, 2008 and November 21, 2008. Responses to these objections are provided in subsections 1.e and 2.e, below.

Anderson – The city and county underestimate the amount of land needed for right-of-way, and therefore fail to comply with OAR 660-024-0040(1). Specifically, the estimate is based on land use within the existing UGB, and fails to account for substandard existing rights-of-way and for needs attributable to stormwater management. [May 7, 2009 letter from Andrew Stamp]

Toby Bayard – The proposal doesn't plan for needed housing types to meet the housing needs of all residents as required by Goal 10, particularly lower income and multifamily housing. The proposal underestimates the land need for housing for lower income households.

The UGB amendment includes approximately 3,500 acres above the city's projected land needs, evidently including a variety of lands that are not suitable for urban uses. These lands include land in rural subdivisions, and appear to include lands that contain Goal 5 resources, but none of the reasons for inclusion are contained in the city's findings. State law does not allow a buffer or cushion (the city included a cushion of 519 acres).

The city has failed to show that residential uses cannot be reasonably accommodated within the existing UGB. The city estimates a potential capacity within the UGB of 44,738 units, but assumes that only 25 percent of this capacity will be utilized. Existing residential density in Bend is less than half that of other Oregon cities of the same size.

The city fails to plan for efficient use of the lands added to the UGB, by assuming that 76 percent of that land will be zoned RS (average density of 4 du/acre). Only 33 acres of the total 941 acres is assumed to be zoned RH (average density of 22 du/acre).

Bend's 1998 General Plan projected a housing mix of 55 percent single-family and 45 percent multi-family (including 10 percent mobile home parks), but actual development since 1998 has been 77 percent single-family and 23 percent multi-family (with 0 percent mobile home parks). The city assumes that housing density and mix will continue to produce the same housing types, without regard for current and future housing needs of the city's population over the next 20 years. The 1998 planned mix of 55/45 percent is identical to the mix provided by the Oregon Housing and Community Services Department's Housing Needs Model, which the city rejected and replaced with a much higher percentage of single-family housing and a much lower percentage of multi-family housing. The city also changed to a different type of housing mix, "detached percent and attached percent" instead of "single-family percent and multi-family percent," which includes single-family housing in the form of high end, low density detached housing, and attached housing in the form of attached housing in the form of high end townhomes, condos, and resort communities. The new mix terminology does less to ensure that both detached and attached housing types more affordable to lower and middle income households are likely to develop. The proposal includes medium and high density development only in the Central Area and on Transit Corridors without demonstrating that this will meet the 20-year housing needs of all residents.

The city has reduced the density in the RL (Residential Low Density) and RS (Residential Standard Density) zones.

The city's estimate of land need for second homes is too high, and is not supported by the evidence in the record.

The city's estimate of land need for public right-of-way is too high.

The city did not sufficiently consider efficiency measures inside the existing UGB as required by ORS 197.296(9). The efficiency measures that were adopted lack documentation to assure that they will be effective. [April 29, 2009 letter]

Carpenter/McGilvary – The city and county underestimate the amount of land needed for right-of-way, and therefore fails to comply with OAR 660-024-0040(1). Specifically, the estimate is based on land use within the existing UGB, and fails to account for substandard existing rights-of-way and for needs attributable to stormwater management. [May 5, 2009 letter from Bruce White]

Central Oregon LandWatch – The city does not explain how or why unsuitable lands are added to the UGB to arrive at a gross acreage total of 8,462 acres. The city's findings do not explain why some lands are considered unsuitable, nor why they are nevertheless added to the UGB. The city's determination that lots less than 3 acres in size are

unsuitable if they have existing development is not explained, not does it comply with Goal 14.

The city has not complied with OAR 660-015-0000(14)(2), in that it has not demonstrated that its projected needs cannot be met within the existing UGB.

The city's projected land need of 500 acres for second home development is not justified and is based on incorrect data.

The city's projected land need of 474 acres for parks is not justified, and is based on plans not incorporated into the city's comprehensive plan. In addition, the city fails to account for the fact that some of this need is and will continue to be met on lands outside of the UGB.

Regarding land need for public right-of-way, the city's estimate is based on existing development patterns and does not consider provisions for skinny streets that can and have reduced the amount of land required in newer developments in the city.

Regarding land needed for private rights-of-way and open space, there is no showing of why this type of private land use is needed under Goal 14, when public parks are already provided.

The city misconstrues 660-024-0040(1) in including a "buffer" of 519 acres over and above its demonstrated land need for residential use.

The city fails to consider the approval of the Tetherow destination resort and its effect on land need within the UGB for this type of use.

The city relied on current market conditions as the basis for determining that a greater degree of redevelopment will not occur within the 20-year planning period. The proposed housing mix of 65 percent single-family detached and 35 percent multi-family will not correct a historic shortfall of land for medium and higher density housing types. The city has not done enough to promote infill and redevelopment within the existing UGB, and must adopt more measures to plan for more multi-family housing. [May 7, 2009 letter from Paul Dewey]

Barbara I. McAusland – Bend's Development Code lacks incentives needed for the construction of affordable housing. Providing for second homes in the residential lands need consumes residential land without providing for the primary affordable housing needs of residents. Too much land is added to the UGB. [May 5, 2009 letter]

Newland Communities – The city underestimates the residential land need through the planning period. The assumptions used by the city concerning redevelopment and infill are overly optimistic, and do not account for various livability land needs such as parks and schools. The city also did not adjust its capacity analysis to reflect infrastructure of lot configuration constraints. The city failed to consider the presence of dwellings on lots

in its capacity analysis. The proposed expansion improperly provides less "room" or "livability" per person than existed during the period 1981–2008. The buildable land inventory within the existing UGB is overly conservative and likely overestimates the number of residential units that could be accommodated within the existing UGB and underestimates the amount of land needed within the proposed UGB.

The city's use of the Oregon Housing and Community Services Department's Housing Needs Model is in error, and will likely result in an underestimate of land need outside the existing UGB during the planning period. The Housing Needs Model should not be used in a UGB expansion, and Bend's use of it should be disregarded. The state should disregard the city's discussion or application of the Housing Needs Model and rely on actual trends (77/23 split) or the transition forecast of 65/35. The city must use the 1998-2005 housing mix and densities as required by HB 2709. [ORS 197.296]

The city is required to project housing density and mix, not housing tenure, and not a particular single family/multi-family split.

The theoretical surplus of 519 acres is needed to fulfill land needs, and to provide for effective delivery of infrastructure and complete communities. [May 7, 2009 letter from Christie White]

Oregon Department of State Lands – The city did not properly analyze housing need by type and density as required by ORS 197.296(3)(b) and failed to plan for needed housing as required by ORS 197.303. The city's conclusion concerning a 65/35 detached/attached housing mix is too generalized to comply with the specificity required under ORS 197.296(3)(b), 197.296(9) and 197.303 for a determination of the number of units and amount of land needed for each housing type (attached and detached single-family housing, and multiple family housing, each for both owner and renter occupancy) for the next 20 years.

The city also fails to adequately consider regional housing needs and a fair allocation of housing types, as required by OAR 660-008-0030.

As a result of these deficiencies, the proposal fails to demonstrate that the UGB will provide sufficient buildable land to accommodate projected housing needs for 20 years. [May 7, 2009 letter from Gary Vrooman]

Swalley Irrigation District – The city and county violated Goal 10 by failing to show that there are measures to achieve needed housing types.

The amount of land determined to be needed is too large and beyond what the city determined was needed. The 519-acre cushion must be removed.

The buildable land inventory does not include all buildable land as defined in ORS 197.295, *e.g.*, by excluding vacant land accessed by private road, by very narrowly defining "redevelopable" land, by excluding "split-zoned" parcels, and by not including

all “partially vacant” land planned or zoned for residential use. The city’s buildable land inventory and housing need analysis ignores or minimizes manufacture home parks as a needed housing type without a factual basis. The city ignores, contrary to Goal 10, the shortage of workforce housing. The city double-counts land need for open space, parks and schools. Parcels 3 acres or smaller with a house are arbitrarily rejected as “unsuitable” for future infill or redevelopment.

The city has selected the most expensive lands to serve with public facilities, making it impossible for affordable housing to be provided.

The city ignored the housing that is planned within two destination resort sites in its housing needs assessment.

The city has failed to include efficiency measures for the existing UGB as required by Goal 14 and ORS 197.296. [May 6, 2009 letter from Wendie Kellington, pp. 63-65, 72, 77-78]

d. Analysis and Conclusions

Population (Statewide Planning Goal 14, Factor 1; and OAR 660-024-0030). The city’s extension of Deschutes County’s acknowledged population forecast, from 2025 to 2028 complies with relevant state law. [ORS 195.036; 195.034] The city used a 1.7 percent annual growth rate for the 2025–2028 period, which is the same average annual growth rate that the County forecast for Bend for 2025. [ORS 195.034(1); R. at 1067-1068]

Buildable Lands Inventory/Capacity Analysis (ORS 197.296(3)–(5); Statewide Planning Goal 10; OAR 660-024-0050; OAR 660-008-0010).
Quantity of Buildable Lands Within the Prior UGB – OAR 660-008-0010 requires that the BLI document the amount of buildable land in each residential plan designation. The BLI must further break down the analysis into the amount of land in each plan designation that is vacant, and the amount that is redevelopable. [OAR 660-024-0050(1)] Buildable lands are residentially designated lands within the UGB that are suitable, available and necessary for residential uses. [OAR 660-008-005(2)] Lands are generally considered suitable and available unless severely constrained by natural hazards, subject to protection measures such as those required by Goal 5, have slopes over 25 percent, are within the 100-year floodplain, or cannot be provided with public facilities. [OAR 660-008-005(2)] In addition, “redevelopable lands” are lands zoned for residential use that are already developed, but where there is a strong likelihood that existing development will be converted to more intense residential uses during the planning period. [OAR 660-008-0050(6)]

Buildable lands include lands that may be used for a mix of residential and employment uses. [ORS 197.296(4)(a)] Finally, the city must create a map or document to verify and identify specific lots or parcels that have been determined to be buildable. [ORS 197.296(4)(c)]

The findings do not clearly explain how the city determined the amount of land that is redevelopable or vacant (the total quantity of vacant and redevelopable lands is determined to be 2,909 acres). [R. at 1071] Generally, the city indicates that the BLI is based on a parcel-level database, where city staff reviewed each tax lot to determine its development status (vacant, vacant platted, vacant with constraints, and redevelopable). [R. at 1071] The city included a summary of the BLI in its newly adopted Chapter 5 of the Bend Area General Plan. [R. at 1288, Table 5-4] However, there does not appear to be a map of the lands determined to be buildable in the record—making it impossible to identify the quantity or location of redevelopable or vacant lands. In addition, the city's most recent BLI indicates in notes that:

(a) Developed residential lots contain existing dwellings and do not meet the [redevelopment] criteria below, or are used for employment, schools, parks, open space, institutional uses, or parking lots[;] and

(b) Redevelopable residential lots can double the number of dwelling units on the lot, are greater than 0.5 acre, have a land value greater than improvement value, [*and*] have no CC&Rs prohibiting future land division[;] and

(c) Constrained lots are those with development constraints (no public road access) or with physical constraints over 50% of the lots (includes slopes greater than 25%, areas of special interest, and floodplains. [R. at 2042]

Based on these notes from the most recent BLI, it appears that the city excluded "constrained" lands that may qualify as "buildable land" under OAR 660-008-005(2). That rule provides that lands are generally considered suitable unless they meet certain specific criteria. It also appears that the city concluded that no redevelopment will occur on lots unless they contain at least 0.5 acres and have a land value exceeding improvement value. The criteria in the rule do not correspond to the criteria used by the city.

It also appears that the city considered some lands as "developed residential lots" that could be redeveloped, such as lands used for open space or parking lots. The criteria for "redevelopable residential lots" do not appear to comply with OAR 660-008-0005(6). Although consideration of land and improvement values and CC&Rs is relevant to the likelihood of existing development being converted to more intense residential uses over 20 years, there is no finding or reasoning in the city's decision that documents the determination required by the rule (i.e., that there is a strong likelihood that existing development will be converted to the capacities the city projects).

Finally, the BLI does not include consideration of potential development in lands that may be used for a mix of residential and employment uses. [R. at 2129] In sum, the department is unable to determine whether the *amount* of vacant and redevelopable land projected by the city for each residential plan designation complies with OAR 660-008-0005, 660-008-0010, 660-024-0050, and ORS 197.295 and 197.296(3) and (4). The director remands the city and county decisions with direction to:

1. Include a map of buildable lands, as required by ORS 197.296(4)(c), as well as a zoning map and a comprehensive plan map for the lands within the prior UGB.

2. Include as its inventory of buildable lands, an analysis for each residential plan district of those lands that are "vacant," and of those lands that are "redevelopable" as those terms are used in ORS 197.296(4)-(5) and OAR 660-008-005(6). As part of this inventory, include an analysis of what amount of redevelopment and infill has occurred, and the density of that development, by plan district, since 1998. The inventory must include the UAR and SR 2 ½ plan districts, as well as the RL, RS, RM and RH districts.

3. If the city excludes lands on the basis that there is not a strong likelihood that existing development will be converted to more intense residential uses during the planning period, include an analysis of lands within all districts showing the extent to which infill and redevelopment has or has not occurred since 1998.

Capacity Analysis for the Prior UGB – In determining the capacity of buildable lands, the city estimated that *all* vacant and redevelopable land will develop during the planning period. [R. at 1071] However, the city also bases its capacity analysis on the assumption that development in the RL, RS and RM plan designations will occur at the minimum density allowed by zoning for vacant lands in these districts, and that development in the RH district will occur at a lower density than the minimum allowed due to parcelization patterns. [R. at 1071] Most of the buildable lands capacity is estimated to be vacant lots and parcels rather than from lands that might redevelop. [R. at 1071, Table III-4]

The findings refer to a March 3, 2008 memorandum as providing the detail for the city's assumptions on buildable land capacity. [R. at 1071, 8408-8414] That memorandum indicates the city used the following assumptions regarding the projected density of new housing units per *acre* through *redevelopment*: one unit per acre for RL; two units per acre for RS; five units per acre for RM; and essentially no redevelopment for RH lands. For *vacant* lands that are *already platted* (or in the process of division), the assumed densities per *lot* are: one unit per lot for RL and RS, and two units per lot for RM and RH. For *vacant acreage*, the densities per *acre* are: two units per acre for RL, four units per acre for RS; eight units per acre for RM; and fourteen units per acre for RH. These calculations net out land for right-of-way (at 31 percent; later changed to 21 percent). [R. at 8409-8410; 1072] The findings do not include an analysis of lands zoned UAR or SR 2½ within the prior UGB (there appear to be UAR areas at Cooley Road, and at Juniper Ridge, and SR 2 ½ areas north of Roper Road, as well as other scattered UAR areas on the west side of the city, all within the prior UGB).

The city's minimum densities for its residential plan designations per its Development Code (Section 2.1.600), and the total acreage within the prior UGB for each as reported by the city, [R. at 8412] are:

- Urban Area Reserve (UAR) one unit per ten gross acres (acreage not listed)

- Suburban Low Density Residential (SR 2½) one unit per 2½ gross acres (single family detached housing) (acreage not listed)

- Low Density Residential (RL) 1.1 units per gross acre (single family detached housing) (1,527 total acres)

- Standard Density Residential (RS) 2.0 units per gross acre (single family detached housing) (9,611 acres)

- Medium Density Residential (RM-10) 6.0 units per gross acre (manufactured homes and attached housing) Note that single-family detached housing is a permitted use in this zone, with no apparent minimum density. (1,336 acres, include RM)

- Medium Density Residential (RM) 7.3 units per gross acre (attached multi-family housing) Note that single-family detached housing is a permitted use in this zone, with no apparent minimum density.

- High Density Residential (RH) 21.7 units per gross acre (attached multi-family housing) (316 acres) [R. at 8411]

While the assumption that *all* buildable lands will be developed during the planning period is aggressive, assumptions regarding the amount of development that will occur on those lands is quite conservative, particularly given the predominance of land planned for lower density within the existing UGB (RL and RS, with the latter allowing a minimum lot size of one-half acre and the former a minimum lot size of just under one acre). In addition, the city apparently failed to analyze lands zoned UAR or SR 2½ at all in terms of development capacity. The final determination of capacity within the existing UGB, which uses these assumptions, yields a total of 10,059 units (before new efficiency measures are considered). [R. at 1071, Table III-4]

Under ORS 197.296(3) and (5)(a), the determination of capacity must be based on data relating to land within the UGB that has been collected since the last periodic review (the city completed its last periodic review in 1998). More specifically, ORS 197.296(5)(a) requires that the determination of housing capacity be based on:

> (A) The number, density and average mix of housing types of urban residential development that have actually occurred;
> (B) Trends in density and average mix of housing types of urban residential development;
> (C) Demographic and population trends;
> (D) Economic trends and cycles; and
> (E) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

The findings do not relate the capacity analysis to the factors that the statute requires. Although some of the city's earlier efforts were based on actual infill and redevelopment

data from 1998 to 2008,[13] the decision simply uses assumptions based on minimum allowed density.[14] The analysis also leaves out any analysis of the extent to which lands have been, or are likely to be, rezoned to higher densities. As a result, the director determines that the city's capacity analysis does not comply with Goal 10 or ORS 197.296(3) or 197.296(5)(a). The director remands the city and county decisions with direction to:

1. For each zoning district, analyze the number of units, density and average mix of housing types of urban residential development that has actually occurred since 1998 (including through rezoning) and how much of this occurred on vacant lands, and how much occurred through redevelopment;

2. For each zoning district, analyze whether future trends over the 20-year planning period are reasonably expected to alter the amount, density and mix of housing types that has actually occurred since 1998; and

3. For each zoning district, adopt findings and conclusions regarding the number of units, the density, and the mix of housing types that the city concludes is likely to occur over the planning period, and identify how much is expected to occur on vacant lands, and how much is expected to occur through redevelopment.

Housing Needs Analysis (ORS 197.296(3)(b)(5); Statewide Planning Goal 10; OAR 660-024-0040 and 0050; OAR 660-008-0005, 0010 and 0030; Goal 14). Like the statutorily required analysis of housing capacity within the existing UGB, the scope and basis for the housing needs analysis is largely dictated by state statute. ORS 197.296(3)(b) and (5) require that the city:

> Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed *for each needed housing type* for the next 20 years." ORS 197.296(3)(b)(emphasis added); and that
>
> The determination of housing * * * need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has

[13] Using 1998-2005 built densities and the current distribution of residential land among the different residential zones would appear to result in a capacity of 12,280 housing units within the existing UGB rather than 10,059 units as the city ended up finding. [Table 13, R. at 2132] The low average built densities in the RL zone (two units per net acre) and RS zone (four units per net acre), and the predominance of those zones (84 percent of the city's total residentially-designated land is RL or RS [Table 5-4, R. at 1288] results in a lower capacity within the existing UGB.

[14] It also appears that the city excluded certain developed lands from consideration for redevelopment potential. Even developed lands must be considered for redevelopment under Goal 10. *Opus Development Corp. v. City of Eugene*, 28 Or LUBA 670, 693-695 (1995).

[sic] been collected since the last periodic review or five years, whichever is greater. The data shall include:

> (A) The number, density and average mix of housing types of urban residential development *that have actually occurred*;
> (B) *Trends* in density and average mix of housing types of urban residential development;
> (C) Demographic and population *trends*;
> (D) Economic *trends* and cycles; and
> (E) The number, density and average mix of housing types *that have occurred* on the buildable lands described in subsection (4)(a) of this section. [ORS 197.296(5)] [emphasis added]

In addition, ORS 197.303 defines "needed housing" as:

> * * * housing types determined to meet the need shown for housing within an urban growth boundary *at particular price ranges and rent levels*. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing" also means:
>
> > (a) Housing that includes, but is not limited to, *attached and detached single-family housing and multiple family housing for both owner and renter occupancy*;
> > (b) Government assisted housing;
> > (c) Mobile home or manufactured dwelling parks as provided in ORS 197.475 to 197.490; and
> > (d) Manufactured homes on individual lots planned and zoned for single-family residential use that are in addition to lots within designated manufactured dwelling subdivisions." [ORS 197.303(1)] [emphasis added]

OAR 660-008-0005 defines several terms used in the preceding statutes that are pertinent to the scope of a city's required housing needs analysis, including: "attached single family housing," "detached single family housing," "housing needs projection," and "multiple family housing." In particular, the term "housing needs projection" (which is the same as the "housing needs analysis" under 197.296(3)) is:

> * * * a local determination, justified in the plan, of the mix of housing types and densities that will be:
>
> > (a) *Commensurate with the financial capabilities of present and future area residents of all income levels during the planning period*;
> > (b) Consistent with any adopted regional housing standards, state statutes and Land Conservation and Development Commission administrative ruels; and
> > (c) Consistent with Goal 14 requirements. [OAR 660-008-0005(4)] [emphasis added]

The city must estimate housing need for each housing type for *both* owner and renter occupancy. ORS 197.303(1)(a). Needed housing also requires that the city evaluate the need for housing at particular price ranges (owner occupancy) and rent levels (renter occupancy), and (as noted above) commensurate with the financial capabilities of *current and future* residents. [Statewide Planning Goal 10, Goal 10 definition of "Needed Housing Units;" OAR 660-008-0005(4) (definition of "housing needs projection"] Finally, OAR 660-008-0010 and ORS 197.307(3) require that "[s]ufficient buildable lands shall be designated on the comprehensive plan map to satisfy housing needs by type and density range as determined in the housing needs projection." See generally, *DLCD v. City of McMinnville*, 41 Or LUBA 210 (2001).

OAR 660-024-0040(7) provides several safe harbors used by the city, under which a city is not required to separately estimate the need for certain housing types (government-assisted housing, manufactured dwellings on individual lots, manufactured dwelling parks).

The collective result of these requirements as applied to the City of Bend is that the city is required to estimate housing need for at least three housing types:

- Attached single family housing (common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot, OAR 660-008-0005(1));
- Detached single family housing (a housing unit that is free standing and separate from other housing units, OAR 660-008-0005(3); and
- Multiple family housing (attached housing where each dwelling unit is not located on a separate lot, OAR 660-008-0005(5)).

In addition, the city must estimate housing need for each of these three housing types for *both* owner and renter occupancy. [ORS 197.303(1)(a)] This estimate must be based both on data concerning the development that has actually occurred since the last periodic review, and on demographic and housing trends. [ORS 197.296(5)(a)] The city must consider the housing needs of both present and future residents. OAR 660-008-0005(4) and OAR 660-008-0010. See generally, *DLCD v. City of McMinnville*, 41 Or LUBA 210 (2001).

<u>Projected Overall Need for Housing Units</u> – The city projected its overall need for housing during the planning period by dividing the total forecasted population increase (less persons in group quarters) by its projected household size (based on the 2000 census) to derive a forecast for needed new housing units. [R. at 1070, Table III-2] The city utilized several safe harbor provisions of OAR 660-024-0040 in making these forecasts. The findings show that it is qualified to use of these safe harbor provisions, and that the forecast of new housing units needed in the 2008–2028 period complies with state laws. The total of new housing units needed during the planning period is 16,681. [R. at 1070] The director finds that the city's projection of overall need for housing units complies with applicable state law.

Projected Need by Density and Housing Type – The city carried out three different housing needs analyses: a "HB 2709 Forecast;"[15] a "Housing Needs Model;" and a "Transition Forecast." [R. 1074-1078]. It appears that the city relied on the "Transition Forecast" for its final decision. [R. at 1078 ("The city finds that this final forecast (aka transition forecast) will meet Goal 10.")] However, the city *adopted* as its final housing need analysis a new Chapter 5 of its General Plan. [R. at 1050, 1280-1315 ("This section of Chapter 5 represents Bend's Housing Needs Analysis." R. at 1285] Nevertheless, the city's findings refer to the three prior analyses rather than to Chapter 5, for reasons that are not clear. As a result, it is extremely difficult to understand the city's reasoning.

The beginning of the newly adopted General Plan Chapter 5 includes a series of important findings, including:

- "The inadequate supply of land has led to a lack of multi family units * * *."
- "Central Oregon has the highest net migration in the state. The inadequate supply of land has led to a lack of multi-family units."
- "The rapid increase in population has resulted in a growth in demand for workforce housing that has outpaced the production of workforce housing units. Between 2000 and 2005, job growth created a demand for 9,057 units of workforce housing while only 8,230 units were produced."
- "* * * [M]ore affordable forms of housing, such as multi-family units, are currently being priced out of the Bend market."
- "Affordable housing for service workers, both for individuals and familites, is in short supply in Bend. * * * * While the cost of rental housing has not increased as rapidly as house prices, recent rent increases are starting to place additional

[15] The city states that its "House Bill 2709 trend forecast" -- an "extrapolation of actual housing mix and density trends between 1998 and 2005" [R. at 2121] -- is consistent with ORS 197.296. The department does not agree. ORS 197.296(5) sets out the state's UGB housing capacity and need methodology for cities like Bend that have 25,000 or more people in their UGBs. The UGB data on which the city must rely include:

- The number, density and average mix of housing types of urban residential development that have actually occurred;
- Trends in density and average mix of housing types of urban residential development;
- Demographic and population trends;
- Economic trends and cycles; and
- The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section. [ORS 197.296(5)(a)]

Only two of these data sources, the first and last, address *past* housing development; the others address future housing *trends.* This means that the city cannot rely exclusively on past data to determine housing need and capacity within the existing UGB. The analysis must also be based on current and future trends.

pressure on low-income households. Further complicating the issue is the seasonality of many jobs in the region * * * making it difficult for the region to meet peak housing needs. * * *"

- "The lack of affordable housing for the workforce has a negative affect on employers in Central Oregon. * * *"

- "The increasing lack of housing affordable to low and moderate income households is resulting in many area workers purchasing homes and living in other communities, including Redmond, Prineville and others. * * * This is exacerbating traffic congestion and other issues caused by rapid growth in the community. It also affects the ability of area employers to attract workers for jobs at many income levels, including service and professional workers." [R. at 1282-1284].[16]

- "In 2000, there were 2,087 and 2,285 very low and low income households, respectively, in Bend. There were only approximately 1,300 housing units available at prices at or under 30% of these households' monthly income * * *. Over 90% of these were rental units." [R. at 1309]

The city analyzed the housing development that occurred within its prior UGB between 2000 and 2008 for two housing types: attached and detached. [R. at 1286] There is no separate analysis of single family attached housing (the data for this housing type are combined with the detached single family housing data). The data show that the proportion of single family housing within the UGB has increased from 70 percent to 78 percent of all units over this period, while the proportion of multi-family housing has held steady (at 20 percent). The proportion of housing in manufactured home parks has decreased rapidly. [R. at 1286, Table 5-3 (note, there are math errors in the cited percentages)] The city also (in narrative, summary form) analyzed the change in density for single family and multi-family housing, finding that single family housing density has increased by 54 percent since 1999, and that the density of some types of multi-family housing has increased by 10 percent (there is no narrative regarding apartments or condominiums). [R. at 1289-1290] The findings also show a significant *decrease* in rental housing as a proportion of the total between 1990 and 2000. [R. at 1290, Table 5-7].

Like Chapter 5, the findings concerning the Transition Forecast consider housing need only for two categories: detached units and attached units. [R. at 1078, Table III-10] The projected housing mix of these two categories is 65 percent detached, and 35 percent attached. The findings indicate that most detached units will be owner-occupied, and that 38 percent of the attached units also are currently owner-occupied, with that percentage

[16] "It is clear that the city has a shortage of land in the higher density zones. A comparison of the land need and land supply by zones shows an overall deficit of about 250 net acres in the RM zone and a deficit of about 200 acres in the RH zone. From a planning perspective, it doesn't make sense to expect that this shortage of RM and RH land will be met entirely in the UGB expansion area(s)." [R. at 2133, City of Bend, Residential Lands Study, April 25, 2005]

expected to increase. [R. at 1078-1079] In other words, the Transition Forecast assumes that at least 78 percent of the housing needed between 2008 and 2028 will be owner-occupied (65% + 38% of 35%).

There are two main problems with the analysis. First, the lack of a clear connection between the findings and its adopted housing needs analysis (Chapter 5), along with the collapsing of housing types into two summary categories (attached and detached), makes it effectively impossible to determine whether the amendment complies with the substantive requirements of Goal 10 and ORS 197.296 to designate sufficient lands to satisfy housing needs by housing type and density. As a result of the use of varying categories and terminology, the director is unable to determine whether the housing needs analysis complies (in form) with ORS 197.296 and Goal 10.

This is not simply a technical problem; the use of varying housing type categories and labels in the findings makes it impossible to evaluate whether they comply with Goal 10 and ORS 197.296 (compare Tables III-5, III-6, III-8, III-9 and III-10). The terminology also makes it impossible to determine whether and how the city's residential zones provide for various housing types as contemplated by OAR 660, division 8. The "transition forecast," which blends actual development with future needs, provides an estimated future housing *type* mix of 54 percent detached and 46 percent attached. [R. at 2130] It is impossible for the director to compare this result with the other two forecasts, the 1998–2005 built mix, and with the 1998 planned mix, because the findings express housing mix in terms of single-family vs. multi-family housing types, not detached versus attached housing types.

More substantively, it is clear from the findings that there is a current and projected future shortage of land for multi-family housing. [R. at 1075] In addition, the city has identified a significant need for additional workforce housing to reduce the growing trend of commuting into Bend from surrounding communities [R. at 1282], and a need for additional seasonal worker housing. [R. at 1282] Neither the findings nor the Housing Needs Analysis explain how the current and future planning designations of land will provide for these housing needs. Instead, the decision simply assumes (and does not attempt to alter) the recent trends that have created these housing needs.

Specifically, the city has planned most of its residential lands (87 percent) within the prior UGB for low-density, single family residential use (RL (1.1 dwelling per gross acre minimum density) and RS (2.2 dwellings per gross acre minimum density)). Multi-family housing (buildings with more than 3 units) is not allowed within the RL and RS zones (duplexes and triplexes are conditional uses in the RS zone). [Bend Code section 2.1.200, R. 1287-1288].

Further, the city is planning for an equivalent distribution of lands among residential districts for the lands the UGB expansion area. [R. at 1079; 1080] (Table III-12 shows 76 percent of the total acreage as being in the RS zone; note that lands in the RL zone are not included in this table at all because, according to the city, this zone will not provide

needed housing.) [R. at 1079; see also R. at 1098 (Framework Plan[17] allocates 84 percent of (non-employment) lands added to the UGB as RS)]. The record lacks findings on why the existing distribution by zone is appropriate for the expansion area, and why it is appropriate for the 20-year planning period, especially in light of other findings in the record about demographic, household income, and housing affordability trends for the Bend area that indicate the existing distribution is not appropriate for the future.[18]

Conversely, previous planning decisions may have undermined the city's ability to provide needed multi-family and high density housing. The city's 2008 BLI reports that there are 341 acres designated as high density residential (RH), which contained 1,246 dwelling units, of which 172 units are single family dwellings. [Table 5-4, R. at 1288, Table 5-5, R. at 1289] This amounts to a gross density of 3.65 dwelling units per acre for the 341-acre inventory of RH-designated land.

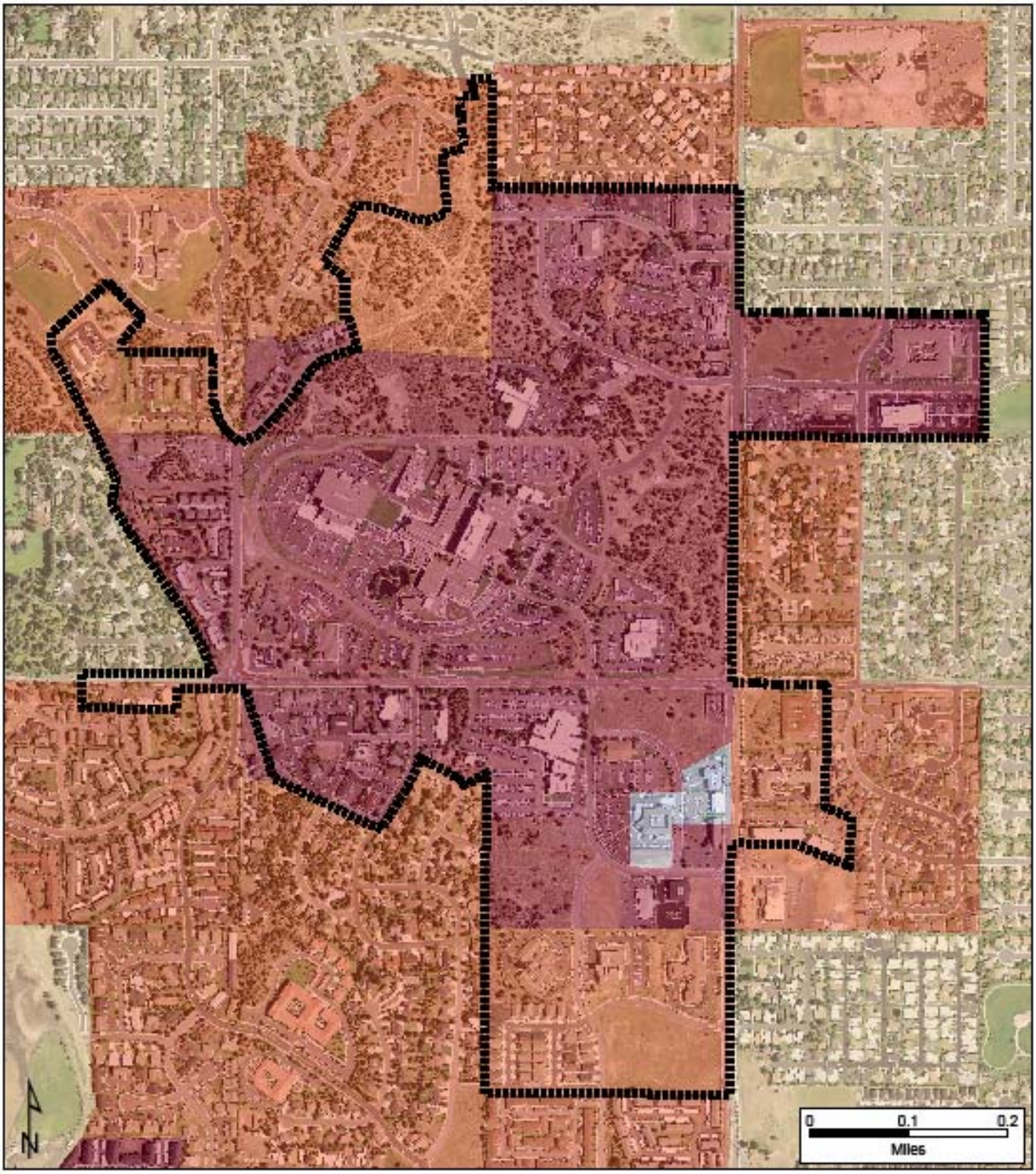
In attempting to understand the low unit per acre yield from the RH inventory, the department has determined that approximately 215 acres of the 341 RH inventory is included within the Medical District Overlay Zone, which is anchored by St. Charles Hospital. (See Figure 2 on the following page). A review of existing land uses within the overlay zone's RH-designated area shows that a majority is devoted to the hospital and related medical uses, including satellite facilities and offices, as well as what appears to be a potential hospital expansion area. Most of the assisted living and nursing home units within the overlay district are actually located on medium density (RM) designated and zoned land. Very little high density housing is found in the approximately 215-acre area of RH. This is partially confirmed by the 2008 BLI, which shows only 29 nursing home dwelling units in the city's RH inventory.

It can be fairly concluded from this data that these approximately 215 acres of RH lands have and will yield very little actual multi-family housing. This "non-yielding" area represents 63 percent of the city's entire RH inventory, leaving only 126 acres of RH land citywide to meet the needs of this needed housing type.

Housing densities within the city appear to have increased to some extent since the last periodic review, and in this sense the city may be moving toward compliance with the intent of Goal 10, OAR 660-008-0020, ORS 197.296 and ORS 197.307(3). Further, the overall amount of land identified as needed by the city for residential uses (941 acres), *may* be reasonable given the city's rapid growth. However, without findings that connect the identification of housing needs with a showing that sufficient lands have been

[17] The Framework Plan referred to in the findings at R. 1098 is referred to elsewhere as the draft Framework Plan. R. 1056]. The Framework Plan is referenced in the City's General Plan, but it is not clear that the city has adopted the Framework Plan.

[18] The city adopted a housing *type* mix of 65 percent detached and 35 percent attached because this was the built mix in 2008. [R. at 1306-07] It is not clear whether this mix applies to the entire amended UGB, or only to the expansion area.



Medical District Overlay Zone

Figure 2

Oregon
Department of Land Conservation & Development

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

RH - Res Urb High Density
RM - Res Urb Medium Density
RS - Res Urb Standard Density
Other City Zones (Employ, Mix Use, & Pub. Fac.)
Overlay Zone Boundary

Aerial image: 2009 NAIP
LSB and zoning information extracted from maps provided by City of Bend and Deschutes County
DLCD GIS (v0.01)010
HospitalPgF.mxd

provided to meet those needs, the director is unable to conclude that the city's decision complies with Goal 10, the Goal 10 rules, the needed housing statutes, or Goal 14 and OAR 660, division 24.

For the foregoing reasons, the director remands the city and county decisions, with direction to:

1. Revise the Housing Needs Analysis to comply with ORS 197.296, OAR 660-008-0020, and ORS 197.303. The Housing Needs Analysis must include an evaluation of the need for at least three housing types at particular price ranges (owner occupancy) and rent levels (renter occupancy), and commensurate with the financial capabilities of *current and future* residents. Those housing types include: (a) attached single family housing (common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot pursuant to OAR 660-008-0005(1)); (b) detached single family housing (a housing unit that is free standing and separate from other housing units pursuant to OAR 660-008-0005(3); and (c) multiple family housing (attached housing where each dwelling unit is not located on a separate lot pursuant to OAR 660-008-0005(5));

2. Adopt the revised Housing Needs Analysis as an element of the comprehensive plan, along with findings that demonstrate how the revised Housing Needs Analysis complies with the applicable statutory, goal and rule requirements described above.

<u>Amount of Land Added to the UGB for Residential Land Need</u> – The amendment includes a conclusion that there is a need for 941 acres of additional land for needed housing, for 5,522 dwelling units that cannot be accommodated within the prior UGB. [R. at 1082] As noted above, without findings that connect this amount to needed housing types as identified by the city in its own findings, and as required by state law, the director is unable to determine whether the amount of land added to the UGB is lawful.

A final key assumption used by the city to determine the quantity of land required in an expansion area for needed housing is that new residential development in the expansion area will occur at an overall density of six units to the net acre, not including lands planned for low density development. [R. at 1079, 1080][19] The findings state that this density:

> * * * would be higher than densities seen in recent development because the 2006 Development Code requires minimum densities of development to ensure housing

[19] The General Plan amendments assumed an average net density of 5.9 dwelling units per net acre, for the expansion area only, based on average net densities for the RS, RM and RH Zones. [R. at 1308] These densities don't appear consistent with the 2006 built densities or the planned densities for the existing UGB or the "Needed density by housing types," and the plan doesn't include findings for the decision to use these numbers. Compare Table 13 [R. at 2132], Table 5-28 [R. at 1308], Table 5-29 [R. at 1308], and Table 5-29A [R. at 1309].

> developed in the RM and RH zone occurs at densities higher than the assumed overall overage of six units to the net acre. The city feels compelled to point out that the needed density of six units to the net acre is 50 percent higher than the current net density of just under 4 units to the acre. [R. at 1081]

As described in more detail below, the director does not agree that the minimum density provisions of the city's 2006 Development Code ensure or otherwise encourage any increase in density given the current and planned allocations of land between the SR 2½, RL, RS, RM and RH districts within the city and within the UGB expansion area. There is simply too much land planned as SR 2½, RL and RS, combined with minimum densities for these districts of one unit per 2.5 acres, 1.1 unit per acre, and two units per acre, respectively, to ensure anything but large lot residential development.

