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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.

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.

The findings substantially misrepresent the footprint of the Seavey Loop area under consideration.

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 **no** 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, never 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.

The findings so focus on the trees that it misses the forest, perhaps intentionally so.

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

Springfield City County and Lane County Board of Commissioners

August 22, 2016

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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

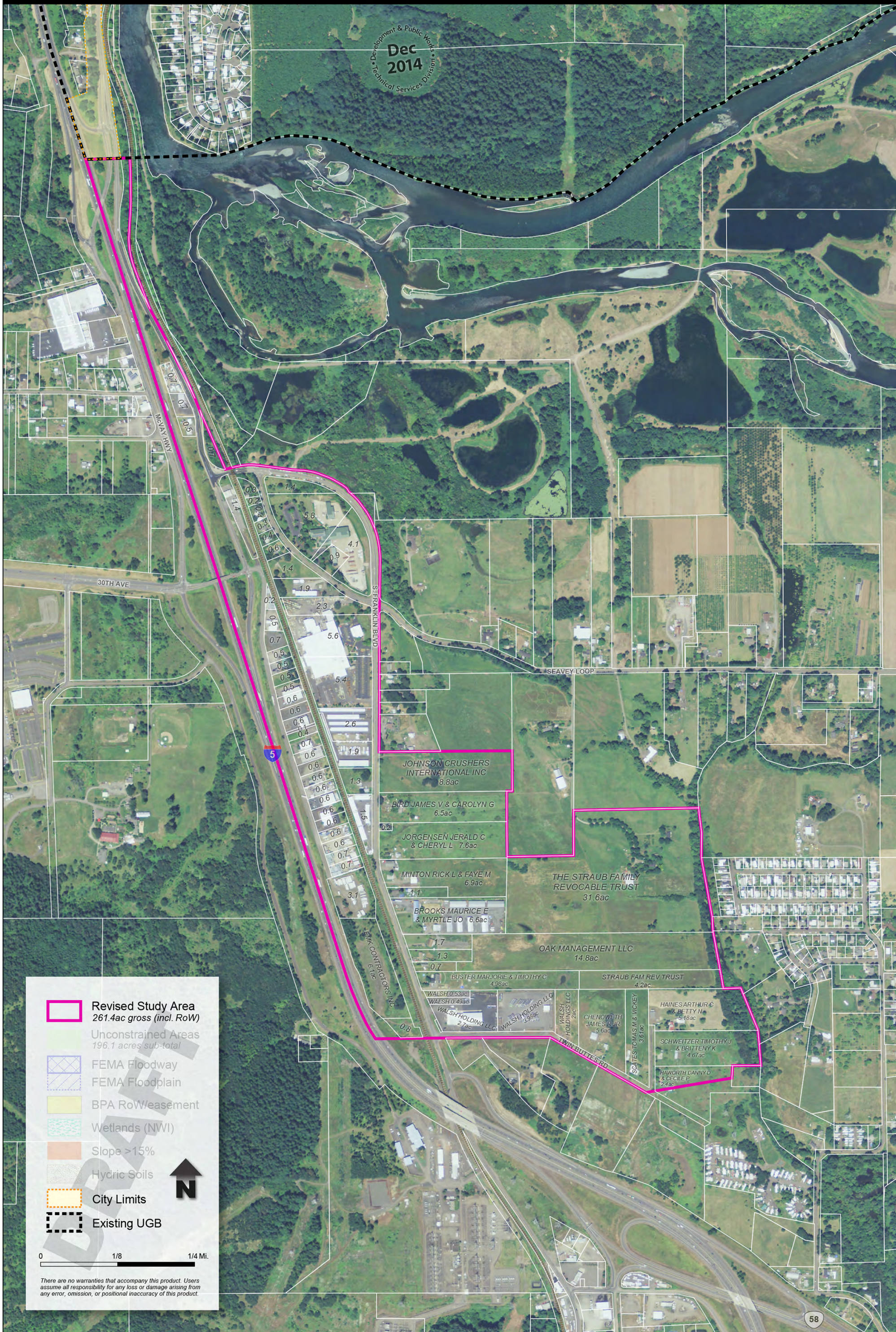
Exhibits included:

- 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)

SPRINGFIELD 2030 REFINEMENT PLAN: Proposed UGB Expansion Areas - College View Industrial



Development & Public Works
 Dec 2014
 Technical Services Division



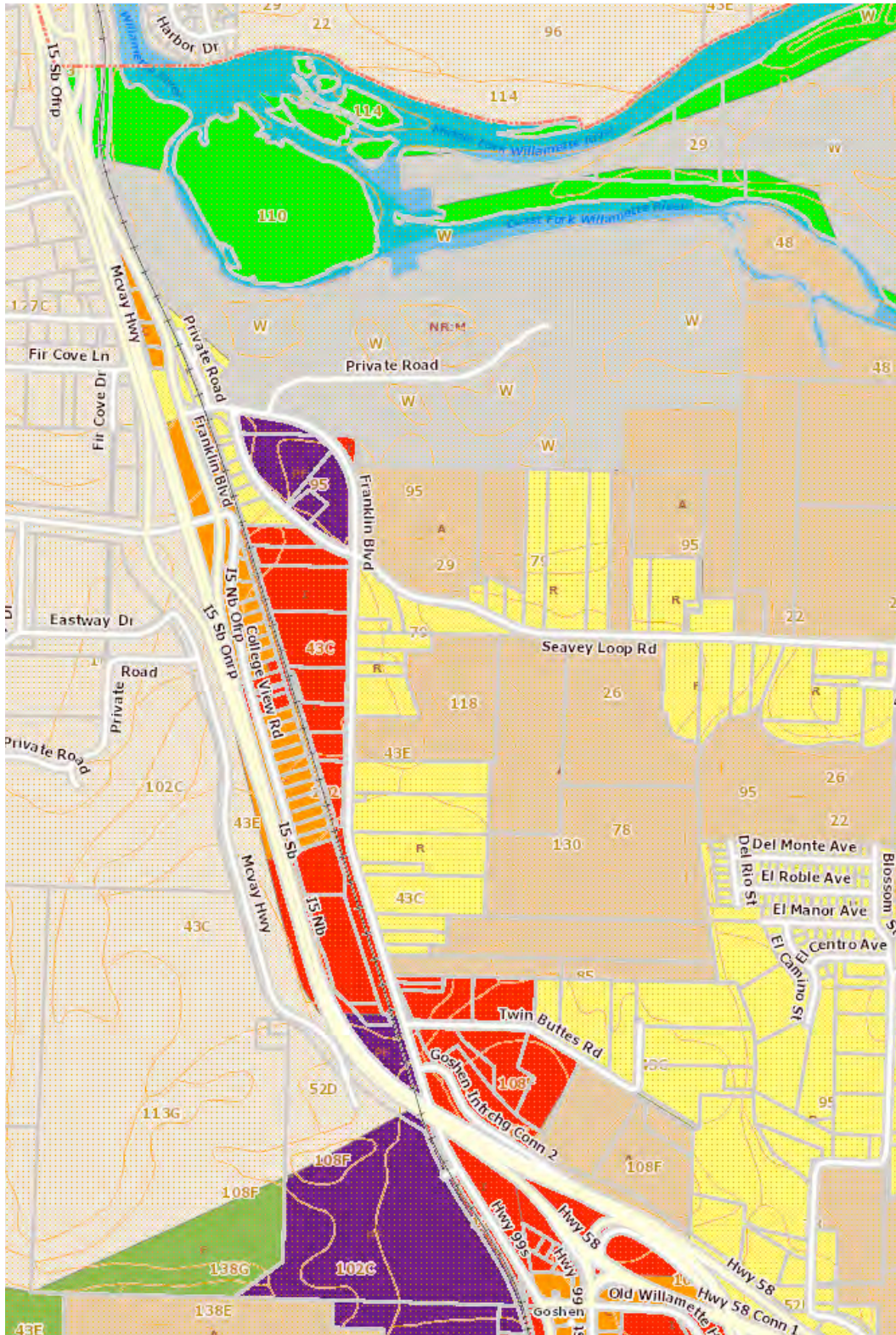
- Revised Study Area
261.4ac gross (incl. RoW)
- Unconstrained Areas
196.1 acres sub-total
- FEMA Floodway
- FEMA Floodplain
- BPA RoW/easement
- Wetlands (NWI)
- Slope >15%
- Hydric Soils
- City Limits
- Existing UGB

0 1/8 1/4 Mi.

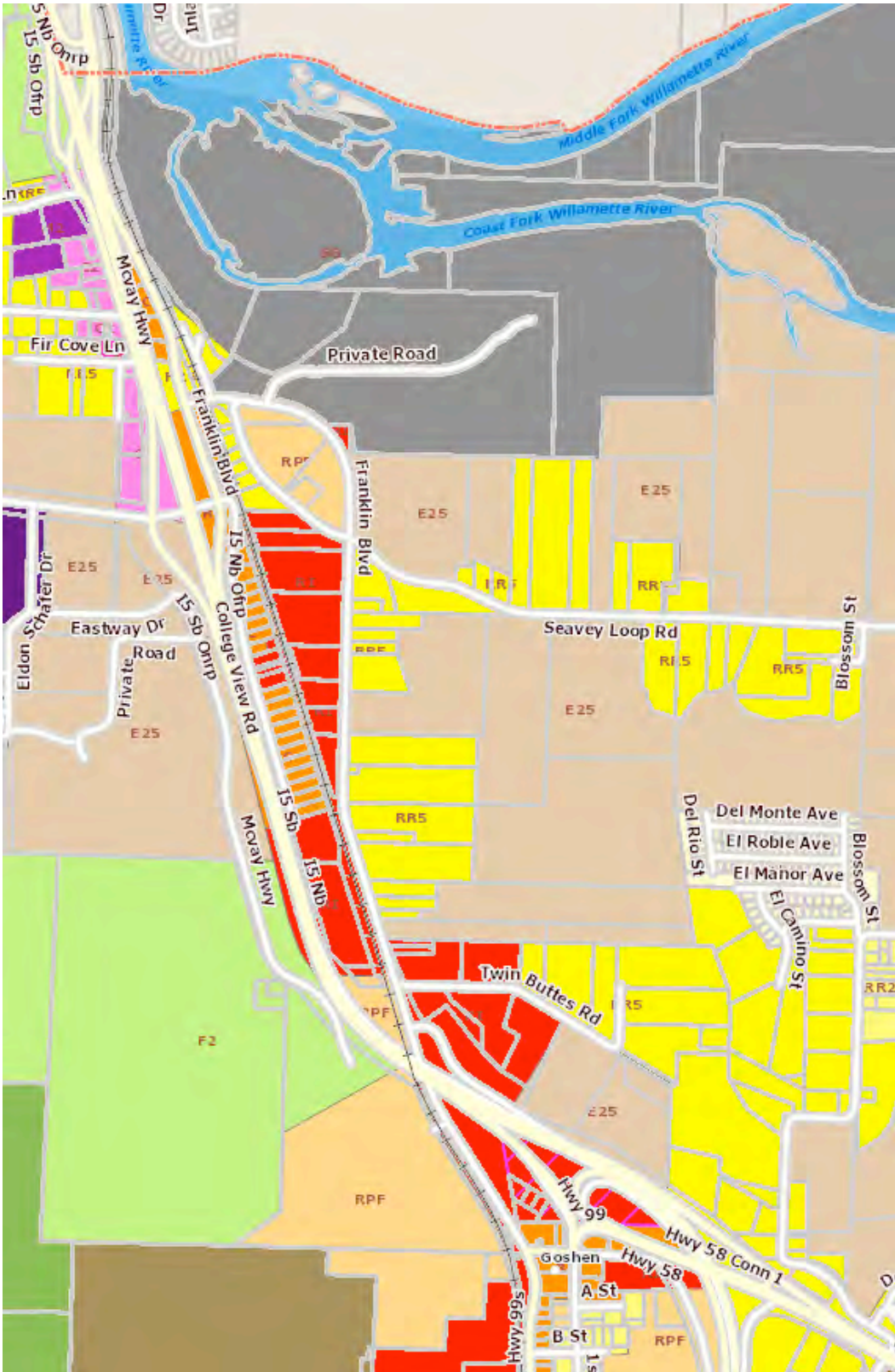
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Seavey Loop Area Plan and Zone Designation Map Excerpts

County Plan Designations and Soils Information



County Zone Designations

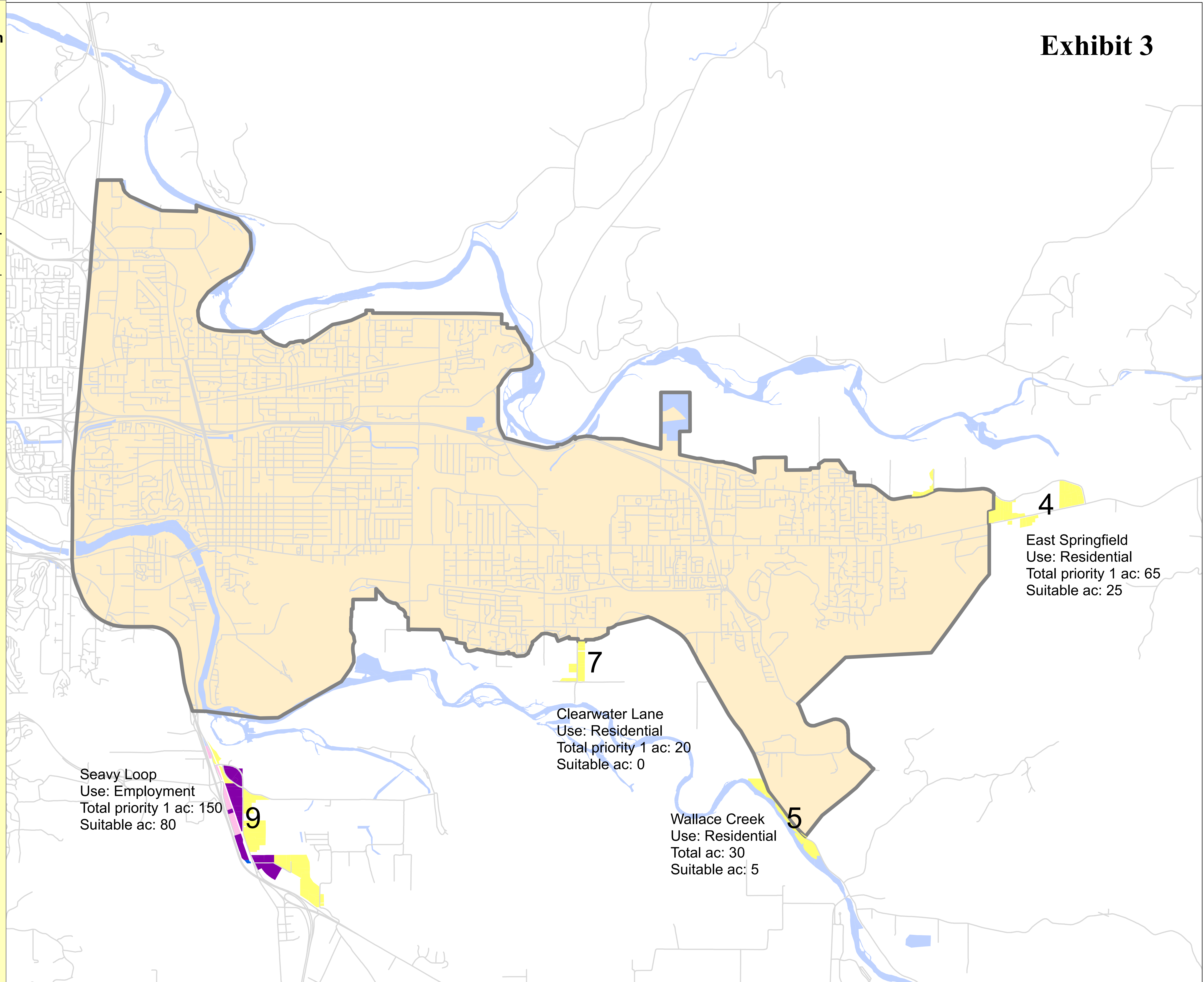


**Map 6. Priority 1 Lands for UGB Expansion
City of Springfield, Oregon**

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



4
East Springfield
Use: Residential
Total priority 1 ac: 65
Suitable ac: 25

7
Clearwater Lane
Use: Residential
Total priority 1 ac: 20
Suitable ac: 0

5
Wallace Creek
Use: Residential
Total ac: 30
Suitable ac: 5

9
Seavey Loop
Use: Employment
Total priority 1 ac: 150
Suitable ac: 80

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.



SPRINGFIELD 2030 REFINEMENT PLAN: Proposed UGB Expansion Areas - College View Industrial