The use of an overall average residential density for the UGB expansion area of 6.0 units per net acre assumes that the city will maintain the same proportional allocation of zones within its prior UGB in the expansion area, providing no progress toward planning for more efficient urban development. This results in the city adding more land to its UGB than is necessary to provide needed housing, and in the long term this will only exacerbate the transportation and public facility challenges facing the city. As a result, the director finds that the city has not demonstrated that the amount of land added to the city's UGB for needed housing complies with Goal 10 or Goal 14, or their implementing rules, or with the needed housing statutes. The director remands the city and county decisions, with direction to:

> Analyze what the mix of plan designations should be in the UGB expansion area in direct relation to the city's projected housing needs, and consider the adoption of new residential plan districts that encourage more multi-family, higher density single family housing, and other needed housing types for a greater proportion of the expansion area, in order to meet the city's and the region's demonstrated housing needs.

<u>Measures</u> – In order to approve the UGB expansion, the director also must determine whether the identified needs for residential land can reasonably be accommodated on land within the prior UGB. [Goal 14; OAR 660-024-0050(4)] In addition, Goal 10 and ORS 197.307(3) require that, when the city identifies a need for housing at particular price ranges and rent levels, sufficient buildable lands must be provided to satisfy that need. ORS 197.296(7) also requires adoption of measures that "demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet needs over the next 20 years."

As part of its decision, the city adopted two new measures intended to increase the proportion of its housing need that could be satisfied within the existing UGB. These measures add 500 units of housing in the Central Area Plan, and up-zone areas along

transit corridors for another 600 units. Chapter 5 of the General Plan (Housing) requires that transit corridor amendments be implemented prior to 2012 [R. at 1311]; there is no timeframe associated with the Central Area Plan work. Nor does Chapter 5 include any specific commitment in terms of number of housing units. Although these units are "assumed" to be attached, the numbers are described as an estimate. [R. at 1303] As a result, the director is unable to determine that these measures "demonstrably increase the likelihood" that the additional residential development will occur.

The city also notes in its findings that it has taken *prior* efficiency measures. [R. at 1083] With respect to these measures, the director believes that the main efficiency measures identified by the city are not likely to be effective. The minimum adopted densities range from 1.1 unit per gross acre to 2.0 units per gross acre for most residentially zoned lands. Even in the city's medium-density zones, the minimum densities are 6.0 to 7.3 units per acre. These densities do little or nothing to address the city's identified need for multi-family, lower income, or workforce housing. As noted above, multi-family housing is not allowed at all in the RS zone (other than duplexes and triplexes, which are conditional uses). The 2007 Residential Lands Study does not demonstrate how much these actions have increased housing densities, how many additional housing units they provided, or how much urban land they saved in the past, nor does it show how much of the city's needed housing types and units, and what amount of residential land, these actions will provide within the next 20 years. As a result, the director determines that the city has failed to demonstrate that the estimated needs cannot reasonably be accommodated on land already within the UGB. The director remands the city and county decisions, with direction to:

1. Consider measures to encourage needed housing types within additional areas of the city, including rezoning of areas along transit corridors and in neighborhood centers.

2. Consider splitting the existing RS zone, which covers most of the residential areas of the city, into two or more zones in order to encourage redevelopment in some areas while protecting development patterns in well-established neighborhoods.

3. In areas where the city is planning significant public investments, consider up-zoning as a means to help spread the costs of such investments.

4. Consider strengthening the minimum density provisions in the existing UAR and SR 2½ zones by eliminating PUDs and other clustering tools.

5. Consider strengthening the minimum density provisions in the existing RS and RM zones to encourage development of needed housing types, rather than relying on low density residential development.

As noted above, the director believes the city likely will be able to make a showing that some amount of residential land is needed in an expanded UGB due to the city's rapid growth rate, but the director believes there are other reasonable measures that the city can

take to accommodate more of the needed housing within the prior UGB over the next 20 years.

e. Response to Objections

Toby Bayard –
Objection: The UGB amendment includes approximately 3,500 acres above the projected land needs, evidently including a variety of lands that are not suitable for urban uses. These lands include land in rural subdivisions, and appear to include lands that contain Goal 5 resources, but none of the reasons for inclusion are contained in the findings. State law does not allow a buffer or cushion (the city included a cushion of 519 acres).
Response: This objection is sustained. As noted in the department's analysis, the findings provide no basis for including lands beyond the roughly 5,000 acres shown as needed for residential and employment related land needs.

Objection: The city has failed to show that residential uses cannot be reasonably accommodated within the existing UGB. The city estimates a potential capacity within the UGB of 44,738 units, but assumes that only 25 percent of this capacity will be utilized. Existing residential density in Bend is less than half that of other Oregon cities of the same size.
Response: This objection is sustained. Goal 14 and OAR 660-024-0050 require the city to show that its needs for urban land cannot reasonably be accommodated within the existing UGB.

Objection: The city has assumed no redevelopment of RL and RS lands within the UGB. Goal 14 and Goal 10 requires the city to analyze what redevelopment has actually occurred on these lands since 1998, and to estimate redevelopment based on actual experience as well as future trends, rather than simply concluding that no redevelopment will occur.
Response: This objection is sustained. As noted above, state statue requires the city to base its estimate of redevelopment on what has actually occurred within the UGB as well as future trends. The city's findings do not address redevelopment or infill that has occurred on UAR, SR 2½, RL, or RS lands.

Objection: The city fails to plan for efficient use of the lands added to the UGB, by assuming that 76 percent of that land will be zoned RS (average density of four dwelling units per acre). Only 33 acres of the total 941 acres is assumed to be zoned RH (average density of 22 dwelling units per acre).
Response: This objection is sustained. The city's Framework Plan and findings, as well as Chapter 5 of the General Plan, indicate that only a very small percentage of land added to the UGB will be planned for moderate or high-density residential uses. Given the findings that there is a shortage of multi-family housing, and shortages of affordable and workforce housing, the decision to follow existing land allocations in the expansion lands violates both Goal 10 and Goal 14, and their implementing rules.

Objection: Bend's 1998 General Plan projected a housing mix of 55 percent single-family and 45 percent multi-family (including 10 percent mobile home parks), but actual development since 1998 has been 77 percent single-family and 23 percent multi-family (with 0 percent mobile home parks). The city assumes that housing density and mix will continue to produce the same housing types, without regard for current and future housing needs of the city's population over the next 20 years. The 1998 planned mix of 55/45 percent is identical to the mix provided by the Oregon Housing and Community Services Department's Housing Needs Model, which the city rejected and replaced with a much higher percentage of single-family housing and a much lower percentage of multi-family housing.

The city also changed to a different type of housing mix, "detached percent and attached percent" instead of "single-family percent and multi-family percent," which includes single-family housing in the form of high end, low density detached housing, and attached housing in the form of attached housing in the form of high end townhomes, condos, and resort communities. The new mix terminology does less to ensure that both detached and attached housing types more affordable to lower and middle income households are likely to develop. The proposal includes medium and high density development only in the Central Area and on Transit Corridors without demonstrating that this will meet the 20-year housing needs of all residents.
Response: This objection is sustained for the reasons set forth in the department's analysis. The form of the city's Housing Needs Analysis makes it impossible to determine what housing needs are, and whether the city's UGB expansion will meet those needs.

Objection: The city did not sufficiently consider efficiency measures inside the existing UGB as required by ORS 197.296(9). The efficiency measures that were adopted lack documentation to assure that they will be effective.
Response: This objection is sustained. As determined above, the city needs to evaluate additional measures to assure that it provides lands for needed housing, and the two efficiency measures that the city has adopted are not adequately assured based on the lack of specificity in Chapter 5.

Central Oregon LandWatch –
Objection: The city has not complied with OAR 660-015-0000(14)(2), in that it has not demonstrated that its projected needs cannot be met within the existing UGB.
Response: This objection is sustained. Both Goal 14 and ORS 197.296 require the city to adopt measure to provide needed housing within its UGB before looking to lands outside of the UGB.

Objection: The city relied on current market conditions as the basis for determining that a greater degree of redevelopment will not occur within the 20-year planning period. The proposed housing mix of 65 percent single-family detached and 35 percent multi-family will not correct a historic shortfall of land for medium and higher density housing types. The city has not done enough to promote infill and redevelopment within the existing UGB, and must adopt more measure to plan for more multi-family housing.

Response: This objection is sustained for the reasons set forth in the director's decision.

Barbara I. McAusland –
Objection: Bend's Development Code lacks incentives needed for the construction of affordable housing. Providing for second homes in the residential lands need consumes residential land without providing for the primary affordable housing needs of residents. Too much land is added to the UGB.
Response: These objections are sustained in part. As set forth in the director's decision above, the city must consider additional measure to assure that lands are provided for the development of needed housing. The director agrees with the city and with the objector that second home development competes with other needed housing types, and should be considered in the city's decisions, and that the city's planning for expansion areas can influence whether the lands are used for second home development or other forms of housing. The director agrees that the city has not justified the amount of land added to the UGB.

Newland Communities –
Objection: The city underestimates the residential land need through the planning period. The assumptions used concerning redevelopment and infill are overly optimistic, and do not account for various livability land needs such as parks and schools. The city also did not adjust its capacity analysis to reflect infrastructure of lot configuration constraints. The city failed to consider the presence of dwellings on lots in its capacity analysis. The proposed expansion improperly provides less "room" or "livability" per person than existed during the period 1981-2008. The buildable land inventory within the existing UGB is overly conservative and likely overestimates the number of residential units that could be accommodated within the existing UGB and underestimates the amount of land needed within the proposed UGB.
Response: The director denies Newland's objection that the city has underestimated the need for residential land through the planning period. As set forth above, the director is unable to determine whether the city has underestimated or overestimated is need for residential land due to problems with the city's BLI and HNA.

The director does not agree that the assumptions used by the city concerning redevelopment and infill are overly optimistic. Again, those assumptions are inadequately documented under ORS 197.296.

The director does not agree that the city failed to consider livability needs. The city has included estimated land need for parks and schools. Again, however, the amounts of land included for these needs are not adequately documented under Goal 14 or OAR 660, division 24.

The director denies the objection that the city's capacity analysis should reflect infrastructure of lot configuration constraints without more specific evidence that lands cannot be served during the planning period. The city did consider the presence of dwellings on lots in its capacity analysis, as set forth above.

The director denies the objection that the proposed expansion improperly provides less "room" or "livability" per person than existed during the period 1981-2008. There is evidence in the record that the density of the city is significantly lower than other large cities in Oregon, and there is nothing in state law that prevents the city from increasing the efficiency of its development pattern and lowering its costs for public services.

The director denies the objection that the buildable land inventory within the existing UGB is overly conservative and likely overestimates the number of residential units that could be accommodated within the existing UGB and underestimates the amount of land needed within the proposed UGB for the reasons set forth in the director's analysis, above. In its current form, it is not possible to conclude whether the city's BLI complies with ORS 197.296 and Goal 10.

Objection: The city's use of the Oregon Housing and Community Services Department's Housing Needs Model is in error, and will likely result in an underestimate of land need outside the existing UGB during the planning period. The Housing Needs Model should not be used in a UGB expansion, and Bend's use of it should be disregarded. The state should disregard the city's discussion or application of the Housing Needs Model and rely on actual trends (77/23 split) or the transition forecast of 65/35. The city must use the 1998-2005 housing mix and densities as required by HB 2709 [ORS 197.296].
Response: Based on the city's findings, it does not appear that the city relied on the Housing Needs Model. Instead, the city relied on the HNA in Chapter 5 of its General Plan and (as set forth in its findings) its "Transition Forecast." The Housing Needs Model is one source of evidence of needed housing, and one which the city apparently did not rely on. As a result, this objection provides no basis for remand of the city's decision. The director agrees that 1998-2008 housing mix and densities (for each of the city's residential districts) is one of the bases that the city must consider (along with future trends), as set forth in the analysis above.

Objection: The city is required to project housing density and mix, not housing tenure, and not a particular single family/multi-family split.
Response: This objection is denied, in part. The city is required to project housing density and mix for both owner-occupied and rental housing, for each residential district, for single family detached, single family attached, and multi-family housing. ORS 197.296(3) and (5).

<u>Oregon Department of State Lands</u> –
Objection: The city did not properly analyze housing need by type and density as required by ORS 197.296(3)(b) and failed to plan for needed housing as required by ORS 197.303. The city's conclusion concerning a 65/35 detached/attached housing mix is too generalized to comply with the specificity required under ORS 197.296(3)(b), 197.296(9) and 197.303 for a determination of the number of units and amount of land needed for each housing type (attached and detached single-family housing, and multiple family housing, each for both owner and renter occupancy) for the next 20 years.
Response: This objection is sustained, for the reasons set forth in the director's analysis, above.

Objection: The city also fails to adequately consider regional housing needs and a fair allocation of housing types, as required by OAR 660-008-0030.
Response: This objection is sustained. The city is obligated under Goal 10, and the cited rule, to consider needed housing on a regional basis. The city's findings indicate that much needed housing for the City of Bend is being provided outside of the city, forcing the region's residents to drive long distances and creating imbalances between cities in Central Oregon. The city and the county must address these regional issues on remand.

Objection: As a result of these deficiencies, the proposal fails to demonstrate that the UGB will provide sufficient buildable land to accommodate projected housing needs for 20 years.
Response: This objection is sustained. Until the city completes the tasks required on remand, it has not demonstrated that its UGB will provide sufficient buildable land to accommodate projected housing needs for 20 years.

Swalley Irrigation District –
Objection: The city and county violated Goal 10 by failing to adopt measures to achieve needed housing types.
Response: This objection is sustained, for the reasons set forth in the director's analysis above.

Objection: The buildable land inventory does not include all buildable land as defined in ORS 197.295, e.g., by excluding vacant land accessed by private road, by very narrowly defining "redevelopable" land, by excluding "split-zoned" parcels, and by not including all "partially vacant" land planned or zoned for residential use. The city's buildable land inventory and housing need analysis ignores or minimizes manufactured home parks as a needed housing type without a factual basis. The city ignores, contrary to Goal 10, the shortage of workforce housing. The city double-counts land need for open space, parks and schools. Parcels 3 acres or smaller with a house are arbitrarily rejected as "unsuitable" for future infill or redevelopment.
Response: This objection is sustained for the reasons set forth in the director's analysis above.

Objection: The city has selected the most expensive lands to serve with public facilities, making it impossible for affordable housing to be provided.
Response: This objection is sustained, in part. ORS 197.296(9) requires cities to ensure that land for needed housing is in locations appropriate for the housing types identified as needed. The city has identified needs for multi-family, workforce, and seasonal worker housing, and a general housing affordability problem, and yet at least some of the lands included within the expansion area are shown by the city's analyses to have very high service costs. The city's revised HNA should address and link needed housing types with its existing analysis of service costs.

Objection: The city ignored the housing that is planned within two destination resort sites in its housing needs assessment.

Response: This objection is sustained for the reasons set forth in response to the similar objection from Central Oregon LandWatch.

Objection: The city has failed to include efficiency measures for the existing UGB as required by Goal 14 and ORS 197.296.
Response: This objection is sustained, in part. The city has included two new efficiency measures and referred to some existing efficiency measures as described in the director's analysis above. However, as set forth in detail above, these measures are both too uncertain, and inadequately related to the city's housing needs, to ensure that the city is complying with the need criteria of Goal 14, or with the requirements of ORS 197.296 to adopt measures to ensure that the city is planning for needed housing.

f. Summary of Decision on Housing and Residential Land Needs

The director remands the UGB amendment with the following instructions:

1. Include a map of buildable lands, as required by ORS 197.296(4)(c), as well as a zoning map and a comprehensive plan map for the lands within the prior UGB;

2. Include as its inventory of buildable lands, an analysis for each residential plan district of those lands that are "vacant," and of those lands that are "redevelopable" as those terms are used in ORS 197.296(4)-(5) and OAR 660-008-005(6). As part of this inventory, include an analysis of what amount of redevelopment and infill has occurred, and the density of that development, by plan district, since 1998. The inventory must include the UAR and SR 2 ½ plan districts, as well as the RL, RS, RM and RH districts;

3. If the city excludes lands on the basis that there is not a strong likelihood that existing development will be converted to more intense residential uses during the planning period, include an analysis of lands within all districts showing the extent to which infill and redevelopment has or has not occurred since 1998;

4. For each zoning district, analyze the number of units, density and average mix of housing types of urban residential development that has actually occurred since 1998 (including through rezoning) and how much of this occurred on vacant lands, and how much occurred through redevelopment;

5. For each zoning district, analyze whether future trends over the 20-year planning period are reasonably expected to alter the amount, density and mix of housing types that has actually occurred since 1998;

6. For each zoning district, adopt findings and conclusions regarding the number of units, the density, and the mix of housing types that the city concludes is likely to occur over the planning period, and identify how much is expected to occur on vacant lands, and how much is expected to occur through redevelopment;

7. Revise the Housing Needs Analysis to comply with ORS 197.296, OAR 660-008-0020, and ORS 197.303. The Housing Needs Analysis must include an evaluation of the need for at least three housing types at particular price ranges (owner occupancy) and rent levels (renter occupancy), and commensurate with the financial capabilities of *current and future* residents. Those housing types include: (a) attached single family housing (common-wall dwellings or rowhouses where each dwelling unit occupies a separate lot pursuant to OAR 660-008-0005(1)); (b) detached single family housing (a housing unit that is free standing and separate from other housing units pursuant to OAR 660-008-0005(3); and (c) multiple family housing (attached housing where each dwelling unit is not located on a separate lot pursuant to OAR 660-008-0005(5));

8. Adopt the revised Housing Needs Analysis as an element of the comprehensive plan, along with findings that demonstrate how the revised Housing Needs Analysis complies with the applicable statutory, goal and rule requirements described above;

9. Analyze what the mix of plan designations should be in the UGB expansion area in direct relation to the city's projected housing needs, and consider the adoption of new residential plan districts that encourage more multi-family, higher density single family housing, and other needed housing types for a greater proportion of the expansion area, in order to meet the city's and the region's demonstrated housing needs;

10. Consider measures to encourage needed housing types within additional areas of the city, including rezoning of areas along transit corridors and in neighborhood centers;

11. Consider splitting the existing RS zone, which covers most of the residential areas of the city, into two or more zones in order to encourage redevelopment in some areas while protecting development patterns in well-established neighborhoods;

12. In areas where the city is planning significant public investments, consider up-zoning as a means to help spread the costs of such investments;

13. Consider strengthening the minimum density provisions in the existing UAR and SR 2½ zones by eliminating PUDs and other clustering tools; and

14. Consider strengthening the minimum density provisions in the existing RS and RM zones to encourage development of needed housing types, rather than relying on low density residential development.

2. Land Added to the UGB for Related (Non-Employment) Uses

a. Legal standards

Goals 10 and 14 and OAR 660, divisions 8 and 24 are the applicable state laws.

b. Summary of Local Actions

As noted in the introduction to this section, in addition to the 941 acres of land added to the UGB for residential uses, the city has added 1,925 acres to meet its estimated land need for public schools, parks, second homes, private open space and rights-of-way, and public rights-of-way. The amount of land the city estimates is needed for each of these uses (based partially on its analysis of land use within the prior UGB) is summarized in Table 1, in subsection 1.b of this section. [R. at 1092]

c. Objections.

Objections related to land need are itemized in subsection 1.c, above, and the department's responses related to those objections specific to non-residential, non-employment land need are provided in section 2.e, below.

d. Analysis and Conclusions.

Public schools and parks. The estimates of land need for public schools [R. 1088-1089] and parks [R. 1089-1090] are based on per-capita service standards recommended by the school district and the parks district. While there may be no inherent problem with the use of service standards, the city's application of the standards assumes that *all* new school and park facilities to serve new residents in Bend will be located on expansion lands outside of the prior UGB. The findings do not address whether the estimated land needs for schools can reasonably be accommodated within the UGB, as required by OAR 660-024-0050(4). Similarly, the findings for parks do not address whether the estimated need can be met within the UGB, or the extent to which the need may already be met by existing or planned facilities *outside* of the UGB (some types of park facilities are allowed outside of UGBs; see, OAR 660, division 34).

In addition, the land need estimate for public parks was increased from 362 acres to 474 acres at the very end of the city's review process, based not on the district's service standards but on an estimate of land need "on a quadrant basis using the city's Framework Plan." [R. at 1090] The findings do not clearly explain the basis for this increase,[20] and given the director's action with regard to the Framework Plan (see below) do not have an adequate factual base. As a result, the director is unable to find taht there is an adequate factual basis for the increased estimate of land needed for public parks. The director remands the city and county decisions, with direction to:

1. Determine whether the need for land for public schools can reasonably be accommodated within the existing UGB;

[20] The city's acceptance of this estimate was based on city council direction to err on the side of including too much, rather than too little land. [R. at 1090, note 55; R. at 8801]

2. Determine whether the need for land for public parks (including trails) can reasonably be accommodated within the existing UGB, and whether this need is already met in whole or in part by facilities planned or existing outside of the UGB; and

3. Adopt findings that justify the increase in land needed on a "quadrant" basis for parks, or use the prior estimate of the district for a lesser acreage.

Second homes. The director agrees with the city that second homes are a "legitimate Goal 10 issue." The city has estimated a land need for 500 acres for second home development. This acreage represents over half (again) the amount of land added for new housing units (first homes).

The city received testimony estimating that 377 acres of land were developed with second homes during the seven years prior to its decision. [R. at 1086] The city also received testimony that 20 percent of the total number of homes that would be developed during the planning period would be second homes. [R. at 1087] However, the city elected to use an 18 percent factor instead. [R. at 1087]

The director believes there is substantial evidence in the record to support the city's determination concerning the number of *units* of second home development during the planning period (between 18 and 20 percent of the total units needed). However, the city's findings do not identify or explain why the city used an average density of six units per net acre (the same density used for the expansion area generally) for this housing type. The findings do not explain why second homes require the same amount of land as the city is planning for first home development. Nor do the findings evaluate whether (or to what extent) this use might be accommodated within the prior UGB. [OAR 660-024-0050] Instead, the findings assume the entire need must be met on expansion lands at the same density as first home development. The result is that, although the city estimates second homes will be 18 percent of the total units developed over the next 20 years, it then allocates second homes more than half of the amount of land allocated to first home development. As a result, the director is unable to determine that land need for this use complies Goals 10 or 14, or their implementing rules, or with ORS 197.296. The director remands the city and county decisions, with direction to:

1. Coordinate with the county specifically concerning the need for second-home housing, and where this need should be satisfied regionally;

2. Evaluate whether this need can reasonably be accommodated on lands within the existing UGB;

3. To the extent that additional lands are required, establish a reasonable, specific density of development for this housing type for the next 20 years.

Private Open Space and Private Rights-of-way. The city applied a 15 percent factor to its projected residential (and park and school and second home) land needs to reflect projected land need for private open space and private rights-of-way. This figure is based on an analysis of the proportion of land within the prior UGB devoted to this use, and assumes the same land allocation within the expansion area. [R. at 1092] However, projecting a land need for private open space and rights-of-way for public parks and for public schools does not appear logical (unless the 15 percent figure was derived for all non-employment lands within the existing UGB, which is not clear from the findings). Further, there is no explanation in the record why prior development patterns, with a relatively large amount of private open space, is needed within the expansion area. Elsewhere in its decision, the city determines that lots that have access through private rights-of-way are not suitable for urbanization. Simply adopting past development patterns is not a sufficient basis to demonstrate a land need under Goal 14 or under ORS 197.296.For all these reasons, the director is unable to determine that this element of the city's decision complies with Goal 14 or OAR 660-024-0040.

The director remands the city and county decisions, with direction to either remove private open space and private rights-of-way as categories of land need, or justify why private open space and private rights-of-way are needed within the UGB expansion area in addition to estimated land needs for public parks and public rights-of-way.

Surplus Acreage. The amendment expands the UGB by 5,475 "suitable" acres to meet the estimated land need of 4,956 acres, yielding a surplus of 519 acres. [R. at 1193] The city's findings explain this excess acreage by referring to OAR 660-024-0040(1), which acknowledges that 20-year projections of land needs are estimates that should not be held to an unreasonably high level of precision. The city also appears to believe that this amount of acreage is needed for several specific reasons, including efficient provision of public services (e.g., including land on both sides of roads in some expansion areas), to facilitate the development of complete neighborhoods, and to make it possible to distribute employment lands throughout the expansion area. [R. at 1193] The findings, however, simply state these reasons, without explaining where these areas are, or why it is not possible to reduce acreage elsewhere in order to keep the total acreage consistent with its estimated land need.

The state does not require precision in estimating land need, and the city's estimates for residential, employment, and other land needs necessarily involve some degree of uncertainty.[21] But once the city *makes* its estimate, state law does not allow the city to simply add a cushion. Instead, state law requires the city to makes its best effort to arrive at a reasonable estimate of land need and then stick with that number. The inclusion of a specific amount of land in the UGB in addition to estimated need appears to be driven by its desire to include particular properties in the expansion area rather than first

[21] As an example, the Goal 10 findings state that the "[c]ity identified a need for 2,714 acres of additional land for housing based on the inventory, the coordinated population forecast, and the housing needs analysis." [R. at 1219] However, elsewhere the findings state that the estimated residential land need is 2,866 acres. [R. at 1092, 1167]

determining an amount of land need, and then deciding where to satisfy that need. [R. at 1193]

In addition, as noted at the introduction to this section, the city has included almost 3,000 additional acres of land within its UGB expansion area with no need determination at all. The city's decision appears to reflect an interpretation of state law that if lands are not suitable for urbanization,[22] they may nevertheless be included within a UGB with no need showing. That interpretation turns the state's urban growth management statutes, goals and rules on their heads.[23]

The city has provided no justification or explanation for the inclusion of these lands in its findings. As a result, the director remands the city and county decisions, with direction to remove the approximately 3,000 acres of lands from the UGB expansion area that the city has found are not suitable for urbanization, or explain with specificity why their inclusion is justified under Goal 10 and Goal 14.

Buffer Areas and Land Shown as RL in the Framework Plan. The adopted "Alternative 4A" UGB includes a 29-acre strip of Urban Low Density Residential (RL) along the central west edge of the proposed UGB, north of Skyliners Road and west of Master Plan Areas 3 and 4. [*See* Bend Urban Area Framework Plan Map, R. at 3; map of "Alternative 4A – Preliminary UGB Expansion December 3, 2008," Supp. R. at 3; and Supp. R. at 207-08] Neither the 2007 Residential Lands Study nor the General Plan amendments provide an adequate factual basis for a need for this land for this use and, in fact, the findings provide that lands proposed for RL plan designations are not serving an urban need. [R. at 1079] The city has not demonstrated a Goal 10 or 14 need for a very low density residential buffer with housing at two units per acre along the west side of the existing UGB between Skyliners Road and Shevlin Park.

More generally, the Framework Plan shows a substantial amount of lands planned as RL (Low Density Residential, 1.1 to 2.2 dwelling units per acre). As noted above, the city does not anticipate that the housing in these lands will serve any urban need. [R. at 1079] We find no findings explaining why it is appropriate to bring these lands within the UGB or what the urban land need is for them. The Framework Plan indicates that the city has no expectation that these lands will ever become urban. In fact, much of the lands were found by the city to not be suitable for urbanization.

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[22] The city's bases for determining that lands in the expansion area are not suitable for urbanization also contain multiple problems, including that: (a) the conclusion that a parcel smaller than three acres with an existing dwelling on it is not suitable for urbanization lacks an adequate factual basis, and is not consistent with Goal 14; (b) the city's conclusion that lands within certain rural subdivisions cannot urbanize due to their CC&Rs is not supported by the city's own findings, which do *not* show that these lands cannot undergo additional development except in the case of a couple of the subdivisions. These issues are addressed in more detail in the portion of this decision concerning the city's decision about *where* to expand its UGB.

[23] For example, see *Collins v. LCDC*, 75 Or App 517 (1985).

As a result, the director finds that their inclusion in the UGB violates Goal 14 and Goal 10 and their implementing rules, as well as ORS 197.296. The director remands the city and county decisions, with direction to remove the lands from the UGB expansion area that the city has designated as RL in its Framework Plan map, or explain with specificity why their inclusion is justified under Goal 10 and Goal 14.

e. Response to Objections

Anderson –
Objection: The city and county underestimate the amount of land needed for right-of-way, and therefore fails to comply with OAR 660-024-0040(1). Specifically, the estimate is based on land use within the existing UGB, and fails to account for substandard existing rights-of-way and for needs attributable to stormwater management.
Response: This objection is denied. While additional right-of-way may be required for stormwater management, the city has included a 15 percent factor for private rights-of-way and open space that should provide more than enough land area for stormwater management needs. In addition, the city's assumption that most of the added residential land will be planned RL or RS provides substantial excess land beyond that required for needed housing. There is no specific evidence regarding the quantity of land needed for stormwater management and public right-of-way, or that the amount of land the city has added to the UGB cannot accommodate these uses. The city should evaluate the amount of land needed for stormwater management in connection with its reevaluation of land need for the UGB expansion area, but no separate remand is required.

Toby Bayard –
Objection: The proposal doesn't plan for needed housing types to meet the housing needs of all residents as required by Goal 10, particularly lower income and multifamily housing. The proposal underestimates the land need for housing for lower income households.
Response: This objection is sustained. As noted above, the city's Housing Needs Analysis fails to analyze needed housing types as required by Goal 10, the Goal 10 rule, and ORS 197.296. The city's Framework Plan would devote most of the expansion area to low density residential uses, where large lots would likely not provide needed housing for lower income households.

Objection: The city's estimate of land need for second homes is too high, and is not supported by the evidence in the record.
Response: This objection is denied in part. As noted in the department's analysis, second home housing is an appropriate Goal 10 issue, and there is substantial evidence to support the city's determination concerning the need for second home units. However, as to the acreage of land needed in a UGB expansion area, the objection is sustained. As explained above, the city has not explained whether this need can be accommodated within the existing UGB, or the amount of land needed in the expansion area.

Objection: The city's estimate of land need for public right-of-way is too high.

Response: This objection is denied. There is substantial evidence in the record to support the city's use of a 21 percent factor in estimating right-of-way for lands added to the UGB (the amount of land devoted to right-of-way within the existing UGB).

Carpenter/McGilvary –
Objection: The city and county underestimate the amount of land needed for right-of-way, and therefore fails to comply with OAR 660-024-0040(1). Specifically, the estimate is based on land use within the existing UGB, and fails to account for substandard existing rights-of-way and for needs attributable to stormwater management.
Response: This objection is denied for the same reasons that the objection of Anderson was denied (above).

Central Oregon LandWatch –
Objection: The city does not explain how or why unsuitable lands are added to the UGB to arrive at a gross acreage total of 8,462 acres. The city's findings do not explain why some lands are considered unsuitable, nor why they are nevertheless added to the UGB. The city's determination that lots less than 3 acres in size are unsuitable if they have existing development is not explained, not does it comply with Goal 14.
Response: These objections are sustained. State law does not allow lands that are not needed, and not suitable, for urban development to be added to an urban growth boundary. The city's findings do not explain its justification for adding lands beyond the approximately 5,000 acres of land need shown for housing, housing-related, and employment needs.

Objection: The city's projected land need of 500 acres for second home development is not justified and is based on incorrect data.
Response: This objection is denied in part and sustained in part. The objection is denied with respect to the city's estimate of needed units. The objection is sustained with regard to the acreage needed within the UGB expansion area, for the reason set forth above with regard to the similar Bayard objection.

Objection: The city's projected land need of 474 acres for parks is not justified, and is based on plans not incorporated into the city's comprehensive plan. In addition, the city fails to account for the fact that some of this need is and will continue to be met on lands outside of the UGB.
Response: This objection is denied in part, and sustained in part. The district's plans can serve as substantial evidence for the city's decision, even though those plans have not been adopted by the city as part of its comprehensive plan. As a result, the city could chose to base its decision on evidence including service standards recommended by the district. However, the element of the objection with regard to the location of where this land need may be met is sustained, for the reasons set forth above.

Objection: Regarding land need for public right-of-way, the city's estimate is based on existing development patterns and does not consider provisions for skinny streets that can and have reduced the amount of land required in newer developments in the city.

Response: This objection is denied. The city can choose to rely on evidence consisting of development patterns from lands within the prior UGB in estimating land need in the expansion area for public right-of-way unless there is a showing that doing so would violate the city's code or comprehensive plan.

Objection: Regarding land needed for private rights-of-way and open space, there is no showing of why this type of private land use is needed under Goal 14, when public parks are already provided.
Response: This objection is sustained for the reasons set forth in the director's decision.

Objection: The city misconstrues 660-024-0040(1) in including a "buffer" of 519 acres over and above its demonstrated land need for residential use.
Response: This objection is sustained for the reasons set forth in the director's decision.

Objection: The city fails to consider the approval of the Tetherow destination resort and its effect on land need within the UGB for this type of use.
Response: This objection is sustained. Both the city and the county have an obligation to consider other second-home development in the region in determining how much second-home development is needed within Bend's UGB. The director's decision requires the city and the county to coordinate in determining regional need for this type of housing, and what proportion of that need should be accommodated within Bend.

Newland Communities –
Objection: The theoretical surplus of 519 acres is needed to fulfill land needs, and to provide for effective delivery of infrastructure and complete communities.
Response: This objection is denied, in part. The director agrees that the 519 acres in question may only be included if the city documents a need for that amount of land. Otherwise, the objection is denied because the city has failed to provide the required justification of need under Goal 14, as set forth in detail above.

Swalley Irrigation District –
Objection: The amount of land determined to be needed is too large and beyond what the city determined was needed. The 519-acre cushion must be removed.
Response: This objection is sustained, in part. As set forth in more detail above, the city has not adequately documented its 20-year need for land for housing and other non-employment uses. In addition, the city may not include land in addition to its documented 20-year need (e.g., the 519 acres of "cushion").

f. Summary of Decision on Land Need Not Related to Residential or Employment Needs

The director remands the UGB amendment with the following instructions:

1. Determine whether the need for land for public schools can reasonably be accommodated within the existing UGB;

2. Determine whether the need for land for public parks (including trails) can reasonably be accommodated within the existing UGB, and whether this need is already met in whole or in part by facilities planned or existing outside of the UGB;

3. Adopt findings that justify the increase in land needed on a "quadrant" basis for parks, or use the prior estimate of the district for a lesser acreage;

4. Coordinate with the county specifically concerning the need for second-home housing, and where this need should be satisfied regionally;

5. Evaluate whether this need can reasonably be accommodated on lands within the existing UGB;

6. To the extent that additional lands are required, establish a reasonable, specific density of development for this housing type for the next 20 years;

7. Either remove private open space and private rights-of-way as categories of land need, or justify why private open space and private rights-of-way are needed within the UGB expansion area in addition to estimated land needs for public parks and public rights-of-way;

8. Remove the approximately 3,000 acres of lands from the UGB expansion area that the city has found are not suitable for urbanization, or explain with specificity why their inclusion is justified under Goal 10 and Goal 14; and

9. Remove the lands from the UGB expansion area that the city has designated as RL in its Framework Plan map, or explain with specificity why their inclusion is justified under Goal 10 and Goal 14.

3. Is the UGB amendment consistent with the Bend Area General Plan?

a. Legal standard

Comprehensive Plan data, findings, conclusions, and policies must be complete, comply with the statewide planning goals, and be internally consistent. ORS 197.015(5), ORS 197.250, and Goal 2.

b. Summary of Local Actions

On January 5, 2009, the city adopted a UGB expansion and other Bend Area General Plan amendments. [R. at 1228-1835] The amendments regarding housing and residential land are in Chapter 5 of the Plan. [R. at 1280-1315]

c. Analysis

No objections were received concerning consistency of the action with Bend's General Plan. The UGB amendment findings state: "Adopted policies in the Bend General Plan support the designation of higher-density residential areas in proximity to commercial services, parks and schools." [R. at 2133] However, the only places that the city plans for needed medium density and high density housing is in the Central Plan Area, on some planned transit routes (location undefined), and in the expansion area; no new medium density and high density housing, infill development, or redevelopment is planned for existing neighborhoods. Therefore, this part of the UGB amendment is not consistent with existing plan policies. (For more details, see the discussions in this report regarding (1) compliance with Goal 14 with efficiency measures, and (2) Goal 10 compliance.)

The UGB amendment and related plan amendments are also inconsistent with the following plan policies:

- Housing Policy 4: "Implement strategies to allow for infill and redevelopment at increased densities, with a focus on opportunity areas identified by the city through implementation strategies associated with this policy." [R. at 1311] Evidence of inconsistency: *As discussed elsewhere in this report*, the city is apparently restricting infill and redevelopment to (1) certain areas in the Central Area Plan and along planned fixed route transit corridors, and (2) developed exception parcels in the UGB expansion area that are larger than three acres. The record shows no evidence for planned infill and redevelopment in most of the existing UGB and also much of the exception lands in the expansion area.

- Housing Policy 17: "Implement changes to the city's code that facilitate the development of affordable housing for very low, low and moderate-income residents, as determined by appropriate percentages of Area median Family income, consistent with recent updates to the city's development code and/or new strategies identified in the Plan" [R. at 1313] Evidence of inconsistency: As discussed elsewhere in this report, the proposal does not demonstrate for either the 2006 development code or proposed amendments thereto how the code will facilitate the development of needed housing for households of most income levels.

- Housing Policy 21: "In areas where existing urban level development has an established lot size pattern, new infill subdivision or PUD developments shall have a compatible lot transition that compliments the number of adjoining lots, lot size and building setbacks of the existing development while achieving at least the minimum density of the underlying zone. New developments may have smaller lots or varying housing types internal to the development." [R. at 1313] Evidence of inconsistency: As discussed elsewhere in this report, the proposed UGB and other plan amendments do not plan for—in fact, do not permit—any infill subdivisions in existing neighborhoods.

d. Conclusion and decision

The Bend Area General Plan is internally inconsistent. The UGB amendment and related plan amendments adopted on January 5, 2009 are not consistent with Housing Policies 4, 17 and 21.

The director remands the proposal with direction to revise the proposal to be consistent with Housing Policies 4, 17 and 21 in Chapter 5 of the Bend Area General Plan.

4. Do the UH-10, UH-2½ and SR 2½ zones comply with Goal 14 and OAR 660, division 24?

a. Legal Standard

Goal 14 and OAR 660-024-0050(5) (2006) address the zoning of land brought into a UGB.[24] The goal and rule require county zoning for urbanizable land within the UGB to "maintain [the land's][25] potential for planned urban development until appropriate public facilities and services are available or planned."

Retaining the existing rural zoning on land brought into the UGB maintains large parcel sizes, severely restricts new non-resource uses, and limits new primary structures. Allowing parcelization at well below 10 acres and allowing new primary use structures,

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[24] Goal 14 provides, in part:

> Urbanizable Land
> Land within urban growth boundaries shall be considered available for urban development consistent with plans for the provision of urban facilities and services. Comprehensive plans and implementing measures shall manage the use and division of urbanizable land to maintain its potential for planned urban development until appropriate public facilities and services are available or planned.

The statewide planning goal definitions as amended April 28, 2005 define "urbanizable land" as: "Urban land that, due to the preset unavailability of urban facilities and services, or for other reasons, either:

> (a) Retains the zone designations assigned prior to inclusion in the boundary; or
> (b) Is subject to interim zone designations intended to maintain the land's potential for planned urban development until appropriate public facilities and services are available or planned."

[OAR 660, division 15]

Goal 14 planning guideline #2 states: "The size of the parcels of urbanizable land that are converted to urban land should be of adequate dimension so as to maximize the utility of the land resource and enable the logical and efficient extension of services to such parcels."

Likewise, OAR 660-024-0050(5) (adopted October 5, 2006) provides: "When land is added to the UGB, the local government must assign appropriate urban plan designations to the added land, consistent with the need determination. The local government must also apply appropriate zoning to the added land consistent with the plan designation or may maintain the land as urbanizable land until the land is rezoned for the planned urban uses, either by retaining the zoning that was assigned prior to inclusion in the boundary or by applying other interim zoning that maintains the land's potential for planned urban development. The requirements of ORS 197.296 regarding planning and zoning also apply when local governments specified in that statute add land to the UGB."