July 2014
Development & Public Works
Technical Services Division

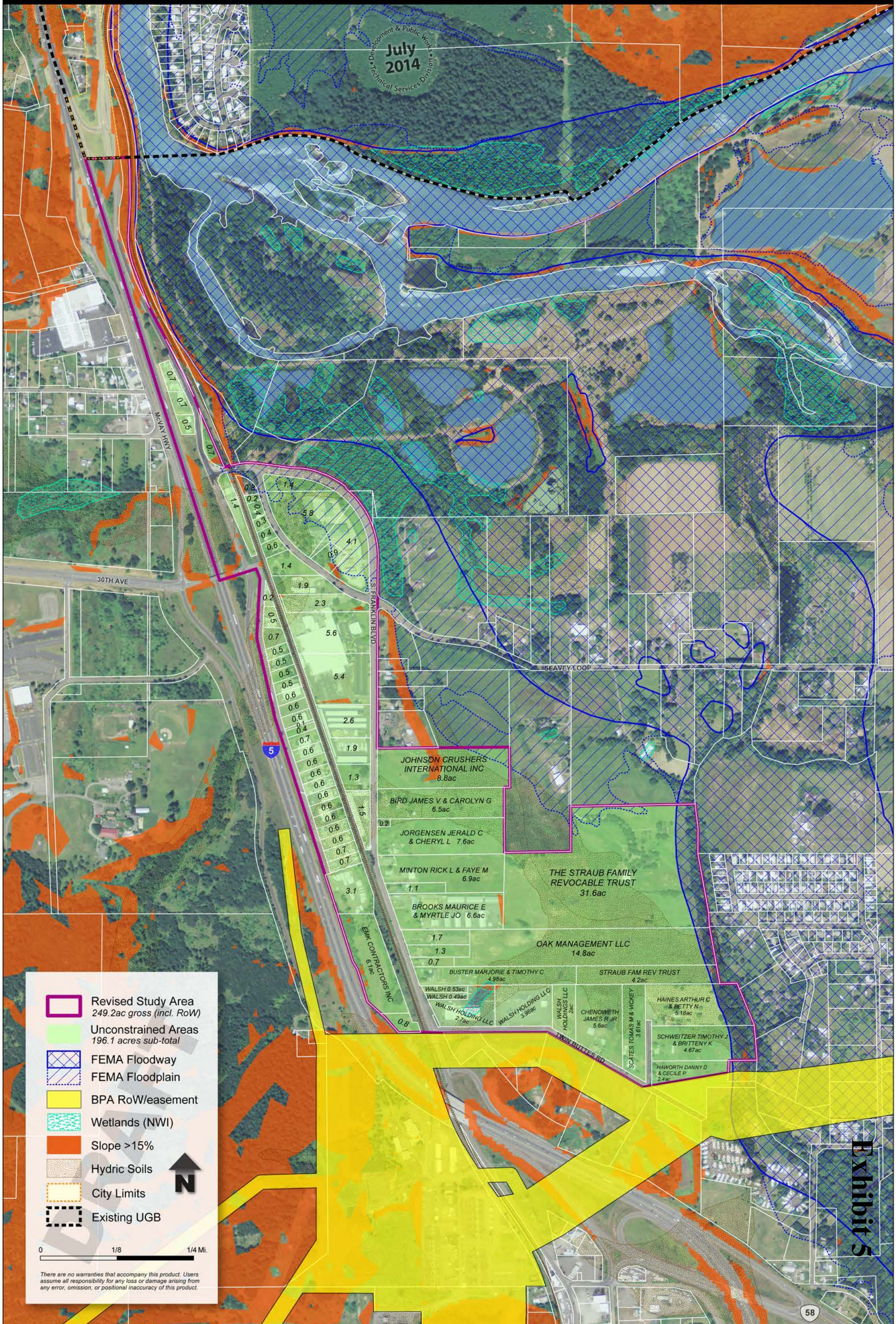


Exhibit 5

There are no warranties that accompany this product. Users assume all responsibility for any loss or damage arising from any error, omission, or positional inaccuracy of this product.

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 LAND WATCH OF LANE COUNTY
5 and LEE D. KERSTEN,
6 *Petitioners,*

7
8 vs.

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10 LANE COUNTY and CITY OF COBURG,
11 *Respondents.*

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13 and

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15 INTERSTATE PROPERTIES, INC.,
16 *Intervenor-Respondent.*

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18 LUBA Nos. 2016-003/004

19
20 FINAL OPINION
21 AND ORDER

22
23 Appeal from Lane County and City of Coburg.

24
25 William K. Kabeiseman, Portland, filed the petition for review and
26 argued on behalf of petitioners. With him on the brief was Garvey Schubert
27 Barer.

28
29 H. Andrew Clark, County Counsel, Eugene, filed a joint response brief
30 and argued on behalf of respondent Lane County.

31
32 Milo R. Mecham, of Coburg.

33
34 Dan Terrell, Eugene, filed a response brief and argued on behalf of
35 intervenor-respondent. With him on the brief was the Law Office of Bill Kloos
36 PC.

37
38 HOLSTUN, Board Chair; BASSHAM, Board Member; RYAN, Board

1 Member, participated in the decision.

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REMANDED

08/01/2016

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You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

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NATURE OF THE DECISION

Petitioners appeal two county ordinances that amend a county rural comprehensive plan and co-adopt city comprehensive plan amendments to the city’s transportation system plan and urban growth boundary.

MOTION TO FILE OVER-LENGTH BRIEF; MOTION TO STRIKE

Respondents Lane County and City of Coburg (county and city, collectively respondents) filed a motion for an over-length response brief. Petitioners Land Watch of Lane County and Lee Kersten (petitioners) filed a motion to strike and a response to the motion. Because we have two consolidated appeals, complex decisions and issues, and a large number of parties, we consider all the parties’ filings, and petitioners’ motion to strike the over-length response brief is denied.

FACTS

Respondents have an intergovernmental agreement regarding coordinated planning and urban services pursuant to ORS 190.003 *et seq.* To address projected population growth in the area, the county and city initiated an urban growth boundary (UGB) expansion by passing ordinances to amend the city’s UGB and revise the city’s transportation system plan (TSP) for the area, based in part on the expanded UGB. The county ordinances that are before us

1 in this appeal concur in and adopt the city's UGB expansion and TSP
2 amendments.¹

3 Respondents determined that Coburg needs an additional 903 residential
4 dwelling units, which justifies an expansion of the UGB by 148.8 acres to
5 accommodate residential and residentially related public facility needs. Record
6 298-299. The city and county also determined that an additional 91.7 acres
7 needed to be brought within the UGB for employment, including land to
8 accommodate large scale industrial sites. Record 306.

9 The city studied eleven different candidate areas to meet the identified
10 need. A map showing those eleven areas and the UGB as it existed prior to the
11 disputed amendments is included as Appendix 1 (Record 1492).² Areas 1, 6, 7,
12 and 8 are made up almost entirely of agricultural land zoned for exclusive farm
13 use (EFU), with Areas 1 and 6 having the best soil quality, Area 8 having lesser
14 soils quality and Area 7 having the worst soil quality of Areas 1, 6, 7 and 8.
15 Area 5 is almost entirely rural residential land, for which an exception to Goal
16 3 (Agricultural Lands) was approved in the past. The UGB amendment
17 ultimately expanded the boundary to include 105.72 acres of land for light
18 industrial use, 2 acres for high-density residential use, 15 acres for medium-

¹ While the appealed ordinances are county ordinances, the decisions are joint city and county decisions and we refer to respondents in the plural in this opinion.

² The dashed line on the map shows the UGB before it was amended by one of the ordinances that is before us in this appeal.

1 density residential use, and 131.84 acres for low-density residential use.
2 Respondents chose to include within the UGB portions of Areas 1, 2, 5, and 6
3 for new residential development and Area 8 for industrial development. A map
4 showing the expanded UGB, west of Interstate-5, is included as Appendix 2
5 (Record 1494).³ To assist in keeping up with the characteristics of the relevant
6 study areas, we include the chart on the following page that summarizes the
7 information in this paragraph.

8 The TSP amendment includes a “Proposed Future Collector” (east-west
9 bypass) to allow traffic to travel north of the existing principal throughway
10 (Coburg Road-Van Duyn Street-Willamette Street). Appendix 3 (Record 1517)
11 shows the proposed east-west bypass. That east-west bypass would travel
12 through Areas 5 and 6 and the Coburg North Industrial Area (Coburg NIA), to
13 connect with Coburg Industrial Way, a north-south collector. The east-west
14 bypass is the subject of petitioners’ first assignment of error.

15

³ Because the color map is displayed here in black and white, it does not display the new UGB very clearly. But with the context map in the lower left corner of Appendix 2 the portions of Areas 5, 6 and 1 that were included in the UGB can be identified. Those areas are the subject of the second assignment of error.

Area Summary

Area	Land Type	Action
1	Mostly High Value Farm Land with some Exception Land	Included Both Exception Land and High Value Farm Land, for Residential Land Need – Omitted most High Value Farm Land
5	Predominantly Exception Land	Included Mid Area 5, All High Value Farm Land, for Residential Land Land Need. North and South Area 5, mostly Exception Lands, were not Included
6	High Value Farm Land	Included the lower part of Area 6, all High Value Farm Land
7	Worst Quality Farm Land (East of I-5)	Not Included
8	Better Quality Farm Land (East of I-5)	Included for Employment Land

FIRST ASSIGNMENT OF ERROR

A. TSP Violates Goal 9

As already noted, the proposed east-west bypass would travel through Areas 5 and 6 and through the Coburg NIA to connect with Coburg Industrial Way, a north/south collector. Petitioners argue that the county erred in adopting a TSP that does not comply with the Statewide Planning Goal 9

1 (Economic Development) and is not supported by an adequate factual basis.⁴
2 Under this subassignment of error, petitioners advance two arguments. First,
3 citing *Opus Development Corp v. City of Eugene*, 28 Or LUBA 670, 691
4 (1995), petitioners contend that developing the east-west bypass will reduce the
5 amount of land now available for commercial and industrial uses in the Coburg
6 NIA, and the county’s decision fails to account for this loss or demonstrate that
7 there will remain a sufficient inventory of land for commercial and industrial
8 uses, as it is required to do under directive 3 of Goal 9.⁵ *Id.* Second,
9 petitioners assert that the TSP does not comply with directive 4 of Goal 9,
10 which requires that local governments “[l]imit uses on or near sites zoned for

⁴ Goal 2 requires that amendments to a comprehensive plan are supported by a factual basis demonstrating compliance with applicable statewide planning goals. Goal 2 Guideline C.1.

⁵ Goal 9 provides that “[c]omprehensive plans for urban areas shall:

- “1. Include an analysis of the community’s economic patterns, potentialities, strengths, and deficiencies as they relate to state and national trends;
- “2. Contain policies concerning the economic development opportunities in the community;
- “3. Provide for at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan policies;
- “4. Limit uses on or near sites zoned for specific industrial and commercial uses to those which are compatible with proposed uses.”

1 specific industrial and commercial uses to those which are compatible with
2 proposed uses.” We turn to petitioners’ second argument first.