[25] "Its" refers to land within the UGB.

especially if they are placed in the middle of a parcel, fails to maintain the expansion area in parcels and in form that can develop efficiently and where it is possible to provide efficient and economic urban services. As the city's findings regarding suitability indicate, urbanizing areas that have developed as suburban subdivisions can be extremely difficult.

b. Summary of Local Actions

The county adopted two holding zones for the UGB expansion area: the Urban Holding-10 (10-acre minimum parcel size) and the Urban Holding-2½ (2½-acre minimum parcel size), in Title 19 of the Deschutes County Code. [R. at 1877-80] The findings state that these zones:

> * * * respect the existing pattern of development and permit reasonable use of the land in the interim while retaining the rural densities. Both holding zones allow lot sizes as small as 15,000 square feet provided that the overall density of the development does not exceed the density of the zone. This 'cluster development' provision encourages maximum retention of large lot parcels. Too often holding zones with ten acre minimum lot sizes develop with 'hobby' farms and ranchettes that never redevelop to urban potential. Cluster development allows residential development at the same rural density but preserves the majority of the land for urban development. [R. at 1221]

An existing city zone, Suburban Low Density Residential (SR 2½), like the new UH-2½ and UH-10 zones, was intended to hold parcels within the UGB "until these lands are annexed to the city or until sewer service is available, and such lands are rezoned consistent with planned densities and uses in the Bend Area General Plan."

c. Analysis

The findings quoted above fail to recognize that the "cluster" provisions in the "holding" zones allow substantial low-density suburban development to occur on lands that are planned for urban densities. None of the adopted zones will preserve urbanizable land for future urbanization. As a result, the city and county actions violate Goal 14 and OAR 660-024-0050. Fifteen-thousand square-foot lots (approximately three units per acre) are urban-density lots, albeit at a density that is lower the six units per acre that the city has planned for the expansion area. Urban levels and intensities of development are not permitted within a UGB unless and until urban facilities and services are available and the land is annexed to the city. Even without the provision for "clustering" with 15,000 square foot lots, the UH-2½ and SR 2½ zones' 2.5-acre minimum parcel size is too small to protect urbanizable lands for efficient future urbanization once the lands are annexed and provided with urban public services. State law provides for two ways to preserve urbanizable land for future urban development: retain the existing rural resource zoning, or apply an interim holding zone that maintains large parcel sizes and doesn't

increase vehicle trip generation.[26] State law does not allow holding zones that provide for substantial increases in development, increased traffic generation, and inefficient future development patterns prior to urbanization and the application of urban zoning and provision of urban services.

The existing city zone, Suburban Low Density Residential (SR 2½), like the new UH-2½ and UH-10 zones, is intended to hold parcels within the UGB "until these lands are annexed to the city or until sewer service is available, and such lands are rezoned consistent with planned densities and uses in the Bend Area General Plan." The SR 2½ zone applies only to "existing SR 2½ lands within the UGB." At first glance, this appears to prohibit *new* lots as small as 2½ acres in the urbanizable area (*i.e.*, outside city limits) of the city's UGB. However, there is no maximum lot size in this zone, and existing SR 2½ lots larger than 2.5 acres may be divided into lots as small as 2.5 acres.[27] As explained above, 2.5 acres is too small a parcel size for a holding zone in an urbanizable area because it does not maintain land for efficient future urbanization. Therefore, the SR 2½ zone also violates Goal 14 and OAR 660-024-0050.

The department advised the city of these issues by letter on October 24, 2008. [R. at 4372]

d. Conclusion and Decision

The UH-10, UH-2½, and SR 2½ zones do not maintain the potential of urbanizable land for planned urban development until appropriate public facilities and services are available or planned and therefore violate Goal 14 and OAR 660-024-0050. The director remands the city and county decisions with direction to:

1. Eliminate the UH-2½ zone, and eliminate application of the SR 2½ zone to lands within the UGB expansion area; and
2. Revise the UH-10 zone to:
   a. Prohibit land divisions that create any parcels smaller than 10 acres in size; and
   b. Include development siting standards to avoid future conflicts with the extension of efficient urban transportation, public facilities, and land use patterns; and
3. Apply the UH-10 zone to any and all land acknowledged for addition to the UGB.

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[26] *See, e.g.,* ORS 197.752(1): "Lands within urban growth boundaries shall be available for urban development concurrent with the provision of key urban facilities and services in accordance with locally adopted development standards." *Also see* OAR 660-024-0020(1)(d): "The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary."

[27] See Bend Code Section 10-10.9C.

F. Economic Development Land Need

Several objections raise issues related to the assumptions, analysis and conclusions used to determine land need for employment uses. The legal criteria for this portion of the submittal are found in Statewide Planning Goal 9 and OAR 660, division 9. Subsection 1.a, below, provides a description of what the goal and rules require, and this description is relied upon in subsequent subsections addressing related objections to the UGB amendment. Objections relating to land need for employment uses that not specifically addressed are deemed denied for the reasons set forth in this section.

1. Did the city have an adequate factual basis for including and excluding lands for employment uses?

a. Legal Standard

Statewide Planning Goal 9, "Economic Development," requires that comprehensive plans provide opportunities for a variety of economic activities, based on inventories of areas suitable for increased economic growth taking into consideration current economic factors. The goal requires that comprehensive plans provide for at least an adequate supply of suitable sites, and limit incompatible uses to protect those sites for their intended function.

OAR 660, division 9 is the administrative rule that implements Goal 9. Its purpose is to "link planning for an adequate land supply to infrastructure planning, community involvement and coordination among local governments and the state," and "to assure that comprehensive plans are based on information about state and national economic trends." [OAR 660-009-0000]

OAR 660-009-0010(5) provides that the effort necessary to comply with OAR 660-009-0015 through 660-009-0030 will vary depending upon the size of the jurisdiction, the detail of previous economic development planning efforts, and the extent of new information on national, state, regional, county, and local economic trends. A local government's planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of the administrative rule.

OAR 660-009-0015 requires that comprehensive plans provide an Economic Opportunities Analysis (EOA) that describes a review of economic trends, required site types for likely future employers in the jurisdiction, an inventory of available lands, and assessment of the community's economic development potential. OAR 660-009-0015(1) requires that the review of trends be the principal basis for estimating future employment land uses.

OAR 660-009-0020 requires that comprehensive plans include policies to implement the local economic development objectives, provide a competitive short- and long-term supply of sites for employment, ensure those sites are suitable for expected users, and provide necessary public facilities and services. OAR 660-009-0020(2) states that plans

for cities and counties within a Metropolitan Planning Organization (MPO) must include detailed strategies for preparing the total land supply for development and for replacing the short-term supply of land as it is developed.

OAR 660-009-0025 requires that comprehensive plans adopt measures adequate to implement local economic development policies. These include designation of sites for a 20-year supply of employment land and maintenance of a short-term supply of serviceable lands.

OAR 660, division 24, "Urban Growth Boundaries," provides direction regarding the use of data, findings and conclusions developed to address economic development and Goal 9 during a UGB review. OAR 660-024-0040(5) states that the determination of 20-year employment land need for an urban area must comply with applicable requirements of Goal 9 and OAR 660, division 9, and must include a determination of the need for a short-term supply of land for employment uses. Employment land need may be based on an estimate of job growth over the planning period. Local government must provide a reasonable justification for the job growth estimate, but Goal 14 does not require that job growth estimates necessarily be proportional to population growth.

b. Summary of Local Actions

The EOA is included in the record as Appendix E. [R. at 1498] The EOA includes a discussion of the community's objectives, including target industries. [R. at 1516] The Executive Summary highlights the steps of the complete analysis including demographic trends, historic and expected employment trends, inventory of the current land supply, determination of new employment, land need through 2028, which is reported in the summary as a table [R. at 1503-1506].

Section 3 of the EOA contains the review of trends used for estimating future employment land uses, as required by OAR 660-009-0015(1). [R. at 1519-1566] It provides a detailed report and analysis of trends, including population and demographics, coordinated population projection, educational attainment, household income, wages and benefits, labor force and unemployment, changing economic markets, current covered employment, employment shifts and land needs, the economic outlook, local economic trends, expectations of disproportionate employment growth, land supply as a threat to employment growth, education's role in the economy, and a need for a large university campus.

Other sections of the EOA detail characteristics of Bend's employment lands, discuss the employment projection methodology, and the results of the projections. [R. at 1567-1578]. The EOA includes a discussion of the use of employment categories instead of the more common employment sectors. [R. at 1583-1584]

The EOA includes a note that the analysis and conclusions were modified by the city [R. at 1585]. The modifications, based on input from the planning commission, UGB

technical advisory committee, and stakeholders, are discussed in appendices A-H [R. at 1642-1727].

Appendix A presents the modified employment projections per industrial sector classification as a spreadsheet. [R. at 1642]

Appendix B is a memo outlining staff recommendations of modifications to economic variables relative to consultant work completed for the city. [R. at 1649-1651] To account for uncovered workers, the employment projection is increased by 11.5 percent, based on interpolation of national and state census data. No local employment data were gathered for this analysis. The memo includes a comment by the Oregon Employment Department regional economist that no analysis exists to suggest how land needs for uncovered workers should be calculated, and suggested a rule-of-thumb instead. The memo also makes recommendations regarding modifications to the employment forecast for employment on residential and public facilities lands.

The submittal includes findings in support of the UGB expansion for employment lands. [R. at 1103-1165] These findings include: policy direction, incorporation by reference of a 2008 EOA, trend analysis, employment projection, employment land inventory, employment land need, discussion of how to satisfy the requirements of Goal 9, identification of required site types, assessment of economic development potential, meeting the requirement of MPOs for short-term supply, economic development policies, designation of employment lands, and findings related to uses with special siting requirements.

In summary, the EOA says there is need for 1,008 acres of commercial land and between 100 and 250 acres of land for each of the following use categories: industrial and mixed employment, public facilities, economic uses in residential zones, medical, new hospital site, a university site, and two 56-acre industrial sites. The total employment land need shown is 2,090 acres. [R. at 1114] This compares to the "Scenario A" conclusion that there is a 1,380-acre need, which was the result of a relatively simplistic formula of dividing employment projections by employment densities.

c. Objections and DLCD Comments

DLCD commented on Goal 9 issues prior to local adoption of the UGB amendment. A DLCD letter of October 24, 2008 commented that the EOA lacked findings on site suitability criteria and findings supporting a land need for two approximately 50-acre industrial sites. [R. at 4725]

A DLCD letter of November 21, 2008 commented that assumptions and determinations relating to employment land were either missing, were not calculated accurately, or lacked an adequate factual basis. Specifically, DLCD cautioned against: (1) the use of a 15 percent vacancy rate assumption for the 20-year employment land supply; (2) adding "surplus" employment land to the need calculation to account for market efficiency; and (3) adding residential land need via the EOA based on employment in residential zones.

The letter further comments that these errors led to an overestimation of the need for employment land. [R. at 3765]

Three objectors challenged whether the submittal provides an adequate factual basis for the findings and conclusions drawn: Swalley Irrigation District, Brooks Resources, and Central Oregon LandWatch.

Swalley Irrigation District – The employment forecast is not supported by evidence in the record. [Swalley Irrigation District, May 6, 2009, pp. 47-53]

Brooks Resources – The findings do not demonstrate that at least some of the employment land needs cannot be accommodated within the existing UGB. The record lacks evidence that the Westside UGB expansion area is suitable for employment lands. [Brooks Resources April 29, 2009, pages 2–9]

Central Oregon LandWatch – The findings and EOA are outdated, so there is no basis for need demonstrated. [Central Oregon LandWatch May 7, 2009, pages 11–12]

d. Analysis

A local government's planning effort under Goal 9 is adequate if it uses the best available or readily collectable information to respond to the requirements of the rule. [OAR 660-009-0010(5)] This standard is intended to make the planning effort informative rather than prescriptive. A substantial record of fact gathering and analysis exists in the record.

The methodology for determining employment land need for a legislative UGB amendmentincludes the following main steps:

- Determine the total 20-year employment land supply need by reviewing trends; [OAR 660-009-0005(13), 0015(1) and 0025(2)]
- Subtract existing sites that are defined as vacant; [OAR 660-009-0005(13]
- Subtract existing sites that are defined as likely to redevelop; [OAR 660-009-0005(13)]
- Add needed sites not available in the inventory of vacant or likely to redevelop. [OAR 660-009-0025(2)]

Completing these steps yields the amount of employment land required in a UGB expansion to meet the 20-year employment land supply called for in the Goal 9 rule. It may also identify some amount of surplus employment land. This surplus means that there are currently-zoned employment sites unsuitable to meet the requirements of the 20-year supply, although in usual practice this is absorbed by the need for general employment sites without specific characteristics other than some number of acres in unspecified locations.

The analysis for the EOA did not follow these steps, and the record is unclear and confusing regarding how the amount of land needed for employment was determined. An

EOA was prepared in 2008, and it was incorporated by reference in the findings for the UGB expansion, [R. at 1110] but other, conflicting findings and conclusions were also included, without the differences being reconciled. A table showing the 20-year employment land need in gross acres is included in the findings. [R. at 1114, 1141]

A table showing the existing supply of vacant and developed employment land is also included in the findings. [R. at 1109] However, there is no analysis included that distinguishes developed employment land likely to redevelop during the planning period from that not likely to redevelop. As set forth above, this analysis is key to determining the quantity of land needed for employment uses for a UGB expansion, and is a required part of an EOA. [OAR 660-009-0015 and 660-009-0005(1)] The EOA "* * * assumes that 10 percent of new employment will take place on existing lands." [R. at 1595] However, there is no analysis of trends to support this assumption.

The findings also do not include identification of needed suitable sites (i.e., sites that are not in the inventory of vacant and likely to redevelop sites already in the UGB). The city response to DLCD's request for record clarification [Bend December 7, 2009] refers to sections of the original EOA as the analysis and basis for findings, but the original EOA analysis was significantly modified later in the process [R. at 1585], and it does not appear that the original EOA is still a basis for the city's decision given the findings.

Forecasts and data are not required to be updated once the UGB review process has begun. [OAR 660-024-0040(2)]

Regarding the assumption that Bend will experience a 15 percent vacancy rate on employment land during the planning period, the evidence in the record does not support such a conclusion. [R. at 1616 and 1111-1112]. The findings state that the local vacancy rates have been approximately half this amount. The city justifies the higher long-term rate on a desire to drive industrial and commercial land rents down. That cannot be a basis for inflating trend data because, taken to its extreme, it would have no limit in terms of the acreage assumed to be committed as a result of commercial and industrial vacancies. While employment land availability, and the effects of availability on rents and land prices, are legitimate considerations in planning for growth, assigning an across-the-board vacancy rate that is significant above trends [R. at 1562] does not comply with the Goal 9 rule.

e. Conclusion

Except for the objection from Central Oregon LandWatch that the findings and EOA are outdated, the objections based on adequacy of the factual record, findings and analysis are sustained. The record does not include adequate findings, analysis or evidence to justify the city's determination of employment land need. The director remands with instructions to develop an EOA that includes a determination of the employment land supply consistent with the requirements of OAR 660, division 9. This must at least include the following elements based on factual evidence:

1. Determination of the 20-year supply of employment land;

2. An inventory of existing employment land categorized into vacant, developed land likely to redevelop within the planning period, and developed land unlikely to redevelop within the planning period;

3. Identification of required site types that are not in the inventory of either vacant or likely to redevelop sites;

4. Identification of serviceable land; and

5. Reconciliation of need and supply.

2. Does the analysis show too great a need for employment land?

a. Legal Standard

OAR 660-009-0015 requires that an EOA determine the need for employment land. OAR 660-024-0040(5) establishes the determination of employment land in the context of a UGB amendment. A more complete explanation of the Goal 9 requirements is provided in subsection 1.a of this section. These rules make it clear that the standard is for the city to provide a 20-year supply of land for employment.

In order to justify a need for employment land within the UGB to provide for efficient market functions or to respond to unique market conditions, there needs to be in the record a policy directive to provide additional land to meet some public purpose; a factual basis in the EOA to satisfy OAR 660, division 9; and, to satisfy OAR 660, division 24, a finding that the job growth estimate that supports that land need determination is reasonable.

b. Summary of Local Actions

A general summary of the city's actions is provided in subsection 1.b, above. The EOA discusses the provision of additional employment lands for a variety of locations and sites in addition to the 20-year supply, described in the EOA as Scenario B. [R. at 1620] A summary is provided. [R. at 1632] The land need findings discuss the city's rationale for increasing the supply of employment land 20-year need. [R. at 1115-1165]

Scenario A is characterized as "minimal employment land demand" and is from the 2008 EOA. Scenario B makes several adjustments to the employment land need from Scenario A, based on input from a stakeholder group. Scenario B reduces the land need as determined by a review of trends from 1,380 to 898 acres, reduces the resulting amount of vacancy-rate adjustment from 207 to 134 acres, adds 421 acres of redundant supply for market choice, increases the resulting 21 percent right of way adjustment to 235 acres, and adds 15 percent or 168 acres for other land needs. The total estimated employment land need in Scenario B is unclear [R. at 1622].

The city adopted economic development policies in chapter 6 of the Bend Area General Plan. [R. at 1339] The policies accept the 2008 EOA and associated land needs, establish the short-term supply management plan, establish emphasis on large-lot industrial, and established mixed-use and commercial development guidance. The short-term land supply management plan requires staff to report to council and do not include detailed strategies for preparing the total land supply for development and for replacing the short-term supply of land as it is developed as required by OAR 660-009-0020(2).

c. Objections and DLCD Comments

The department commented that the city erred in increasing its estimated long-term (20-year) employment land supply by 50 percent based on analysis perhaps appropriate for the required short-term supply, and by adding residential land need in the EOA based on employment in residential zones. [R. at 3765-3766] Also see the description of DLCD comments in subsection1.c of this section.

The department received objections from four parties alleging a variety of deficiencies with the submittal related to the amount of employment land the city needs: Swalley Irrigation District, Central Oregon Land Watch, and Brooks Resources Corporation.

Swalley Irrigation District – The UGB was expanded to include more employment land than was justified. The city used an erroneous definition of "developed land" and "serviceable land." [Swalley Irrigation District, May 6, 2009, pp. 47-53]

Brooks Resources – The findings do not demonstrate that at least some of the employment land needs cannot be accommodated within the existing UGB. [Brooks Resources April 29, 2009, pages 2–9]

Central Oregon LandWatch – The EOA employed an inappropriate assumption regarding vacancy rates and institutional use, open space, and right of way. The EOA does not demonstrate a need for several specific uses. The EOA impermissibly adds surplus employment land to the inventory. [Central Oregon Land Watch May 7, 2009, pages 11–12]

Barbara I. McAusland – Barriers to locating industry in Bend argue against the need for an oversupply of industrial land. The findings do not demonstrate a need for an oversupply of employment land. [McAusland May 5, 2009, page 3]

d. Analysis

The determination of the employment land supply is based on the review of trends the local government expects to influence the decision. The local government then identifies the sites that are expected to be needed to accommodate anticipated employment growth. There is in the record policy direction, fact-based analysis of an employment projection, and market analysis of the rationale for providing employment land above the minimum 20-year need. No upper limit is established in rule or statute, but OAR 660-009-0015(2) states that the EOA "must identify the number of sites by type *reasonably expected to be*

needed to accommodate the expected employment growth. . .” [emphasis added] and OAR 660-024-0050 and Goal 14 require an analysis showing that the needs cannot reasonably be accommodated on land already inside the UGB.

The EOA includes two estimates of employment land need [R. at 1618, 1622]. Both scenario A and B include policy directives to increase the base land need for a variety of factors including vacancy, redundant supply, and right-of-way. There is policy direction and ample discussion. However, as noted in subsection 1.c of this section, the city’s findings do not explain the land need determination in a fashion that demonstrates it complies with OAR 660, division 9.

In order to justify an increase in the need for certain types of employment land within the UGB over what a trends-based analysis would conclude, there would need to be a policy directive to provide additional land for economic development purposes in the record; a factual basis in the EOA to satisfy OAR 660, division 9; and, to satisfy OAR 660, division 24, a finding that the job-growth estimate that supports the land need determination is reasonable and cannot be accommodated within the existing UGB.

As noted in subsection 1.c above, the findings do not include identification of needed suitable sites. The EOA does not make a distinction between built sites that are likely to redevelop and those that are not, as required by OAR 660-009-0015(3).

e. Conclusion

The objection is sustained. The director remands with the same instructions explained in subsection 1.e, above.

3. Did the city err in designating 114 acres for employment in residential areas?

a. Legal standard

OAR 660, division 9 requires that an EOA determines the need for employment land. [OAR 660-009-0015] OAR 660-024-0040(5) establishes the determination of employment land in the UGB. A more complete explanation is provided in subsection 1.a of this section, above.

OAR 660-009-0005(3) defines industrial use. OAR 660-009-005(6) defines “other employment uses” as:

> All non-industrial employment activities including the widest range of retail, wholesale, service, non-profit, business headquarters, administrative and governmental employment activities that are accommodated in retail, office and flexible building types. Other employment uses also include employment activities of an entity or organization that serves the medical, educational, social service, recreation and security needs of the community typically in large buildings or multi-building campuses.

OAR 660-009-0025 requires local governments to "adopt measures adequate to implement [economic development] policies" and "(a)ppropriate implementing measures include amendments to plan and zone map designations…"

Goals 10 and 14 and OAR 660, divisions 8 and 24 establish the requirements for designation of residential land and UGB expansion considerations for residential uses.

b. Summary of Local Actions

The findings regarding employment land need in Table 4-3 include 119 acres for employment uses on residentially zoned land. [R. at 1114] The trends analysis includes the number of employees expected to find employment on 119 acres zoned for residential [R. at 1113].

The 2008 EOA recommends an increase to the employment projection for jobs that are typically based in residential zones, such as certain public facilities, schools, churches and home occupations, and that may not be captured by traditional forecast methods, and recommends that additional residential land be designated to accommodate the forecast. [R. at 1651]

c. Objections and DLCD Comments

The department received objections regarding designation of residential areas for employment from Swalley Irrigation District and Central Oregon LandWatch. DLCD had also commented on this issue**.** The department's letter asserts that the EOA allocates a significant amount of employment to the high-density residential districts based on a methodology that does not protect lands for needed multi-family housing from commercial development. [R. at 3767]

Subsequent review has revised this analysis. The city's 2008 EOA [R. at 1651] recommends an increase to the employment projection for jobs typically based in residential zones, such as certain public facilities, schools, churches and home occupations that may not be captured by traditional forecast methods, and recommends that additional residential land be designated to accommodate the forecast.

d. Analysis

It is appropriate to define the portion of projected employment that is expected to take place on residential land in order to gain an accurate approximation of how much will locate in employment zones. However, OAR 660, division 9 does not permit designation of residential land for employment use. Residential land is designated according to the standards of OAR 660, division 8, which permits adjustments to the residential buildable lands inventory to account for non-residential uses.

e. Conclusion

The objection is sustained. The 119 acres of residential land is not justified, and must be removed from the employment land need.

4. Did the city err in including land for a hospital, university campus, and two 50-acre industrial sites?

a. Legal standard

OAR 660-009 requires that an EOA determines the need for employment land. [OAR 660-009-0015] OAR 660-024-0040(5) establishes the determination of employment land in the UGB. OAR 660-009-0025(8) provides requirements for designating employment uses with special siting characteristics.[28] A more complete explanation of OAR 660, division 9 requirements is provided in subsection 1.a of this section, above.

In order to justify an increase in the need for certain types of employment land within the UGB there must be a factual basis in the EOA to satisfy OAR 660, division 9, a policy directive to provide the sites for economic development purposes, and measures to protect the sites for the intended uses.

b. Summary of Local Actions

The EOA discusses the provision of additional employment lands for specific uses including a new hospital, a university campus and two 50-acre industrial sites [R. at 1506, 1517, 1628, 1724]. Policies are included as an appendix to the EOA [R. at 1674]. Findings are included [R. at 1103-1165], with specific use references [R. at 1107, 1114, 1115, 1116, 1120, 1122, 1123, 1124, 1126, 1128, 1140].

c. Objections and DLCD Comments

The department received objections alleging the city lacked justification to add to its estimated need land for a hospital, a university campus and two 50-acre industrial sites. [Central Oregon LandWatch May 7, 2009, p. 11] The department had commented that the city lacked substantial findings to support the addition of large sites for a new hospital, an auto mall, a university campus and two 50-acre industrial sites [R. at 3770, 3771, 3776].

d. Analysis

A jurisdiction's planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of this division per OAR 660-009-0010(5). There is in the record policy direction, fact-based analysis of an employment

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[28] OAR 660-009-0025(8): * * * Cities and counties that adopt objectives or policies providing for uses with special site needs must adopt policies and land use regulations providing for those special site needs. Special site needs include, but are not limited to large acreage sites, special site configurations, direct access to transportation facilities, prime industrial lands, sensitivity to adjacent land uses, or coastal shoreland sites designated as suited for water-dependent use under Goal 17. Policies and land use regulations for these uses must:

(a) Identify sites suitable for the proposed use;

(b) Protect sites suitable for the proposed use by limiting land divisions and permissible uses and activities that interfere with development of the site for the intended use; and

(c) Where necessary, protect a site for the intended use by including measures that either prevent or appropriately restrict incompatible uses on adjacent and nearby lands.

projection and market analysis of the rationale for providing employment land for a hospital, a university campus, and two 50-acre industrial sites.

The justification for these specific uses is undermined, however, by other deficiencies in the EOA. The EOA does not adequately identify land already in the UGB that could be developed for some or all these uses. There city does not appear to have adopted policies or other mechanisms to ensure the land included in the UGB is protected for the intended use and from conflicting uses.

e. Conclusion

While the analysis of the need for the specific employment uses is present, the EOA must also analyze whether these uses can reasonably be accommodated within the existing UGB. Additionally, the city has not adopted policies that provide adequate protections to ensure the sites remain available for the intended uses.

The objection is sustained. The director remands with instructions to analyze whether the identified uses can reasonably be accommodated within the existing UGB, and for the adoption of measures so that employment land with special siting characteristics complies with OAR 660-009-0025(8) regarding protection of the site for the intended use and from conflicting uses.

G. Public Facilities Plans

This section addresses whether the City of Bend's ordinance NS-2111, adopting new public facilities plans for the city and a new Chapter 8, complies with Goal 11, Goal 14, applicable administrative rules, and OAR 660-024-0060, or whether the ordinance takes exceptions to those goals.

a. Legal Standard

Goal 11 and ORS 197.712(2)(e) require cities with a population greater than 2,500 to prepare and adopt public facilities plans for water, sewer and transportation services within the city's UGB. Public Facilities Plans (PFPs) are required primarily to assure that local governments plan for timely, orderly and efficient arrangement of public facilities and services, and to serve as a framework for future urban development. Timely, orderly and efficient arrangement "refers to a system or plan that coordinates the type, locations and delivery of public facilities and services in a manner that best supports existing and proposed land uses." Goal 11 and OAR 660-011-0000.

The required contents of a public facility plan are provided in OAR 660-011-0010(1), and are not intended to cause duplication or to supplant technical documents supporting facility plans and programs. OAR 660-011-0010(3). At a minimum, public facility plans shall include plans for water, sewer and transportation facilities and the responsibility(ies) for preparation, adoption and amendment of a public facility plan shall be specified within an urban growth management agreement. OAR 660-011-0015(1).

When evaluating a proposed UGB amendment, OAR 660-024-0060(8) requires that:

> The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:
>
> (a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the UGB;
> (b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the UGB
> * * *

b. Summary of Local Actions

The city prepared certain water and sewer system master plans in 2007, which evaluated the capacity of existing public facilities to serve areas already within the UGB, as well as areas being studied at that time for possible inclusion in a UGB expansion area. Those master plans also identified significant system improvements needed both to serve lands and uses within the existing UGB (a significant number of homes in the prior UGB utilize septic systems) and to serve lands being considered for inclusion in a UGB expansion area. The master plans evaluate future service needs for a UGB expansion area containing only lands zoned UAR. They did not evaluate other exception lands, including a large area of rural residential development to the south of the city, or most of the lands zoned and planned for farm use to the east that were included in the UGB expansion area. See, e.g. R. at 467 (map of study area); R. at 500-504 (SE interceptor). The sewer collection master plan also did not evaluate the cost of some improvements identified as needed (North interceptor crossing of Deschutes River, R. at 497 "For this river crossing to be cost-effective, a bridge must be constructed over the river. * * * Costs for the bridge structure were not included in the cost for this interceptor."]

In the first half of 2008, the city had certain addenda to the master plans prepared. [R. at 211]. Those include several analyses specific to particular areas (Newlands property; Hamby Road area). On October 8, 2008, the city provided the department an amended 45-day notice of its proposed UGB amendment that included a summary statement that it was also proposing to amend its public facilities plan element of the General Plan. However, no draft of the PFP Chapter (chapter 8) of the city's General Plan was provided until October 20, 2008 (seven days before the first evidentiary hearing).

Bend Ordinance NS-2111 adopts certain Water Public Facilities Plans and Sewer Public Facilities Plans as amendments to the Public Facilities Element of the Bend General Plan. [R. at 35]. The ordinance also appears to adopt the city's sewer and water public facilities plans in support of and associated with its UGB expansion proposal. [R. at 35-1049] Exhibit A (Findings in Support of UGB Expansion) [R. at 37-210], Exhibit B (Findings in Support of the Amendments to the Public Facilities Plan) [R. at 211-224] and Exhibit C (Facilities Plans and all supporting components, addenda and supplements) [R. at 225-1049] are attached to Ordinance NS-2111.

Ordinance NS-2111 states:

> * * * the Public Facilities serve the goals, objectives and policies of the General Plan by addressing the provision of public facilities and services within the urban growth boundary (UGB), services to areas outside the UGB, locating and managing public facilities and financing public facilities. [Record at Page 35] The city's Goal 11 findings state "the proposed amendment to Chapter 8 of the Bend General Plan incorporates the city's water system master plan and collection system master plan as Goal 11 public facility plans," and "[i]n addition, the city has based the proposed expansion of the UGB in part on the development of three

> (3) new sewer interceptors that are located beyond the city's current UGB. [R. at 205]

Exhibit C [R. at 225] includes documents that comprise the adopted Public Facilities Plan. The following is a general description of the facilities plan and incorporated documents provided in the findings:

> The water system master plan covers those areas already inside the Bend UGB, and areas outside the current Bend UGB that are not already served by the Avion Water Company or another private water utility. The sewer master plans include a Collection System Master Plan (CSMP) that covers those areas inside the existing Bend UGB, and areas identified under the (prior, 2007) Bend Area General Plan as urban reserves. The sewer master plans also include a master plan for the reclamation facility, which is located north and east of Bend and treats effluent collected through the city system. [R. at 211]

The proposal includes a new chapter 8 of the Bend Area General Plan dated October 20, 2008. [R. at 1478-1498] No facility collection, distribution or service area maps are provided in chapter 8 of the plan. Map information is contained only in incorporated documents. The findings also incorporate by reference the adoption of water and sewer collection master plans and supporting documentation as the public facility plans for water and sewer service under Goal 11. [R. at 211]

The incorporated water and sewer collection master plans and supporting documents are described as follows. The adopted water public facility plan (WPFP) includes:

- Water System Master Plan (WSMP) Update-Final Report (2007) [R. at 225-340]
- Airport Water System Master Plan (2007) [R. at 341-384]

The adopted sewer public facilities plan (SPFP) includes:

- Collection System Master Plan (CSMP) Final Report (2007) [R. at 385-516]
- CSMP Addendum No. 1 – Final Executive Summary and Alternative Technical Analysis: North East Bend (2007) [R. at 517-550]
- CSMP Addendum No. 2 – Collection System CIP Analysis and Report (2008) [R. at 551-692]
- CSMP Addendum No. 3 – Technical Memorandum 1.5 – Hamby Road Sewer Analysis (2008) [R. at 693-703]
- Water Reclamation Facilities Plan (2008) and Technical memos No. 1-10 [R. at 705-1048]

In a footnote, the city's findings state, "The record on the Bend UGB expansion also includes a 2007 draft of the CSMP, including nine study area plans that were submitted to DLCD on June 11, 2007." [R. at 211, see footnote 1].

A number of technical memos related to sewer planning appear in the city's supplemental submittal provided to the department on May 6, 2009. However, Ordinance NS-2111 and its associated findings do not appear to include these technical memos, and they are not listed as part of the incorporated public facilities plans adopted as part of the UGB adoption package which is described above from page 211 of the record.[29]

The adopted public facilities plan includes sewer, stormwater and water services only. Transportation plans are not included in the public facilities plan amendment. The city's submittal and this report, however, do address transportation separately.

c. Objections and Analysis

The city did not prepare revised public facilities plans for water or sewer to address the additional lands added to its UGB expansion study area in 2008. Although there are parts of the city's submission that address parts of the additional expansion area, the primary two master plans limit their analysis to lands that were planned UAR in 2007. [R. at 450-453] Exception lands and agricultural lands to the east are not analyzed in the sewer system collection master plan. Nor are exception lands to the south of the city. The water system master plan only examined Tetherow and Juniper Ridge outside of the prior UGB. [R. at 249]

Nine objecting parties raised 13 specific concerns related to the city's public facilities plans. Four of the 13 parties filed public facilities plan objections during the city's first UGB submittal to the department on April 16, 2009, and in response to the city's June 12, 2009 supplemental submittal of public facilities plans as part of the UGB expansion proposal.

A list of objectors and a summary of objections filed in response to the city's public facilities plans follows. Parties filing objections on both submittals are noted with an asterisk.

Swalley Irrigation District *
Central Oregon LandWatch *
Rose and Associates, LLC *
Tumalo Creek Development, LLC *
Toby Bayard
Hunnel United Neighbors
Newland Communities
Anderson Ranch
J. L. Ward Company

Swalley Irrigation District – The May 6, 2009 objection states that no notice was provided to DLCD or others for the city's public facilities plans, nor was notice provided advising of hearings on the plans. The objection further states that there was never a time when the city provided opportunity for meaningful input on the location of public

[29] Supplemental Items 99, 99A through 99M, Supplemental R. at 985 – 1210.

facilities. [p. 1]. The city's October 8, 2008 and October 20, 2008 revised notice to DLCD indicated that the city planned to adopt a variety of public facility plans on November 24, 2008, yet those plans were not attached to the revised DLCD notice, making the notice void. [p. 22]

The objection also states that draft public facilities plans were improperly used to influence the location of the UGB without adequate public input, thereby violating Goal 1. [pp. 25-26]

The objection points out that Goal 11 requires the city to (1) evaluate the carrying capacity of "air, land and water resources of the planning area" and not exceed such carrying capacity, (2) provide an orderly and efficient arrangement of public facilities and services, and (3) provide rough cost estimates for planned facilities. According to the objection, the city fails these requirements, particularly in the service areas of the Swalley Irrigation District. [p. 55]

The objection argues that, for reasons generally discussed above, chapter 8 of the Bend Area General Plan does not comply with OAR 660, divisions 11 or 24. [p. 80]

The objection points out that the city's Consolidated Sewer Master Plan (CSMP, 2007) acknowledges significant funding gaps. At the same time, the CSMP fails to compare the cost of sewer upgrades and enhancements to areas of failing onsite system or areas with infill and redevelopment capacity versus the CSMP's program. [pp. 88-89] The objection discusses several areas where the CSMP is allegedly deficient. [pp. 89-95]

The objection asks that the department remand and instruct the city to select public facility options that are reasonably affordable and can demonstrate reasonable costs for needed housing, and that the city be required to examine "undisputed" exception areas in the south and southwest quadrants of the city.[30] [p. 103]

Swalley Irrigation District also submitted objections in a July 6, 2009 letter (herein noted as SID2) on the city's public facility plan submittal. The objection's arguments regarding whether the department and the LCDC have jurisdiction to decide the adequacy of Bend's public facilities plan are examined in section III.D of this report. [SID2, pp. 8-12]

The objection argues that the public facility plan submittal failed to clearly identify what adoption decisions were submitted, leaving objectors to guess what the city actually submitted. [SID2, pp. 12-13]

The objection argues that since the UGB proposal does not demonstrate compliance with Goal 14, ORS 197.298 and OAR 660-0024-0060, the city must start over with its public facilities planning after it develops a new UGB proposal that follows and meets those requirements. [SID2, p. 43] The objection provides a number of technical challenges to

[30] Swalley Irrigation District has objected that lands zoned Urban Area Reserve (UAR) were not acknowledged exception lands.

the city's sewer master plan, which are similar to the objector's earlier May 2009 submittal. [SID2, pp. 45-55]

Central Oregon LandWatch – The May 7, 2009 objections argue that the sewer and water facility plans impermissibly provide infrastructure on lands outside the current UGB. [Page 16 of 18] The objector's June 30, 2009 objections argue that the city predetermined "so many aspects" of its UGB decision on the location of infrastructure, that it has not properly prepared public facility plans for lands inside the current UGB. The objection argues that the city has not recognized its overarching priority "to provide sewer to the thousands of acres and people currently lacking this service within the City." The objection points out that, while the city's Central Area needs infrastructure improvements and capacity to handle substantial infill development, it assumes only 500 new residential units due to Central Area sewer deficiencies. [p. 2] The objection incorporates by reference the June 28, 2009 objections of Toby Bayard.

Rose and Associates, LLC – The objector filed during both submittal phases. In its May 5, 2009 objection, it is argued, "The city erred by adopting the sewer and water master plans as part of the UGB rather than through an independent process." In addition, the city failed to comply with Goal 1 when it adopted the plans without separate public hearings. [p. 3] (See section III.K concerning Goal 1 objections.) The objection also points to technical errors regarding gravity sewer serviceability for specific property excluded from the UGB proposal. [p. 5]

The objector's June 29, 2009 submittal argues that the city sewer plan is inconsistent with the UGB amendment and does not provide for timely, orderly and efficient service, as required by Goal 11. The objection points out specific lands included in the UGB proposal but not in the sewer facilities plan, and other properties included in the sewer facilities plan but not in the UGB proposal. [p. 2]

Tumalo Creek Development, LLC – The objector's July 2, 2009 submittal states that the public facilities plan violates Goal 11 and OAR 660, division 11, because it does not consider more cost effective sewer alternatives. The objection cites its submittal of alternative lower cost technical solutions (e.g., membrane technology associated with satellite treatment facilities) for serving portions of the west side and Central Area, which it determined would provide much needed additional capacity in the city's urban core. According to the objection, however, the city did not consider objector's alternative proposal and the city's findings do not address the proposed alternatives. [p. 2] This objection is also included in the objector's May 7, 2009 submittal.

The objection argues that the sewer facility plan does not provide service in a "timely, orderly, and efficient" manner. The objection specifically points to the ability of the city to serve areas needing a Deschutes River crossing via the proposed North Interceptor as an area that will likely have to wait years and probably decades for sewer service, due to high costs and environmental concerns. The city has not adequately addressed these cost and environmental concerns, according to the objection. [pp. 2-3]

Toby Bayard – The objector's June 28, 2009 objection argues that the city adopted its public facilities plans without the benefit of a public hearing, "having failed to advertise, properly notice, or inform the public that it was accepting testimony on the PFP." (See section III.K of this report, dealing with Goal 1.)

While the objector's June 28, 2009 objections include concerns over how the city adopted its public facility plans and how it used the same plans in determining its Goal 14 boundary location analysis, these issues are addressed elsewhere in this report. (See report discussions on Goal 1 and ORS 197.298.). The objection lays out a number of Goal 11 concerns as follows:

- There is no clear statement demonstrating how various public facilities plan infrastructure costs will be funded [pp. 7, 23]
- The public facilities plans and related documents provide conflicting information [p. 7]
- The sewer facilities plan contemplates provision of services to areas not part of the UGB proposal. [p. 15] At the same time, certain land included in the UGB proposal is not included in the sewer facilities plans. [p. 18]
- The sewer facilities plan does not satisfy Goal 11 requirements for a timely, orderly and efficient arrangement. [p. 20]
- The city's sewer facilities plan was not coordinated with other entities, including state and federal agencies. [p. 20-21]
- The sewer facilities plan and Bend Area General Plan Chapter 8 (Facilities Plan) conflict with each other and with the city's findings. [p. 21-22]
- Key Goal 11 determinants were not properly applied when developing the sewer facilities plan. [p. 22]
- The Northern Interceptor cost estimates omit crucial cost components. [p. 22-23]
- Goal 11 requires that estimates use current year costs but the city used 3-year old cost estimates. [p. 23]

Hunnel United Neighbors – The objection argues that the city failed to provide a sewer facility plan that is internally coordinated or provides for an orderly, timely and efficient arrangement of services. The objection challenges whether the Northern Interceptor produces an orderly arrangement of sewer service, given that Goal 11 directs that priority should be given to the large supply of unsewered land to the southeast and south which is located in the current UGB. The objection questions whether the Northern Interceptor will accommodate timely development in an area that is already subject to "serious transportation issues" and cost of service issues. The objection also questions whether the Northern Interceptor's full cost, which has not been "determined or disclosed" related to the crossing of the Deschutes River, will demonstrate an efficient arrangement of its sewer service plans. [pp. 3-4]

Newland Communities – Most of the objection's concerns raise jurisdictional issues related to review of the public facilities plans; these are addressed in section III.D of this report. The objection provides a single objection directly pertinent to Goal 11, which is stated in precautionary terms as follows: "If DLCD exercises jurisdiction over the PFPs,

DLCD's review must conform with OAR 660-011-0010(1) and OAR 660-011-0050." The objection then argues that the city's decision meets these requirements. [July 2, 2009, letter from Christe C. White]

Anderson Ranch – The objection argues that in preparing its public facility plans, the city failed to comply with the citizen involvement requirements of OAR 660-015-0000(1). This objection is addressed in section III.K of this report under Goal 1 compliance.

J. L. Ward Company – The objection questions whether the sewer facility plan adequately addresses which existing and amended UGB areas are to be served by the proposed Southeast Sewer Interceptor and asks that this be clarified by the city. [June 22, 2009, letter from Jan Ward]

d. Analysis

In this section, the department examines whether the public facilities plans satisfy the requirements of Goal 11 and its rule, and whether those plans are consistent with the land use provisions of Goal 14, ORS 197.298 and OAR 660, division 24 relating to a UGB expansion. The following examination is based on the objections above and on the department's own concerns.

Public notice, hearing issues and public involvement. Under OAR 660-025-0175(3) and ORS 197.610, the city is required to provide the department with notice of a proposed amendment 45 days prior to the city's first evidentiary hearing on the proposal. The notice is required to contain the text of the amendment and any supplemental information that the local government believes is necessary to inform the director as to the effect of the proposal. [ORS 197.610(1)] The department received notice of the city's June 2007 public hearings on its first UGB proposal, including draft public facility plans for a 4,884-acre UGB amendment considered at that time.[31] [32] The city's October 8, 2008 revised notice,[33] however, which proposed to nearly double the size of its UGB proposal to 8,943 acres, did not include updated public facility plans, as pointed out in department letters sent to the city in October 2008 and November 2008.

[31] While the city's June 11, 2007, 45-day notice and submittal included a draft public facilities plan, it did not include other information necessary to review that proposal at that time. Specifically, the submittal did not contain any comparative analysis as required by ORS 197.298 and Goal 14 locational factors.

[32] On March 30, 2007, the city submitted a plan amendment to the department that proposed to amend Chapter 8 – Public Facilities and Services element to the Bend Area General Plan. (DLCD file Bend 002-07, local file 07-012) The proposal included changing the plan text to incorporate by reference two new facility master plans, a Water Master Plan and a Sewage Collection System Plan, with no changes to existing policies or the UGB. The intent of these amendments was to support re-calculation of system development charges for water and sewer services and for capital improvement programming. In April, 2007 the city indefinitely postponed hearings on the amendment. (Source: DLCD plan amendment files)

[33] The city's October 8, 2008 revised 45-day notice was revised on October 20, 2008; neither of the notices contained an updated public facility plan for the 8,943-acre UGB proposal.

Several parties raise objections regarding adequate public involvement and the city's public hearings process related to adoption of its public facility plans; these objections are addressed in sections III.K in this report. Objections have also raised jurisdictional questions relating the city's public facility plan adoption; these objections are addressed in section III.D.

Public facility plans were improperly used to determine the location of the UGB. A key question raised by objector is whether the sewer collection and water distribution master plans are consistent with the city's UGB expansion, and whether these plans provided the analysis required to evaluate alternate locations for a UGB expansion, as required by ORS 197.298, Goal 14 and OAR 660, division 24.

The first step in making such a determination is to examine the capacity of the city's public facilities to serve the existing UGB area, as well as areas proposed for addition to the UGB. OAR 660-024-0060(8).

The next step is a comparative analysis of the relative costs, advantages, and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services. OAR 660-024-0060(8).

The data and findings from the second step may be used in two situations:

1. When a city prepares findings supported by an adequate factual base to demonstrate that future urban services could not reasonably be provided to higher priority lands (such as exception lands) due to topographical or other physical constraints, the city may then exclude these lands from the prioritization otherwise required by ORS 197.298(1). ORS 197.298(3)(b).

2. In addition, if the total amount of land in a particular priority category exceeds the amount needed, the city may apply, weigh and balance the four Goal 14 location factors to select which lands will be added to the UGB. One of those four factors is the "orderly and economic provision of public facilities and services" (see OAR 660-024-0060(1)).

The requirements for analyzing alternate UGB expansion areas are contained in OAR 660-024-0060(8).

The city's Goal 11 findings state, "The city has based the proposed expansion of the UGB in part on the development of three (3) new sewer interceptors that are located beyond the city's current UGB." [Record at 205] The record does not support this finding. The sewer collection master plan included an analysis of planned new sewer interceptors, but the location of those interceptors was (for the most part) not identified as being on agricultural lands (the interceptors are located almost entirely on UAR lands, or within the existing UGB). Further the analysis of what lands will be served in the future in the master plans does not correlate with the lands in the UGB expansion area. The UGB expansion area includes substantial lands that are evaluated in the master plans,

creating an internal conflict in the city's General Plan contrary to Goal 2 as well as Goals 11 and 14. Nor do the master plans contain an analysis of the relative costs, advantages and disadvantages of alternative UGB expansion areas as required by OAR 660-024-0060(8). Instead, they simply analyze the feasibility of serving the existing UGB and UAR lands.

Not all serviceable exception areas were included in the public facility plans. Several objections point to certain lands included in the amended UGB but not included in the public facility plans, and certain other lands included in the public facility plans but not included in the UGB proposal. The Collection System Master Plan (CSMP) study area includes the area within the prior UGB, UAR exception lands adjacent to the existing UGB, all of the 1,500-acre Juniper Ridge area in the north one square mile of EFU lands,[34] and the Tetherow destination resort located southwest of the current UGB. [R. at 410] The CSMP has also included some exception lands adjacent to the UGB designated as SR 2½, and property owned by the Department of State Lands (DSL). The UGB expansion area does not include the DSL and Tetherow properties, and only a portion of the Juniper Ridge site (as location of a future university site); nor does it include a large area of rural residential development south of the city.

The city also adopted CSMP Addendum No. 1–Final Executive Summary and Alternative Technical Analysis: North East Bend (2007) which expands the territorial scope of the CSMP approximately 1.5 miles eastward north of Butler Market Road to include both exception and resource lands in the northeast area of the UGB proposal. [R. at 517-550] The main purpose of this study is to propose a more southerly alignment for the Plant Interceptor sewer line to the treatment plant. It is not clear from the record what disposition occurs between the CSMP's original version of the Plant Interceptor expansion and alignment and the North East Bend supplement, which appears as an alternative to the original CSMP Plant Interceptor proposal. Chapter 8 of the General Plan appears to provide that the CSMP (rather than the Addendum) controls. [R. at 1495 ("[The CSMP] shall direct the development of the system and be the basis for all sewer planning and capital improvement projects." R. at 1495, Policy 2.)[35]

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[34] Land referred to as Section 11 owned by the Oregon Department of State Lands, zoned for exclusive farm use and located adjacent to the current UGB on the east side.

[35] The city also adopted CSMP Addendum No. 3–Technical Memorandum 1.5–Hamby Road Sewer Analysis (2008) which proposes an alternative sewer interceptor approximately one mile east of the existing UGB on a mix of exception and resource land. The newly proposed route at least partially replaces an earlier proposed Southeast Interceptor alignment along 27th Street. [R. at 693-703] This proposed alternative interceptor, proposed as an alternative alignment for the Southeast Interceptor, would flow north from Stevens Road (Department of State Lands property located at Section 11) along Hamby Road to one of the Plant Interceptor alternatives described above. Similar to the Plant Interceptor alternatives, the findings do not explain the disposition between the CSMP's original alignment for the Southeast Interceptor expansion and the Hamby Road alternative. The Addendum No. 3 shows the costs of the two alignments to be very similar, and indicates that there are disadvantages to the Hamby Road alignment. [R. at 698]

Approximately 640 acres of exception land adjacent to the prior (and current) UGB in the southwest area in the vicinity of Bucks Canyon Road and west of Highway 97 are not evaluated in the CSMP. This area meets the city's suitability criteria, but is not included in the UGB or in the CSMP. [R. at 2449] The Bucks Canyon Road exception area is zoned RR-10 and consists of mostly large-lot exception properties. This exception area was included in the September 2008 UGB alternatives analysis in Alternatives 1 and 2, and a significant portion of Alternative 3. [R. at 5983, 5986 and 5989, respectively] Each alternative map showed proposed sewer interceptors and major roadway facilities. These exception lands are not considered in the CSMP although they meet the suitability criteria for residential development and are located at a higher elevation than gravity sewers in CSMP Planning Study Area No. 8 served by the CSMP's proposed Southeast Sewer Interceptor. [R. at 463, 476]

The Water System Master Plan Update does not cover all the existing UGB or expanded UGB area. The Water System Master Plan (WSMP) update was completed in March 2007. [R. at 226] According to the WSMP, the city serves 53,000 people within its existing UGB at the time the study was completed. The remaining population within the UGB was served by two private water providers, the Avion Water Company and Roats Water System. [R. at 236] The WSMP goes on to point out that the plan includes the "current service area within the UGB and the Tetherow development area as well as the Juniper Ridge area." [R. at 236]

The WSMP does not contain any public facility plan components for the Avion Water Company or Roats Water System, as required by OAR 660-011-0005 and -0010 and OAR 660-024-0020(1). The WSMP does not appear to contain composite service maps of the UGB service areas or illustrations of the proposed principle water distribution system operated by the Avion Water Company or Roats Water System.

The UGB expansion proposal includes areas served by the city, Avion Water Company, and Roats Water Company. However, there is no evidence that the WSMP includes plans for these expansion areas, as required by the Goal 11 and 14 rules. The WSMP also does not appear to satisfy the coordination requirements in Goals 2 and 11.

Sewer plans undercut providing adequate and timely services to unserved, underserved and areas with high infill and redevelopment potential, such as the Central area. This objection is closely related to the Goal 14 requirement to promote efficient patterns of urban development; adequate provision of density measures called for by ORS 197.296 and Goal 14; and OAR 660-024-0050(4), which calls for demonstration that land needs cannot reasonably be accommodated on land already inside the UGB prior to expanding the boundary.

The most significant CSMP project to affect the service capacity of the Central area is the need for a threefold increase in capacity of the Westside pump station, which is a major regional facility serving west and central Bend. The CSMP shows that ultimate buildout of the service area relying on the Westside pump station will require rerouting some of the increased flow from the pump station to a new Westside Interceptor, hence

connection to a new Northern Interceptor near Highway 97, all to relieve the current central interceptor, which follows a northeasterly alignment to the treatment plan. [R. at 493, 494, 495, 497] The CSMP's cost estimate for upgrading the Westside pump station, Westside Interceptor and Northern Interceptor to near Highway 97 is almost the same as building the entire Northern Interceptor, including an alignment that crosses the Deschutes River and follows the contour around the north and west quadrants of Awbrey Butte. [R. at 488, 499, 504]

The CSMP notes that 53 percent of the acreage, or 9,468 acres, within the existing UGB does not currently receive sanitary sewer service based on the city's 2005 database. [R. at 407] The city identifies 2,909 acres of vacant and redevelopable residential land by plan designation in UGB in 2008. [R. at 1071, 1083] The CSMP describes its UGB buildout conditions as the number of dwelling units "calculated assuming all parcels developed on a net acreage basis at the average zoning density for the specific land use type for each parcel." [R. at 407] For areas within the current UGB, the CSMP utilizes average densities for new housing construction over the last six years, as inventoried by the city planning department.[36] [R. at 417] The city's RS designation is estimated to build out at 5.3 dwelling units per acre during the planning period.

For UAR areas located outside the existing UGB, the CSMP assumes an average residential density of 5.3 dwelling units per acre. [R. at 417] However, nothing in the record demonstrates how almost 3,000 acres of land "unsuitable" for urban development, and 519 acres of buildable "surplus," are analyzed and accounted in the sewer facility plan. The effect of these approximately 3,500 acres of "unsuitable" and "surplus" land on the capability and capacity of service cannot be determined from the record when it provides little or no information on the location of such "unsuitable" and "surplus" lands.

On the other hand, the city's housing needs analysis assumes that vacant and redevelopable residential land within the current UGB, will build out at the current average density of 3.96 units per acre. [R. at 1071, 1289] For the expanded UGB area, however, the housing needs analysis assumes an average density of just under 5.9 units per acre on 941 net acres of residential development spread over 2,866 acres. [R. at 1080, 1082] In essence, the city proposes to provide higher densities in UGB expansion areas on the city periphery than on existing vacant and redevelopable land inside the existing UGB.

Both needs analysis numbers are inconsistent with those used by the CSMP. For areas in the existing UGB, the city's needs analysis density is significantly less than that of the CSMP, which from a sewer service perspective, effectively leaves more development capacity inside the UGB than reported by the city.

[36] This residential density data is provided in Table 2-7 of the CSMP. [Record at Page 418] An average overall density and period of measurement is not provided, though. The department believes this data shows recent density of new construction for the period of 1998 to 2005.

The Bend General Plan incorporates a defective PFP. The discussion above highlights internal inconsistencies between the city's water and sewer facilities plans and the UGB expansion. Chief among these inconsistencies are that the sewer plans include areas that are not part of the UGB expansion area, and the UGB expansion area includes areas not analyzed in the CSMP. Similar deficiencies appear for the water system plan. These internal inconsistencies are incorporated into the Bend General Plan in chapter 8, Public Facilities and Services, do not provide an adequate public facilities plan required by Goal 2 and Goal 11 or as required by the Goal 11 rules or the UGB amendment rules (OAR 660, divisions 11 and 24, respectively). [R. at 1480, 1483]

No timely, orderly and efficient arrangement of public facilities. Timely, orderly and efficient arrangement refers to "a system or plan that coordinates the type, locations and delivery of public facilities and services in a manner that best supports the existing and proposed land uses." [Goal 11 and OAR 660-011-0000] If the public facility plan is found to be incomplete, as described immediately above, then the water and sewer facility plans, as a whole, cannot demonstrate the "timely, orderly and efficient arrangement of public facilities."

Did not evaluate carrying capacity. "Carrying capacity" is a term used by Statewide Planning Goal 6. This term does not apply directly to Goal 11 unless a water or air quality violation is found. Since the UGB expansion does not directly implicate water or air quality standards, there is no Goal 11 compliance issue.

Can the city's public facilities plan be acknowledged for areas of the existing UGB, only? At the city's request, the department considered whether the updated public facilities plan could be partially acknowledged for use in planning sewer and water services within the existing UGB. In order to be acknowledged, the adopted plan would need to demonstrate compliance with Goal 11 and its rules, including those parts of the goal and rules that prohibit extension of sewer collection systems beyond the UGB to serve properties located outside of the current UGB. The exception includes mitigating circumstance for specifically recognized health hazards.

Internal inconsistencies identified in this section, including density assumptions related to infill and redevelopment, and the efficient development of vacant land, need to be resolved between the city's needs analysis and its public facilities plans before the public facilities plans may be acknowledged. In addition, the city must complete its public facility plan for water by including information called out in OAR 660-011-0010 for areas served by the Avion Water Company and Roats Water Company, consistent with the city's urban growth management agreement with each water company. [OAR 660-011-0015] As a result, the director determines that he cannot partially acknowledge the city's public facilities plan based on the current submittal.

d. Conclusions

The director remands the public facilities plans for sewer and water, and directs the City of Bend to complete the work described below.

The city is directed to prepare revised public facility plans and amend chapter 8 of the Bend Area General Plan to clearly identify what sewer and water projects are needed to accommodate development in the UGB expansion area, including the elements listed below. To the extent that the city is relying on relative costs of public facilities and services to justify inclusion of particular lands within the UGB expansion area, it must include the comparative analysis required by OAR 660-024-0060(8).

Revised public facilities plans shall contain the items listed in ORS 660-011-0010(1), which outlines the minimum content for a public facility plan, including:

a. An inventory and general assessment of the condition of all the significant public facility systems which support the land uses designated in the acknowledged comprehensive plan;

b. A list of the significant public facility projects which are to support the land uses designated in the acknowledged comprehensive plan. Public facility project descriptions or specifications of these projects as necessary;

c. Rough cost estimates of each public facility project;

d. A map or written description of each public facility project's general location or service area;

e. Policy statement(s) or urban growth management agreement identifying the provider of each public facility system. If there is more than one provider with the authority to provide the system within the area covered by the public facility plan, then the provider of each project shall be designated;

f. An estimate of when each facility project will be needed; and

g. A discussion of the provider's existing funding mechanisms and the ability of these and possible new mechanisms to fund the development of each public facility project or system.

H. Transportation Planning

Several objections raise issues related to whether the transportation planning component of UGB planning complied with relevant requirements. The legal criteria for this portion of the submittal are primarily found in Statewide Planning Goal 12 and OAR 660, division 12 (the "Transportation Planning Rule" or "TPR").

1. Did the amendments to the transportation plan violate Goal 12 or OAR 660, division 12 and related portions of Goal 14 and OAR 660-024-060?

Several objections allege the amendments to the City of Bend's urban-area transportation plan violate Goal 12 and the TPR and related portions of Goal 14 and OAR 660-024-060, which require consideration of cost and feasibility of providing transportation facilities needed to serve planned urban development. The department submitted comments to the city prior to adoption of the amendments, and these comments along with the objections raise issues with whether the evaluation of transportation facility improvement needs (i.e., major road and highway improvements) provide a complete and accurate evaluation and comparison of the costs, advantages, and disadvantages of alternative UGB expansion areas.

a. Legal Standard

OAR 660-024-0060(8) sets forth how cities must evaluate and compare public facility costs of alternative boundary expansion areas:

> The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:
>
> * * *
>
> (c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

b. Summary of Local Actions

The city has adopted findings that reflect a transportation analysis of UGB alternatives conducted in 2007 by DKS (Bend UGB Expansion: Transportation Analysis), which has been incorporated into amendments to the city's transportation system plan (TSP), and the transportation element of the general plan. [R. at 2184-2303] The city's evaluation and comparison of transportation costs, advantages and disadvantages follows the city's overall approach to evaluation of alternatives, which combines multiple individual areas into a few composite options for UGB expansion.

The major findings of the city's transportation analysis are as follows:

- Overall impacts, needed mitigation measures, and costs are similar under any of the alternatives analyzed.

- State highways will be severely congested..... The most severe congestion would be on US 97 north of Colorado Avenue to the city limits. Significant system expansion, new facilities or new management measures would be needed to comply with state mobility standards."

- The four land use scenarios for UGB expansions have very similar relative impacts on the Capacity Street network. ....The location, function and scale of needed additional improvements on the state and city street network had very many common elements among the scenarios. That means that the total expected investment will be very similar no matter which combination of areas within the planning area is selected for UGB expansion.

- Development in the Juniper Ridge area does have several unique roadway elements associated with the state highway that do not occur with the other land use scenarios considered. These potentially could include upgraded junctions with US 97 at Cooley Road, US 97 at Deschutes Market Road and a potential additional connection in between. The scale of these projects would require additional review and approvals with ODOT.

- The total cost estimated for mitigations to the transportation system resulting from UGB expansion ranges from $154 million to $232 million .... A major element of this cost range is targeted for improvements at the US 97 / US 20 junction area which is under study by ODOT for a preferred alternative solution (cost estimated at $125 million to $185 million in 2006 Refinement Plan.)

- Further study is required to select the best options on state facilities in the US 97 and Cooley Road areas that were identified for the Juniper Ridge development scenario. Recommendations made in this study are preliminary only. Specifically the concept of upgrades at Cooley Road and Deschutes Market Road require further study in conjunction with the Juniper Ridge Master Plan to understand the best combination of

investments on the state highway system. (Findings in Support of UGB Expansion, page 150-151; [R. at 1202-1203]

c. Objections and DLCD Comments

The department and the Oregon Department of Transportation (ODOT) expressed concerns about the city's evaluation and comparison of transportation costs of different UGB expansion alternatives prior to adoption. The department raised this issue in its comment letters in July 2007 and October 2008.

In November 2007, the department advised that the city needed to do more work and coordination with ODOT to compare costs, advantages and disadvantages of expanding UGB to the north. [R. at 10378] In October 2008, the department again expressed concern that the city's process for evaluating transportation costs was not complete or detailed enough to comply with requirements in OAR 660, division 24. The department's comments questioned the city's decision to assign costs of major roadway improvements in the north area of Bend to the entire city, and the city's overall conclusion that the extent of needed transportation improvements was essentially the same regardless which lands were included in the UGB.

ODOT expressed significant concern about the proposal to extend commercial and other intensive zoning along both ends of Highways 20 and 97. Of particular concern was the northerly portion of Highway 97 and 20. Intensifying land use in this area will further complicate the process of identifying transportation solutions and, given that it will likely be 15-20 years before a long-term solution could be constructed, these more intensive uses will exacerbate the existing congestion and safety issues. (ODOT Preliminary Comments on City of Bend UGB Expansion, October 27, 2008) [R. at 4392]

ODOT also commented on the April 2007 DKS Traffic Report: "It is unclear to what extent this analysis reflects the impacts and needed mitigation for the currently proposed "Alternative 4." We are currently comparing this report to the Alternative 4 proposal but it is clear that the preferred alternative has not been sufficiently analyzed to determine what the transportation investment costs will be." (ODOT Preliminary Comments on City of Bend UGB Expansion, October 27, 2008) [R. at 4392]

Five objectors challenged whether the city has adequately evaluated and compared transportation costs, advantages and disadvantages of alternative UGB expansion areas:

- Swalley Irrigation District
- Rose and Associates
- Central Oregon LandWatch
- Newland Communities
- Department of State Lands

Each of these objectors made objections to the city's analysis that can be characterized as follows:

- The city failed to analyze relative costs of serving individual areas and instead assigned the cost of major improvements to the city or UGB as a whole, when in fact, these improvements are primarily needed to serve a particular area. Several objectors referred to comments provided by ODOT expressing concern about improvements proposed to in the North area, to Highway 20 and 97.

- The analysis of roadway improvements needs did not use a consistent or accurate method to evaluate transportation of roads needed to serve development in different areas of the city.

Individual objectors provided additional specific objections to the city's analysis, as follows.

Swalley Irrigation District – The city assigned costs of major roadway projects that appear to be needed primarily to serve UGB expansion to the NW to the entire city. These include a proposed new bridge crossing the Deschutes River and improvements to state highways 97 and 20. The city fails to provide a detailed cost estimate for the Deschutes River bridge construction. [Swalley, May 6, 2009, page 75]

Department of State Lands – The city excluded transportation infrastructure improvement costs directly associated with specific alternative UGB expansion areas, leading to flawed conclusions and decisions. The city excluded from its analysis expensive transportation improvements at Cooley Road that are required to serve the Juniper Ridge expansion area. The city also excluded the expensive bridge over the Deschutes River that is necessary to serve select northwest UGB candidate expansion areas. These projects are by far the largest improvements in the city's transportation infrastructure list, yet those improvements are not applied to the UGB expansion areas they uniquely serve. If the candidate UGB expansion areas served by these infrastructure improvements were not included in the UGB, then these expensive projects would not be needed or built to the same extent, and the extraordinary costs of the projects would not be incurred to the same degree. [DSL, May 7, 2009, page 5 of 6]

Rose and Associates, LLC – North end highway and bridge improvements are estimated at $300-$500 million with no clue as to where funding might come from. Rather than analyze the direct impacts of adjacent properties upon development, the city spread these costs evenly through out the system. This same methodology was not employed at the south end interchange, for example. There is not consistency in the methodology creating an unfair advantage for the north and west properties in terms of cost per acre to develop. [Rose and Associates, May 1, 2009, Exhibit 2]

The city used different local roadway spacing standards (arterials and collectors) for the north and west areas than they did for the southeast area. Due to steep slopes, the Deschutes River and other natural features, it would not be practical to build a standard grid system as is required in the southeast. Therefore, in the city's analysis, the cost to serve the southeast area is higher than serving the north and west areas. What they didn't

take into account was the extraordinary cost of building roadways on steep terrain. They also didn't take into account the extraordinary cost of building a bridge across the river and the north end interchange. The relative cost comparison is fundamentally flawed. [Rose and Associates, May 1, 2009 Exhibit 2]

Newland Communities – The city did not properly consider costs and advantages of its property (and others) in the southeast area that will rely on the existing collector and arterial street system and not require trips on the heavily impacted Highway 97 and 20 for access to employment and other local trips. [Newland Communities, May 7, 2008, pages 21-22]

Central Oregon LandWatch – The city did not provide a detailed transportation analysis for the UGB expansion that it ultimately adopted. The analysis the city relied upon covers earlier proposals that are significantly different than the one ultimately adopted by the city and county.

Expansion in the northwest area would require widening of Newport and Galveston Streets from three to five lanes, which would violate a city plan policy that restricts widening of these streets (Street System Policy 21 of the Bend Area General Plan). [LandWatch, May 7, 2009, page 16]

d. Analysis

The city's evaluation of transportation costs of serving different areas is improper and incomplete. By bundling combinations of different areas into UGB expansion alternatives, the city has not properly conducted the evaluation of "alternative areas" called for in OAR 660-012-0060(8) because the analysis does not disclose unique costs associated with serving individual areas.

The city has not justified assignment of cost for key major highway improvements in Highway 97/20 area to all of the possible UGB expansion areas. State highway and related improvements in the north Highway 97/20 area are the single largest transportation cost identified in the city's evaluation. The city's estimate, based on a 2006 refinement plan is that facilities will cost $125 million to $185 million. These improvements makes up roughly 80 percent of the total cost of transportation improvements needed to serve the proposed UGB expansion areas. The city's findings assert that these improvements will be needed for any of the possible UGB expansion areas the city is considering. The city's position is not supported by the findings provided and is contrary to the information that is in the record and as a result does not have an adequate factual base.

The city's findings, summarized above, state that Juniper Ridge has unique additional costs, but does not itemize or otherwise identify these costs, and indicates that the further study of appropriate solutions is needed, and that this would need to be done "in conjunction with the Juniper Ridge Master Plan." By contrast, the city has provided a

detailed estimate of individual street improvements needed to serve most of the other proposed expansion areas.

Also, as Central Oregon LandWatch notes, the city's analysis does not appear to have considered existing plan policies that that restrict widening of Newport and Galveston.

The DKS analysis that the city relies on was conducted prior to the development of the city's adopted UGB amendment, Alternative 4A. Alternative 4A is significantly different from the UGB expansion alternatives analyzed by DKS and as a result the city's analysis does not comply with OAR 660-024-0060.

e. Conclusion

The director remands the evaluation of transportation costs of UGB expansion alternatives for further work consistent with the requirements of OAR 660-024-0060(8). The findings and analysis need to be revised to:

1. Identify and assign costs of individual UGB expansion areas, rather than combinations of different areas;
2. Provide additional information regarding the costs of providing transportation facilities to serve individual areas, including any extraordinary costs related to overcoming topographic barriers or rights of way;
3. Provide more detailed analysis of the extent to which the costs of improvements for major roadway improvements in north area (including proposed improvements to Highways 20 and 97) are a result of and should be assigned to development in the north area rather than the city as a whole. (That is, the city's analysis and evaluation should assess whether the extent of improvements in north area might be avoided or reduced in scale or cost if the UGB was not expanded in this area, or if the extent of the UGB expansion was reduced.); and
4. Provide comparable estimates for providing needed roadway capacity for areas that, because of topographic constraints, may need to be served by different types of road networks. For example, growth on the east side can apparently be served by a fairly complete grid of streets, while topographic barriers limit potential for a full street grid in this area.

2. Does the UGB amendment violate Goal 12 because the urban-area Transportation System Plan has not been acknowledged to be in compliance with the Transportation Planning Rule?

a. Legal Standard

The TPR requires that cities and counties adopt TSPs establishing a system of planned transportation facilities and services to adequate to support planned land uses.

b. Summary of Local Actions

The city's findings note that the city adopted a TSP that was approved in periodic review. [R. at page 1202]

c. Objections

Swalley Irrigation District contends that the city's UGB amendment does not comply with various portions of the TPR that require the city to adopt a TSP, which sets forth a system of planned facilities and services to meet identified transportation needs.

d. Analysis

The Bend TSP, adopted in 2000, was *partially* approved by the commission in periodic review. The commission's approval of the TSP itemized a number of relevant TPR requirements with which the city had not fully complied**.** However, the department believes that, notwithstanding this remaining work, the existing TSP is partially acknowledged and the city may rely upon it. The TSP complies with Goal 12 and the TPR except for those provisions where the periodic review order specifically indicated additional work remains to be done. The objector does not indicate how the UGB amendment is inconsistent with specific provisions of the TPR where the city has additional work to do.[37]

e. Conclusion

The city has a substantially complete, commission-approved TSP. Because the objector has not identified specific TPR provisions that require additional work by the city that affect the UGB decision, the department disagrees that the TPR requirement that the city have an adopted TSP has been violated.

3. Does the UGB amendment violate Goal 12 and the Transportation Planning Rule because findings do not demonstrate there are adequate planned transportation facilities to serve the planned land uses?

a. Legal standard

OAR 660, division 24 requires that UGB amendments comply with all statewide planning goals and rules, including Goal 12 and the TPR. OAR 660-012- 0020(1)(d) allows cities to defer addressing requirements of OAR 660-012-0060 (to demonstrate that there are adequate planned transportation facilities) until property is re-designated or rezoned to allow urban development.[38]

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[37] The department has separately identified outstanding work related to TPR planning requirements for metropolitan areas that the city has not completed. These are discussed below, but were not raised by Swalley and so are not considered here.

[38] OAR 660-024-0020(1)(d) The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary;

b. Summary of Local Actions

The findings indicate that the city has elected to defer addressing OAR 660-012-0060 to subsequent plan amendments and zone changes as provided for in OAR 660-024-0020. The findings supporting the UGB amendment indicate that adopted zoning for UGB expansion areas put in place interim plan and zone designations that are intended to restrict development to levels that would not result in more traffic generation than allowed by existing zoning. [R. at 1202]

c. Objection

Swalley Irrigation District contends that the UGB amendment fails to comply with provisions of OAR 660-012-0060, applicable to plan amendments and zone changes, which require that the city plan for adequate transportation facilities and services to accommodate planned land uses.

d. Analysis

The city is required to address OAR 660-012-0060 requirements as part of its UGB decision *only* if it that decision also authorizes more intense use of the land (in terms of trip generation) than allowed under current zoning. In this case, the UGB decision defers addressing OAR 660-012-0060 to a separate process that would involve a plan amendment and zone change. In short, while the city has the option to address and comply with the OAR 660-012-0060 now, it has chosen instead to defer compliance with the TPR to a subsequent plan amendment or zone change, which it is allowed to do if its interim zoning does not allow development that would generate more vehicle trips than the prior zoning.

As noted in section III.E.4 of this report, however, the interim zoning applied by the city and the county includes provisions that *may* allow for development that would generate more vehicle trips. The director is unable to determine whether the city and county have complied with this provision because their findings do not address it and there does not appear to be a comparison of prior and current zoning of the expansion area for Alternative 4A in the record.

e. Conclusion

The objection is sustained. OAR 660, division 24 specifically allows local governments to address OAR 660-012-0060 in a subsequent plan amendment or zone change, but only if they show that the interim zoning adopted for the UGB expansion area will not generate more traffic than the prior zoning. The expansion area includes a significant amount of land that had prior resource zoning (mainly EFU), that now is zoned UAR-10, as a result, the director concludes that the city and county have failed to show that they are entitled to defer the application of OAR 660-012-0060.

The director remands with direction to either retain current zoning within the expansion area or evaluate and adopt findings and measures to address OAR 660-012-0060.

4. Planning Status of the Proposed Deschutes River Bridge Crossing

a. Legal Standard

OAR 660-012-0025 describes how local governments are to comply with the statewide planning goals in preparing TSPs. This rule includes three major requirements:

- It directs that TSPs are to include land use decisions regarding planned transportation facilities (OAR 660-012-0025)(1));
- It directs that TSPs include findings showing that planned facilities are consistent with applicable goal requirements (OAR 660-012-0025)(2)); and
- It allows, under certain conditions, that local governments may defer required planning decisions to a subsequent refinement plan. (OAR 660-012-0025(3))[39]

b. Summary of Local Actions

The TSP indicates that the city "contemplates" a new bridge over the Deschutes River in northwest Bend. The TSP also includes two new minor arterial street segments that would extend from existing roadways to either side of the Deschutes River to the location where the proposed bridge is contemplated:

> The transportation circulation plan for the greater Bend urban area also contemplates a new bridge over the Deschutes River. This new bridge would join an extension of Skyline Ranch Road on the west to an extension of Cooley Road on the eastside. *Arterial street connections are included in the plan to accommodate that facility.*
>
> The exact location and alignment of the affected roadways and bridge crossing is the subject of further study and evaluation. Also, the *final* determination of need, evaluation of state land use Goal 5 and other impacts is being deferred to a refinement study. Findings of need and impact will be incorporated into the TSP once that study has been completed. [R. at 1472, emphasis added]

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[39] (3) A local government or MPO may defer decisions regarding function, general location and mode of a refinement plan if findings are adopted that:

(a) Identify the transportation need for which decisions regarding function, general location or mode are being deferred;

(b) Demonstrate why information required to make final determinations regarding function, general location, or mode cannot reasonably be made available within the time allowed for preparation of the TSP;

(c) Explain how deferral does not invalidate the assumptions upon which the TSP is based or preclude implementation of the remainder of the TSP;

(d) Describe the nature of the findings which will be needed to resolve issues deferred to a refinement plan; and

(e) Set a deadline for adoption of a refinement plan prior to initiation of the periodic review following adoption of the TSP.

The proposed bridge is also shown on the adopted roadway system map.[40]

While the TSP appears to be deferring key planning decisions about the bridge to a refinement study, the adopted findings addressing OAR 660-012-0025(3)[41] say:

> [The city is] not proposing to defer decisions regarding function, general location and mode of a refinement plan to a later date. [Exhibit D, Bend UGB Expansion Study – Statewide Planning Goal 12 Findings, pages 15 and 41 of 55]

In the process of conducting its review, the department has learned that the city may have adopted the wrong findings.[42]

c. Objection and DLCD Comments

Swalley Irrigation District contends that the UGB amendment violates several provisions of the TPR, including OAR 660-012-0025. [Swalley Irrigation District, May 6, 2009, page 56] As discussed in detail in objections related to Goals 5, 11, and 14, Swalley argues that the sewer plan assumes a crossing of the Deschutes River—in the form of either a bridge or tunnel under the river—but does not incorporate the cost of this crossing in its cost estimates, or address relevant goal requirements that would apply to this decision.

DLCD's October 24, 2008 letter asked that the city clarify the planning status of the proposed bridge:

> While this improvement is included in the plan's list of "outstanding issues" the text of the plan suggests that the city has made key land use decisions about need, mode, function and general location of this planned improvement [in]…. Section 9.6.3 (quoted above)
>
> If the city is making a decision that this roadway and bridge are planned facilities subject only to subsequent decisions about selecting a precise alignment, the plan

[40] The river crossing is highlighted with a large asterisk with this note: "Bridge subject to further study of need and location (see TSP Chapter 9)" [R. at 1476]

[41] The city's adopted Goal 12 and TPR findings are referenced in the record at page 1220. The referenced exhibit, Exhibit D, was included in the city's 2007 notice to the department, but was not included in the adopted record.

[42] In response to a request from the department to confirm the contents of the city's record and findings, city staff advised the department that the wrong set of TPR findings were adopted. [Bend letter, December 7, 2009, page 8 of 9] The adopted findings are a draft version dating from June 2007. The record includes "replacement" findings developed in 2008 that are somewhat different than the 2007 findings, but these were not adopted by the city or county as their official findings. In addition, the city advises that it has posted a *third* set of TPR findings on its website that were not part of the city's record. Due to time constraints in preparing this report, the department has not been able to analyze these findings in detail. And, in any event, the director must base his decision on the city's adopted findings.

needs to (1) address the relevant goals, including Goal 5, (2) establish an overall corridor within which the roadway may be located; and (3) specify the process and standards by which a subsequent decision selecting an alignment for the roadway and bridge will be made. [R. at 4735]

d. Analysis

OAR 660-012-0025 directs that TSPs clearly make or defer decisions about proposed transportation improvements. In this case, the plan is ambiguous. It neither clearly authorizes the proposed bridge, with findings demonstrating that the bridge is consistent with relevant goals, nor clearly defers specific planning decisions about the bridge to a subsequent process.

It appears that the city may have intended to defer a decision on a possible bridge in the northwest area to some point in the future. However, the TSP does not accomplish deferral consistent with OAR 660-012-0025. The TSP does not include findings and provisions required to properly accomplish deferral consistent with the OAR 660-012-0025(3). In addition, parts of the TSP and other parts of the UGB submittal suggest a decision to plan a bridge at this location (i.e., the statement that the bridge is contemplated, and decision to plan for minor arterial roadways extending to either side of the river at to the proposed bridge location).

In short, further work is needed to either authorize the bridge as a planned facility, or defer decisions to a subsequent refinement plan consistent with OAR 660-012-0025. Also, whichever path the city chooses to take in addressing OAR 660-012-0025, its work should be conducted in concert with work addressing two other requirements: OAR 660-024-0060(8) evaluating and comparing costs of different UGB expansion alternatives and evaluating whether widening of Newport and Galveston streets is consistent with the city's adopted plan policies for these streets.

e. Conclusion

The objection is sustained. The plan policy language does not comply with OAR 660-012-0025. As described above, OAR 660-012-0025 requires specific findings and actions when a local government acts to defer required planning decisions to a refinement plan. The city's findings and policies do not fulfill requirements of OAR 660-012-0025(3). The director remands the decision with instructions to either revise the TSP to include planning decisions required to comply with the TPR and applicable goals or properly accomplish deferral consistent with OAR 660-012-0025(3).

Because the bridge is an expensive improvement and appears intended to serve a specific area, the city should, as part of its Goal 14 work, consider whether the bridge improvement is needed to serve a specific areas proposed for UGB expansion, and consider the costs of such an improvement as part of its evaluation of expansion alternatives consistent with OAR 660-024-0060(8).

5. Is the city obligated to complete overdue requirements to reduce reliance on the automobile?

This subsection addresses several issues related to TPR requirements that apply specifically to city's within metropolitan planning areas (MPOS), and whether these requirements must be satisfied prior to significantly amending its UGB. The TPR establishes planning requirements for cities within MPO areas to develop a strategy to reduce reliance on the automobile through the adoption of transportation and land use measures. This section of the report addresses three related issues:

1. Whether the metropolitan planning requirements of the TPR are applicable to Bend at this time;

2. Whether Bend's plan is in compliance with provisions applicable to metropolitan areas for adoption of standards and benchmarks to reduce reliance on the automobile; and

3. Whether the planning requirements in the TPR must be met prior to a significant amendment of the UGB.

Goal 12 and the TPR apply to the UGB expansion decision. Bend is subject to TPR requirements for metropolitan areas, and is well past deadlines for completing the required work. The outstanding work is significant because it is likely to require that the city take additional steps to promote mixed-use land use patterns that support multiple modes of transportion. This work relates directly to requirements in Goal 14 that the city maximize efficiency of urban land uses, and demonstrate that lands within the UGB cannot reasonably accommodate anticipated housing, employment and other land needs.