3 Petitioners argue that the proposed east-west bypass would cut directly
4 through the NIA and significantly interfere with the NIA’s ability to continue
5 to provide regional employment opportunities. Petitioners cite to the testimony
6 of Steve Lee to the board of commissioners, which alleged that the east-west
7 bypass would severely damage the ability of current NIA industrial users to
8 continue operations. Petitioners’ Appendix C 1-3. That testimony is further
9 supported by Kelly Sandow, a civil engineer who explained how the bypass
10 might damage industrial operations by rendering loading docks unusable and
11 impairing the use of a parking lot at two existing buildings. Record 851-856.
12 Petitioners note that the TSP findings do not address the east-west bypass
13 road’s impact on the NIA and the city’s Economic Opportunity Analysis did
14 not account for any loss of employment land capacity due to the east-west
15 bypass road’s impact. Petitioners assert that the city must explain how the NIA
16 will be able to retain existing jobs if it is disrupted by the new east-west
17 bypass.⁶

⁶ Pursuant to OAR 660-012-0025(1), the TSP “constitute[s] the land use decision regarding the need for transportation facilities, services and major improvements and their function, mode, and general location.”

1 Respondents offer a number of responses to petitioners’ arguments, but
2 cite only one relevant finding, which does not address the alleged impacts of
3 the proposed east-west bypass on the NIA.⁷

4 It is certainly possible that the east-west bypass envisioned by the TSP
5 amendment might negatively impact the loading docks and parking associated
6 with the two buildings the east-west bypass would pass between, if that
7 roadway is actually constructed in the location shown in the amended TSP.⁸
8 But the fourth paragraph of Goal 9 does not operate in the broad way that
9 petitioners argue. The “specific industrial and commercial uses” that the fourth
10 paragraph of Goal 9 refers to are limited to “specific commercial or industrial
11 uses with special site requirements.” *Opus Development*, 28 Or LUBA at 693.
12 We explained in *Opus Development*, 28 Or LUBA at 692, that OAR 660-009-

⁷ The TSP Amendment’s brief finding on Goal 9 provides:

“The Coburg TSP is consistent with this goal because it reinforces the City’s freight network with transportation projects that will provide access to freight facilities and employment sites. Adopting the TSP will ensure that transportation improvements will be available to support the planned uses in the City’s employment areas, consistent with other local economic development goals that are consistent with Goal 9.” Record 790.

⁸ Respondents contend the TSP only displays the general location for the east-west bypass, and that when the specific location for the east-west collector is selected, appropriate measures can be imposed at that time to mitigate any impacts there might be to existing businesses in the Coburg NIA.

1 0025 is relevant context for interpreting the goal, as it implements the fourth
2 paragraph of Goal 9. OAR 660-009-0025(8) explains what is required:

3 “Uses with Special Siting Characteristics. Cities and counties that
4 adopt objectives or policies providing for uses with special site
5 needs must adopt policies and land use regulations providing for
6 those special site needs. Special site needs include, but are not
7 limited to large acreage sites, special site configurations, direct
8 access to transportation facilities, prime industrial lands,
9 sensitivity to adjacent land uses, or coastal shoreland sites
10 designated as suited for water-dependent use under Goal 17.
11 Policies and land use regulations for these uses must:

12 “(a) Identify sites suitable for the proposed use;

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

16 “(c) Where necessary, protect a site for the intended use by
17 including measures that either prevent or appropriately
18 restrict incompatible uses on adjacent and nearby lands.”⁹

⁹ In 1995, this text was located at OAR 660-009-0025(4), but is now at OAR 660-009-0025(8). The applicable version in 1995 quoted below had similar wording and any difference does not alter the analysis in *Opus Development*:

“Jurisdictions which adopt objectives or policies to provide for specific uses with special site requirements shall adopt policies and land use regulations to provide for the needs of those uses.
* * * Plans and land use regulations for these uses shall:

“(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 to those which

1 We further noted that there is no requirement that uses near all lands
2 zoned commercial or industrial must be limited to compatible uses, and the
3 fourth paragraph is only applicable “where the local government has designated
4 certain commercial or industrial zoned land for specific commercial or
5 industrial uses with special site requirements.” 28 Or LUBA at 693. Petitioners
6 have not demonstrated that the Light Industrial (LI) zoning that applies in the
7 Coburg NIA is for “specific commercial or industrial uses with special site
8 requirements,” or includes any specific and special site requirements for
9 particularized uses. Therefore, the fourth paragraph of Goal 9 is inapplicable
10 and does not provide a basis for remand.

11 Petitioners’ first argument that the proposed east-west bypass will
12 effectively remove land from the county’s or city’s inventory of land for
13 industrial or commercial uses is similarly without merit. The LI zone lists eight
14 uses. Petitioners’ Appendix F. As we have already explained, those uses are
15 not “specific commercial or industrial uses with special site requirements.” In
16 fact, the eighth listed use in the LI zone is “[t]ransportation facilities consistent
17 with the City’s Transportation System Plan[.]” The LI zone applied to the NIA

would not interfere with development of the site for the
intended use; and

“(c) Where necessary to protect the site for the intended
industrial or commercial use, include measures which either
prevent or appropriately restrict incompatible uses on
adjacent and nearby lands.”

1 anticipates a need for transportation facilities to serve the NIA. The county
2 was not obligated to adopt findings regarding the adequacy of its inventory of
3 commercial and industrial lands where the acknowledged zoning district that
4 applies to those lands already anticipates that at least some of those lands may
5 be used for transportation facilities.

6 Petitioners' first sub-assignment of error is denied.

7 **B. TSP Compliance with OAR 660-012-0015**

8 Petitioners argue in their second assignment of error that the TSP
9 violates OAR 660-012-0015(3)(a) which provides:

10 "Cities and counties shall prepare, adopt and amend local TSPs for
11 lands within their planning jurisdiction in compliance with this
12 division:

13 "(a) Local TSPs shall establish a system of transportation
14 facilities and services adequate to meet identified local
15 transportation needs and shall be consistent with regional
16 TSPs and adopted elements of the state TSP[.]"

17 Petitioners argue that the amended TSP will not establish a *viable* system of
18 transportation that meets the community's local needs, since the east-west
19 bypass cannot be built in its proposed location, because: (1) that proposed
20 bypass has been shown to be inconsistent with directives 3 and 4 of Goal 9 and
21 (2) because that bypass would cross over "fish-bearing Muddy Creek for at
22 least 100 feet[.]" Petition for Review 8. Since the bypass could avoid that
23 stream if located elsewhere, petitioners contend "it is very unlikely that any
24 permits would be allowed[.]" *Id.* at 9.

1 Respondents reiterate their position that the east-west bypass complies
2 with all applicable transportation rules, and that the connector is not a new
3 addition to the Coburg TSP. Respondents assert that the general location has
4 not changed from the previously acknowledged TSP. In addition, respondents
5 argue that the fish-bearing stream petitioners identify, although in the vicinity
6 of Coburg, is not located within the area proposed for the bypass.

7 We turn first to respondents’ contention that the east-west bypass
8 location is unchanged from the prior TSP. If that were true, we would deny
9 this subassignment of error because the amended TSP could not be remanded
10 for re-adopting a general location for the east-west bypass that was previously
11 adopted. Respondents asked that we take official notice of a map from the 1999
12 TSP, and we do so. Comparing that map with the map from the amended TSP
13 that is attached to this opinion as Appendix 3, it is simply not accurate to say
14 that what we are referring to as the east-west bypass is depicted at the same
15 location on the two maps.

16 Turning to petitioners’ arguments, it requires a creative reading of OAR
17 660-012-0015(3)(a) to find the “demonstration of viability” requirement that
18 petitioners read into the rule. Even if there is such a requirement, we reject
19 petitioners’ suggestion that OAR 660-012-0015(3)(a) requires, at the time a
20 transportation facility is identified as needed in the TSP, that a local
21 government establish that such facilities are “viable,” in the sense that all
22 necessary siting permits will be issued in the future if that facility is sited in the

1 location shown on the TSP. And we have already rejected petitioners
2 understanding that Goal 9 paragraph 4 applies generally to all areas zoned for
3 commercial and industrial uses. Those are the only reasons petitioners put
4 forward to support their claim that the east-west bypass is not viable.

5 The second sub-assignment of error is denied.

6 The first assignment of error is denied.

7 **SECOND ASSIGNMENT OF ERROR**

8 Petitioners argue that the county erred in adopting an amended UGB that
9 violates ORS 197.298 and the Statewide Planning Goals, and is not supported
10 by an adequate factual basis.¹⁰

11 **A. The UGB Amendment Does not Comply With Goal 9**

12 Petitioners argue that the UGB amendment also does not comply with
13 Goal 9. *See* n 5. Petitioners explain that the Coburg NIA currently abuts only a
14 small area of residential land within the city to the southwest, but the proposed
15 UGB expansion would approximately quadruple the amount of residential land
16 that would abut the NIA. *See* Appendix 2. Petitioners argue that the city failed
17 to address the conflicting nature of residential and industrial uses in approving
18 the disputed UGB amendment, particularly because there was extensive
19 testimony below regarding conflicts between the two uses attributable to,

¹⁰ ORS 197.298 was amended by legislation that took effect January 1, 2016. The version of ORS 197.298 that was in effect before that 2016 amendment took effect governs in this appeal.