Issue 1: Whether Bend is Subject to Metropolitan Transportation Planning Requirements at this time.

a. Legal standard

OAR 660-012-0016 and -0055 require that each MPO prepare a regional transportation system plan (RTSP) in coordination with adoption of the federally-required regional transportation plan (RTP). Under both provisions, MPO plans and the city's conforming amendments to its TSP must be adopted no later than one year after the federally required RTP.[43]

[43] OAR 660-012-0016: (1) In metropolitan areas, local governments shall prepare, adopt, amend and update transportation system plans required by this division in coordination with regional transportation plans (RTPs) prepared by MPOs required by federal law. Insofar as possible, regional transportation system plans for metropolitan areas shall be accomplished through a single coordinated process that complies with the applicable requirements of federal law and this division. * * *

(2) When an MPO adopts or amends a regional transportation plan that relates to compliance with this division, the affected local governments shall review the adopted plan or amendment and either:

b. Summary of Local Actions

The city asserts that obligations in OAR 660-012- 0016 and -0055 to conduct metropolitan planning are not applicable at this time:

> OAR 660-012-0016…[and]…OAR 660-012-0055(1)…[do] not apply to the City of Bend because at the time the 2000 Bend Urban Area Transportation System Plan was prepared and adopted on October 11, 2000, the city of Bend was not part of an MPO. [Exhibit D, Bend UGB Expansion Study – Statewide Planning Goal 12 Findings, pp. 15 and 41 of 55]

However, the city's findings, prepared in 2007 and adopted by reference in its submittal, indicate that the city understood the one-year deadline for adoption of an RTSP:

> An RTP that meets federal requirements is expected by the end of June 2007 and an RTP that meets the requirements of this division is expected by the end of December 2007. The City of Bend is committed to amending the City's TSP to be consistent with the adopted RTP within one year of the adoption of the RTP. [Exhibit D, Bend UGB Expansion Study – Statewide Planning Goal 12 Findings, page 42 of 55]

c. DLCD Comments

The department advised the city that the metropolitan transportation planning requirements in the TPR are applicable to Bend at this time. The department raised this issue in its comment letters in July 2007 and October and November 2008:

> The Transportation Planning Rule (TPR) requires that metropolitan areas adopt transportation and land use plans and measures that significantly increase the availability and convenience of alternative modes of transportation and reduce reliance on the automobile. Bend is past due in completing this work. The City of

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(a) Make a finding that the proposed regional transportation plan amendment or update is consistent with applicable provisions of adopted regional and local transportation system plan and comprehensive plan and compliant with the applicable provisions of this division; or,

(b) Adopt amendments to the relevant regional or local transportation system plan that make the regional transportation plan and the applicable transportation system plans consistent with one another and compliant with the applicable provisions of this division. Necessary plan amendments or updates shall be prepared and adopted in coordination with the federally-required plan update or amendment. Such amendments shall be initiated no later than 30 days from the adoption of the RTP amendment or updated and shall be adopted no later than one year from the adoption of the RTP amendment or update or according to a work plan approved by the commission. * * *

OAR 660-012-0055(1)(b): When an area is designated as an MPO or is added to an existing MPO, the affected local governments shall, within one year of adoption of the regional transportation plan, adopt a regional TSP in compliance with applicable requirements of this division and amend local transportation system plans to be consistent with the regional TSP.

> Bend is currently obligated to work with department to prepare a work plan and schedule for completing the required work. (DLCD, November 21, 2008) [R. at 3781]

d. Analysis

The metropolitan transportation planning requirements were applicable at the time the city adopted its amended UGB and amended its TSP. As outlined above, the TPR includes two separate but essentially equivalent requirements for adoption and update of transportation system plans in metropolitan areas.

OAR 660-012-0016 was adopted in 2006 and specifically addresses the relationship of state and federally required transportation plans. This was intended to minimize duplication of effort in meeting state and federal transportation planning requirements. As noted above, the rule specifically directs that TPR required planning "…be accomplished through a single coordinated process" and allows up to one year for local governments to adopt conforming amendments when a federally adopted plan is adopted or amended. (OAR 660-012-0016 also allows local governments to request an extension to the one year deadline, but the city has not requested an extension.)

OAR 660-012-0055, adopted in 1991, requires local governments in a newly designated or expanded MPO to adopt a TSP within one year of adoption of a federally required RTP.

The Bend MPO was designated in 2002, and the MPO adopted an RTP on June 27, 2007. Consequently, the city was obligated to adopt amendments to its TSP meeting relevant TPR requirements no later than June 27, 2008.[44]

The fact that the city was not part of an MPO in 2000 when it adopted its TSP does not affect the applicability of the metropolitan planning requirements. OAR 660-012-0016 clearly directs that metropolitan planning requirements be addressed *at the same time* and *through the same process* that is used to develop the RTP.

The MPO has been working on preparation of an RTP since the area was designated as a metropolitan area in 2002. The city's proposed UGB expansion proposal, TSP, and the RTP have been developed at the same time (2006-2007), and all three plans cover the same planning period: through 2030. Under the terms of the TPR, the city's TSP is subject to metropolitan planning requirements and must include these in its transportation plan.

e. Conclusion

The TPR requirements for metropolitan areas are applicable to Bend at this time.

[44] The city could also have requested that the commission approve a work program extending the date for completion of the required plan as provided in OAR 660-012- 0016, but it has not done so.

Issue 2: Whether the adopted TSP complies with TPR requirements for metropolitan areas.

a. Legal Standard

OAR 660-012-0035 includes requirements regarding planning for transportation choices, and reduced reliance on the automobile. The rule includes a specific target for reduction in vehicle miles traveled (VMT) and provides timeframes for completion and review procedures.[45]

b. Summary of Local Actions

The submittal includes conflicting findings on its compliance with metropolitan transportation planning requirements. As noted above, city argues that provisions of the TPR for metropolitan areas do not apply to Bend at this time. However, the city's findings also say that the city has adopted performance measures and benchmarks as required by 0035 and that it can demonstrate that it has planned for a five percent reduction in vehicle miles travelled (VMT) per capita, as required by the rule:

> * * * the TSP includes benchmarks to assure satisfactory progress towards meeting the approved standard or standards adopted pursuant to this rule at

[45] OAR 660-012-0035: (4) In MPO areas, regional and local TSPs shall be designed to achieve adopted standards for increasing transportation choices and reducing reliance on the automobile. Adopted standards are intended as means of measuring progress of metropolitan areas towards developing and implementing transportation systems and land use plans that increase transportation choices and reduce reliance on the automobile. It is anticipated that metropolitan areas will accomplish reduced reliance by changing land use patterns and transportation systems so that walking, cycling, and use of transit are highly convenient and so that, on balance, people need to and are likely to drive less than they do today.
OAR 660-012-0035(5) *MPO areas shall adopt standards to demonstrate progress towards increasing transportation choices and reducing automobile reliance* as provided for in this rule:

(a) *The commission shall approve standards by order upon demonstration by the metropolitan area* that:

(A) Achieving the standard will result in a reduction in reliance on automobiles;

(B) Achieving the standard will accomplish a significant increase in the availability or convenience of alternative modes of transportation;

(C) Achieving the standard is likely to result in a significant increase in the share of trips made by alternative modes, including walking, bicycling, ridesharing and transit;

(D) VMT per capita is unlikely to increase by more than five percent; and

(E) The standard is measurable and reasonably related to achieving the goal of increasing transportation choices and reducing reliance on the automobile as described in OAR 660-012-0000.

(6) *A metropolitan area may also accomplish compliance with requirements of subsection (3)(e), sections (4) and (5) by demonstrating to the commission that adopted plans and measures are likely to achieve a five percent reduction in VMT per capita over the 20-year planning period*. The commission shall consider and act on metropolitan area requests under this section by order.
(7) *Regional and local TSPs shall include benchmarks* to assure satisfactory progress towards meeting the approved standard or standards adopted pursuant to this rule at regular intervals over the planning period. MPOs and local governments shall evaluate progress in meeting benchmarks at each update of the regional transportation plan. Where benchmarks are not met, the relevant TSP shall be amended to include new or additional efforts adequate to meet the requirements of this rule. [emphasis added]

> regular intervals over the planning period. [Exhibit D, Bend UGB Expansion Study – Statewide Planning Goal 12 Findings, page 27 of 45]
>
> * * * the City can demonstrate to the commission that adopted plans and measures are likely to achieve a five percent reduction in VMT per capita over the 20-year planning period.[46] In addition, the City has adopted interim benchmarks for VMT reduction and shall evaluate progress in achieving VMT reduction at each update of the TSP. [Exhibit D, Bend UGB Expansion Study – Statewide Planning Goal 12 Findings, page 27 of 55]

c. DLCD Comments

The Bend metropolitan area does not have commission-approved standards or benchmarks for achieving reduced reliance on the automobile as required by OAR 660-012-0035. The department raised this issue in its comment letters of October 24, 2008 and November 21, 2008:

> We…recommend that the city revise or delete the finding related to TPR Section 0035. This section of the rule relates to adoption of measures to implement an adopted, Commission-approved standard (required of 0035(5)-(6). As noted above, work related to these requirements remains as an outstanding work task. (DLCD, October 24, 2008, page 16.) [R. at 4737]
>
> The key outstanding [TPR] requirement relates to adoption of a plan and measures to significantly increase the availability and convenience of alternative modes of transportation and reduce reliance on the automobile. This includes development and adoption of specific targets for accomplishing reduced reliance. (TPR Section 035(5)) (DLCD, November 21, 2008) [R. at 3781]

d. Analysis

While the city has adopted several benchmarks for adding bike and pedestrian facilities and transit service, it has not formally proposed or adopted a performance measure as required by provisions of OAR 660-012-0035, and has not obtained or sought commission approval of such a standard as required by OAR 660-012-0035(5)(a).

Further, although the city asserts that it can demonstrate that its TSP is likely to achieve a five percent reduction in VMT—thus meeting relevant requirements of the TPR—nothing in city's TSP or adopting findings provide evidence to support this assertion, or that would provide a basis for a commission order approving this finding as provided under OAR 660-012-0035(6).

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[46] Under terms of OAR 660-012-0035(6), a metropolitan area can meet the requirement to adopt standards for accomplishing reduced reliance on the automobile in sections 0035(4) and (5) "…by demonstrating to the commission that adopted plans and measures are likely to achieve a 5% reduction in VMT per capita over the 20 year planning period."

e. Conclusion

The city's amended TSP does not satisfy TPR requirements for metropolitan planning. The city must develop a standard and benchmarks that show how the city's transportation and land use plans will significantly increase the availability and convenience of alternative modes of transportation and reduce reliance on the automobile and obtain commission approval of those measures.

Issue 3: Whether the TPR's requirements for metropolitan area planning must be completed prior to or contemporaneously with the city's UGB amendment

a. Legal standard

OAR 660-024-0020 requires that the city address all of the statewide planning goals in its decision to amend its UGB:

> (1) All statewide goals and related administrative rules are applicable when establishing or amending a UGB, except as follows:
>
> * * *
>
> (d) The transportation planning rule requirements under OAR *660-012-0060* need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary …. OAR 660-024-0020 (emphasis added).[47]

This rules allows deferral of the application of OAR 660-012-0060, but not of other provisions of the TPR. The TPR includes several specific requirements for metropolitan areas that affect or are implemented through changes to land use densities, designations and design standards to meet specific requirements in the TPR to significantly increase transportation options and significantly reduce reliance on the automobile. These include:

- Adoption of local standards, approved by LCDC, that demonstrate the city's TSP will significantly increase transportation options and reduce reliance on the automobile. (OAR 660-012-0035(4)-(6))
- Adoption of a parking plan and a transit plan (OAR 660-012-0020(2)(c) and (g))
- Adoption of ordinance amendments to allow for transit-oriented developments, and transit-supportive uses and densities along transit routes (OAR 660-012-0045(4))

[47] As noted above, the director sustained an objection from Swalley Irrigation District concerning this requirement as it relates to deferring application of OAR 660-012-0060 of the TPR to subsequent plan and zone change decisions.

b. Summary of Local Actions

Table 2 below summarizes the city's actions and findings that relate to planning requirements for metropolitan areas. As noted above, for the most part the city contends that these requirements do not apply to the city at this time. Individual findings appear to suggest that the city has nonetheless adopted actions that comply with metropolitan planning provisions in the TPR.

Table 2. City findings and actions related to TPR Requirements for Metropolitan Areas

TPR Section	Summary	Goal 14 Related Outcome	City Findings/Status
0035(4)–(7)	Performance standards for increasing trans-portation options and reducing reliance on the automobile	Plan and zoning changes to allow more mixed use higher density residential and employment development; especially in close-in areas, and infill and redevelopment	City has not adopted performance standards. The TSP includes several "benchmarks" for TDM, bike and pedestrian improvements that were adopted as part of city's 2000 TSP that predate Bend's designation as an MPO[48]
0020(2)(g) 0045(5)(c)	Parking Plan to reduce per capita parking by 10% or adopt parking management reforms	Supports increased employment density, multifamily housing density	City findings assert city has met this requirement of the rule. Nothing in TSP or record includes a parking management plan that meets applicable requirements
0020(2)(c)(C)	Transit Plan designating major transit routes and major stops	Supports higher residential and employment densities	TSP includes a map of potential routes and three potential major stops.[49] [50] Policies dating from 2000 TSP direct city to continue work on transit planning
0045(4)–(5)	Ordinances allowing transit-oriented developments and transit supportive uses and densities along transit routes	Increased housing and employment densities along transit routes	City has adopted some changes to ordinances as a result of 2000 TSP work and PR remand. Policies direct city to continue work.[51] No new ordinance provisions as part of this amendment.

c. DLCD Comments

The department raised this issue in its comment letters in October and November 2008:

[48] TPR requires benchmarks that measure progress in implementing adopted, LCDC approved performance standards. Since Bend does not have an adopted, approved performance standard, these benchmarks do not meet -0035 requirements.

[49] At present, the following are proposed as major transit stops: the downtown transit center, St. Charles Medical Center and Central Oregon Community College. Also, as the system grows, evaluation of major transit stops in the northern and southern reaches of the Bend area should be conducted. [R. at 1388]

[50] "The final determination of public transit routes, facilities and amenities within the UGB areas will be subject to further analysis and funding availability. [R. at 1453]

[51] "Major transit corridors shall be opportunity areas within ¼ mile of either side of a corridor shall be a priority for medium to high density residential designations to implement the Framework Plan. [TSP, R. at 1354]

> In our July 2007 comments we recommended that the city clarify the relationship of proposed TSP amendments to the city's obligations to prepare and adopt a regional transportation system plan (RTSP) in compliance with the TPR. Of particular note are TPR requirements to plan for reduced reliance on the automobile. Because land use strategies play an important role in accomplishing this objective, this work should be integrated with the city's consideration of UGB amendments. (DLCD, October 24, 2008) [R. at 4737]

> The key outstanding [TPR] requirement relates to adoption of a plan and measures to significantly increase the availability and convenience of alternative modes of transportation and reduce reliance on the automobile. This includes development and adoption of specific targets for accomplishing reduced reliance. (OAR 660-012-035(5)) Because urban growth patterns affect reliance on the automobile, the proposal needs to assess how expansion to different areas would affect city's efforts to reduce reliance on the automobile. In general, reduced reliance on the automobile is accomplished by planning for compact, mixed use development, with an emphasis on focusing development in close in areas and along major transit routes. This is especially true for major trip generating uses, including regional commercial development, the proposed university and hospital medical center. For these uses, the proposal should evaluate whether needs can be met through increased infill or redevelopment or more intense development of close in sites. (DLCD, November 21, 2008) [R. at 3781]

d. Analysis

The city is required to address portions of Goal 12 and TPR related to metropolitan planning in its UGB amendment. The UGB expansion adds a significant quantity of land and residential and employment capacity to the Bend urban area that will affect transportation systems and that will have long-term effects on the extent to which area residents must rely on automobiles. Compliance with these provisions of the rule is important now because the work needed to meet these requirements relates to and affects the city's decisions about how to accommodate future urban growth. Generally, this portion TPR is met by changes to land use designations and densities that result by planning and zoning additional areas for compact, mixed use development and higher densities, through increased rates of infill and redevelopment and through development of transit oriented development or mixed use centers or neighborhoods:

> It is anticipated that metropolitan areas will accomplish reduced reliance by changing land use patterns and transportation system so that walking, cycling and use of transit are highly convenient and so that, on balance, people need to and are more likely to drive less than they do today. [OAR 660-012-0035(4)]

In addition, the TPR includes detailed guidance about the kinds of land use actions that metropolitan areas should consider to accomplish this objective.[52]

As the department stated in its comments to the city, this work must be integrated into the city's analysis of future land use needs as part of the UGB amendment process. As discussed above, the Goal 14 rule requires the city to consider and adopt efficiency measures to attempt to accommodate future land use needs on lands that are currently within the UGB. Since city must comply with the TPR as part of its UGB amendment, the city's efficiency measures must also include land use related actions that comply with the TPR.

e. Conclusion

The city's plan does not comply with key portions of the TPR related to planning for reduced reliance on the automobile. The city does not have a commission-approved standard for accomplishing reduced reliance on the automobile; a transit or parking plan; or related implementing measures allowing for transit oriented development.

Compliance with this part of the TPR is likely to require that the city take steps to plan and zone lands to encourage more compact, mixed use development, either through infill and redevelopment in the central area, or more detailed planning for transit oriented development or mixed use centers along transit routes. This work is closely related to work city is otherwise required to complete in order to comply with Goal 14 to adopt "efficiency measures." The city's decision is remanded to address these portions of the TPR, and to coordinate this work with its proposed UGB expansion.

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[52] OAR 660-012-0035(2) lists the types of land use changes that local governments are encouraged to consider to reduce reliance on the automobile:
(a) Increasing residential densities and establishing minimum residential densities within one quarter mile of transit lines, major regional employment areas, and major regional retail shopping areas;
(b) Increasing allowed densities in new commercial office and retail developments in designated community centers;
(c) Designating lands for neighborhood shopping centers within convenient walking and cycling distance of residential areas; and
(d) Designating land uses to provide a better balance between jobs and housing considering:
(A) The total number of jobs and total of number of housing units expected in the area or subarea;
(B) The availability of affordable housing in the area or subarea; and
(C) Provision of housing opportunities in close proximity to employment areas.

6. Did the rezoning of lands within the UGB expansion area violate Goal 2, OAR 660-024-0050(5) and the Transportation Planning Rule?

a. Legal standard

OAR 660-024-0050(5) (2006)[53] provides that at the time a city and county adopt a UGB amendment, they must also adopt comprehensive plan and zoning designations that are consistent with the 20-year land need determinations for all land that is being added to the UGB. This rule codifies long-standing appellate case law.[54] For Bend, this rule applies to revisions to plan and zoning maps to address future urban residential, commercial, industrial, institutional, park, and other uses in the expansion area. There are two ways to zone the land being added to the UGB: (1) retain the existing rural zoning, such as rural residential or exclusive farm use, or (2) apply interim urban holding zones that limit or prohibit land divisions, maintain large parcel sizes, limit uses, and prohibit increased vehicle trip generation.[55] The purpose of this requirement is to maintain the potential of the urbanizable land[56] within the UGB for future planned urban development.

b. Summary of Local Actions

In addition to adopting new interim plan and zoning designations, the city also designated future land uses for the expansion area on the Urban Area Framework Plan Map [R. at

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[53] The text of OAR 660-024-0050(5) (2006):

> When land is added to the UGB, the local government must assign appropriate urban plan designations to the added land, consistent with the need determination. The local government must also apply appropriate zoning to the added land consistent with the plan designation or may maintain the land as urbanizable land until the land is rezoned for the planned urban uses, either by retaining the zoning that was assigned prior to inclusion in the boundary or by applying other interim zoning that maintains the land's potential for planned urban development. The requirements of ORS 197.296 regarding planning and zoning also apply when local governments specified in that statute add land to the UGB.

[54] A UGB expansion based on a specific need must be conditioned on zoning and development the subject property to achieve the result of providing for the identified need. *Concerned Citizens vs. Jackson County*, 33 Or LUBA 70 (1997).

[55] *See, e.g.*, ORS 197.752(1): "Lands within urban growth boundaries shall be available for urban development concurrent with the provision of key urban facilities and services in accordance with locally adopted development standards." *Also see* OAR 660-024-0020(1)(d): "The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary."

[56] The definitions in OAR 660, division 15 define "Urbanizable land" as: "Urban land that, due to the present unavailability of urban facilities and services, or for other reasons:

(a) Retains the zone designations assigned prior to inclusion in the boundary; or
(b) Is subject to interim zone designations intended to maintain the land's potential for planned urban development until appropriate public facilities and services are available or planned."

"Urban land" is defined as "land inside an urban growth boundary."

4897]. Part of the expansion area was designated as six master plan areas: four on the west side, one on the south side, and one on the northeast side. The map specifies the approximate gross "available acres" for various urban uses for each master plan area.

c. Objection

Tumalo Creek Development LLC contends Bend violated Goal 2 by assigning future plan designations in the proposed Framework Plan to lands outside its jurisdiction. This would be lawful only if the designations are guidelines. If the map designations are binding, the city must coordinate with Deschutes County and comply with statutes and rules regarding re-zoning, including Goal 2. Objector states that it owns the land designated as Master Plan Area 3. [May 7, 2009 letter, p. 2]

d. Analysis

The city designated future urban land uses on the Urban Area Framework Plan Map. This designation was coordinated with Deschutes County through the county's co-adoption of the UGB amendment, Framework Plan amendments, and plan and zoning map amendments, in compliance with OAR 660-024-0050(5)(2006). However, the city did not apply the *appropriate* plan designations and zoning as required by OAR 660-024-0050(5).[57]

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[57] The proposal does not comply with the OAR 660-024-0050(5) requirement to apply appropriate plan designations and zoning to the expansion area. This rule states:

> When land is added to the UGB, the local government must assign appropriate *urban* plan designations to the added land, consistent with the need determination. The local government must also apply appropriate zoning to the added land consistent with the plan designation, or may maintain the land as urbanizable land either by *retaining the zoning* that was assigned prior to inclusion in the boundary *or* by applying other *interim zoning that maintains the land's potential for planned urban development until the land is rezoned for the planned urban uses.* The requirements of ORS 197.296 regarding planning and zoning also apply when local governments specified in that statute add land to the UGB. [Emphasis added]

The city applied the following *plan designations* to the expansion area: Urban Reserve Residential, Urban Reserve Commercial, Urban Reserve Industrial, Surface Mining, and Public Facilities. [Bend Urban Area Proposed General Plan Map, R. at 40, 174, 1189, 1055, 1226, 1232] Except for the last two, these are rural, not *urban* plan designations.[57] The city has in the past zoned a large amount of land outside the UGB as "urban reserve"[57] but has not used such zoning inside the UGB.

The proposed *zoning* for the expansion area also does not comply with OAR 660-024-050(5). The county adopted two new zones for the expansion area, the Urban Holding-10 (10-acre minimum parcel size) and the Urban Holding-2½ (2½-acre minimum parcel size), in Title 19 of the Deschutes County Code. [R. at 1852] The code also states that an existing city zone, Suburban Low Density Residential (SR 2½), like the new UH-2½ and UH-10 zones, is an urban holding zone. Please see the detailed discussion in section III.E regarding the department's position that these three zones will not preserve urbanizable land for future urbanization and therefore are not urban holding zones in violation of Goal 14 and OAR 660-0050(5). The "land uses" that appear on the Bend Area Framework Plan Map [R. at 1235] are neither land use designations nor the pre-expansion zoning or interim holding zones; they are the intended future urban uses, only.

e. Conclusion and Decision

The city and county did not violate Goal 2 by adopting future urban plan designations for lands within the proposed UGB expansion area. The city appropriately coordinated with Deschutes County. The director denies this objection.

However, as described in more detail immediately below, the city violated OAR 660-024-0050(5) by applying *rural* plan designations (Urban Reserve Residential, Urban Reserve Commercial, Urban Reserve Industrial) to portions of the expansion area, and by applying zoning designations that fail to maintain the expansion area as urbanizable land either by retaining the zoning that was assigned prior to inclusion in the boundary *or* by applying other interim zoning *that maintains the land's potential for planned urban development until the land is rezoned for the planned urban uses.*

I. UGB Location

1. Do the UGB locational analysis and UGB amendment comply with the requirements of ORS 197.298, Goal 14 and OAR 660, division 24?

a. Legal standard

ORS 197.298, Goal 14 and OAR 660-024-0060[58] contain the applicable state requirements that establish *where* a city may expand its urban growth boundary (UGB).

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[58] ORS 197.298 Priority of land to be included within urban growth boundary:

(1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:

(a) *First* priority is land that is *designated urban reserve* land under ORS 195.145, rule or metropolitan service district action plan.

(b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, *second* priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an *exception area or non-resource land*. Second priority may include *resource land that is completely surrounded by exception areas* unless such resource land is high-value farmland as described in ORS 215.710.

(c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the amount of land needed, *third* priority is land designated as *marginal land* pursuant to ORS 197.247 (1991 Edition).

(d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, *fourth* priority is land *designated in an acknowledged comprehensive plan for agriculture or forestry*, or both.

(2) Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.

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

(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."
[emphasis added]

Statewide Planning Goal 14 (as amended April 28, 2005) requires the following:

Boundary Location
The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors:
(1) Efficient accommodation of identified land needs;
(2) Orderly and economic provision of public facilities and services;
(3) Comparative environmental, energy, economic and social consequences; and

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

The relevant rules in OAR 660-024-0060 (adopted 10-5-06) are as follows:

Boundary Location Alternatives Analysis

(1) When considering a UGB amendment, a local government must determine which land to add by evaluating alternative boundary locations. This determination must be consistent with the priority of land specified in ORS 197.298 and the boundary location factors of Goal 14, as follows:

(a) Beginning with the highest priority of land available, a local government must determine which land in that priority is suitable to accommodate the need deficiency determined under 660-024-0050.

(b) If the amount of suitable land in the first priority category exceeds the amount necessary to satisfy the need deficiency, a local government must apply the location factors of Goal 14 to choose which land in that priority to include in the UGB.

(c) If the amount of suitable land in the first priority category is not adequate to satisfy the identified need deficiency, a local government must determine which land in the next priority is suitable to accommodate the remaining need, and proceed using the same method specified in subsections (a) and (b) of this section until the land need is accommodated.

(d) Notwithstanding subsection (a) through (c) of this section, a local government may consider land of lower priority as specified in ORS 197.298(3).

(e) For purposes of this rule, the determination of suitable land to accommodate land needs must include consideration of any suitability characteristics specified under section (5) of this rule, as well as other provisions of law applicable in determining whether land is buildable or suitable.

(3) 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.

(4) In determining alternative land for evaluation under ORS 197.298, “land adjacent to the UGB” is not limited to those lots or parcels that abut the UGB, but also includes land in the vicinity of the UGB that has a reasonable potential to satisfy the identified need deficiency.

(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.

(6) The adopted findings for UGB adoption or amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis. If the analysis involves more than one parcel or area within a particular priority category in ORS 197.298 for which circumstances are the same, these parcels or areas may be considered and evaluated as a single group.

(7) For purposes of Goal 14 Boundary Location Factor 2, “public facilities and services” means water, sanitary sewer, storm water management, and transportation facilities.

(8) The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation with regard to impacts on the state transportation system. “Coordination” includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:

(a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the UGB;

(b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the UGB; and

The department provided a detailed explanation of how to complete an analysis of UGB locational alternatives in letters to the city dated May 27, 2008, October 24, 2008, and November 21, 2008 [R. at 3758, 4356, 4722, and 7268]. Deschutes County legal counsel also provided public written advice concerning the locational analysis on September 17, 2007 that is consistent with the department's letters. [R. at 8870] The process is set forth in Goal 14, ORS 197.298, and OAR 660, division 24, and is summarized as follows.

Once a local government has accommodated as much of its total 20-year identified needs for housing and employment as it reasonably can in the current UGB,[59] it then proceeds to analyze lands within a study area outside the existing UGB from which to select lands to satisfy any remaining needs. Goal 14, ORS 197.296, OAR 660-024-0050(4).

The first step is to determine a study area around the existing UGB. Next, the government determines which lands in the study area are the highest priority lands under ORS 197.298(1). For Bend, since there are no acknowledged urban reserves that were adopted under OAR 660-024-0060(1)(a) and ORS 197.298(1)(b), the highest priority lands for urbanization are exception areas (areas that are not subject to the agricultural or forest lands goals, and that usually are planned for rural residential, rural industrial, rural commercial or other rural uses). In the case of Bend, exception areas include properties zoned UAR, RR-10, and SR 2½, as Goal 3 and Goal 4 exceptions were taken for all of these lands (the status of the UAR zoned lands is addressed in more detail later in this section).

Once the highest priority lands are identified, the local government must develop a list of the lands and/or map them. The list or map, along with other data, is then used to analyze the lands for their suitability.

The suitability analysis relates directly to how the local government has justified its need for additional lands. If the additional lands are for general needed housing (e.g., for single family residential) the suitability criteria that may be used as a screen to eliminate lands from consideration (at this stage) are the same general criteria used in determining what residential lands are "buildable" (housing) or "suitable vacant and developed land" (employment). OAR 660-024-0060(1)(e) and 660-024-0010(1)(lands for housing are not buildable if they: have severe natural hazards, are protected by Goal 5, have slopes over 25 percent, are within the 100-year floodplain, can't be provided with public facilities); OAR 024-0010(8))(lands for employment are not "suitable" unless they are "serviceable" (OAR 660-009-0005(9) and are either "vacant" (a lot greater than 1/2 acre not containing permanent improvements or greater than 5 acres where less than 1/2 acre is occupied by

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(c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

[59] The adequacy of the city's accommodation of identified need and efficiency measures for land within the existing UGB is addressed in more detail elsewhere in this report.

improvements, OAR 660-009-0005(14)) or developed but likely to be redeveloped during the planning period. OAR 660-009-0005(1).

If, however, the additional lands are for an "identified need" with "specified characteristics" in terms of location, then the local government may use the required locational characteristics identified in the need showing as a screen to eliminate lands from consideration. OAR 660-024-0060(5). An example is rail-dependent industrial uses. If the local government's economic opportunities analysis demonstrates a need for this type of employment use, lands without rail access could (and should) be excluded from review under the priority of lands statute (ORS 197.298(1)). Similarly, if the local government's housing needs analysis shows a need for high-density, multi-family housing that needs to be located close to a university, or that is located on a planned bus route (in the comprehensive plan), then the city or county may specify suitability criteria that limit its locational analysis to lands that will satisfy the identified need. OAR 660-024-0060(5).

Once the local government has determined the quantity of suitable first priority lands adjacent to the existing UGB, it compares that quantity with the amount of land need it has demonstrated in its housing needs analysis and/or economic opportunities analysis. OAR 660-024-0060(1)(b). If the amount of suitable land in the first priority category exceeds the amount needed, it then uses the Goal 14 location factors to identify which first priority lands to include in its UGB. OAR 660-024-0060(1)(b). The Goal 14 location factors are not criteria, they are considerations that are applied to each alternative parcel or group of parcels. The parcel or parcels that, on balance, best satisfy the factors are selected. In other words, no single one of the four location factors may be the sole basis for selecting a particular parcel(s) to add to the UGB.

If the amount of suitable land in the first priority category does *not* exceed the amount needed, the city or county then proceeds to evaluate the second priority category in the same manner, and so on until sufficient lands are included in the UGB.OAR 660-024-0060(1)(c).

As noted above, ORS 197.298(3)(a) allows a city or county to limit the application of the priority of lands for urbanization established in ORS 197.298(1) if the need being addressed is specific type of identified need with particular locational requirements. Similarly, ORS 197.298(3)(b) and (c) also provide bases for not including lands that would otherwise be a higher priority for a UGB expansion. See also, OAR 660-024-0060(1)(d). The exceptions to the priority statute for the difficulty of providing future urban services (ORS 197.298(3)(b), and for maximum efficiency of land use within the proposed UGB are narrowly construed as exceptions to the general rule for where UGBs are to expand.[60]

[60] ORS 197.298(3) allows a city or county to exclude higher priority parcels from consideration up-front, before the city selects suitable parcels in that priority; and, if the land supply in that priority category exceeds need, before the city applies the Goal 14 boundary location factors. There is a high threshold to exclude higher priority land, such as exception land (including land zoned UAR) and instead add lower

This step provides a tentative list of highest priority parcels (within the exception lands category) to add to the UGB.[61]

If the amount of suitable exception land is *not* sufficient to meet the land need, the local government adds all of the suitable exception lands to the UGB expansion area, and then evaluates lands in the next highest priority category in ORS 197.298(1). For Bend, the next highest priority of land for urbanization is resource land with low resource production capability.

If the analyses do not yield enough land to meet the housing and employment needs the city has identified, then city may consider lower priority lands (i.e., the next set of higher capability farm and forest lands) and produce a tentative list of suitable lands in this final priority category for addition to the UGB.

If there remains an unmet need after this process, the next step is to expand the study area and begin the process described above again from the beginning.

b. Summary of Local Actions

The following is a summary of the city's and county's analyses of where to expand the UGB:

In January 2006, the city established a study area of approximately 27,000 acres for both a proposed UGB expansion and a proposed urban reserve area designation. [R. at 45, 1060] In June 2007, the first UGB expansion scenario was prepared and sent to the department with a 45-day notice. On August 7, 2007, the city and Deschutes County

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priority lands, such as farmlands. For example, the fact that it may cost more to provide public services to one area than others does not satisfy ORS 197.298(3)(b) or OAR 660-024-0060. Likewise, the fact that one parcel will yield fewer new homes or less development than others does not allow a local government to exclude that land from a UGB expansion area in favor of other, lower priority lands. LUBA and the courts have construed the ORS 197.298(3) exceptions narrowly to allow inclusion of lower priority lands at the exclusion of higher priority lands only in cases with compelling facts. *See, e.g., DLCD v. Douglas County*, 36 Or LUBA 26 (1999) ("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.); *1000 Friends of Oregon, et al vs. Metro*, 38 Or LUBA 565 (2000)("Metro must determine whether exception lands can reasonably accommodate the proposed use. As we stated in *Parklane I* and *Residents of Rosemont*, exception criterion (ii) is not satisfied by findings that alternative sites to resource lands cannot accommodate the proposed use 'as well as' those resource lands … a finding that the resource land has relatively fewer developmental constraints or a higher percentage of buildable lands than an alternative site is not sufficient to satisfy the 'reasonably accommodate' standard").

[61] "The goal of consideration under [the Goal 14 boundary location factors] is to determine the 'best' land to include within the UGB, based on appropriate consideration and balancing of each factor." The Goal 14 location factors "must be considered together and balanced, but individual factors are not independent approval criteria." *Alliance for Responsible Land Use v. Deschutes Cty*, 40 Or LUBA 304, 318-319 (2001), *aff'd* 179 Or App 348 (2002). *Also see* OAR 660-024-0060(1)(b).

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withdrew the urban reserve amendment until the UGB expansion was resolved. [DLCD Form 3 Notice of Denial/Withdrawal, Supplemental Record at 1423] In the fall of 2007, the city enlarged the study area to over 44,000 acres,[R. at 1061] and to respond to direction from the city council to consider the need for land for employment uses as well as housing. [R at 1060]

The city established and applied "threshold suitability criteria" to lands within the enlarged study area. [R. at 1062] The suitability criteria were intended to be consistent with the Goal 14 location factors. [R. at 1062] The parcels that met all of these criteria were considered suitable to meet Bend's needs for housing and employment (and other land needs). [R. at 1168-1170] Those suitability criteria included:

- Whether the parcel can be served [with sewer] by an existing or proposed city facility detailed in the 2008 Collection System Master Plan [e.g., the amended Public Facilities Plan]
- Whether the parcel is serviceable according to the 2007 City Water Master Plan, as amended, or a private water district service area
- If the parcel scores medium or high for street connectivity
- Not an active surface mine, not a state of local park, not a landfill, not a destination resort
- Vacant or improved with improvement value below $20,000
- Improved with a dwelling, if on a parcel greater than 3 acres
- Improved with a school or church, if on a parcel greater than 5 acres
- Not recreational land
- Not owned by the Bend/La Pine School District
- Not in a commercial farm classification with 23 acres of irrigation water rights
- Not subject to restrictive CC&Rs
- Not in private open space
  [R. at 1169]

The "suitable" parcels were then separated into the ORS 197.298 priority groups. The city then applied the Goal 14 location factors to the exception lands by ranking them. The city developed five alternate UGB expansion scenarios after performing additional analysis and evaluation under planning commission direction.

Alternative 1 "places a strong emphasis on the statutory priorities of ORS 197.298(1)" and has "an overriding emphasis on including higher priority lands under the statute."[62] [R. at 1186] The Planning Commission recommended Alternative 4 to the city council, which modified Alternative 4 as a new Alternative 4A. The city council adopted Alternative 4A on January 5, 2009, and Deschutes County adopted it on February 11, 2009. Alternative 4A between 8,462 and 8,943 acres of land to the UGB. The city's

[62] Alternative 1 is the only one of the total seven scenarios for which the city makes this statement. Alternative 1 included 87 percent exception land and 13 percent resource land. Alternative 4A, which the city council adopted on January 5, 2009, reduced the amount of exception land to 74 percent and increased the amount of resource land to 26 percent.

findings report the total acreage as 8,462 acres [R. at 1054], but the city's post-adoption notice to the department reports the acreage as 8,943 (which *may* be the "total" acreage of 8,462 plus the city's "surplus" of another 519 acres). [R. at 1054]. Of the 8,500 plus acres added, it appear the city included approximately 3,500 to 4,000 acres of land that it determined are not "suitable" for inclusion in the UGB. [R. at 1054]

Of the 5,475 acres of "suitable" land included in the UGB, 4,069 acres (74 percent) was first priority exception land (79 percent of which is zoned Urban Area Reserve), and 1,406 acres (26 percent) was resource land.[63] [R. at. 47-48, 153-154, 156, 171-178, 1050, 1062-63, 1166-1207, including Figures V-6 and V-7 and Table V-9]

c. Objections

Tony Aceti – The amendment includes too much EFU land and not enough exception land. [May 4, 2009 page 1]

Terry L. Anderson – The southwest Buck Canyon area, which is suitable exception land, should be included in the amended UGB. [May 6, 2009, page 1]

Central Oregon LandWatch – The amendment does not justify its assumption that the following lands are unsuitable:

- Parcels smaller than three acres with a house,
- Split-zoned parcels, and
- Parcels that did not score "medium" or "high" for street connectivity.

In applying the Goal 14 boundary location factors, the city did not adequately consider the "economic" part of the factor that considers "[o]rderly and economic provision of public facilities and services." The city also fails to apply one of the location factors, "Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB." (May 7, 2009, pp. 9, 13, 15-16]

Hilary Garrett – The amendment passed over suitable high-priority exception land in the southwest Buck Canyon area for actively farmed EFU lands east of Hamby Road for the indefensible reason that the farm parcels will help build the southeast sewer interceptor. One of the suitability criteria was not evenly applied to like lands; *i.e.*, objector's residential subdivision of lots largely smaller than three acres was included while parcels smaller than three acres in another part of the UGB study area were excluded. No parcels smaller than three acres should be included in the amendment. [April 18, 2009, pp. 1-2]

Miller Tree Farm – The city's threshold suitability criteria impermissibly allowed the city to add resource land in place of much of the available exception land. The city gave these criteria more weight than the ORS 197.298 priorities, without justification in the record for doing so. As LUBA ruled in *Residents of Rosemont v. Metro*, 38 Or LUBA 199

[63] In response to a department request for direction to location in the record, the city identified the following pages as constituting the city's boundary location analysis: 1059-1065, 1166-1207, and 7772-7775.