1 among other things, noise and smell from industrial operations. Petitioner also
2 cites to the Coburg zoning code setback provision for industrial sites abutting
3 residential districts, arguing that the new residential zone will result in
4 “existing, protected Goal 9 resources [having] to change to accommodate the
5 new residential development” due to the future imposition of a 25-foot setback
6 from residential parcels. Petition for Review 12.

7 Respondents consider petitioners’ argument to be that new residential
8 development would require the NIA to modify its operations and accommodate
9 residential development, resulting in a failure of a Goal 9 resource.
10 Respondents argue that the portion of the NIA that is adjacent to the UGB
11 residential expansion is already built out and “no growth is possible within the
12 area of alleged concern.” That appears to be the case. *See* Appendix 2.

13 In any event, based on our disposition of the first assignment of error, we
14 disagree with petitioners that paragraph 4 of Goal 9 applies to protect the
15 Coburg NIA in the manner petitioner argues.

16 This subassignment of error is denied.

17 **B. The UGB Amendment Is Inconsistent With The ORS 197.298**
18 **Priority Scheme**

19 As we explain in more detail below, ORS 197.298 establishes priorities
20 for the types of lands that may be included in the UGB. Under the priority
21 scheme, exception lands must generally be included in the UGB before
22 agricultural lands. Exception lands are lands outside the existing UGB, for
23 which a committed exception to Goal 3 has been approved, to permit those

1 lands to be put to uses other than those allowed in exclusive farm use (EFU)
2 zones. Frequently, and in the present case, exception lands have been put to
3 low density rural residential uses. In addition, under the ORS 197.298 priority
4 scheme, where the local government must choose between agricultural lands, it
5 must generally include agricultural lands with worse productivity soils over
6 agricultural lands with soils of better productivity soils.

7 By selecting the alternative that they did, the city and county rejected
8 parts of Area 5 with higher priority exception land: North Area 5 (77 acres of
9 exception lands) and South Area 5 (20 acres of exception lands located south
10 of Coburg Road), in favor of high value agricultural land. Compare
11 Appendices 1 and 2.¹¹ In selecting lands for the identified commercial and
12 industrial development (employment lands) needs, the city and county chose to
13 include Area 8.

14 Below, we first discuss how the ORS 197.298 priority scheme is
15 supposed to work, in conjunction with the Goal 14 (Urbanization). We then
16 turn to petitioners' challenges to the findings the city and county adopted to
17 support their decision to include agricultural lands in Areas 1 and 6 instead of

¹¹ Appendix 2 shows the middle portion of Area 5 that was included. The roughly triangular southern portion of Area 5 below Coburg Road (which is Van Duyn extended west) was not included in the UGB.

1 exception lands in Area 5 and select Area 8 with better quality soils than Area
2 7, which has the worst quality agricultural soils.¹²

3 **1. Priority Scheme for UGB Amendments**

4 ORS 197.175(1) requires cities and counties to exercise their planning
5 and zoning responsibilities in accordance with state land use statutes and the
6 Statewide Planning Goals. ORS 197.298 requires that urbanization of rural
7 lands occur by expanding the UGB based on a priority scheme. Although the
8 statute partially supplants the requirements of Goal 14, the Goal continues to
9 operate in a manner that supplements the statutory priority scheme.¹³

10 The relevant text of ORS 197.298 is set out at footnote 15.¹⁴ None of the
11 11 candidate areas in this case include urban reserves or marginal lands, so

¹² The nomenclature can be confusing. In this opinion we refer to the ORS 197.298(1) priority scheme as expressing a preference for exception lands (a higher priority) over agricultural lands (a lower priority). And if agricultural lands are to be included, agricultural lands of the worst quality are a higher priority than agricultural lands of the best quality (a lower priority). ORS 197.298(2).

¹³ “[B]ecause 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.” *1000 Friends of Oregon v. LCDC*, 244 Or App 239, 260, 259 P3d 1021 (2011), *quoting Residents of Rosemont v. Metro*, 173 Or App 321, 332-333, 21 P3d 1108 (2001) (emphasis in original).

¹⁴ One of the things that complicates UGB amendments is that the statutes, rules and applicable statewide planning goals have been amended frequently. ORS 197.298 was amended in 2013 to accommodate for a new simplified urban growth boundary amendment process, but the 2013 amendment became

1 relevant priorities are set out in ORS 197.298(1)(b) and (d), exception lands
2 have priority over agricultural lands, and lower quality agricultural lands have
3 priority over better quality agricultural lands.¹⁵ Under ORS 197.298(3), lower

effective on January 1, 2016, and is irrelevant to these proceedings. All references are to the version of ORS 197.298 that existed prior to 2013.

¹⁵ Prior to amendments that took effect on January 1, 2016, ORS 197.298 provided:

“(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

1 priority land can be included in the UGB instead of higher priority land, where
2 the higher priority land “is found to be inadequate to accommodate the amount
3 of land” needed based on any of three reasons. *See* n 14. Those three reasons
4 are: (1) “specific types of identified land needs cannot be reasonably
5 accommodated on higher priority lands,” (2) “[f]uture urban services could not
6 reasonably be provided to higher priority land due to topographical or other
7 physical constraints,” or (3) “[m]aximum efficiencies of land uses within a

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.” (Emphases added.)

1 proposed [UGB] requires inclusion of lower priority land in order to include or
2 provide services to higher priority land.”

3 Because Goal 14 also plays a role in amending UGBs, and because there
4 is some tension or potential inconsistency between the Goal 14 Boundary
5 Location Factors and the ORS 197.298 priority scheme, in *1000 Friends of*
6 *Oregon v. LCDC*, 244 Or App 239, 259 P3d 1021 (2011) (*McMinnville*), the
7 Court of Appeals went through a lengthy analysis of the interaction between
8 ORS 197.298 and Goal 14. In *McMinnville*, the Court of Appeals explained
9 that under ORS 197.298 and Goal 14, UGB amendments require a three-step
10 process. We summarize those three steps below, before turning to petitioners’
11 challenges to respondents’ findings.

12 Under Step One, Goal 14 “Land Need” factors 1 and 2 are applied to
13 determine the amount of land needed:

14 “Establishment and change of urban growth boundaries shall be
15 based on the following:

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

19 “(2) Demonstrated need for housing, employment opportunities,
20 livability or uses such as public facilities, streets and roads,
21 schools, parks or open space, or any combination of the
22 need categories in this subsection (2). In determining need,
23 local government may specify characteristics, such as parcel
24 size, topography or proximity, necessary for land to be
25 suitable for an identified need. Prior to expanding an urban
26 growth boundary, local governments shall demonstrate that

1 needs cannot reasonably be accommodated on land already
2 inside the urban growth boundary.”¹⁶

3 The Court of Appeals explained that “Factors 1 and 2 necessarily require[]
4 differentiation of land use types according to their land consumption
5 attributes.” 244 Or App at 256. For example, high density residential land
6 uses consume less land per living unit than low density residential land uses.

7 After the amount of land needed is determined, Step Two requires a
8 determination whether higher priority candidate lands are adequate under ORS
9 197.298. Only if higher priority lands are “inadequate,” may lower priority
10 candidate lands be included in the UGB to meet identified land needs.¹⁷ The
11 *adequacy* inquiry under Step Two has both a straightforward quantitative part
12 (whether there are enough acres of the higher priority land to meet the

¹⁶ Goal 14 was amended in 2005 and 2006, and in *McMinnville* the Court of Appeals was concerned with the pre-2005 version of Goal 14. 244 Or App at 243. The 2005 and 2006 amendments merely rearranged the substantive provisions for clarification, with some minor wording changes. No party argues the minor changes in wording are significant in this case, and for purposes of this opinion we assume that they are not. The Goal 14 Factors 1 and 2 in *McMinnville* are now Goal 14 Land Need Factors 1 and 2 quoted above. The Goal 14 Factors 3, 4, 5 and 7 discussed in *McMinnville* are now Goal 14 Boundary Location Factors 1, 2, 3 and 4 respectively. The Goal 14 Factor 6 identified in *McMinnville* has been eliminated in the current version of Goal 14. It is similar in substance to ORS 197.298(2). *See* n 15. All citations to Goal 14 Factors in this opinion are to the current Goal 14 Land Need and Boundary Location Factors.

¹⁷ ORS 197.298(1)(b), (c) and (d) all require a finding that higher priority lands in the previous subsections of ORS 197.298(1) are “inadequate.” *See* n 15.

1 identified need) and a much less straightforward qualitative part. The
2 qualitative part of the inquiry is attributable first to ORS 197.298(3), which
3 allows including lower priority agricultural land in the UGB, instead of higher
4 priority exception land, if any of the ORS 197.298(3)(a)-(c) reasons make that
5 higher priority land “inadequate to accommodate the amount of land” needed.
6 Candidate lands that are not buildable may also be excluded as not adequate.
7 244 Or App at 262.

8 In addition to the ORS 197.298(3) reasons, Goal 14 “Boundary
9 Location” factors potentially may be applied in Step 2 to determine that higher
10 priority candidate land is “inadequate.” The Goal 14 “Boundary Location
11 Factors are set out below:

12 “The location of the urban growth boundary and changes to the
13 boundary shall be determined by evaluating alternative boundary
14 locations consistent with ORS 197.298 and with consideration of
15 the following factors:

16 “(1) Efficient accommodation of identified land needs [old
17 Factor 3];

18 “(2) Orderly and economic provision of public facilities and
19 services [old Factor 4];

20 “(3) Comparative environmental, energy, economic and social
21 consequences [old Factor 5]; and

22 “(4) Compatibility of the proposed urban uses with nearby
23 agricultural and forest activities occurring on farm and
24 forest land outside the UGB [old Factor 7].”