(2000) and *1000 Friends of Oregon v. Metro*, 38 Or LUBA 565 (2000), it isn't sufficient to determine that exception lands cannot accommodate the proposed use as well as resource lands can accommodate the same use(s). Development must be directed to exception lands rather than the resource lands if the exception lands can reasonably accommodate the proposed development. For example, a finding that exception lands can't accommodate as much or as dense residential development per acre as resource lands does not justify excluding those exception lands. The city did not properly apply and balance the Goal 14 boundary location factors. [May 5, 2009, pp. 1-2, 8-10]

Paul J. Shonka – The amendment includes too much EFU land and not enough exception land. [May 1, 2009, pp. 1-2]

Cindy B. Shonka – The amendment includes too much EFU land and not enough exception land. [May 1, 2009, pp. 1-2]

Tony and Cyllene King (McGraw and Associates, LLC) – The amendment includes too much EFU land and not enough exception land. [May 1, 2009, p. 1]

Oregon Department of State Lands – The selection of land does not comply with the ORS 197.298 priorities to add land to a UGB. The "Stevens Road Tract," a large parcel of EFU land abutting the east side of Bend's UGB and owned by the objector, should be included in the expansion if any resource land is included, because the tract is the city's "top-ranked UGB candidate expansion area." [May 7, 2009, pp 4-5]

Rose and Associates, LLC – The city's sewer, water and transportation plans dictated the location of the UGB expansion and predetermined the outcome of the location analysis, in violation of Goal 14. The location analysis fails to include one of the four Goal 14 boundary location factors: "Comparative environmental, energy, economic and social consequences." The location analysis inappropriately deferred the evaluation and comparison of alternate sites for provision of public facilities and services, which is required by OAR 660-024-0060(8). [May 5, 2009, p. 3]

Barbara I. McAusland – The correct lands were not selected in the location analysis. [May 5, 2009, pp. 1-2]

Swalley Irrigation District The correct lands were not selected in the location analysis and the city's suitability findings are inadequate, in violation of Goal 14. The city fails to adequately consider adding thousands of acres of highest priority exception lands in the southwest area. The amendment lacks a factual basis for its claim that all suitable exception land has been included. The city's suitability criteria, including exclusion of parcels smaller than 3 acres with a dwelling, are not consistent with State law. The city fails to comply with its own ordinance that requires application of the Goal 14 boundary location factors and the Goal 2 exception process that were in effect before LCDC amended Goal 14, Goal 2, and OAR 660-004-0010 on April 28, 2005. Exception land in the northwest area should be removed from the amendment. The location alternatives analysis should have considered the impacts of urbanization on rural irrigation systems,

which are water systems under OAR 660-024-0060(8). [May 6, 2009, pp. 40, 42-43, 60-61, 71-73, 75-79]

Newland Communities – The findings support inclusion of the objector's 149 agriculturally designated acres in the northeast area that are surrounded by exception lands on the northeast, north, west, and south. Inclusion of this land should be augmented with a better "legal and factual argument" based on the record, which the objector provides. The city properly followed the location analysis in Goal 14, OAR 660-024-0060, and ORS 197.298. [May 7, 2009, pp. 3, 9-10, 22]

Harold W. Sampson – The city should include the exception lands east of N. Highway 97 bordered by the Burlington Northern Railroad and Juniper Ridge and should eliminate the auto mall and industrial area west of N. Highway 97. [May 1, 2009, p. 1]

Brooks Resources Corporation – Land selected for employment uses is not suitable for that use. [April 29, 2009, pp. 5-8]

d. Analysis

The city and county locational analysis of where to expand its UGB does not comply with ORS 197.298, Goal 14 or the pertinent provisions of OAR 660, division 24 as summarized above. The analysis does reflect a substantial effort to examine what lands are best suited for addition to the UGB, but the methodology and approach used improperly excluded a substantial amount of land planned and zoned as exception lands (including a significant amount of land in existing suburban subdivisions, many of which rely on septic systems) from consideration for inclusion in the UGB. This resulted from the city's use of suitability criteria, some of which did not correspond to the future housing and employment needs identified by the city, and some of which simply do not comply with state law.[64]

Generally, the analysis of suitability is not transparent and lacks clear explanations linking its analysis to the data in the record. In addition, once they began considering farm land for the UGB expansion, the city and county were required to analyze farm lands with the poorest soils first, which they failed to do. The record does not demonstrate that all resource lands within the study area are grouped by soil capability, and then considered and added according to capability (lower capability lands before higher capability lands), in accordance with Goal 14, ORS 197.298, and OAR 660-024-0060.

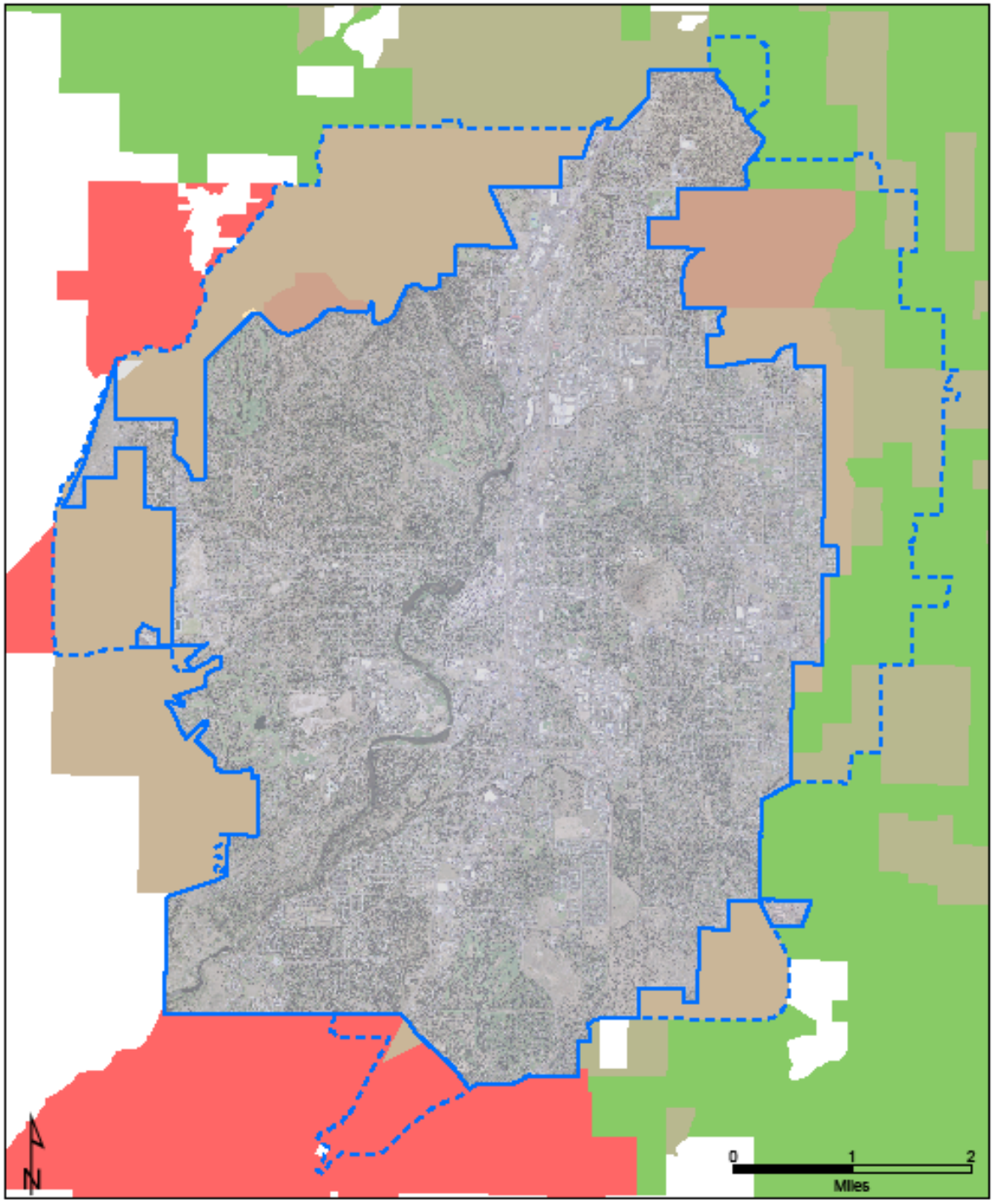
[64] On or about April 10, 2008, the city planning commission was presented with a proposed "strategy" for the city's boundary alternatives analysis. [R. at 7772-75] The memorandum quoted relevant portions of Goal 14, OAR 660-024-0060, and ORS 197.298, but its explanation of how those laws must be applied was incorrect. In letters dated May 27, 2008, October 24, 2008, and November 21, 2008, the department advised the city of the deficiencies in its UGB location analysis, and offered detailed direction on how to complete the analysis correctly under state law. [R. at 3758, 4356, 4722, and 7268] The incorrect "strategy" proposed in the memorandum appears to be the methodology that the city used to arrive at Alternative 4A, which the city council adopted on January 5, 2009.

The city and county did, generally, attempt to avoid land planned as agricultural land. However, the present findings and record do not justify (at this point) any significant inclusion of agricultural lands in the UGB expansion area. The city has begun to make an adequate showing that expansion onto some agricultural lands to the east may be necessary to provide public services to higher priority lands (ORS 197.298(3)(c) [R. at 1183-1186], but given the uncertainty concerning the *amount* of land needed, the director cannot determine that the city has made the showing required by the statute at this time. There also are several, technical, problems with the submittal. The record does not include a map or description of all resource parcels in the study area, as required by OAR 660-024-0060(6). The boundary location analysis map shows only those parcels determined to be "suitable" because they met all of the city's threshold suitability criteria. [R. at 165, 1180, Figure V-4] The department has prepared a map showing the zoning of lands in the study area as Figure 2, using GIS data from Deschutes County.

The record does not include a map or description of all exception parcels in the study area, which is required by OAR 660-024-0060(6). But see Figure 3 on the following page, prepared by the department based on the county's official zoning maps. The boundary location analysis map in the record shows only those exception parcels that are determined "suitable" because they met all of the "threshold suitability criteria." [R. at 164, 1179 - Figure V-3] The city removed all other exception parcels from the study area prior to the boundary location analysis, using the "threshold suitability criteria" that appears to be developed *after* the completed need analysis. Other exception lands are not part of the need analysis in the record. [R. at 47-48,153-160, 1062-63, 1168-75]

Suitability. As described above, in order to eliminate lands from consideration for inclusion in a UGB expansion, they either must be found to be generally unsuitable based on the criteria in OAR 660, division 8 ("buildable" lands for housing) or division 9 ("suitable and available lands" for employment), or (if the lands are being added for a specific identified land need) the suitability criteria must be based on the applicable needs analysis (HNA or EOA). In addition, lands in a study area may be unsuitable for one need, and suitable for another (for example, suitable for single family housing, but unsuitable for a medical center). The underlying housing and employment needs analyses establish a generalized housing need – mainly for single family housing, as well as general commercial uses, and do not identify why these general uses can't be met (at least in part) on adjacent exception lands identified as unsuitable. As shown in Figure 2, there is a substantial amount of exception land to adjacent to the southern boundary of the city. The city's analysis of these lands is addressed in more detail, below.

The city's application of site criteria to *all* planned urban uses before the study area parcels were divided into the ORS 197.298(1) priorities was overbroad. This step prematurely rejected many parcels that are suitable for one or more of the city's future land needs before those parcels could be analyzed under OAR 660-24-0060 and ORS 197.298. The city improperly "refined and reduced the size of the study area for the 20-year UGB expansion (2028) in an iterative fashion." [R. at 152, 1167]



Exception Lands Zoning

Figure 3

Oregon
Department of Land
Conservation & Development

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

Unincorporated County Areas

- EFU Resource
- SR2.5 - Res. Suburb. Low Density
- UAR - Urban Area Reserve
- MUA10 - Multi Use Agriculture
- RR10 - Rural Residential

Urban Growth Boundary

- Current UGB
- Expansion Area

Aerial image: 2008 NAIP
UGB and zoning information extracted from maps provided by City of Bend and Deschutes County

DLCD GIS jcd 01/05/10
Areazoning@1.mxd

The suitability criteria for a UGB amendment for a *general* residential or employment land need are identified in OAR 660-024-0010(8) (for employment uses) and in OAR 660-024-0010(1) (for general housing needs). OAR 660-024-0060(5) allows local governments to apply additional suitability criteria, but only for an "identified need." That term is a term of art, from ORS 197.298(3)(a) – e.g. an "identified need" that has specific locational requirements that are unique to that particular use. The city could, for instance, determine that there is a need for and identified housing type, such as higher density attached multi-family housing along transit routes (where there is access to multiple modes of travel), and thereby justify not following the statutory direction to include exception lands before agricultural lands, if the only locations for this identified type of housing that are along planned or current transit (bus) lines are zoned for agriculture. Similarly, if the economic opportunities analysis identified a need for a site with rail access, and the only such site is on agricultural lands, then the city could use rail access as a suitability criterion and screen out exception lands if there are no exception lands with rail access.

Some of the city's suitability criteria do follow the general suitability criteria allowed under OAR 660-024-0010(1) and 0010(8). Others are appropriate only for an "identified need" for a particular planned urban use that has specific locational requirements. To assist the city on remand, the director provides his evaluation of the city's criteria in the following table.

Table 3. Findings Regarding Boundary Location Threshold Suitability Criteria

Criterion	Analysis
Lot is not entirely within the 100-year floodplain.	This criterion is based on OAR 660-008-0005(2) (for housing)[65] and OAR 660-009-0005(2) (for employment),[66] and is a permissible screen for both general land need and specific identified land needs.
Lot is serviceable for *city* sanitary (does not include private or public systems other than the city).	This criterion is a permissible screen under OIAR 660-008-0005(2)(e) (cannot be provided with public facilities), except for the limitation to *city* facilities. So long as sanitary sewer is available or feasible during the planning period, the property cannot be excluded as unsuitable.
Lot is serviceable for city water.	This criterion is permissible, see analysis immediately above.
Lot is in regional stormwater plan service area.	This criterion is permissible, see analysis immediately above.

Criterion	Analysis
The lot scores medium or high for street connectivity.	This criterion is not a permissible suitability screen. As long as street access is feasible during the planning period, the property can be provided with public facilities. This criteria can, however, be used as a Goal 14 factor for determining what exception lands to include in the event there is an excess amount of such lands and the city and the county are deciding which exception lands to include.
Lot is a public or private right-of-way for roads, sidewalks, and/or landscaping.	Publicly owned land generally is not considered buildable (Goal 10 – within the existing UGB) or suitable (OAR 660-024), and is an appropriate suitability screen. However, *private* right-of-way and open space land is "generally considered "suitable and available."
Lot does not contain an active surface mine in the county's Goal 5 inventory.	This criterion, which is based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), is a permissible suitability screen for general land need.
Lot is not designated by the county as a Goal 5 resource.	This criterion, which is based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), is a permissible suitability screen for general land need.
Lot is not a cemetery.	This criterion, which is based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), is a permissible suitability screen for general land need.
Lot is not owned by the federal government.	This criterion, which is based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), is a permissible suitability screen for general land need.
• Lot is not a state park; • Lot is not owned by the Bend Metro Park and Recreation District (listed twice). • Lot is not owned by Bend-La Pine School District	These criteria, which are based on OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment), are permissible suitability screens for general land need.

Criterion	Analysis
Lot is not a public or private open space.	This criterion is a permissible suitability screen for *publicly owned* open space, but not for private open space. OAR 660-008-0005(2).
Lot is developed with a school or church and is larger than 5 acres.	(1) Some church and school land may be redeveloped. Such lands may be screened as "unsuitable" only based on findings and an adequate factual base that they are not likely to be redeveloped during the 20-year planning periodLarger lots with substantial vacant land generally will be considered to be suitable (at least in part)..
Lot is not a landfill.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period. OAR 660-008-0005(2) (for housing) and OAR 660-009-0005(2) (for employment).
Lot is not a destination resort approved by the county.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period.
Lot has recorded CC&Rs prohibiting further division.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period. The director finds that the evidence citied in the city's findings, R. at 1171-1174, does not support the city's conclusion that the listed subdivisions cannot be redeveloped. The comments in Table V-6 [R. at 1173] show that additional residential development is not prohibited in almost all of the subdivisions listed. Even for those few subdivisions where additional land divisions are prohibited by CC&Rs, the findings do not address whether there are vacant lots, or whether additional housing not involving a land division, such as an "in-law" apartment or "granny flat" may be feasible.

Criterion	Analysis
Lot has improvements with a value of less than $20,000.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period. The valuation threshold used by the city is very low in relation to the potential value of residential redevelopment, and would appear to effectively define lands that have minimal improvements as being developed rather than vacant.
Lot has 1 dwelling and is larger than three acres.	This criterion may be used only if based on findings and an adequate factual base that the lands are not likely to be redeveloped during the 20-year planning period. The acreage threshold used by the city is very high. A lot with an existing home and several acres of land normally could accommodate some additional residential development during a twenty-year planning period. As noted in the section of this report addressing housing need, the city has not analyzed the actual level of redevelopment that has occurred on such lands, making it impossible to reach definitive conclusions about the amount of redevelopment that is likely to occur, as those terms are used in OAR 660-008-0005(2) and 660-024-0010(1) and 0060(1)(e) and (5). The city appears to have excluded a substantial amount of exception lands based on this criterion.

Criterion	Analysis
Lot is zoned EFU-TRB with 23 acres of high value soils when irrigated OR zoned EFU-UAL with 36 acres of high value soils when irrigated.	The capability of soils on commercial farm parcels becomes relevant only if and when (a) all suitable exception parcels have been added, (b) some amount of 20-year land need remains, (c) the city goes to the next highest priority under ORS 197.298(1), which is agriculture or forest land, (d) lower capability agriculture or forest parcels have been given priority over higher capability resource parcels per ORS 197.298(2), (e) lower capability resource parcels are not suitable for the identified need, or there is not enough lower capability resource land to meet that remaining need, and (f) lowest priority high value resource land must be considered.

By excluding a large amount of adjacent exception lands as "unsuitable" based on suitability criteria that are not tied to a specific identified need for housing or employment, or are not based in the general criteria allowed under OAR 660-024-0060, the city and county have not complied with Goal 14, ORS 197.298, and OAR 660, division 24. The analysis creates an artificial shortage of first priority exception lands, and then uses that shortage to justify including lower priority resource land, effectively undermining the statutory priorities in ORS 197.298.[67]

[67] In *D.S. Parklane Development, Inc. v. Metro*, 35 Or LUBA 516 (1999), *aff'd as modified* 165 Or App 1 (2000), LUBA found that Metro, in part, created its own inadequacy of higher priority lands to accommodate urban land need. LUBA concluded that this error undermined the urban reserve rule's priority scheme "and hence the urban reserve rule." "[W]e conclude that Metro's failure to study enough higher priority lands created in part the inadequacy that Metro relied upon to designate lower priority lands, and further that Metro's application of Subsections 2, 3 and 4 [of OAR 660-021-0030] as described above effectively undermines the urban reserve rule's priority scheme and hence the urban reserve rule." *Id.* at 554.

"The relationship between the elements of ORS 197.298(1) through (3) is essentially the same as the relationship between the elements of OAR 660-021-0030(3) and (4), and LUBA's and the Court of Appeals' interpretation of the latter should guide the interpretation of the former." *Residents of Rosemont v. Metro*, 38 Or LUBA 199, 249 (2000), *aff'd in part, rev'd and rem's on other grounds* 173 Or App 321 (2001). The statutory exceptions to the priorities to add land to a *UGB* in ORS 197.298(3), enacted in 1995, were based on the statutory exceptions to the priorities to add land to *urban reserves* in OAR 660-021-0030(4), which LCDC had previously adopted in 1992. Therefore, interpretations of the OAR 660-021-0030(4) priority exceptions in *Parklane* apply to Bend's use of the ORS 19.298(3) priority exceptions in this UGB amendment, including the magnitude of error caused by improper use of both the priorities and the exceptions to the priorities.

In conclusion, even assuming that (1) the city's 20-year land need estimate of 4,956 acres [R. at 39, 43, 152, 1054, 1058, 1167] is correct, and (2) the city does not need to adopt any additional efficiency measures to accommodate housing need within the existing UGB, its appears that the city could meet all of its 20-year land needs within adjacent exception lands.[68]

Aggregation of Lands for Alternatives Analysis. A second general problem with the locational analysis is that large areas grouped for evaluation do not have similar circumstances as required by OAR 660-024-0060(6). The analysis:

- Aggregates all parcels in the study area and then applied the same "threshold suitability criteria" for all urban land needs;
- Did not separate resource parcels by soil capability before applying site need criteria;
- Did not map or describe the resource parcels in the study area by soil capability;
- Classified resource lands by current use, which is not a valid "common circumstance" under Goal 14, ORS 197.298, and OAR 660-024-0060;
- Segregated exception parcels with potential scenic or natural resources from other exception parcels, without any Goal 5 inventory and regulatory protection program as a basis for doing so;
- Grouped together exception and resource parcels into UGB alternative scenarios based, in part, on cost to extend sewer lines, instead of following the methodology for selecting parcels to include in Goal 14, ORS 197.298 and OAR 660-024-0060;
- Segregated exception parcels into two different groups—parcels zoned Urban Area Reserve and all other exception parcels—when all exception parcels are the same priority and must be treated alike under ORS 197.298(1)(b).

As a result, the analysis does not comply with the OAR 660-024-0050(5) requirement to apply appropriate plan designations and zoning to the expansion area. This rule states:

> When land is added to the UGB, the local government must assign appropriate *urban* plan designations to the added land, consistent with the need determination. The local government must also apply appropriate zoning to the added land consistent with the plan designation, or may maintain the land as urbanizable land either by *retaining the zoning* that was assigned prior to inclusion in the boundary *or* by applying other *interim zoning that maintains the land's potential for planned urban development until the land is rezoned for the planned urban uses.* The requirements of ORS 197.296 regarding planning and zoning also apply when local governments specified in that statute add land to the UGB. [emphasis added]

[68] The findings provide that only 5,733 acres of the adjacent exception lands in the study area are "suitable," and only 5,434 acres are both "suitable and available." [R. at 159, 175-176, 1174, 1190-91]

Response to Objections. For the reasons set forth above, the following objections are sustained by the director:

- The amendment includes too much EFU land and not enough exception land (Tony Aceti, Paul J. Shonka, Cindy B. Shonka, Tony and Cyllene King (McGraw and Associates)).

- The amendment does not justify excluding parcels that have a house and are smaller than three acres (Central Oregon LandWatch, Swalley Irrigation District).

- The amendment does not justify excluding parcels that are split-zoned or don't score medium or high for street connectivity (Central Oregon LandWatch)

- The correct parcels were not selected for inclusion in the UGB. (Barbara I. McAusland, Swalley Irrigation District).

- The city improperly excluded suitable high priority exception land in the SW Buck Canyon area (Hilary Garrett).

- One of the suitability criteria was not evenly applied to like lands; i.e., objector's residential subdivision containing lots smaller than three acres was included, while parcels smaller than three acres in another part of the UGB study area were excluded (Hilary Garrett).

- The use of threshold suitability criteria impermissibly allowed the city to add resource land in place of much of the exception land. Development must be directed to the exception lands instead of resource lands if the exception lands can reasonably accommodate the proposed development. A finding that exception lands cannot accommodate as much or as dense residential development per acre as resource lands does not justify excluding those exception lands (Miller Tree Farm).

- The selection of land does not comply with the ORS 197.298 priorities to add land to a UGB (Department of State Lands).

- The suitability findings are inadequate, in violation of Goal 14 (Swalley Irrigation District).

- The amendment fails to adequately consider adding thousands of acres of highest priority exception lands in the SW area (Swalley Irrigation District).

- The amendment lacks a factual basis for its claim that all suitable exception land has been included (Swalley Irrigation District).

- Suitability criteria, including exclusion of parcels smaller than three acres with a dwelling, are not consistent with State law (Swalley Irrigation District).

- The SW Buck Canyon Area is suitable exception land and should be included in the expansion if needed (Terry L. Anderson).

- The city fails to apply one of the location factors, "Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB" (Central Oregon LandWatch).

- The location analysis fails to include one of the four Goal 14 boundary location factors: "Comparative environmental, energy, economic and social consequences" (Rose and Associates, LLC).

- The amendment does not properly apply and balance the Goal 14 boundary location factors (Miller Tree Farm).

The following objections are denied:

- The "Stevens Road Tract," a large parcel of EFU land abutting the east side of Bend's UGB that is owned by the objector, should be included in the UGB expansion if any resource land is included, because it is the city's "top-ranked UGB candidate expansion area" (Department of State Lands). Reason for denial: Because of the improper application of relevant state goals, statutes and rules in the city's urban growth boundary location analysis, it is not possible to determine, until the city redoes the location analysis on remand, whether any resource land must be added to the UGB, and if so, where. In addition, there is no showing that these lands have lower capability soils, under ORS 197.298(2).

- The amendment fails to comply with a city ordinance that requires application of the Goal 14 boundary location factors and the Goal 2 exception process that were in effect before LCDC amended Goal 14, Goal 2, and OAR 660-004-0010 on April 28, 2005 (Swalley Irrigation District). Reason for denial: LCDC adopted amendments to Goal 14, Goal 2, and OAR 660-004-0010 on April 28, 2005, effective April 28, 2006. These amendments, among other things, revised the Goal 14 location factors and eliminated the need for Goal 2 exception findings for a UGB amendment. A city that began the UGB amendment process prior to LCDC's action had the option of proceeding with either the "old" Goal 14 or the "new" Goal 14. The city submitted a 45-day notice of the UGB amendment on June 11, 2007[69] and adopted the UGB amendment on January 5, 2009; Deschutes County adopted the UGB amendment on February 11, 2009; and the city and county submitted a revised UGB amendment to the department on April 16, 2009[70], after the goal amendments took effect. Between the time that the city submitted its notice and the time the city and county adopted the revised UGB amendment, the city made several changes to the findings and conclusions and used the amended Goal 14. Any provisions in the city's plan or code to the contrary are not consistent with current State law and are not valid or enforceable. The goals and that apply to this UGB amendment are those in effect after LCDC amended Goal 14, Goal 2, and OAR 660-004-0010.

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[69] See Notice of Proposed Amendment in the department's City of Bend PAPA file 010-007.

[70] See Notice of Adoption of UGB Amendment in the department's City of Bend UGB file 2009-01.

- Exception land in the northwest area should be removed from the amendment (Swalley Irrigation District). Reason for denial: The director cannot determine based on the current record whether these lands should or should not be included.

- The location alternatives analysis should have considered the impacts of urbanization on rural irrigation systems, which are water systems under OAR 660-024-0060(8) (Swalley Irrigation District). Reason for denial: OAR 660-024-0060(8)[71] specifies how cities apply the Goal 14 boundary location factors to the land in a statutory priority category in order to select the parcels to fulfill the city's 20-year land need for a particular urban use. This rule addresses application of only one of the four factors, "orderly and economic provision of public facilities and services," which must be weighed and balanced when applied to all parcels in the relevant priority. Goal 14 and OAR 660, division 24 use the term "public facilities and services," but public facilities and their component systems are defined in Goal 11 and OAR 660, division 11. Goal 11 defines "water system" as "a system for the provision of piped water for human consumption subject to regulation under ORS 448.119 to 448.285." (emphasis added) Irrigation is "the watering of land by artificial means to foster plant growth." (emphasis added)[72] Thus, an irrigation system is not a water system under Goal 11, Goal 14, and their implementing rules, and a city does not consider irrigation systems in a UGB location analysis.

The following objections are addressed in other sections of this report:

- The location analysis inappropriately deferred the evaluation and comparison of alternate sites for provision of public facilities and services, which is required by OAR 660-024-0060(8) (Rose and Associates, LLC) (see Goal 12).

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[71] This rule statess:

> (8) The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:
>
> (a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the UGB;
>
> (b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the UGB; and
>
> (c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

[72] Definition from Merriam-Webster On-Line Dictionary.

- Land selected for employment uses is not suitable for that use (Brooks Resources Corporation) (see Goal 9).

d. Conclusion and decision

The UGB location analysis and UGB amendment do not comply with the boundary location requirements in Goal 14, ORS 197.298, and OAR 660, division 24.

The director remands the UGB amendment with direction to submit a UGB location analysis that is consistent with requirements of Goal 14, ORS 197.298, and OAR 660, division 24, as described in this report.

2. Do the UGB location analysis and UGB amendment comply with ORS 197.298?

This section addresses the following additional issues related to the location analysis under Goal 14 and ORS 197.298:

- Which lands in Bend's UGB study area are considered exception lands under ORS 197.298(1)(b)?
- Are lands zoned UAR urban reserves under ORS 197.298(1)(a), exception lands under ORS 197.298(1) (b), or something else?
- Do ORS 197.298(2) requirements to rank parcels by soil capability apply to all of the land priorities in ORS 197.298(1)(a) through (d), or does it apply only to designated resource lands in ORS 197.298(1)(d)?
- Does the UGB expansion comply with the ORS 197.298(2) requirement to give higher priority to resource land of lower capability?
- Does the UGB expansion comply with ORS 197.298(3)(a) in including certain agricultural lands to satisfy identified needs for a future university site, and for large site, general industrial center?
- Does the UGB expansion comply with ORS 197.298(3)(c) in eliminating higher priority exception lands to the south of the city from consideration for inclusion in the UGB?

a. Legal standard

The relevant state law is ORS 197.298. As the department explained in comment letters to the city on May 27, 2008, October 24, 2008, and November 21, 2008 [R. at 3758, 4356, 4722, and 7268], ORS 197.298 requires Bend's UGB location analysis to include the following:

> First, determine which parcels in the study area are the highest priority lands under ORS 197.298(1). For Bend, these are exception parcels under ORS 197.298(1)(b)

because there are no acknowledged urban reserves under ORS 195.145 and ORS 197.298(1)(a).[73] Make a list of these parcels and/or map them. Determine which of these parcels are suitable for an identified land need[74] by analyzing each parcel according to specific site suitability characteristics for the intended use, if any (*i.e.*, residential, commercial or industrial), that were identified in the earlier need analysis (for example, if the city's EOA identified special size, location and access characteristics necessary for regionally significant industrial sites).

The city may determine that study area parcels are not suitable by applying: (1) one or more of the physical site need characteristics that were identified during the need analysis, if any; or (2) one or more of the three exceptions to the statutory priorities in ORS 197.298(3), which may or may not overlap with the previously identified physical site need characteristics; or (3) both.[75]

The remaining parcels after this analysis form a preliminary list of suitable highest priority (exception) parcels. If the amount of suitable exception land under ORS 197.298(1) (b) *exceeds* the land need deficiency amount outside the existing UGB, then the city applies the four Boundary Location Factors in Goal 14 to all of the suitable exception parcels or areas, in order to narrow down the list and select the best exception parcels for the amount of the land need.[76] This provides a tentative list of highest priority parcels to add to the UGB.

If the total amount of suitable exception land is *not sufficient* to meet the amount of land need, the city must first add all of the suitable exception parcels, and then

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[73] Bend's exception areas consist primarily of parcels zoned UAR, RR-10, and SR 2½.

[74] To determine whether the land in any of the ORS 197.298(1) priorities is "inadequate to accommodate the amount of land needed" for a particular urban use under ORS 197.298(1), a local jurisdiction must consider both quantity and suitability. *City of West Linn vs. LCDC*, 201 Or. App. 419, 440 (2005).

[75] In order to exclude lands in any priority category in favor of land in a lower priority, a city or county must provide data, analysis, and findings consistent with one or more of the three exceptions in ORS 197.298(3). ORS 197.298(3) allows a city to remove higher priority parcels from consideration up-front, before the city selects suitable parcels in that priority; and, if supply in that priority exceeds need, before the city applies the Goal 14 boundary location factors. However, there is a high threshold to exclude higher priority land, such as exception land (including land zoned UAR) and instead add lower priority lands, such as farmlands. For example, the fact that it may cost more to service one parcel than to service others does not satisfy ORS 197.298(3)(b). Likewise, the fact that one parcel will yield fewer new homes or less development than others does not satisfy ORS 197.298(3)(c). LUBA and the courts have construed the ORS 197.298(3) exceptions narrowly to allow inclusion of lower priority lands at the exclusion of higher priority lands only in cases with compelling facts.

[76] Because they are factors and not criteria, the considerations embodied in the factors are applied to each alternative parcel or group of parcels. The parcel or parcels that, on balance, best satisfy the factors should be selected. In other words, no single one of the four location factors, such as "orderly and economic provision of public facilities and services" or "efficient accommodation of identified land needs," may be the sole basis for selecting particular parcels to add to the UGB. See OAR 660-024-0060(1) (b).

evaluate all of the parcels and/or areas of similar parcels in the next highest priority category in ORS 197.298(1). For Bend, the next highest priority of land for urbanization is resource land with low resource production capability in ORS 197.298(1) (d).

This evaluation *may* start with a suitability analysis based on: (1) one or more physical site need characteristics that were identified during the need analysis, if any, or (2) one or more of the exceptions to the priorities in ORS 197.298(3) if there are adequate data and findings to support one or more of the three exceptions, or (3) both. (See OAR 660-024-0060(1)(c) and (2).) The steps described for highest priority exception land above are applied to each available parcel of lower-capability farmland, providing a tentative list of suitable parcels in this priority to add to the UGB Note that the Goal 14 boundary location factors are *not* triggered and applied in this situation. The Goal 14 factors are applied only when there is an excess amount of suitable land in a priority category.

If, after the previous analyses, the city still does not have enough land to meet all of its 20-year identified need for the particular use, the city may consider lower priority lands (*i.e.*, the next set of higher capability farm and forest lands) under ORS 197.298(2), using the same analytical methodology used to select higher priority lands, and produce a tentative list of suitable parcels in this final priority to add to the UGB.

b. Summary of Local Actions

The analysis classified parcels designated UAR as exception lands. [R. at 162, 1177] In addition, the Bend Area General Plan (the city's comprehensive Plan) includes a statement that "Lands in this Urban Reserve area [land zoned UAR] are considered first for any expansion of the Urban Growth Boundary." Because of this plan provision, the amendment ranked UAR-zoned land higher than other exception land and included it in the UGB expansion before considering the other exception parcels zoned Suburban Residential 2.5-acre minimum, MUA 10-acre minimum, and Rural Residential 10-acre minimum. [R. at 175, 1190]

It is unclear from the record whether the city selected resource parcels in accordance with ORS 197.298(2), which includes mapping or describing the soil capability of all resource parcels in the study area, grouping them according to soil capability, considering low capability parcels before high capability parcels, and applying the Goal 14 boundary location factors if there is more resource land than needed.[77]

[77] The record is missing a map showing the soil capability of all resource parcels in the original or revised study area. The boundary location analysis map that shows resource lands does not show soil capability. [See R. at 165,1180, Figure V-4]

Consideration of resource parcels assumes that all of the 20-year needed cannot reasonably be accommodated on land within the existing UGB through efficiency measures, and on exception land outside the existing UGB. Whether the city can reasonably accommodate more or all of its 20-year land needs within the existing UGB or on exception land is addressed elsewhere in this report.

The amendment includes resource lands for a future university site on the city-owned property known as Juniper Ridge, and for a large-site general industrial center adjacent to the East State Highway 20/Hamby Road intersection. The city's analysis is that land of lower priority (*e.g.*, exception land), could not reasonably accommodate these uses, justifying an exception to the statutory priorities to add land to a UGB under ORS 197.298(3)(a). [R. at. 166-167, 1181-82]

The amendment also includes 1,253 acres of resource land identified as Areas A through D on the east and northeast side of the existing UGB. The primary justification for including these lands is that planned sanitary sewer lines must cross these intervening resource parcels in order to serve exception parcels elsewhere. The findings state that maximum efficiency of land uses within the proposed UGB requires inclusion of these lower priority resource lands in order to include or provide services to the higher priority exception lands, pursuant to an exception to the statutory priorities to add land to a UGB in ORS 197.298(3) (c). [R. at 168-171, 1183-86, including Figure V-5]

c. Objections

Tony Aceti – The amendment includes too much EFU land and not enough exception land. [May 4, 2009, p. 1]

Paul J. Shonka – The amendment includes too much EFU land and not enough exception land. [May 1, 2009, pp. 1-2]

Cindy B. Shonka –The amendment includes too much EFU land and not enough exception land. [May 1, 2009, pp. 1-2]

Tony and Cyllene King (McGraw and Associates, LLC) – The amendment includes too much EFU land and not enough exception land. [May 1, 2009, p. 1]

Oregon Department of State Lands (DSL) – The amendment's selection of land does not comply with the ORS 197.298 priorities to add land to a UGB. [May 7, 2009, p. 4]

Barbara I. McAusland – The correct lands were not selected in the location analysis. [May 5, 2009, pp. 1-2]

Swalley Irrigation District – The correct lands were not selected in the location analysis. The amendment fails to adequately consider adding thousands of acres of suitable highest priority exception lands in the southwest area. The amendment lacks a factual basis for its claim that all suitable exception land has been included. The amendment's suitability criteria are not consistent with state law, including exclusion of parcels smaller than three acres with a dwelling. The amendment's suitability findings are inadequate. The analysis was not based on appropriately adopted public facilities plans (see Goal 11 objections). ORS 197.298(2)'s requirement to rank parcels by soil capability applies to all of the types

of land in ORS 197.298 (1)(a)–(d) being considered for addition to a UGB (*i.e.*, urban reserves, exception areas, non-resource lands, and marginal lands), and not just rural resource land under ORS 197.298(1)(d). The lands designated "Urban Area Reserve" were never properly excepted from Goals 3 and 4 and therefore are Agricultural lands not exception lands under ORS 197.298(1)(b) (except for one small area designated "Industrial Park"). [May 6, 2009, pp. 34-40, 59-61, 68, 70, and 77-78]

Newland Communities – The amendment properly followed the location analysis in Goal 14, OAR 660-024-0060 and ORS 197.298. The amendment properly included much of objector's land. Objector's property, although designated Agricultural, has the high priority of exception or non-resource land because a private consultant's report concludes that 85 percent of the tract is non-agricultural land. [May 7, 2009, pp. 3, 9, and 11-12]

Rose and Associates, LLC – The lands designated "Urban Area Reserve" were never properly excepted from Goals 3 and 4 and therefore are Agricultural lands not exception lands under ORS 197.298(1)(b) (except for one small area designated "Industrial Park"). [May 5, 2009, pp. 1-2]

The requirements, objections, and analysis of the UGB location are complex. The following subsection is comprised of issues and sub-issues paired with a summary of the results of the department's findings.

d. Analysis

Which lands in Bend's UGB study area are exception lands evaluated under ORS 197.298(1)(b)? Are lands zoned UAR urban reserves evaluated under ORS 197.298(1)(a), exception lands evaluated under ORS 197.298(1)(b)? On June 25, 1981, LCDC acknowledged the City of Bend comprehensive plan, which included city and county exceptions to Goals 3 and 4 for approximately 6,858 acres of land outside the 1981 UGB. These lands were designated UAR, 10-acre minimum parcel size (UAR-10), Suburban Residential, 2.5-acre minimum parcel size (SR 2½), and Surface Mining (SM). Parcels zoned UAR are therefore exception lands. UAR parcels in Deschutes County have not been designated as urban reserves under ORS 195.145.[78] UAR lands in Deschutes County are exception lands. [R. at 7268; Excerpts from the July 7, 1981 LCDC Compliance Acknowledgment Order for the Bend comprehensive plan are attached as Exhibit A]

Does the ORS 197.298(2) requirement to rank parcels by soil capability apply to all of the land types in ORS 197.298(1)(a) through (d), or does it apply only to resource lands in ORS 197.298(1)(d)? The ORS 197.298(2) requirement to rank parcels by soil capability applies only to designated resource lands under ORS 197.298(1)(d). The types of land specified in ORS 197.298(1)(a)–(c) being considered for addition to a UGB (*i.e.*,

[78] In fact, it is impossible for land zoned Urban Area Reserve to be statutory urban reserves. ORS 195.145 was adopted by the Legislative Assembly in 1993, 12 years after Bend's comp plan, including Goal 3 and 4 exceptions for UAR parcels, was acknowledged.

urban reserves, exception areas, non-resource lands, and marginal lands) are not ranked by soil capability, and soil capability is not a criterion or factor to determine whether those parcels are added to the UGB.