25 However, the Court of Appeals concluded in *McMinnville* that because Goal 14
26 Boundary Location Factors 1 and 2 have more specific and limited counterparts

1 in ORS 197.298(3)(b) and (c), *see* n 15, the ORS 197.298(3)(b) and (c) bases
2 for a finding that higher priority lands are “inadequate” apply in place of
3 Factors 1 and 2. That leaves only the Factor 3 “[c]omparative environmental,
4 energy, economic, and social consequences” and Factor 4 “[c]ompatibility of
5 the proposed urban uses with nearby agricultural and forest activities occurring
6 on farm and forest land outside of the UGB” as relevant Goal 14 Boundary
7 Location Factors in determining whether higher priority candidate lands are
8 “inadequate to accommodate the amount of land” needed as determined by Step
9 One.

10 If highest priority lands are found to be “adequate to accommodate the
11 amount of land needed,” a local government moves to Step Three, where the
12 local government applies all of the Goal 14 “Boundary Location” factors to
13 choose the “best” land within those “available” high priority lands. If highest
14 priority lands are not adequate to accommodate the amount of land needed, the
15 next lowest priority lands are reviewed for adequacy under Step Two
16 (reviewing adequacy under ORS 197.298(3) and Goal 14’s consequence and
17 compatibility Factors 3 and 4). Then local government repeats the process
18 between Step Two and Step Three until the highest priority lands accommodate
19 the need in light of Goal 14 factors or until it is determined that a broader study
20 area is required to identify a sufficient number of adequate acres.

1 **2. Petitioners’ Findings Challenges**

2 Respondents’ brief includes 35 pages in which respondents attempt to
3 explain why they believe the challenged decision properly applied the three-
4 step analysis required under the Court of Appeals’ *McMinnville* decision. But
5 respondents’ brief makes almost no attempt to acknowledge and directly
6 address petitioners’ challenges to a number of respondent’s findings. Because
7 our task on review is to determine the merits of petitioners’ challenges to those
8 findings, that failure on respondents’ part complicates our resolution of this
9 part of petitioners’ second assignment of error. While the subassignments of
10 error that we discuss separately below are technically sub-subassignments of
11 error under petitioners’ second subassignment of error, we refer to them as
12 subassignments of error to avoid the awkward phrase sub-subassignment of
13 error.

14 **a. Adjacent to the UGB (North Area 5; South Area 5)**

15 Area 5 contains 97 acres of exception lands. As we have already
16 explained, the highest priority areas in candidate areas identified by the city are
17 exception lands. Under ORS 197.298 those exception lands must be “adjacent
18 to an urban growth boundary[.]” One of the reasons respondents gave for not
19 including North Area 5 and South Area 5 in the UGB is that North Area 5 and
20 South Area 5 are not “adjacent” to the urban growth boundary. Respondents
21 relied on a dictionary definition of “adjacent,” but petitioners argue that the

1 decision should have applied the definition of “adjacent land” at OAR 660-
2 024-0060(4), which provides:

3 “In determining alternative land for evaluation under ORS
4 197.298, ‘land adjacent to the UGB’ is not limited to those lots or
5 parcels that abut the UGB, but also includes land within the
6 vicinity of the UGB that has a reasonable potential to satisfy the
7 identified need deficiency.”

8 Respondents do not respond to the argument. The response brief merely
9 touches on adjacency as one of the reasons “one portion of study area 5” was
10 excluded, in part due to being “separated by approximately one half mile from
11 Coburg and only marginally connected to the rest of study area 5 across a
12 heavily traveled road.” Respondents’ Brief 38. Although respondents do not
13 cite to it, we understand the primary finding on adjacency to be at Record 747,
14 which appears to conclude that North Area 5 and South Area 5 are not adjacent
15 to the UGB, but does not address OAR 660-024-0060(4).

16 OAR Chapter 660, Division 24, is LCDC’s administrative rule
17 concerning urban growth boundaries and is, at the very least, relevant context
18 regarding the meaning of the word “adjacent” in ORS 197.298(1). More to the
19 point, in contrast to respondents’ argument that area 5 is not “adjacent” to the
20 existing UGB, the findings seem to indicate that all eleven study areas were
21 considered “adjacent” for purposes of the UGB amendment: “Map 11 of the
22 2010 Urbanization Study shows ‘built upon and developed’ exception areas * *
23 * and natural resource areas * * * *located adjacent to the Coburg Urban*
24 *Growth Boundary.*” Record 728 (emphasis added). See Record 1441 (showing

1 Map 11 with all of the study areas including North and South Area 5). Absent a
2 better explanation from the city, we agree with petitioners that the city erred in
3 finding that North Area 5 and South Area 5 are not adjacent to the city’s
4 existing UGB.

5 This subassignment of error is sustained.

6 **b. Access to Coburg Road (South Area 5)**

7 Petitioners’ next subassignment of error challenges findings concerning
8 access to Coburg Road from South Area 5. Respondents apparently found that
9 South Area 5 could be eliminated as candidate exception land because Lane
10 County spacing standards for new access to minor arterials render it
11 unbuildable. Record 749. Petitioners argue that finding is not supported by the
12 record. Petitioners contend South Area 5 has considerable depth to develop an
13 internal road system with only a few access points on Coburg Road.
14 Petitioners attach Lane County Code sections addressing access to county
15 roads and contend they do not support respondents finding that additional
16 access for South Area 5 is not possible.

17 The response brief does not specifically acknowledge and address
18 petitioners’ argument. However, respondents do argue that South Area 5

19 “would not support any of the residential development * * *. Only
20 two parcels are large enough to contain any undeveloped area
21 suitable for development and they both have some floodplain areas
22 on them. * * * Most important are the transportation limitations on
23 these two parcels. Any development on them would require
24 additional access to busy Coburg Road where the layout of
25 existing driveways and Stallings Lane in the area would mean a

1 violation of Coburg’s driveway and street spacing requirements.”
2 Respondents’ Brief 53.

3 If respondents’ rationale for excluding South Area 5 is that existing
4 driveways and county street spacing requirements make South Area 5
5 unbuildable, that rationale is not sufficiently explained with reference to the
6 city or county spacing standards respondents are relying on. In addition, as
7 discussed further below, absent an identified need for residential land with
8 particular parcel sizes, which the city did not justify under *McMinnville* Step
9 One for residential lands, respondents cannot exclude exception lands as
10 inadequate simply because they are parcelized. Parcel size is one of the factors
11 that can be relied on to justify an irrevocably committed exception in the first
12 place. 660-004-0028(6)(c). Disregarding exception lands simply because they
13 are parcelized, without more, is inconsistent with the ORS 197.298(1) priority
14 scheme.

15 This subassignment of error is sustained.

16 **c. Conflicts with TSP (North Area 5)**

17 The county adopted the following finding:

18 “Coburg is developing a multi modal path around the current UGB
19 to facilitate non-vehicular movement in Coburg. Inclusion of
20 Stallings Lane properties, especially those distant from the rest of
21 Coburg, would be directly contrary to the concept of the multi
22 modal path as a resource available for all Coburg residents, and
23 would negate the development work on the path that has already
24 been accomplished.” Record 750.

25 Petitioners argue:

1 “There is no evidence for this assertion; nothing prevents the
2 residents of North Area 5 from accessing the multi-modal path.
3 The residents in North Area 5 are no more distant from the multi-
4 modal path than downtown residents. In any event, the record
5 does not contain even a basic explanation of how the urbanization
6 of Area 5 could negatively impact the proposed path.” Petition for
7 Review 19.

8 We agree with petitioners. But more to the point, respondent may not
9 eliminate candidate exception lands, or in the words of ORS 197.298(1) decide
10 such lands are “inadequate,” simply because respondent believes development
11 of those exception lands is inconsistent with the “concept” of a planned
12 transportation facility. Exception land probably could be deemed “inadequate”
13 if, for example, a planned transportation facility would render the exception
14 land unbuildable. But respondent has not shown that to be the case.

15 **d. Goal 14, Boundary Location Factor 3**
16 **Environmental Consequences (Area 7)**

17 Assuming that exception lands are inadequate to accommodate identified
18 land needs, under ORS 197.298(1)(d) lower priority agricultural lands can be
19 included in the UGB. However, in that circumstance, ORS 197.298(2) makes
20 agricultural land with poorer soils a *higher* priority than agricultural lands with
21 better soils.

22 Portions of Areas 1 and 6 were included in the UGB. Areas 1 and 6
23 contain high quality Class I and II soils. Area 7, which was not included in the
24 UGB, has Class IV soils. Since Area 7 has poorer soils than Areas 1 and 6,
25 under ORS 197.298(2), Area 7 is a higher priority for a UGB expansion and

1 absent a relevant consideration to the contrary should have been included
2 before Areas 1 and 6.

3 As part of *McMinnville* Step Two, a local government may consider Goal
4 14, Boundary Location Factor 3 “[c]omparative environmental, energy and
5 economic and social consequences” when determining if higher priority land
6 adequately accommodates identified land needs. Respondent relied in part on
7 Goal 14, Boundary Location Factor 3 to include portions of Areas 1 and 6, and
8 not include Area 7, based on “the environmental consequences of development
9 within the 100-year floodplain and impacts to mapped wetlands.” Record 736-
10 37.

11 Petitioners argue:

12 “* * * There is no factual basis for this assertion. The findings
13 concede that, out of Area 7’s 240 acres, only 23 acres are either
14 floodplain or wetland, and inspection of the City’s mapping
15 reveals that area lies at the far north end, well away from the area
16 closest to the city center and most likely to be urbanized.
17 Furthermore, the findings do not explain why the consequences of
18 urbanizing Area 7 would be so severe that these areas would be
19 ‘inadequate’ under ORS 197.298(1).” Petition for Review 19
20 (record citations omitted).

21 We have not been able to locate a cognizable response to petitioners’
22 arguments concerning respondent’s reliance on Goal 14, Boundary Location
23 Factor 3 environmental consequences to include portions of Areas 1 and 6
24 while not including Area 7. This subassignment of error is sustained.

1 Lane study area appeared at some of these events. The majority of
2 people from Stallings Lane who appeared expressed objections to
3 being included in the proposed UGB expansion. Coburg must plan
4 for properties becoming available on a regular basis over time.
5 The process will not work if the current property owners, or
6 replacement property owners who have purchased an operating
7 farm, do not wish to give up that lifestyle for urban residential
8 uses. If there is a significant delay in properties in the area
9 becoming available then Coburg will not be able to meet its need
10 over the next twenty years. If Coburg were to include only the
11 properties along Stallings Lane and these properties did not
12 become available for years, Coburg would have failed its
13 responsibilities to actually provide for reasonable residential
14 growth. Given the evidence in the record, Coburg had no choice
15 except to consider that these properties would not be available.”
16 Record 748 (footnote omitted).

17 Petitioners contend that if property owner opposition to urbanization is
18 sufficient to render candidate exception lands “inadequate” under ORS
19 197.298(1), the ORS 197.298 priority scheme will not work as the legislature
20 intended. Presumably that is because at least some of the residents of rural
21 exception lands will always prefer to retain the rural residential nature of their
22 properties. Moreover, petitioners argue, the record does not support
23 respondents’ speculation that property owner opposition will mean that land
24 will not be redeveloped to meet higher density residential land needs if the land
25 is brought into the UGB. Petitioners additionally dispute that the level of
26 opposition in Area 5 is as significant as respondents suggest and point out that
27 past failures to redevelop lands brought into the UGB are not predictive of the
28 future, since the city did not even have a sewer system until a few years ago.
29 Finally, the record includes a study that petitioners contend demonstrates that

1 exception lands that are brought into the UGB in fact do redevelop at higher
2 densities.

3 If there are responses to petitioners’ arguments in the challenged
4 decision, respondents do not call them to our attention. We generally agree
5 with petitioners that mere expressions of opposition to urbanization or
6 redevelopment cannot be a basis for determining that exception land is
7 “inadequate to accommodate” identified land need. There must be a real and
8 substantial basis for concluding that rural lands brought inside the UGB, so that
9 those lands can be provided urban services and become valuable for
10 development and redevelopment, will nevertheless remain in their rural
11 underdeveloped condition during the planning period.

12 This subassignment of error is sustained.

13 **g. Goal 14, Boundary Location Factor 4**
14 **Compatibility With Nearby Agricultural Activities**
15 **(South Area 5 and North Area 5)**

16 Petitioners assign error to respondents’ exclusion of North Area 5 and
17 South Area 5, based on Goal 14, Boundary Location Factor 4’s compatibility
18 factor, which permits consideration of “[c]ompatibility of the proposed urban
19 uses with nearby agricultural and forest activities occurring on farm and forest
20 land outside of the UGB” when determining if candidate land is adequate to
21 accommodate the land need. Petitioners argue that “the findings do not contain
22 descriptions of the adjacent farm activities or any analysis of how those
23 particular farm activities could be affected by urbanization of adjacent land.”

1 Petition for Review 24. Petitioners argue remand is appropriate, because “the
2 findings are not sufficiently descriptive of nearby agricultural uses to allow
3 comparison among the candidate sites[.]” citing *McMinnville*, 244 Or App at
4 287. Petitioners also argue that respondent treated exception areas
5 inconsistently by including 13.6 acres in Area 1, with Class I and II soils, while
6 excluding 20-acre South Area 5, exception land, based on agricultural activity
7 conflicts, when those two areas appear to be very similarly situated.

8 Respondents do not clearly respond to petitioners’ arguments under this
9 subassignment of error.

10 We agree with petitioners. Exclusion of candidate land based on
11 incompatibility between existing agricultural operations and proposed
12 residential zoning must identify those agricultural practices and explain why
13 any incompatibility justifies deviating from the ORS 197.298(1) priority
14 scheme. Respondents also must address petitioners’ contention that for *all*
15 candidate land there is some level of agricultural conflict, because every study
16 area abuts farmland. Record 744 (“the compatibility impacts do not appear to
17 be much different between the UGB study areas.”) This sub-assignment of
18 error is sustained.

19 **h. Traffic Impacts (North Area 5)**

20 Petitioners argue that respondents erred in using the lack of an existing
21 east-west bypass to exclude portions of Area 5 as unavailable to meet identified
22 residential land needs. Respondents found:

1 “The potential of a significant increase in traffic along Coburg
2 Road if the exception area of Stallings Lane is included in the
3 Coburg UGB significantly exacerbates the public safety issues that
4 Coburg now faces. * * *

5 “This public safety problem can only be alleviated if an East-West
6 connector^[18] is constructed to give emergency services an
7 alternative means to access Coburg. Until that time, any residential
8 development along Stallings Lane will mean an unacceptable
9 increase in traffic, unacceptable because it would significantly
10 increase the risk of isolating parts of Coburg from emergency
11 services.” Record 750.

12 “Transportation and public safety issues serve as a limiting factor
13 for any of the exceptions areas of Stallings Lane being included in
14 the proposed Coburg UGB. If, however, a connector could be built
15 across the lower priority land adjacent to and just north of the
16 current Coburg UGB, the connector would provide an alternative
17 means to access the properties along Stallings Lane and reduce or
18 relieve the practical limitations on developing any part of Stallings
19 Lane.” Record 752.

20 Petitioners contend it is inconsistent for the city to (1) acknowledge that
21 any transportation impact problems that might be caused by included North
22 Area 5 would be solved by the east-west bypass, (2) include the east-west
23 bypass as a project in the updated TSP, and (3) nevertheless exclude North
24 Area 5 on the basis of adverse traffic impacts without the east-west bypass.

25 Respondents state that Area 5 was determined to be inappropriate for
26 residential development because:

¹⁸ The referenced East-West Connector is what we refer to as the east-west bypass. In the record it is also sometimes referred to as the East-West Collector.

1 Under *McMinnville*, reliance on Factor 2 is inappropriate, but Factor 3 is
2 potentially applicable.

3 Petitioners contend that deviating from the ORS 197.298(1) priority
4 scheme to include agricultural land instead of exception land is only
5 appropriate for cost of service reasons under ORS 197.298(3)(b), which allows
6 selecting lower priority exception lands where they are needed “to provide
7 services to higher priority lands.” *See* n 15.

8 Respondents do not specifically respond to the argument, except to argue
9 that Coburg found that “the higher per residential unit cost of water and service
10 services [sic] to properties along Stallings Lane * * * were inhibiting factors
11 that would slow any development, so that the Stallings Lane area was unlikely
12 to meet the standards for efficient accommodation of the identified need[.]”
13 Respondents’ Brief 40.

14 Petitioners’ broad assertion that exception lands can only be rejected for
15 cost of service reasons under ORS 197.298(1) in the circumstances set out in
16 ORS 197.298(3)(b) (“Maximum efficiency of land uses within a proposed
17 urban growth boundary requires inclusion of lower priority lands in order to
18 include or to provide services to higher priority lands”) finds support in
19 *McMinnville*. There the court concluded “any inefficiency in the provision of
20 urban services and facilities is not material to the analysis under ORS
21 197.298(1).” 244 Or App at 276. The court also concluded “[t]he city’s
22 evaluation of the cost-effectiveness of the provision of public facilities and

1 services is immaterial to the analysis under ORS 197.298(1) during Step Two.”
2 244 Or App 278. The court apparently considers cost of providing services to
3 be an “efficiency” issue under Goal 14 Boundary Location Factor 1, which is
4 irrelevant at Step Two, rather than an economic issue that is potentially
5 applicable under Goal 14 Boundary Location Factor 3.

6 Moreover, we agree with petitioners that the record appears to indicate
7 that providing services to Area 5 is relatively cheap. Record 493 (“According
8 to Coburg’s Public Works Director, Study Area 5 is one of the least expensive
9 areas to extend City water and stormwater service into.”) To the extent
10 respondents excluded portions of Area 5 due to perceived economic
11 consequences of providing needed services, the city erred.

12 This subassignment of error is sustained.

13 **j. Urban Form (North and South Areas 5, and Area**
14 **7)**

15 Petitioners assert that respondents erroneously eliminated North Area 5,
16 South Area 5, and Area 7, thus deviating from the ORS 197.298(1) priority
17 scheme, on the basis that including those areas does not meet Coburg’s criteria
18 for urban form and violate comprehensive plan policies that pertain to orderly
19 and efficient development. Respondents contend those policies call for a
20 concentrically shaped urban area.