LUBA has agreed that the ORS 197.298(2) priority ranking scheme is applicable only to resource lands. In its decision remanding expansion of the Myrtle Creek UGB, LUBA stated: "ORS 197.298(2) and Goal 14, factor 6[79] establish a second priority system for including agricultural lands."[80]

"The relationship between the elements of ORS 197.298(1)–(3) is essentially the same as the relationship between the elements of OAR 660-021-0030(3) and (4), and LUBA's and the Court of Appeals' interpretation of the latter should guide the interpretation of the former."[81] The statutory exceptions to the priorities to add land to a *UGB* in ORS 197.298(3), enacted in 1995, were based on the statutory exceptions to the priorities to add land to *urban reserves* in OAR 660-021-0030(4), which LCDC had previously adopted in 1992. Therefore, appellate interpretations of the OAR 660-021-0030(4) priority exceptions[82] apply to Bend's use of the ORS 197.298(3)(a) and (c) priority exceptions in this UGB amendment, including assigning the same meaning to the second sentence of OAR 660-021-0030(3)(c) and ORS 197.298(2). In 2000, the commission amended OAR 660-021-0030 to move the text that was a separate sub-rule, OAR 660-021-0030(3)(d), into 660-021-0030(4), apparently for consistency with ORS 197.298. In 1995, the rule text originally adopted as OAR 660-021-0030(3)(d) was codified in its own statutory subsection, ORS 197.298(2), instead of being included within ORS 197.298(1)(d).

The language of ORS 197.298(2) and the second sentence of OAR 660-021-0030(3)(c) indicates that their use is limited to resource lands by referring to the resource capability as "appropriate for the current use." This could not apply to exception land or non-resource land (ORS 197.298(1)(b) and OAR 660-021-0030(3)(a) because once an exception has been taken to land outside a UGB, it is no longer farm or forest land.

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[79] Before LCDC amended Goal 14 in 2005, the goal contained seven factors. Factor 6 was: "Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority." The 2005 amendments separated the factors into two groups: need criteria and location factors. At the same time, location factor 6 was deleted because LCDC considered a reference to ORS 197.298 in the new preface to the location factors an adequate representation of state policy to retain agricultural land. [See April 14, 2005 staff report to LCDC, attached as Exhibit B]

[80] *DLCD vs. Douglas County*, 36 Or LUBA 26, 36-37 (1999). LUBA also stated: "Like ORS 197.298(2), Goal 14, factor 6 requires that when agricultural lands are added to the UGB higher priority must be given to land of lower agricultural capability." *DLCD vs. Douglas County*, 36 Or LUBA at 37, fn 14.

[81] *Residents of Rosemont*, 38 Or LUBA at 249.

[82] *See, e.g., D.S. Parklane Development, Inc. v. Metro*, 35 Or LUBA 516 (1999).

Does the amendment comply with the ORS 197.298(2) requirement to give higher priority to resource land of lower capability? The amendment submittal does not contain the data and findings that constitute an ORS 197.298(2) soil capability comparison and analysis. The amendment does not include a map showing the soil capability of all resource parcels in the study area. The boundary location analysis map that shows resource lands does not show soil capability. The record lacks the data, analysis, and (particularly) findings that resource lands within the study area were grouped by soil capability, with lower capability lands being considered before higher capability lands, in accordance with Goal 14, ORS 197.298, and OAR 660-024-0060.[83]

The analysis in the city and county's decisions relies on the current use of resource parcels as a factor in determining which resource parcels to include in the UGB [R. at 178-184, 1193-99]; however, under state statute, resource lands must be selected for inclusion in a UGB based exclusively on soil capability. [See ORS 197.298(1)(d) and (2)]

Does the city's UGB expansion comply with ORS 197.298(3)(a)in including certain specified areas to satisfy an identified need for land?

Does the UGB expansion comply with ORS 197.298(3)(c) in including certain resources lands in order to provide services tohigher priority exception lands?

The decisions rely on both ORS 197.298(3)(a) and (c)[84] to include resource lands on the North and East side of the city. [R. at 1181-86] Two specific employment needs are identified that must be met on agricultural lands: a need for a future university campus with approximately 150 acres of land, and a need for a large site general industrial center on county-owned land adjacent to the intersection of E. Highway 20 and Hamby Road. [R. at 1181]

The director has previously determined that the decision adequately establishes a need for these two employment uses, but that there has not been an analysis of whether they may reasonably be accommodated within the prior UGB. If the city and county conduct an analysis of lands within the existing UGB, and conclude that these uses cannot be reasonably accommodated, and that analysis is supported by appropriate findings and an adequate factual base, then they will have made the showing required by ORS 197.298(3)(a) and Goal 14 for a specific identified land need. At this point, however, due

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[84] ORS 197.298(3):

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

(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.

to the absence of the required analysis of whether the use can occur within the existing UGB, the director is unable to conclude that the decision complies with ORS 197.298(3)(a).

The UGB expansion also includes 1,253 acres of agricultural lands included in Areas A-D on the East side of the city, based on the need to include them to serve adjacent exception lands. ORS 197.298(3)(c). [R. 1183-1186]. The findings generally demonstrate that inclusion of *some* of these lands may be necessary in order to provide services to lands already within the (prior) UGB and to serve exception lands in the expansion area. However, the findings also state that some agricultural lands in these areas were included "in order to achieve a logical boundary." In addition, the decision relies on the city's newly adopted public facilities plan and, as determined in that section of this decision, there are deficiencies in those plans.

"Area A" appears to consist of two non-contiguous groups of parcels totaling 143 acres adjacent to the northeast corner of the current UGB. [R. at 169-170, 1184-85 including Figure V-5] The amendment justifies adding this resource land as follows: "Inclusion of this area will allow for extension of urban services from the current UGB to the Pioneer Loop Exception land. Inclusion of Area A will allow for the extension of Cooley Rd. eastward to Deschutes Market Rd. and eventually to a link with Hamehook/Hamby Rd. In addition, the planned North Sewer Interceptor will pass through Area A as it is extended westward from the wastewater treatment plant. This interceptor is included in the city's adopted Sewer Public Facility Plan." [R. at 168-169, 1183-84] The problem with this rationale is that it is not clear why the entire area of resource lands must be included in order to serve lands within the UGB and exception parcels adjacent to the northeast of the current UGB. [see Figure V-5, R. at 169, 1184].

"Area B" is a 422-acre area on both the west and east sides of Hamehook Road and both north and south of Butler Market Road, east of the current UGB. It is separated from the east boundary of the UGB by a large area of exception parcels also proposed for inclusion. [See Figure V-5, R. at 169, 1184] The amendment states that "[t]his resource is included in order to provide urban services (specifically the planned Hamby Rd. sewer interceptor) from exception lands abutting Pioneer Loop in the north to exception lands on both sides of Hamby, south of Nelson Rd.…the Hamby interceptor…must pass through these resource lands in order to reach higher priority exception areas to the south." [R. at 169, 1184] The record does not demonstrate the need to add Area B, a large area of resource parcels, in order to provide public services to a small exception area east of Hamehook Road. [See Figure V-5, R. at 169]

"Area C" is 536 acres of resource land on both sides of Hamehook Road. Again, the amendment states that this land is needed to extend the sewer interceptor – and also parks and schools -- to exception land farther south; however, the Alternative 4A map shows that the exception areas farther south are accessible from the existing UGB. [Figure V-5, R. at 169, 1184]

"Area D" is 152 acres of resource land east of the current UGB, south of Areas A through C. The Alternative 4A map shows that the exception parcels adjacent to Area D are accessible from the existing UGB. [See Figure V-5, R. at 169, 1184] The findings do not explain why the entire area of resource lands must be include in order to serve the exception areas.

In conclusion, at this time the director is unable to determine that the inclusion of these agricultural lands complies with ORS 197.298(3)(c). It appears that once the problems with the public facilities plans are resolved, the city may be able to make the showing required by the statute to include some of these lands, but at present there is too much uncertainty regarding the overall amount of land need to determine that these lands must be included (it may not be necessary to include the adjacent exception lands if the overall quantity of land need is substantially lower). In addition, the city's findings must determine with specificity that inclusion of the agricultural lands is necessary in order to serve nearby exception lands.[85]

Response to Objections. The following objections are denied by the director:

- ORS 197.298(2)'s requirement to rank parcels by soil capability applies to all of the types of land in ORS 197.298 (1)(a)–(d) being considered for addition to a UGB (*i.e.*, urban reserves, exception areas, non-resource lands, and marginal lands), and not just rural resource land under ORS 197.298(1)(d) (Central Oregon LandWatch, Swalley Irrigation District). Reason for denial: As explained in the issues discussion above, the ORS 197.298(2) requirement to prioritize land by soil capability applies only to resource lands.

- Environmental impacts to natural resources, the barrier of high land cost to affordable housing, or the impact to irrigation districts may justify rejecting suitable exception land for resource land under the ORS 197.298(3) exceptions to the ORS 197.298 (1) and (2) statutory priorities (Central Oregon LandWatch). Reason for denial: The only bases for rejecting exception parcels are:

    - They are not suitable for a particular use based on physical site need criteria established during the need analysis, or

    - An adequate factual record justifies one of the three exceptions to the statutory priorities in ORS 197.298(3).

[85] "Subsection 4(c) applies where the inclusion of lower priority lands is <u>*required*</u> in order * * * to achieve a maximally efficient urban form, either because higher priority lands *cannot be included* absent inclusion of lower priority lands, or because urban services *cannot be provided* to higher priority lands absent inclusion of those lands. If a proposed urban reserve area can achieve '[m]aximum efficiency of land uses,' that is, develop at urban densities and efficiencies, *without* including lower priority lands, then inclusion of such lands is not required, and Subsection 4(c) does not apply." *D.S. Parklane Development, Inc.*, 35 Or LUBA at 617.

- Environmental impacts to natural resources, the barrier of high land cost to affordable housing, and the impact to irrigation districts are neither Goal 14 physical site need characteristics, nor ORS 197.297(3) exceptions to the statutory priorities to add land to a UGB. In addition, the record does not justify the city's rejection of any exception land for either of those reasons.

- Lands zoned UAR are highest priority for inclusion in the UGB under ORS 197.298(1)(a) (Miller Tree Farm). Reason for denial: As discussed in the issues section above, for the City of Bend, all exception lands are first priority under ORS 197.298(1)(b) for addition to the UGB; UAR-zoned parcels do not have any higher priority than other exception parcels.

- The lands designated "Urban Area Reserve" were never properly excepted from Goals 3 and 4 and therefore are Agricultural lands, not exception lands under ORS 197.298(1)(b) (except for one small area designated "Industrial Park") (Swalley Irrigation District, Rose and Associates, LLC). Reason for denial: As discussed in the issues section above, parcels zoned Urban Area Reserve were acknowledged as exception lands in 1981.

- The city properly followed the location analysis in Goal 14, OAR 660-024-0060, and ORS 197.298 (Newland Communities). Reason for denial: As discussed in the issues section above, the UGB location analysis was not consistent with Goal 14, OAR 660-024-0060, and ORS 197.298.

- The city properly included much of Objector's land (Newland Communities). Reason for denial: Because of the improper application of relevant state goals, statutes and rules in the city's urban growth boundary location analysis, it is not possible to determine, until the city redoes the location analysis on remand, whether any resource land may be added to the UGB, and if so, where.

- Objector's property, although designated Agricultural, has the high priority of exception or non-resource land because a private consultant's report concludes that 85 percent of the tract is non-agricultural land (Newland Communities). Reason for denial: ORS 197.298(1)(b) exception lands are only those that have been acknowledged as such by LCDC. Unless and until Deschutes County re-designates the objector's land as non-resource land or marginal land, this land is in the lowest priority of designated agricultural or forest land under ORS 197.298(1)(d).

e. Conclusion and decision

The UGB location analysis and UGB amendment do not comply with the ORS 197.298 priorities for adding land to an urban growth boundary.

J. Natural Resources and Hazards

The department submitted comments and received objections related to compliance with Statewide Planning Goal 5 and received one objection related to Statewide Planning Goal 7. These goals relate to natural resource areas and natural hazards.

1. Did the city and county comply with Goal 5 and its implementing rules in amending the city's UGB?

The department received a variety of objections that the city failed to comply with Goal 5 by not adequately applying Goal 5 to the UGB expansion area, and by identifying land within the proposed expansion area as protected land without adequate justification for the designation.

a. Legal Standard

Statewide Planning Goal 5 and OAR 660, division 23 address protection of significant natural, scenic and historic resources and open space. Rules in OAR 660, division 23 specify which resource categories must be protected by comprehensive plans and which are subject to local discretion and circumstances; the rules provide guidance on how to complete inventories and protection programs, and when the rule requirements apply. OAR 660, division 23 requires cities to inventory significant riparian areas, wetlands and wildlife habitat.

For some Goal 5 resources the rule allows cities to rely on inventories compiled by other agencies, and for other resources the local government must complete their own inventory of the resource. For all inventoried significant Goal 5 resources, a local government must complete a process to develop and implement appropriate protection measures. If a local program to protect a Goal 5 resource includes development restrictions, the loss of buildable land that results from these restrictions must be accounted for when determining the amount of land need.

OAR 660, divisions 23 and 24 both specify that a UGB expansion triggers applicability of Goal 5. [OAR 660-023-0250(3)(c) and OAR 660-024-0020(1)(c)] At a minimum, a local jurisdiction expanding its UGB must complete the following for the expansion area when factual information is submitted that a Goal 5 resource or the impact area of a Goal 5 resource is included in the UGB expansion area:

- Conduct an inventory of Goal 5 resources that are required to be inventoried and for which the rule does not rely on state or federal inventories. These are riparian corridors, wetlands, and wildlife habitat
- Adopt the local state and federal inventories as described in the rule for resources that require inventories. These are: federal Wild and Scenic Rivers, Oregon Scenic Waterways, state-designated critical groundwater areas and restrictively classified areas, approved Oregon Parks and Recreation Commission recreation trails, Oregon

State Register of Natural Heritage Resources sites, federally designated wilderness areas, and certain specific energy sources.
- Develop a local protection programs for all significant Goal 5 resources that are identified in an inventory, as required by the rule specific to the resource category.

Local jurisdictions have the option of conducting inventories and developing protection programs for historic resources, open space, and scenic views and sites. When using this option at the time of a UGB expansion, the Goal 5 process for these resources must be complete before land can be designated unbuildable or limitations on building can be considered in sizing the expansion area. [OAR 660-023-0070] The Goal 5 process is complete for these resources when:

- Existing and available information about Goal 5 resource sites is collected [OAR 660-23-0030(2)]
- Information on the location, quantity, and quality of the resource is determined to be adequate [OAR 660-23-0030(3)]
- The significance of resource sites is determined [OAR 660-23-003(4)]
- A list of significant resources is adopted of as part of the comprehensive plan [OAR 660-23-0030(5)]
- An analysis is completed of the economic, social, environmental and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use [OAR 660-23-0040]
- A program to achieve Goal 5 is developed and adopted based on the conclusions of the ESEE analysis [OAR 660-23-0050]

b. Summary of Local Actions

Findings in the submittal state that the proposed UGB expansion and Public Facilities Plan element of the city's General Plan satisfy Goal 5 because, "it avoids to the extent practicable lands with county-inventoried Goal 5 resources." The findings for Goal 5 further state that Deschutes County's Goal 5 program "does not identify any acknowledged riparian corridors, wetlands, wildlife habitat or other Goal 5 resources within the proposed urban growth boundary." [R. at 1215] The findings also state that review of the National Wetlands Inventory shows no wetlands within the proposed expansion area, and this serves to satisfy Goal 5 requirements.

The findings describe the county's knowledge of wildlife habitat within its jurisdiction, and explains that the proposed expansion area does not include any lands in the Wildlife Area Combined Zone, "applied to Goal 5 wildlife habitat," and does not include county-mapped deer winter range or elk habitat [R. at 1216]. The findings do not state when the county's inventories were last updated.

The findings identify two significant riparian corridors within the proposed expansion area and explain that they are protected through the county's plan and code. The findings also state that "approximately 22 additional [riparian] acres are located in the proposed UGB expansion area outside of the Deschutes River and Tumalo Creek." [R. at 1216]

The findings also consider the possibility that additional Goal 5 resources will be identified through future planning efforts. The record states that existing city code implementing its Waterway Overlay Zone and its areas of special interest will apply to newly identified Goal 5 resources. [R. at 1216]

New policies commit the city to perform "a complete Goal 5 inventory once the new UGB is acknowledged." Other policies prevent urbanizable land from becoming urban until the Goal 5 inventory is complete and protection measures are in place. [R. at 1217] The findings apparently use the term "Goal 5 resource" only to refer to resources that have, or will at some point, be identified as significant Goal 5 resources.

The findings do not include information about the approach to areas of special interest (ASI), a city classification described in the Bend General Plan. The ASI classification includes Goal 5 scenic, open space and habitat resources. [R. at 1247] Some discussion of the city's intention to identify and manage impacts to ASIs is presented in the findings on the UGB locational analysis. [R. at 159]. Although the term "Areas of Significant Interest" is not used, the findings state that about 299 acres will not be available for urban uses, "because of their significance as scenic or natural resource" [R. at 159] The bulleted list of evidence for these resources in the proposed expansion area describes landscape features that fit the ASI classification. These include: the presence of the Deschutes River viewshed; presence of the Deschutes River Canyon State Scenic Waterway; and past surveys documenting prominent rock outcroppings, which are potential scenic resources.

Bend has included the Bend Area General Plan as amended January 5, 2009 in the record. Chapter 2, "Natural Features and Open Space," provides some information on riparian areas, wetlands and wildlife habitat, and the city's commitment to protecting these resources. The preservation of water resources, riparian areas and wildlife habitats is identified as one of the goals necessary to ensure Bend's livability by provide long term protection of open space and natural features. [R. at 1244] In several places, the Natural Features and Open Space chapter recognizes that the Deschutes River and Tumalo Creek provide important habitat for a variety of aquatic life, birds, reptiles and mammals, both big and small. On page 1251 of the record, it is stated that all of the significant wetlands identified for the local wetland inventory, conducted in 2000, are located along the Deschutes River.

The plan includes several policies for natural features and open space. Policy 4 states:

> Prior to the completion of the Goal 5 inventory, analysis and ordinance by the city, properties seeking annexation shall conduct a Goal 5 inventory pursuant to OAR 660-023. Where a significant Goal 5 resource is identified, amendments to the Bend Area General Plan and the Bend Development Code shall be proposed and adopted, consistent with inventory findings and OAR 660-23, to ensure appropriate protection of the resource, prior to approval of any land use action.

This appears to be one of the policies mentioned in the findings. [R. at 1217]. It would allow development to proceed and provide for a property-by-property approach to the inventory and protection of Goal 5 resources.

The "Natural Features and Open Space" chapter of the plan explains that the identification and preservation of ASIs and natural features is part of an effort to "retain and conserve the natural character of Bend as the community grows and changes." (R. at 1247] ASIs are identified as "features typical of Central Oregon, or represent important wildlife areas." [R. a 1247]. The association of river canyons with wildlife habitat is recognized in this section.

The analysis for UGB amendment alternative 4A includes information on the environmental consequences of selecting the alternative, and discusses Goal 5 resources for each quadrant. It appears that the term "Goal 5 resource" is used to refer to a resource that has already been identified as significant and placed on the Deschutes County inventory of significant resources, or that may be identified by the city as significant in the future. There are findings of no Goal 5 resources for the northeast priority 2 and priority 4 quadrants and the southeast priority 2 and priority 4 quadrants. It is stated that the southeast priority 4 quadrant is near Townsend bat habitat and has features that could qualify as an ASI. The northwest priority 2 quadrant is described as having one Goal 5 resource, a 200-acre aggregate site, and potential Goal 5 resources within the Tumalo Creek corridor. It is also stated that a State Scenic Waterway designation is recognized for portions of the Deschutes River that run through this quadrant. [R.. at 2460-1261]

There are findings of "no naturally occurring wetlands" for four of the six quadrants, presumably based on the National Wetlands Inventory. The analysis states that the southwest quadrant "contains some soils that have characteristics that may be indicative of potential areas of special interest," and that the northwest quadrant contains a band of lowlands along the canyon bottom of the Deschutes River and Tumalo Creek which is in the 100-year floodplain. [R. at 2430-2462]

c. Objections and DLCD Comments

DLCD provided comments regarding Goal 5 requirements to the city in letters of October 24 and November 8, 2008. [R. at 4728-4729 and 3782] There were two main issues raised with respect to Goal 5: the Goal 5 *procedures* that are required prior to land being identified as non-buildable, and the *inventory* requirements for Goal 5 resources that are triggered at the time of a UGB expansion.

In the October 24 letter, DLCD described several Goal 5 resource categories that overlapped with the "areas of special interest" designation used by the city, and described some options for meeting the objectives of preserving the values of these land both within and outside the confines of Goal 5. The November 8th letter recognized the city's intent to complete the Goal 5 requirements following completion of the UGB expansion, and stated this was not sufficient to comply with the rule. Both letters explained that it was the city's obligation to inventory riparian areas, wetlands and wildlife habitat and assess

resource sites for significance when factual information was submitted that these resources exist in the expansion area.

Objectors have raised concerns regarding the decision to postpone application of the Goal 5 process to known resources that exist within the proposed expansion area. In particular, riparian areas, wetlands, wildlife habitat and state Scenic Waterways need to be inventoried and protected as part of the UGB expansion planning process.

The following comments have been submitted regarding compliance with OAR 660-023 and OAR 660-024-060.

Swalley Irrigation District – Avoidance of county-designated Goal 5 resources (e.g., big game habitat) does not comply with the Goal 5 rule. At the time of a UGB expansion, resources within the expansion area must be reevaluated due to the new conflicting uses allowed. The city failed to apply Goal 5 protections to state scenic waterways. The designation of land along the Deschutes River and canyon as unbuildable was made without completion of the Goal 5 process. It is premature to adopt the Combined Sewer Master Plan and the transportation plan without an adequate inventory of Goal 5 resources. [Swalley, May 6, 2009, p. 45]

Toby Bayard – The city failed to complete Goal 5 inventories of natural areas, scenic and historic areas and open space. Land set aside for protection within the proposed expansion area was not adequately identified as a Goal 5 resource. Reliance on county Goal 5 inventory is not sufficient to meet Goal 5 requirements that apply to the proposed UGB expansion. The city failed to maintain an inventory of historic, open space, and scenic views and sites. [Bayard, April 29, 2009, pp. 1 and 34]

Bend Metro Park and Recreation District – The city failed to provide an adequate Goal 5 analysis as part of the proposed UGB expansion, pursuant to OAR 660-023-0250. The city inappropriately defers Goal 5 analysis to after the adoption of the UGB. [Bryant Lovlien & Jarvis, PC for Bend Metro Parks & Recreation District, May 5, 2009, pp. 1-2]

Central Oregon Land Watch – The city wrongly interpreted OAR 660-024-0020(1)(c) and 660-023-0250(3)(c) and failed to apply Goal 5 requirements as part of the proposed UGB expansion. The designation of 299 acres as restricted due to the presence of Goal 5 resources is not based on a Goal 5 inventory. The city wrongly relies on existing county Goal 5 inventory information to identify to satisfy Goal 5 requirements triggered by the UGB expansion. [Paul Dewey Attorney at Law for Central Oregon Land Watch, May 7, 2009, pp. 5 and 14-15]

Edward J. and Doris E. Elkins – City failed to justify their designation of available lands and constrained lands since no Goal 5 analysis has been completed. A portion of the land was identified as constrained without adequate inventory and assessment. [Elkins, April 26, 2009, pp 1-3].

Department of State Lands – The city failed to conduct Goal 5 inventories and analysis in the proposed UGB expansion areas. [Vrooman, Oregon Department of Justice for Oregon Department of State Lands, May 7, 2009, p. 4]

Tumalo Creek Development, L.L.P. – The city's proposed areas of special interest do not comply with Goal 5. The city failed to conduct a Goal 5 process to properly identify the location of and potential conflicts with ASI designated land. [David C. Allen Attorney, for Tumalo Creek Development, LLC, May 7, 2009, p. 3]

Toby Bayard (PFP) – The city failed to meet its Goal 5 obligations. Specifically, the city did not perform a Goal 5 inventory in advance of recommendations to construct a major sewer system interceptor. [Bayard, July 2, 2009, pp. 11-14]

Swalley Irrigation District (PFP) – The city failed to apply the Goal 5 process during adoption of the public facilities plan, which was required due to the presence of a designated State Scenic Waterway in the northwest quadrant. This objection is also included in the objections made to the UGB expansion. The city failed to address the habitat conservation planning effort that is underway for the bull trout and to recognize constraints on sewers and other infrastructure that are likely to result from the federal endangered species listing. Potential impacts to Tumalo Creek have not been evaluated. [Swalley Irrigation District, July, 6 2009, pp. 29-31]

d. Analysis

The city states that the proposal "avoids to the extent practicable lands with county-inventoried Goal 5 resources," and that Deschutes County's Goal 5 program "does not identify any acknowledged riparian corridors, wetlands, wildlife habitat or other Goal 5 resources within the proposed urban growth boundary." [R. at 1215] These statements may be accurate if Goal 5 resources are understood to mean only resources that the *city* has determined to be significant, but it does not appear that the city made that decision. Even so, there appears to be some contradiction. The findings also state that the Deschutes County Code, Chapter 23.112, identifies two Goal 5 riparian areas within the expansion area. The findings go to explain that "most of these areas are along the Deschutes River and Tumalo Creek…[but] approximately 22 additional acres are located in the proposed UGB expansion area outside of the Deschutes River and Tumalo Creek." [R. at 1216]

OAR 660-23-0250(3)(c) specifies that that the requirements of Goal 5 apply when a post-acknowledgment plan amendment "amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area." The resource sites at issue in this rule are not only sites that have already been identified by the county as significant. The rule requires the city to independently evaluate the expansion area where where resources are identified and evaluate them for significance and possible protection. The city may use the county's inventory as a starting point, but it must also evaluate other information and make its own determination of significance.

The city has factual information that natural resource sites may exist in the UGB expansion area. The alternatives analysis and associated maps clearly show that the Deschutes River and Tumalo Creek run through proposed expansion areas. The Bend Area General Plan recognizes the association between these two landscape features and important wildlife habitat. [R. at 1251 and 1254]

The plan also recognizes the association between the Deschutes River and wetlands. [R. at 1251] Four out of the six quadrants in Alternative 4 are described as having "no naturally occurring wetlands," [R. at 2432, 2437, 2442 and 2447] presumably based on National Wetland Inventory data. The southwest quadrant is described as having soils with "characteristics that may be indicative of areas of special interest." [R. at 2453] The northwest quadrant is described as having land along the Deschutes River and Tumalo Creek that is within the 100-year floodplain. [R. at 2461] The descriptions of these latter two quadrants may indicate the likelihood of wetlands. The record also acknowledges the State Scenic River designation for the Deschutes River [R. at 2460], and the existence of a Goal 5 aggregate resource in the northwest quadrant. [R. at 2460-2461]

Based on the evidence in the record of Goal 5 resources, the city needs to conduct an inventory, identify conflicting uses, and complete the Goal 5 process for the following resources in the proposed expansion area: riparian corridors, wetlands, and wildlife habitat. Potential impacts from new uses that will result from the proposed UGB expansion on the significant Goal 5 resources that are located in the expansion area must also be identified. These include State Scenic Waterways along the Deschutes River and the aggregate resource site in the northwest quadrant.

The city will also need to complete the Goal 5 process for areas of special interest, if these lands are to be considered unavailable for urban use within the proposed UGB expansion area. The Goal 5 process includes the identification of potential impacts from allowed uses and an assessment of the consequences of allowing, limiting or prohibiting uses and activities that conflict with a significant resource. This process is intended to generate findings that justify the final decision to alter or not alter development options. It is possible that the city will be able to rely on significance criteria and portions of the impact analysis that were completed to implement the ASI program within the existing UGB. However, if the ASI program development was competed under OAR 660, division 16, additional work will be needed. The fact that the ASI definition includes wildlife habitat, and implementation of protection measures serve in part to protect habitat, the city will need to consider the requirements of OAR 660-23-0110, when applying Goal 5 to these resources.

Failure to complete an inventory of historic resources was mentioned by one objector, but local governments are not required to identify and protect significant historic resources under Goal 5. If a jurisdiction chooses to identify historic resources, the process and criteria described in OAR 660-23-0200 must be followed. Another objector stated that the city had not adequately addressed current efforts to develop a habitat conservation plan for bull trout in the Deschutes River. Although the listing of bull trout under the

federal Endangered Species Act may be an important consideration for UGB expansion, Goal 5 does not require fish habitat to be included in a wildlife inventory. The inclusion of fish habitat will depend on choices made by the city when applying the rule (OAR 660-23-0110(4)), and is a consideration in protection of riparian corridors.

The director concurs with the objectors that the city has not completed the steps necessary to asses Goal 5 resources within the UGB expansion area for significance, and has not adequately addressed potential impacts to known significant Goal 5 resources as required by OAR 660-023-0250(3)(c) and OAR 660-024-060. The director also concurs that the areas of special interest identified by the city have not been evaluated sufficiently by the city at this point in time for land to be set aside for their protection. Furthermore, the director agrees with objectors that planning for transportation, housing and parks is undermined by the lack of analysis of the location, quantity, and quality of Goal 5 resources.

e. Conclusion

The UGB amendment and the amendments to the Public Facilities Plan do not comply with OAR 660, division 23. The director remands with direction to complete the inventory, assessment, and program development work needed to comply with Goal 5.

2. Is the designation of Surface Mining on certain property appropriate?

a. Legal Standard

OAR 660-023-0180 addresses identification of significant aggregate resources, approval of mining activity, and protection of the resource from conflicting uses. The rule sets criteria for significance and prescribes a process for evaluating potential impacts from the proposed mining activity. The rule requires a plan amendment for amending the local inventory of significant aggregate resources, changes to the mining activities allowed on the site, changes to the post-mining use of the site, and changes to the restrictions imposed in the impact area on new uses that could conflict with a protected mining activity.

b. Summary of Local Actions

The Bend Urban Area General Plan Map, dated December 12, 2008, shows the comprehensive plan designation for property owned by Shevlin Sand and Gravel to be surface mining. [R. at 1226]

c. Objection

One objector, Shevlin Sand and Gravel (SSG), raised a concern about a comprehensive plan map designation of surface mining that does not correlate with the Department of Aggregate and Mineral Industry (DOGAMI) permit authorizing mining. The objector does not cite a violation of local or state regulations, but explains that the plan designation depicted on the Bend Urban Area Proposed General Plan Map creates a problem with making use of their property. More land is designated as surface mining

than is covered under the DOGAMI permit for their mining operation. The land not covered by the DOGAMI permit can't be mined, and it can't be used for other purposes due to the plan designation. The objector does not state when the plan designation was made.

The objection is, "The surface mining designation makes [the] portion of the property [not covered by the DOGAMI permit] useless, because it is legally impossible for SSG to conduct mining and processing operations in this area." The objector recommends that the City of Bend change the boundary of the area designated surface mining to include only the area subject to the DOGAMI permit. The objector has provided a diagram showing the DGAMI permit boundary. Some land would need to be removed and other land added to the area designated as surface mining for the boundaries to be coincident. [Johnson & Sherton Attorney for Shevlin Sand and Gravel, May 7, 2009, pp. 1-2]

d. Analysis

The map designation is presumably based on a previous action by Deschutes County to designate the Shevlin Sand and Gravel property as a significant aggregate resource. A UGB expansion does not trigger a requirement for the city to conduct a new inventory of aggregate resources within the expansion area. Local jurisdictions are only required to amend the significant aggregate resource inventory in response to an application for a post-acknowledgement plan amendment. [OAR 660-23-0180(2)] A change in the boundaries of this site will require consideration of a separate plan amendment and will need to be based on findings developed consistent with OAR 660-23-0180.

e. Conclusion.

The objection is not sustained.

3. Does the UGB amendment comply with Goal 7 when the findings do not address wildfire hazard?

a. Legal Standard

Goal 7 is: "To protect people and property from natural hazards." There is no administrative rule associated with this goal.

The goal requires local governments to "adopt comprehensive plans (inventories, policies and implementing measures) to reduce risk to people and property from natural hazards." The definition of natural hazard includes wildfires. The goal provides how local governments are to implement the goal, and avoiding development in hazard areas is one of the principles to be considered.

b. Summary of Local Actions

The UGB amendment findings, analysis and conclusions do not address wildfire risk as a consideration regarding where to locate the boundary.

c. Objection

Central Oregon LandWatch objected that the UGB amendment does not address wildfire risk and specifically that emergency preparedness and emergency access are not addressed. The objector submitted evidence that the City of Bend "is one of four western cities at the greatest risk of wildfire." The objector cites to Goal 7 provisions, and states the department should review new fire hazard information and notify local governments (presumably Bend and Deschutes County in this case) that the information requires a local response, as required by Goal 7. The objection does not identify this new information. [Central Oregon LandWatch, May 7, 2009, p. 17]

d. Analysis

Deschutes County has adopted a community wildfire protection plan for the Greater Bend Area that identifies significant wildfire risks for the area. The department agrees that the county and city should consider wildfire risk in evaluating the location and type of development for the city's UGB expansion. However, at present, the Goal 7 does not *require* such an action by the county and city.

e. Conclusion

The director denies this objection. However, the director also believes that the city and county should consider the information in the Community Wildfire Protection Plan for the Greater Bend area on remand as they determine where to expand the UGB and how to plan for the expansion area.

K. Procedural Issues

Several objections raise issues related to whether the city and county have complied with certain procedural requirements in adopting the five ordinances at issue in this review. The legal criteria for this portion of the submittal are primarily found in ORS 197.610, OAR 660-025-0175 and OAR 660-018-0020, and Goals 1 and 2. This section addresses objections relating to local procedure and coordination for both the four ordinances initially submitted to the department (the two county ordinances, and city ordinances NS 2112 (UGB) and NS 2113 (code amendments), and the city's public facilities plan, adopted as ordinance NS 2111.

1. Did the city properly notice its submittal of the ordinances and plan amendments to the department?

Swalley Irrigation District (Swalley) alleges that the City of Bend's April 16, 2009 notice of its submittal to the department is inadequate to meet ORS 197.626, 197.633(2)(b), OAR 660-025-0175(3), and OAR 660-025-0100 (as well as Goal 1) in that the notice does not identify with clarity what decisions were submitted to the department for review. Swalley Objection 2(A), at 17-18.

a. Legal Standard

OAR 660-025-0175 sets forth how local governments must provide notice of UGB amendments, and the requirements for submittal of their final decision:

> (3) The local government must provide notice of the proposed amendment according to the procedures and requirements for post-acknowledgement plan amendments in ORS 197.610 and OAR 660-018-0020.
> (4) The local government must submit its final decision amending its urban growth boundary, or designating urban reserve areas, to the department according to all the requirements for a work task submittal in OAR 660-025-0130 and 660-025-0140.

In turn, OAR 660-025-0130 governs what must be submitted to the department and when, and OAR 660-025-0140 governs notice of the submittal and objections.

b. Summary of Local Actions

The city submitted notice of the city's and county's adoption of four ordinances to the department on April 16, 2009. Those four ordinances were the city's ordinances adopting the amended UGB and amending the city's development code in certain respects (Ordinances NS-2112 and NS-2113), and the county's ordinances co-adopting the amended UGB and making certain amendments to the county's comprehensive plan map and text for the lands within the UGB expansion area. [R. at 1050-1051 (city ordinance NS 2112 - UGB); R. at 1836-1844 (city ordinance NS 2113 – development code);

[county ordinance 2009-1 – UGB map and DCC and TSP map]; [county ordinance 2009-2 – zoning map and certain DCC amendments].

The city did *not* submit ordinance NS 2111, amending the city's Public Facilities Plan element of its General Plan, to the department on April 16, 2009 (although a copy of this ordinance, which was adopted immediately before the UGB amendment ordinance, was included in the record for the submittal of the UGB ordinance (NS 2112), and the city submitted a separate notice of adoption of the Public Facilities Plan on January 9, 2009). However, on June 12, 2009, following LUBA's decision and May 8, 2009 order in LUBA Nos. 2009-010, 2009-011 and 2009-020, the city did separately submit ordinance No. NS-2111 to the department, and provided notice to the objectors, as required by OAR 660-025-0175(3) and (4) and OAR 660-025-0130 and -0140.

c. Analysis

Although the city's action in adopting the Public Facility Plan elements of its General Plan as a separate ordinance from its UGB amendment may have caused confusion, there is no legal prohibition on what the city did. The city's 45-day notice covered both the UGB amendment and amendments to elements of the city's comprehensive plan, including the Public Facilities Plan. The city properly gave post-adoption notice of its submittals to the department and those entitled to notice.

d. Conclusion

The director denies this objection. The city properly gave pre- and post-adoption notice of its submittals to those entitled to notice, include Swalley.

2. Did the city provide required notice and hearings for its ordinances?

Swalley, Bayard, Hillary Garrett, and Central Oregon LandWatch allege that the local processes leading to the submittals were unreasonably confusing and provided inadequate notice. Swalley Objection 2(B), at 18-28; Bayard Objection 1, at 23-25; Central Oregon LandWatch Objection at 6-8; Hillary Garrett, at 3-4.

a. Legal Standard

OAR 660-018-0020 sets forth how local governments must provide notice to the department 45 days in advance of the first evidentiary hearing on a proposed comprehensive plan amendment:

> (1) A proposal to amend a local government acknowledged comprehensive plan * * * must:
>
> > (a) Be submitted to the director at least 45 days before the first evidentiary hearing on adoption. * * *
> >
> > (c) Contain two copies of the text and any supplemental information the local government believes is necessary to inform the director as to the effect of the proposal. One of the required copies may be an electronic copy;

* * *

(e) In the case of a map change, include a map showing the area to be changed as well as the existing and proposed designations. Wherever possible, this map should be on 8-1/2 by 11-inch paper;

* * *

(2) The text submitted to comply with subsection (1)(c) of this rule must include the specific language being proposed as an addition to or deletion from the acknowledged plan or land use regulations. A general description of the proposal or its purpose is not sufficient. In the case of map changes, the text must include a graphic depiction of the change, and not just a legal description, tax account number, address or other similar general description.

These provisions concern the required notice to the department. They do not prohibit changes to a proposed action. If a local government substantially amends a proposed plan amendment, then it must describe the changes in its notice of adoption. [OAR 660-018-0045]

Statewide Planning Goal 1 sets forth what must be contained in a local government's citizen involvement program. The city's citizen involvement program is acknowledged for compliance with Goal 1. The city's hearings procedures for legislative amendments do include a local code requirement for 20-day advance local notice of public hearings on legislative plan amendments, which is cited by Bayard and Garrett. BDC Section 4.1.315.

b. Summary of Local Actions

The city provided an amended 45-day notice to the department of its revised proposal to amend the UGB and certain provisions of its comprehensive plan, including the Public Facilities element of its plan, and including its development code, on October 8, 2008. [R. at 4820] Swalley, Garrett and Bayard identify several respects in which they and other local participants were frustrated or confused about what was proposed, and allege that the proposed Public Facilities Plan was not submitted to the department until October 20, 2008, and that the local newspaper notice did not separately identify that amendments to the Public Facilities Plan were to be heard.

The record indicates that the proposed amendments to Chapter 8 (Public Facilities) of the General Plan were first presented to the city's planning commission on or about August 15, 2008. [R. at 6150, 6250] The record also indicates that the location and, to some extent, size of the proposed UGB amendment was changed significantly on or about October 3, 2008, and that the city and county planning commissions met to consider the submittals on October 27, 2008. [R. at 1211] The city gave public notice of the planning commissions' hearing on October 7, 2008; [R. at 4756] and public notice of the city council hearing on November 7, 2008. [R. at 3954-55] It is not clear when the city provided the text of the proposed changes to Chapter 8 of its General Plan (Public Facilities); it appears that the text was sent on or about October 20th.

c. Analysis

Swalley, Garrett and Bayard are correct that the city's notices failed to comply with OAR 660-018-0020 and ORS 197.610, in that the submittal was late (in relation to the first evidentiary hearing) and may not have initially been complete. It also appears that the city's notice of the planning commissions' joint hearing and the city council hearing violated BDC section 4.1.315 by failing to provide notice 20 days in advance of the hearings. However, Swalley, Garrett and Bayard also note that they were allowed to and did provide written testimony to the planning commissions (and city council) at public hearings on the proposals.

Whether a violation of the notice requirements of ORS 197.610 requires a remand depends on whether the objector(s) were prejudiced by the late or inadequate notice. See, *No Tram to OHSU, Inc. v. City of Portland*, 44 Or LUBA 647, 658 (2003). In this case, Swalley and other objectors allege that they were prejudiced by the lack of time to review the extensive submittal, which was changed substantially by the city in early October. The objectors have identified substantial prejudice in the sense of not having been able to present their concerns to the local decision-makers.

d. Conclusion

Goal 1 is violated in the context of a legislative comprehensive plan amendment only if the local government does not follow its citizen involvement program. *Casey Jones Well Drilling, Inc. v. City of Lowell*, 34 Or LUBA 263, 284 (1998); *Wade v. Lane County*, 20 Or LUBA 369 (1990). Swalley and Bayard have not identified a violation of Goal 1.

However, as set forth above, the record shows that the city did violate ORS 197.610 by failing to provide timely and adequate notice of its proposed amendment to its General Plan. As a result, the director concludes that remand is required in this case.

3. Did the city otherwise violate Goal 1?

Toby Bayard (and to some degree Swalley and Central Oregon LandWatch) alleges that the city failed to provide critical information to the public in a timely fashion, and made substantial last-minute changes in its proposal that had the effect of not allowing the public adequate time to comment. [Bayard Objection 1 at 1-26; Central Oregon LandWatch Objection at 6-8]

a. Legal Standard

Goal 1 is to "develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process." [OAR 660-015-0000(1)] Goal 1 establishes requirements for local citizen involvement programs. Its provisions do not apply to comprehensive plan amendments unless those amendments include the government's citizen involvement program. The city and county submittals do not amend or affect either the city's or county's citizen involvement program. Under those circumstances, the submittals are in violation of Goal 1 only if the submittals include provisions that are inconsistent with the city or county citizen involvement programs.

Homebuilders Assoc. v. Metro, 42 Or LUBA 176, 196-197 *aff'd Homebuilders Assn. of Metropolitan Portland*, 184 Or App at 669. No objector attempts to establish that the submittals include provisions that are inconsistent with either citizen involvement. In addition, the objectors do not identify any specific provision of the city's citizen involvement program that has been violated. See, General Plan, Chapter 1.

b. Summary of Local Actions

The city is not amending its citizen involvement program.

c. Analysis

Because the city is not amending its citizen involvement program, Goal 1 does not establish requirements for the local government actions before the director.

d. Conclusion

The director denies the Bayard, Central Oregon LandWatch and Swalley objections concerning Goal 1, because the goal does not establish legal requirements for the actions that are before the director for review.

4. Did the local governments fail to coordinate with Swalley Irrigation District, Central Oregon Irrigation District, or ODOT in violation of Goal 2?

Swalley Irrigation District (Swalley) and Toby Bayard allege that the city and county failed to coordinate with the Swalley and other governmental entities, as required by Goal 2. In particular, Swalley alleges that the submittals were not coordinated with the district in the sense that the district's needs were considered and accommodated as much as possible. Goal 2; ORS 197.015(5). [Swalley Objection 2(A), at 28-34. Bayard Objection 2, at 27-33]

a. Legal Standard

The coordination elements of Goal 2 require local governments to exchange information with affected governmental units. In addition, information received from affected governmental units must be used by the adopting local government. *Santiam Water Control District v. City of Stayton*, 54 Or LUBA 553, 558-559 (2007); *DLCD v. Douglas County*, 33 Or LUBA 216, 221 (1997); *Brown v. Coos County*, 31 Or LUBA 142, 145 (1996). The adopting government must provide "notice clearly explaining the nature of the proposal and soliciting comments concerning the proposal." *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372, 394, *aff'd* 130 Or App 406 (1994). A local government's 45-day notice to DLCD is not sufficient for this purpose. *Id*.

Similarly, newspaper notice is not sufficient. *Adkins v. Heceta Water District*, 23 Or LUBA 207, 218 (1992). Finally, the local government's findings must address the concerns raised; simply rejecting the concerns or deferring addressing them to a later time is not sufficient. *Cox v. Polk County*, 49 Or LUBA 78, 89 (2005). *DLCD v. Douglas County, supra*. Goal 2 and ORS 197.015(5) do not mandate success in accommodating

the needs or legitimate interests of all affected governmental agencies, but they do mandate a reasonable effort to accommodate those needs and legitimate interests "as much as possible." *Turner Community Association v. Marion County*, 37 Or LUBA 324, 353-354 (1999). From the foregoing, the coordination requirement is satisfied where the local government has engaged in an exchange of information regarding an affected governmental unit's concerns, put forth a reasonable effort to accommodate those concerns and legitimate interests as much as possible, and made findings responding to legitimate concerns.

b. Summary of Local Actions

The city adopted findings summarizing its coordination with irrigation districts, including Swalley. [R. at 1214-1215] Those findings describe how the city and the district communicated, and the city's consideration of the concerns raised by the district. According to the city's findings, it removed a 332-acre area entirely within the district. Also according to the city it "cannot balance SID's opposition to urbanization with the need for urbanization of the identified lands, for all of the reasons explained in the city's findings." [R. at 1215]

c. Analysis.

The director concludes that the city has complied with the coordination elements of Goal 2. The city met repeatedly with the district; conducted an analysis of the acreage of irrigated lands affected by the proposal; removed some irrigated lands from the proposal; and adopted findings describing the district's concerns and how they were accommodated. Although the notice provided by the city was confusing, it appears to have met legal requirements, and the district itself has indicated that it was able to make its concerns known in writing.

d. Conclusion

The director concludes that the city's and county's actions (the three city ordinances, and the two county ordinances) were adopted in compliance with the coordination requirements of Goal 2. The objection is denied.

5. Did the city improperly adopt the Public Facilities Plan?

Toby Bayard and Hillary Garrett and Central Oregon LandWatch, and Hunnel United Neighbors and Anderson Ranch all allege that the city improperly adopted the Public Facilities Plan in NS 2111. Specifically, they allege there was no public hearing on the ordinance, and that the city's public notice only referenced the UGB amendment. Bayard Objection 2, at 25; Garret Objection, at 3.

a. Legal Standard

BDC section 4.1.310 requires a public hearing before the city's planning commission and its city council on any legislative change to the city's plan or land use regulations. BDC 4.1.315 requires public notice of the hearing 20 days prior to the date of the hearing.

b. Summary of Local Actions

The city held a public hearing on the proposed Public Facilities Plan. The planning commission held a hearing on October 27, 2008 and the city council held a hearing on November 24, 2008. The city provided public notice of the proposed UGB amendment, which included the proposed adoption of Chapter 8 of the General Plan (Public Facilities).

c. Analysis

BDC section 4.1.310 requires a public hearing on the legislative change to the city's General Plan. The code does not prevent the city from splitting proposed changes to its comprehensive plan into two ordinances, so long as a public hearing was held that covers all of the changes. The city's hearings appear to have met the code requirement. The objectors have not identified a legal requirement concerning the level of detail required in the city's public notice.

d. Conclusion

Based on the reasoning above, the director denies these objections.

IV. CONCLUSIONS AND DECISION

1. Conclusions

The scope of the director's review of the decisions is whether they comply with the statewide planning goals and relevant statutes and administrative rules. The foregoing sections of this report explain the analysis and findings for the relevant provisions of law. The conclusions resulting from of the director's review are as follows.

Goal 1

As explained in section III.K.2 and 3, the local governments comply with Goal 1.

Goal 2

As explained in sections III.H.5 and III.K.4, the local government actions and decisions generally comply with Goal 2. However, as explained in sections III.E. and III.G., there are inconsistencies between the housing needs analysis and the UGB decision, and between the public facilities master plans and the UGB decision such that the decisions do not comply with the Goal 2 requirement for consistency with the comprehensive plan. Bend and Deschutes County complied with the requirement of Goal 2 that it coordinate the UGB amendment with affected units of local government. The director concludes that the decisions do not comply with Goal 2, for the reasons stated above and in the analysis sections of this report.

Goal 3

Compliance with Goal 3 in the context of a UGB amendment relies on satisfaction of Goal 14 requirements. See the section for Goal 14, below. Because the local governments have not demonstrated that the UGB amendment has satisfied the need criteria or location factors in Goal 14, the director cannot conclude that agricultural land is preserved and maintained pursuant to Goal 3. The director concludes that the decisions do not comply with Goal 3.

Goal 4

Compliance with Goal 4 in the context of a UGB amendment relies on satisfaction of Goal 14 requirements. In this case, no land subject to Goal 4 is affected by the decision. The director concludes that, as a result, Goal 4 does not apply to the decisions.

Goal 5

As discussed in section III.J, the UGB submittal does not comply with the requirements of Goal 5. The city has not completed the steps necessary to asses Goal 5 resources within the UGB expansion area for significance, and has not adequately addressed potential impacts to known significant Goal 5 resources as required by OAR 660-023-

0250(3)(c) and OAR 660-024-060. The director concludes that the decisions violate Goal 5.

Goal 6

Goal 6 ensures compliance with state and federal environmental laws. No person has objected that the decisions violate Goal 6, or that Goal 6 compliance will be affected by the UGB expansion. The city's amended public facilities plans indicate that the city will be in compliance with state and federal water quality laws. As a result, the director concludes that the UGB expansion complies with Goal 6.

Goal 7

As discussed in section III.J.3, the director concludes that the decisions do not conflict with the requirements of Goal 7.

Goal 8

The city's analysis of land needs included an analysis of lands required for parks. No person has objected that the UGB expansion violates Goal 8. The director concludes that the expansion complies with Goal 8.

Goal 9

This goal is addressed in section III.F. The UGB amendment does not appropriately identify land for employment uses for the planning period. The data and analysis in the adopted economic opportunities analysis are inadequate to justify the amount and location of employment land includes in the UGB expansion. As a result, the director concludes that the decisions violate Goal 9.

Goal 10

As explained in section III.E, the adopted housing needs analysis does not demonstrate that the comprehensive plan will permit appropriate housing types and densities that accommodate housing affordability needs for Bend's population. The residential land needs analysis contains data, assumptions, and conclusions that are not supported by the evidence in the record. As a result, the director concludes that the decisions do not comply with Goal 10.

Goal 11

The public facilities plans and comprehensive plan amendments prepared in conjunction with the UGB amendment do not comply with the requirements of Goal 11 or OAR 660, division 11. As a result, the director concludes that the decisions do not comply with Goal 11.

Goal 12

The decision did not properly evaluate transportation impacts or clearly make or defer decisions about proposed transportation improvements. The city, as a member of a

metropolitan planning organization, needs to address requirements for increasing the availability and convenience of alternative modes of transportation and reducing reliance on the automobile and it has not done so. As a result, the director concludes that the decisions do not comply with Goal 12.

Goal 13

Compliance with Goal 13 in the context of a UGB amendment relies on satisfaction of Goal 14 requirements. See the section for Goal 14, below. Because the local governments have not demonstrated that the UGB amendment has satisfied the need criteria or location factors in Goal 14, particularly as they relate to efficient arrangement of land uses, the director cannot conclude that energy is conserved pursuant to Goal 13. As a result, the director determines that the decisions do not comply with Goal 13.

Goal 14

Primary considerations for evaluating compliance with Goal 14 include 20-year land need and the appropriate location for the UGB. Need is addressed in section III.E and F while boundary location is addressed in section III.I. The findings and conclusions supporting the decision do not adequately justify the amount of land included in the UGB amendment for residential, employment, or other uses. The findings supporting the decision on UGB location do not adequately address the requirements of the goal. As a result, the director determines that the decisions do not comply with Goal 14.

ORS 197.296, 197.298, 197.303, 197.307

2. Decision

The director remands the decisions to the City of Bend and to Deschutes County for further action, consistent with this report and order.

VICTOR ATIYEH
GOVERNOR

Department of Land Conservation and Development

1175 COURT STREET N.E., SALEM, OREGON 97310 PHONE (503) 378-4926

July 7, 1981

The Honorable Ruth Burleigh
Mayor, City of Bend
P.O. Box 431
Bend, OR 97701

Dear Mayor Burleigh:

It gives me a great deal of pleasure to confirm that the Land Conservation and Development Commission, on June 25, 1981, officially acknowledged the comprehensive plan and implementing ordinances of the City of Bend as being in compliance with the Statewide Planning Goals.

The acknowledgment signifies a historic step for the City's land use planning efforts.

I would like to commend the local officials, staff, and citizens of your City for their hard work and foresight in the field of land use planning.

Congratulations,

W. J. Kvarsten
Director

WJK:DZ:af
5980A/5B

Enclosure

cc: Deschutes County Board of Commissioners
Betsy Shay, Coordinator
Brent Lake, Field Representative
Dick Wilson, Real Estate Division
Claire Puchy/Dale Blanton, Lead Reviewers
Jim Knight, DLCD
DLCD Library
Portland Field Office

BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF THE CITY OF BEND'S COMPREHENSIVE PLAN AND IMPLEMENTING MEASURES	)	COMPLIANCE ACKNOWLEDGMENT ORDER

On January 14, 1981, the City of Bend, pursuant to ORS 197.251(1) (1977 Replacement Part), requested that its comprehensive plan and implementing measures be acknowledged by the Land Conservation and Development Commission to be in compliance with the Statewide Planning Goals.

The Commission reviewed the attached written report of the staff of the Department of Land Conservation and Development on June 25, 1981 regarding the compliance of the aforementioned plan and measures with the Statewide Planning Goals. Section IV of this report constitutes the findings of the Commission.

Based on its review, the Commission finds that the City of Bend's comprehensive plan and implementing measures comply with the Statewide Planning Goals adopted by this Commission pursuant to ORS 197.225 and 197.245.

THEREFORE, IT IS HEREBY ORDERED THAT:

The Land Conservation and Development Commission acknowledges that the aforementioned comprehensive plan and implementing measures of the City of Bend are in compliance with the Statewide Planning Goals.

DATED THIS 7TH DAY OF JULY, 1981.

FOR THE COMMISSION:

W. J. Kvarsten, Director
Department of Land
Conservation and Development

WJK:DZ:af
5982A/5B

Attachment

LAND CONSERVATION AND DEVELOPMENT COMMISSION
ACKNOWLEDGMENT OF COMPLIANCE

RESPONSE TO CONTINUANCE ORDER OFFERED

January 22, 1980

City of Bend

DATE RECEIVED:
January 14, 1981

DATE OF COMMISSION ACTION:
June 26, 1981

I. REQUEST

Acknowledgment of Compliance with the Statewide Planning Goals for the comprehensive plan and implementing measures.

II. SUMMARY OF RECOMMENDATIONS

Staff:

Recommends the Commission acknowledge the City of Bend's comprehensive plan and implementing measures to be in compliance with the Statewide Planning Goals.

Local Coordination Body:

None received.

FIELD REPRESENTATIVE: Brent Lake
Phone: 389-2253

LEAD REVIEWER: Dale Blanton/Claire Puchy
Phone: 378-4926

COORDINATOR: Betsy Shay
Phone: 382-4000

Date of Report: June 17, 1981

III. BACKGROUND INFORMATION

The Commission reviewed the City of Bend's initial acknowledgment request in December, 1979, and offered to continue the request 120 days to allow the City time to complete work to comply with Statewide Planning Goals 1, 2, 4-6 and 8-14. Major problems were primarily due to the fact that the UGB and major portions of the plan were established prior to the adoption of the Statewide Planning Goals. Most plan policies were advisory rather than mandatory, and there was an inadequate factual base for a number of goals. The location and size of the UGB were not supported with adequate findings.

IV. ADDITIONAL MATERIALS

The following additional materials have been submitted by the City as part of its second acknowledgment request:

City and urban area plan amendments, and UGB amendments	City Resolution No. 1557 (12-17-80) County Ordinance No. 80-216 (12-18-80)
City Zoning Ordinance amendments	City Ordinance No. NS-1308 (1-7-81)
City Zoning Map amendments	City Ordinance NS-1314 (2-18-81)
Urban Area Zoning Map and ordinance amendments	County Ordinance No. 80-217 (12-18-80)
Historic Preservation Ordinance	City Ordinance No. NS-1289 (9-17-80) County Ordinance No. PL-21 (9-17-80)
Joint Urban Area Planning Commission	City Ordinance No. NS-1300 (11-19-80) County Ordinance No. 80-226 (12-18-80)
City of Bend - Water System Master Plan	(July 1980)

V. FINDINGS AND REASONS

Previously Approved Goals:

In making its continuance offer in December, 1979, the Commission found the City of Bend's request in compliance with Statewide Planning Goal 7. The amendments made do not conflict with that action taken by the Commission.

Requirement 2

All lands remaining outside the boundary established in 1. above, but inside the current UGB must be designated as natural resource, rural or urban reserve, and zoned in the UAR-10 or other protective zone classification until such time as a boundary change is justified.

Response

Lands between the IUGB and out UGB have been designated as Agriculture or Open Space on the plan map and zoned in UAR-10 (Urban Reserve), SM (Surface Mining) and SR-2 1/2 (Residential Suburban).

An exceptions statement has been adopted for the area between the IUGB and the outer UGB. This document states:

> "The City and County have agreed to a new Initial Urban Growth Boundary that excludes approximately 25 percent of the land contained in the 1979 Urban Growth Boundary. These lands are designated as urban reserve and surface mining, and zoned SR-2 1/2, UAR-10, and SM. The majority of the SR-2 1/2 areas are currently developed with lot sizes of that size or smaller.
>
> The inventory of soil data indicates that most of the agriculture lands are Class VI and are interspersed between lava ridges of scabland Class VIII. The forest soils are site 6 except for a small area of 4 contained within the Tumalo Creek Canyon which is Shevlin Park. The conclusion from this analysis is that these lands are marginal resource lands. Much of the land is surrounded by existing one to five acre subdivisions. These areas have been excepted in the Deschutes County Comprehsive Plan.
>
> The urban reserve area acts as a buffer to the more rural and resource lands beyond the UGB. The use of the urban reserve will promote more orderly and efficient development, and still retain the 1972 planning commitments which have resulted in financial commitments from both the public and private sectors. The minimum lot sizes of 2 1/2 to 10 acres will be compatible with the adjacent land uses, and in most cases are the same as the adjacent MUA-10 and RR-10 zoning outside the UGB.
>
> The provisions of these areas as urban reserve will enable the community to convert these areas when needed, and hopefully reduce any impact of the small number of individual owners of larger parcels within the IUGB. It is important to pre-plan future expansion areas for compatibility and consistency with

adjacent uses and services. These areas offer opportunities important to the Bend's and Deschutes County's economy for destination resorts. These areas offer the community an opportunity to review rural urban conflicts and develop more compatible urban and rural relationships.

No alternatives were considered, since this would require the enlargement of the 1979 UGB.

Based on these considerations, the City and County are taking an exception to Goals 3 and 4 as they relate to the land between the IUGB and the UGB."

Objection

1000 Friends of Oregon has objected to acknowledgment of the Bend Plan for Goal 14 (see Attachment A). The objection raises the following issues:

1. Unjustified use of a double UGB.

2. Inadequate demonstration of need and commitment for lands included in the UGB.

3. Inappropriate urban densities.

4. Inappropriate inclusion of lands within the UGB.

Response

The concept of a second UGB as a longer term boundary for planning purposes does not violate Goal 14 or other resource Goals in this instance. The concept here can be an effective long-range tool for facilities and urbanization planning. Adopted plan policies cited earlier in this section of the report ensure the orderly provision of facilities and services within the IUGB. Although no specific policy prohibits annexation beyond the IUGB, this has not been a compliance requirement. Even though not explicitly stated as policy, the City cannot under Goal 14, annex beyond the IUGB. If the plan indicated that such an annexation could occur, this would violate Goal 14. The combination of quality of resource lands, holding zones and a requirement to amend the IUGB before more intense development insures the IUGB will function as an effective Goal 14 boundary.

As noted in the conclusion to this section of this report, the City has adequately considered the seven factors of Goal 14 in establishing the IUGB. Although the boundary contains more land than needed, the area is justified based upon commitment and other locational factors.

The SR 2 1/2 outside the IUGB is justified because the area is relatively parcelized and for the most part, surrounded by a Deschutes County exception to Goals 3 and 4 based upon commitment. This area is clearly a

dividing line between the larger urbanizable parcels inside the IUGB and the agricultural areas beyond the outer UGB and as such provide for an orderly transition between urban, rural and resource lands.

The RL lands (20,000 square foot) do not impact the City's ability to meet its housing needs, but are not efficient in terms of economy of services. However this area is, for the most part already developed to these lot sizes and is outside the Phase II service area. According to the City:

> "These RL areas have supplied a substantial amount of the recently developed lots providing modest priced housing within the urban area. In most cases, until such time as the sewer would become available, these areas will not be further divided.
>
> The County's subdivision ordinance does contain replatting provisions. The Urban Area Planning Commission is working on a redraft of the subdivision ordinance to bring standards, procedures, and requirements into uniformity within the urban area. We will add provisions for redivision as part of this process" (see Attachment C).

Finally, the inclusion of a 177 acre parcel inside the UGB, but outside the IUGB does not impact the County's ability to preserve all or portions of the parcel as a habitat area. This parcel's inclusion in the outer UGB does not violate Goal 14.

Conclusion: The City of Bend complies with Goal 14.

The City has revised its urban growth boundary to exclude 6,858 acres which are not needed and could not be justified based upon Goal 14 requirements. The revised boundary is justified because the land is committed to urban development through facilities or existing development. Locational considerations of Goal 14 (Factors 3-7) are addressed by the findings document through general findings and specific findings for each geographic segment of the boundary. This initial urban growth boundary serves as a viable Goal 14 UGB. Any land use changes outside the IUGB will require an amendment pursuant to the seven factors of the Goal. The outer UGB will work as a longer term growth area, which will be retained for potential urbanization at the time the land is needed. In the interim, UAR-10, SM and SR-2 1/2 zoning will retain the area in a land use pattern which will enable more intensive development in the future.

OVERALL CONCLUSION

The City of Bend has made extensive modifications to its comprehensive plan and implementing measures to correct deficiencies identified by the Commission in December, 1979. Among the major changes were a completely updated land use and buildable lands inventory, a new water plan, a new

parks plan, and a revised economic base analysis. Perhaps the most significant change has been the establishment of a UGB and IUGB with Deschutes County. The City now has a sound plan upon which land use decisions can be based.

V. RECOMMENDATION

Staff:

Recommends the Commission acknowledge the City of Bend's comprehensive plan and implementing measures to be in compliance with the Statewide Planning Goals.

Local Coordination Body:

None received.

CP:kb
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April 14, 2005

EXHIBIT: 6
LAND CONSERVATION & DEVELOPMENT COMMISSION
DATE: 4/28/05
PAGES: 22
SUBMITTED BY: DLCD staff

TO: Land Conservation and Development Commission (LCDC)

FROM: Bob Rindy and Jim Hinman, DLCD

SUBJECT: **Agenda Item 6; April 28, 2005, LCDC meeting**

WORK SESSION AND POSSIBLE ADOPTION OF PROPOSED AMENDMENTS TO GOAL 14 AND RELATED ADMINISTRATIVE RULES CONCERNING URBAN GROWTH BOUNDARIES

AGENDA ITEM SUMMARY

This item is a work session intended for Land Conservation and Development Commission (LCDC) to discuss and potentially adopt proposed amendments to Goal 14 and two related administrative rules – OAR 660, Divisions 004 and 026. The proposed amendments (Attachments A through C to this report) are intended to clarify and streamline the state's urban growth boundary (UGB) requirements and procedures. LCDC held a final public hearing on these proposals February 3, 2005, and extended the time for written comments until February 28, 2005. The Commission held a work session on March 17, 2005, to discuss the proposals and the comments regarding the proposals. At that time, the Commission indicated its intent to consider adoption of the goal and rule amendments at its April 28, 2005, meeting.

For more information about this agenda item, contact Bob Rindy, at (503) 373-0050, Ext. 229, or email at bob.rindy@state.or.us.

SUMMARY OF RECOMMENDED ACTION

The department recommends that the Commission adopt the proposed Goal 14 amendments and related rule amendments, OAR 660, Divisions 004 and 026.

BACKGROUND AND HISTORY

The Commission initiated this policy project on June 11, 2004. The intent is to clarify and streamline the UGB amendment process by amending Goal 14 and by adopting new administrative rules outlining procedures and requirements for UGB amendments. An addition new rule (not presented with this report) would include "safe-harbors" that will specify optional methods for local governments to use in order to save time and expense in the UGB amendment process.

LCDC appointed an advisory workgroup to guide the department and Commission with this project, consisting of twenty four members from a variety of backgrounds representing local governments, state agencies, citizens and interest groups concerned about the UGB amendment process. The workgroup began meeting in July 2004 and has met twelve times.

The workgroup discussion of amendments to Goal 14 resulted in proposed changes to the existing text that would more clearly express longstanding UGB policy and other requirements, and improve wording that is currently ambiguous or unclear. The workgroup has also recommended the elimination of a major step in the UGB process – the "exceptions process" – and replacing it with more clearly expressed requirements intended to accomplish the same purposes. The workgroup discussion resulted in proposed amendments to Goal 14 and two related rules (Divisions 004 and 026), published October 20, 2004, that were the subject of ten public hearings statewide conducted by the department in November 2004 through January 2005, and also the subject of two LCDC public hearings and one work session.

In addition to consideration of Goal 14 itself, the workgroup's primary purpose has been to draft a new set of rules (under a proposed new Division 024 under OAR 660) in order to clearly set forth the procedures and requirements for UGB amendment, and to provide a higher level of detail than the goal itself concerning these procedures and requirements. Most important, the draft rules would establish new "safe harbor" provisions intended to reduce local government time and cost in amending a UGB. An initial draft of these new rules was published on October 20, 2004, and was also a subject of the department's ten public hearings in November 2004 through January 2005. Based on comments received in the initial ten public hearings, the workgroup determined that there had not been enough time for study and discussion of the new rules, especially the proposed safe harbors. In response, at its December 8, 2004, meeting, LCDC directed the department and the workgroup to extend the time period for study and consideration of the proposed new UGB rules under Division 024. The workgroup will meet at least through the Fall of 2005 in order to refine the proposed new rules for LCDC's consideration later in 2005.

In its February and March 2005, meetings, LCDC indicated its intent to consider adoption of the proposed amendments to Goal 14 (and the two related rules). The workgroup met December 18, 2004, and January 6, 2005, in order to respond to the Commission's direction with regard to the proposed Goal 14 amendments. Based on this discussion, the department issued a new draft of the goal amendments (and two related rules at OAR 660, Divisions 004 and 026) on January 7, 2005.

On February 3, 2005, the Commission held a final public hearing on the proposed amendments to Goal 14 and related rules. After the close of that hearing, LCDC directed the department to extend the period for written comments. The comment period was extended to February 28, 2005, based on a revised draft of the Goal amendments dated February 9, 2005, and a written proposal for the applicability dates of the new goal and rule amendments should they be adopted by the Commission (See Attachment D).

NOTE: This report does not include detailed descriptions of the intended goal amendments. The department's November 29, 2004, and January 19, 2005 staff reports provided detailed descriptions as to the intent of the various changes in the proposed Goal 14 and related rule amendments, and these descriptions were also summarized and attached to the department's March 3, 2005, staff report to LCDC.

SUMMARY OF MARCH 17, 2005, LCDC WORKSESSION

At its March 17, 2005, meeting, the Commission held a work session on the proposed amendments. At that time the Commission discussed the various issues that had been raised in testimony regarding the proposal. The Commission's discussion is summarized below.

1. Timeline for Goal Adoption

The Commission discussed postponing action to amend Goal 14 until the broad "30-year review" of the land use program contemplated in the department's legislative proposal, Senate Bill 82. The Commission decided the proposed amendments to Goal 14 should not be put off to that longer-term review of the program.

2. Potential for Litigation regarding Changes to Goal 14

The Commission agreed that, although changes to the goal should be made very carefully because they are likely to be the subject of litigation in the future, the potential for unintended consequences as a result of such litigation should not deter action to clarify and streamline Goal 14.

3. Livability

The Commission favored leaving the term "livability" in the Land Need section of the goal, but also leaving the clarifying language on page 1, lines 30 through 32 of Attachment A, that had been crafted in order to replace "livability". In its discussion the Commission indicated that, although the term livability, as interpreted in the past, does not provide a different standard than the new clarifying language, there is a public perception that omitting the term could in some manner affect a change in the goal. The Commission asked the department to omit Option 1 in the proposed goal amendments, and prepare a version for Commission consideration in April that carries forward Option 2 retaining the word "livability" (See Attachment A).

4. The "and" Between Need Factors 1 and 2

The Commission discussed the two need factors, and agreed that local governments need to address both of these factors (1) and (2), and may not choose either one or the other. This was in response to a suggestion that prior policy allowed local governments to consider both factors, but then address only one or the other. The department pointed out that the seven factors were always connected by an "and," i.e., there had not been

previous policy suggesting only one of the need factors could be addressed. Thus, to change the "and" to "or" would be a change in policy.

The discussion also highlighted the fact that authorizing only one of the need factors to be addressed could imply that a local government may ignore Factor 1 and approve a UGB amendment without support of a 20-year population forecast. The amended goal states that the determination of a land need is a two-step process: First, calculate the 20-year population forecast, and then calculate the amount of land needed for one or more need categories. As part of this discussion, the Commission also directed that the department's staff report clarify that a new 20-year population forecast is not necessarily required in order to amend a UGB. Rather the local government must show that the proposed UGB amendment "is consistent with" the 20-year forecast, either a new forecast or the current forecast. Thus, a "quasi-judicial UGB amendment" proposed by a property owner could still be considered based on the current population forecast.

5. The "or" in the list of uses under Factor 2

Proposed amendments to Need Factor 2 link the list of land need categories with the term "or", rather than "and" as in the current list ("Demonstrated need for land suitable to accommodate housing, employment opportunities, livability "or" uses such as public facilities, streets and roads, schools, parks or open space"). The department explained that this was done in order to clarify that a local government could pursue a UGB amendment in order to accommodate only one of the categories of needs on the list while not addressing the other, for example, to accommodate the need for housing land while not simultaneously examining the need for employment land. In the discussion, it was brought out that the term "and/or" may have been more appropriate, but that term is discouraged by legal counsel and protocols for rule drafting. The Commission directed the department to propose wording that accomplishes the same thing without using "and/or," and that more clearly indicates the intent to authorize a UGB amendment for one or more need categories. The department has proposed the following:

> "(2) Demonstrated need for land suitable to accommodate housing, employment opportunities, and livability ***or any combination of the foregoing***, and uses such as public facilities, streets and roads, schools, parks or open space."

6. Special Characteristics for Need

The Commission discussed the new proposed wording indicating that local government may specify characteristics of needed land, and the alternative wording proposed by Jeff Bachrach, which provides more specificity than the department's proposed wording. The Commission discussed whether the language should remain fairly broad, as in the current draft proposal, or provide a higher order of specificity, as in Mr. Bachrach's proposal. It was concluded that the general direction in the workgroup's proposal provides a greater degree of discretion for local governments.

7. The Reference to ORS 197.298

The Commission discussed whether to include this reference in the goal, and whether or not there is need for more detailed guidance on the manner in which cities address this statute and the locational factors. The Commission decided to include the reference, and to consider the question of additional guidance in the new UGB rules under consideration by the workgroup. Proposed legislation affecting this statute was also discussed and the Commission agreed that we would not likely know whether this bill would pass by April 28, and we should not delay action due to that uncertainty.

It was also noted that this statute is the only place in the goal that provides for consideration of the preservation of farm and forest land in UGB amendments. If at any point in the future that statute is deleted or modified, the Commission indicated it would need to revise the locational factors to return Factor (6) or something equivalent.

8. If "livability" is retained as a need, should it be remove it as a location factor?

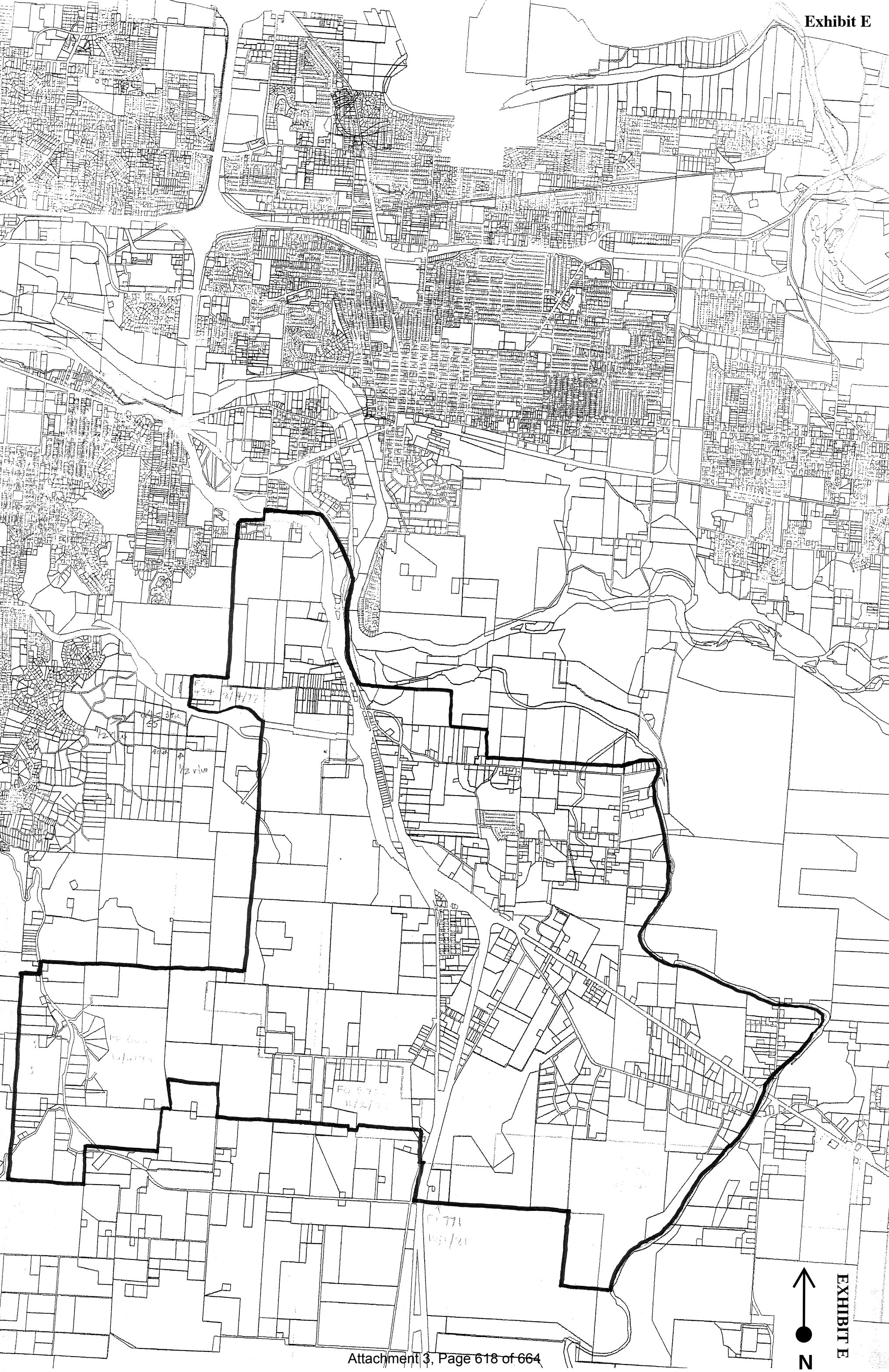
The Commission asked whether the decision to retain "livability" as a need factor would mean that it is no longer appropriate to add it as a locational factor (the term is included as a new Location Factor 2, see Page 2, Line 12 of Attachment A). The department notes that Location Factor 2 also includes the term "efficient urban form", which is not currently a location factor.

By retaining the word "livability" in both the sections, the Commission may be implying – and a Court could well conclude - that "livability" is something different in each section, and that is not necessarily what the UGB workgroup intended. The department indicated that there might conceivably be some aspects of "livability" that are purely locational, and therefore this term could logically remain under the Boundary Location section of the goal. On the other hand, the goal does not currently require local governments to address "livability" as a locational factor. As such, this would arguably be a *modification* of the goal, *not* a *clarification.* If the rationale for retaining "livability" in the land needs section is to *not* change the Goal, then the Commission might also consider *not* adding the term to the locational factors.

If the commission decides to *not* add "livability" as a new location factor, the department would recommend that the commission also consider whether the remaining piece of that factor, regarding "efficient urban form," should stand alone as a new Location Factor 2, or should be combined with the proposed modified Location Factor 1, which also addresses efficiency.

9. Urbanizable land available "over time"

The discussion brought out concerns regarding the phrase "over time" and whether this might be misinterpreted to mean there would be some sort of sequence for making UGB land available. This discussion also raised the fact that the proposed goal should do more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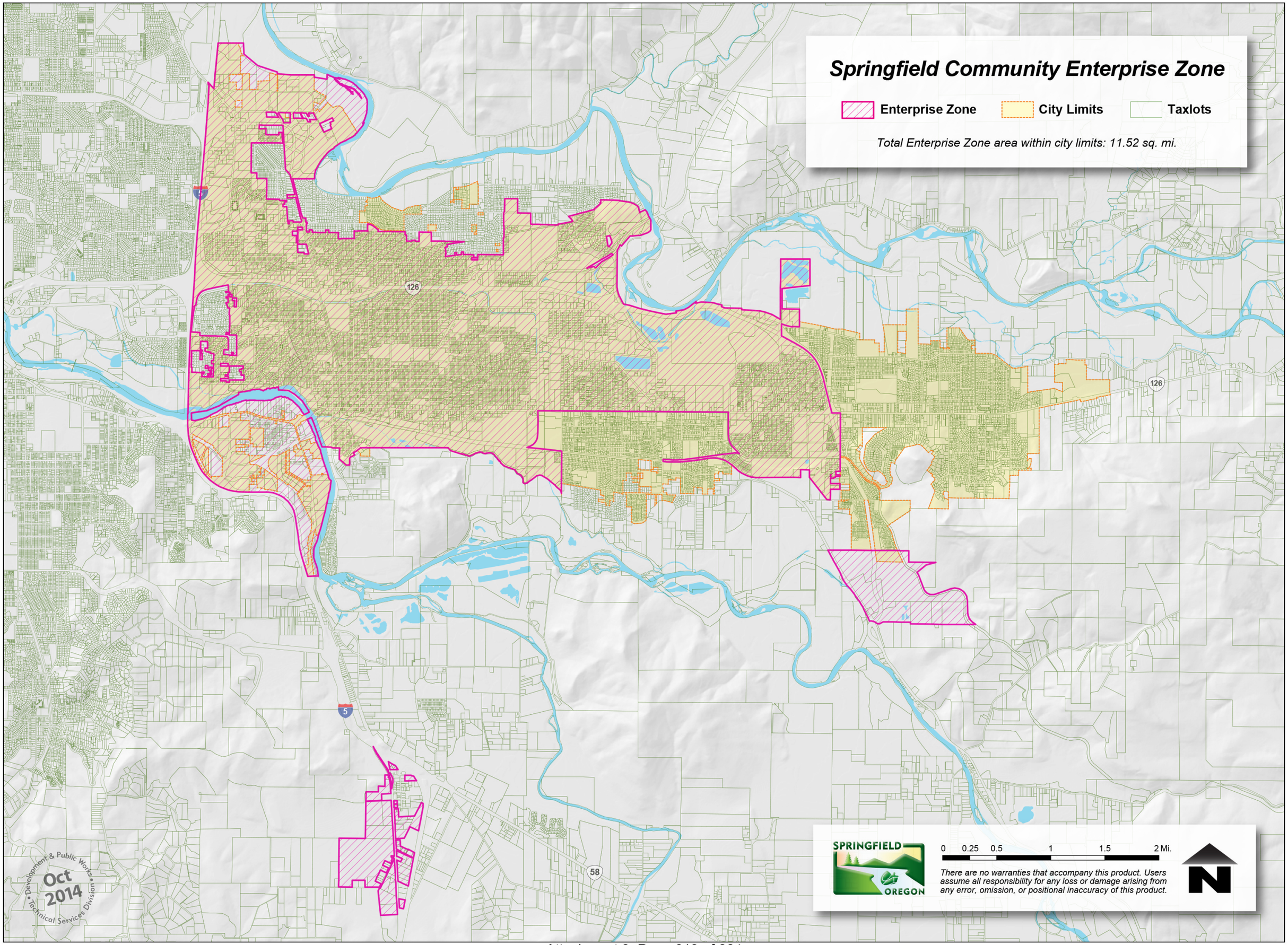

ATTACHMENT 4