21 “Several policies were applied to limit the area of study area 5 that
22 would be included in the needs analysis.

23 **“Policy 1:** The City shall preserve urbanizable land
24 and provide for orderly, efficient development by

1 controlling densities through provision of the Zoning
2 and Subdivision Ordinances, thereby preventing the
3 need for overly extensive public services and
4 restricting urbanization to that commensurate with the
5 carry capacity of the land.

6 **“Policy 17:** The City shall promote the efficient use
7 of land within the urban growth boundary and
8 sequential development that expands in an orderly
9 way outward from the existing city center.

10 **“Policy 19:** The City shall accommodate projected
11 growth, expand the urban growth boundary in a
12 manner that balances the need to protect high quality
13 farm and forest resource lands with the needs of the
14 existing and future population and with efficient
15 public facility and service delivery.

16 2010 Coburg Urbanization Study pg 172

17 “These policies, emphasizing orderly and efficient growth argued
18 against considering exception land to meet a residential need that
19 was more than twice as far from the city center than any current
20 residential land. To consider this land as ‘needed residential land’
21 the City would have to pass over land that was already partially
22 within the UGB and was surrounded on three sides by the existing
23 city. The City determined that to consider such land needed would
24 be contrary to the city policies. Based on that analysis, the City
25 adopted and applied a local criteria in considering need:
26 *‘Expansion should be limited to areas and tax lots that would*
27 *promote sequential development that expands in an orderly way*
28 *outward from the existing city center, and promote a street*
29 *network that expands in an orderly way outward from the existing*
30 *city center, and promote a street network that is interconnected in*
31 *order to promote connectivity and community interaction.’* 2010
32 Coburg Urbanization Study pg 173. This criteri[on] rules out the
33 most distant portions of Stallings Lane because it did not fit the
34 local criteria of needed land.” Record 763-64 (boldface and italics
35 in original).

1 The *McMinnville* court noted that “[c]onsiderations of urban form under
2 Goal 14 * * * are more appropriately deferred to Step Three, during the full
3 application of Goal 14 to candidate lands identified under the priorities
4 statute.” *McMinnville*, 244 Or App at 278. If respondents were selecting which
5 of the available and suitable exception lands “should be added to the
6 boundary,” under *McMinnville* Step Three, it would be entirely appropriate to
7 apply the urban form policies and select the exception lands that are most
8 consistent with those policies. But to the extent respondents applied the urban
9 form policies to exclude exception lands and higher priority farm land (portions
10 of Area 5 and Area 7) from further consideration under ORS 197.298(1) in
11 *McMinnville* Step Two, as appears to be the case here, respondents erred.

12 This sub-assignment of error is sustained.

13 Subassignment of error B is sustained.

14 **C. Error To Include Area 6 Farmland to Accommodate Need For**
15 **Multi-Family Residential Land**

16 Area 6 is agricultural land that contains Class I and II soils. As noted
17 earlier, ORS 197.298(3) sets out three reasons that may be relied on to deviate
18 from the ORS 197.298(1) priority scheme and include within a UGB lower
19 priority lands instead of higher priority lands. One of those reason is “specific
20 types of identified land needs cannot be reasonably accommodated on higher
21 priority lands.” Petitioners argue the city has not shown exception lands or
22 lands within the city’s existing UGB cannot reasonably accommodate the
23 identified multi-family housing land need.

1 It is not entirely clear to us that respondent’s legal theory for including
2 Lower Area 6 was because it is needed for multi-family housing that cannot
3 reasonably be accommodated on exception land. But respondents do not
4 dispute the point, so we assume that is the case.

5 Petitioners make a number of arguments. First, petitioners contend that
6 30 of the 47 acres in Area 6 have been designated for low density housing, not
7 multi-family housing. So at most, a need for land that can reasonably
8 accommodate multi-family housing could only justify 17 of those 47 acres.
9 Second, petitioners contend the city has not adequately explained why the
10 entire need for multi-family housing cannot be accommodated inside the
11 existing UGB, by rezoning some land now designated for low density housing
12 if necessary. Third, while the city cites a need to site multi-family housing
13 away from “the Coburg Historic District or any developed neighborhoods,”
14 petitioners contend there is no evidence to support that assertion. Finally,
15 petitioners challenge respondents’ findings that the need to aggregate smaller
16 parcels in the North and South Area 5 and landowner opposition to multi-
17 family development means those exception lands cannot reasonably
18 accommodate multi-family housing, arguing those observations are not
19 sufficient to establish that multi-family housing “cannot be reasonably
20 accommodated” in those exception areas.

21 In its response brief, respondents do not point to any findings in the
22 decision that respond to the issues raised under this subassignment of error.

1 We do not foreclose that possibility that circumstances in irrevocably
2 committed lands could pose such challenges to development of multi-family
3 housing that the city could find and justify a decision that multi-family housing
4 cannot “be reasonably accommodated” on such exception lands. But
5 generalized concerns about parcelization complicating site acquisition or
6 property owner opposition to multi-family housing fall far short of making the
7 demonstration required under ORS 197.298(3)(a) that “specific types of
8 identified land needs cannot be reasonably accommodated on higher priority
9 lands.”

10 This subassignment of error is sustained.

11 **D. Error to Include Area 6 Farmland to Site East-West Bypass**

12 Area 6 is exclusive farm use zoned land composed of Class I and II soils.
13 There is no dispute that Van Duyn Street, which provides access to downtown
14 Coburg, is experiencing congestion at two intersections west of the city. *See*
15 Appendix 3. Petitioners argue respondent improperly relied on ORS
16 197.298(3)(c) to include the lower part of Area 6 to allow construction of the
17 east-west bypass to resolve access problems associated with this traffic
18 congestion.¹⁹ Under ORS 197.298(3)(c), lower priority land may be included
19 within the UGB ahead of higher priority land if “[m]aximum efficiency of land

¹⁹ Respondents at one point proposed to include a larger part of Area 6, but when faced with opposition settled on the smaller portion of Area 6, primarily to allow construction of the east-west bypass.

1 uses within a proposed urban growth boundary requires inclusion of lower
2 priority lands in order to include or to provide services to higher priority
3 lands.” Respondents found:

4 “Transportation and public safety issues serve as a limiting factor
5 for any of the exceptions areas of Stallings Lane being included in
6 the proposed Coburg UGB. If, however, a connector could be built
7 across the lower priority land adjacent to and just north of the
8 current Coburg UGB, the connector would provide an alternative
9 means to access the properties along Stallings Lane and reduce or
10 relieve the practical limitations on developing any part of Stallings
11 Lane.

12 “The lower priority agricultural land must be included to provide
13 urban levels of service to the higher priority land along Stallings
14 Lane.” Record 752-53.

15 Petitioners first note in *McMinnville*, the Court of Appeals determined
16 that the scope of “services” in ORS 197.298(3)(c) does not include “roads.”
17 244 Or App at 275. Although petitioners recognize that respondent also cites
18 “public safety issues,” we understand petitioners to contend the public safety
19 issues are indistinguishable from the roads that would be used to provide them.

20 We reject petitioners’ argument that respondent is categorically
21 precluded from relying on ORS 197.298(3)(c) to include the lower part of Area
22 6 to provide needed police and other emergency services to Area 5. That those
23 services would be provided by using roads does not mean they are the same
24 thing as a road. Area 5 apparently does currently suffer from poor access for
25 police and other emergency services and would suffer even more if that Area
26 were developed more densely without transportation improvements of some

1 sort that would allow quicker emergency access. However, that does not
2 necessarily mean that respondents have demonstrated that “[m]aximum
3 efficiency of land uses” requires inclusion of 47 acres of agricultural land in
4 Area 6 in order to provide faster emergency services to the Area 5 exception
5 lands.

6 Petitioner next argues that including the lower portion of Area 6 to
7 resolve public safety issues with Area 5 is unnecessary because the TSP
8 already proposes an emergency access onto Coburg Bottom Loop Road that
9 would address the problem. Record 824, 826. Petitioners also argue there is
10 currently sufficient area within the Coburg UGB to locate an east-west bypass
11 north of Van Duyn Road without adding Area 6.

12 Respondents’ answer that the emergency access petitioners identify was
13 included in the TSP to improve emergency access to western neighborhoods in
14 the city, not to solve the larger east-west congestion problem on Van Duyn.
15 Respondents are correct. Record 826. But respondents offer no response that
16 we can see to petitioners’ contention that the needed east-west bypass could be
17 constructed north of Van Duyn without having to expand the UGB into the
18 lower part of Area 6. Remand is required for respondent to address that issue.

19 Finally, petitioners argue the real issue for the city with regard to the
20 east-west bypass is financial, not “maximum efficiency of land uses.”
21 Petitioners contend respondent improperly seeks to allow development of the
22 lower part of Area 6 in order to fund the east-west bypass. Respondents

1 respond that the city has traditionally relied on private development to finance
2 transportation infrastructure and that there is nothing improper about making
3 financing of the east-west bypass a factor under ORS 197.298(3)(c).

4 We agree with petitioners. As the Court of Appeals explained in
5 *McMinnville*, the scope of “services” in ORS 197.298(3)(c) does not include
6 “roads.” 244 Or App at 275. If the real reason respondents included the lower
7 part of Area 6 was to allow development that would generate the funding
8 necessary to build the east-west bypass (a road), respondents erred in relying
9 on ORS 197.298(3)(c) to include Area 6.

10 **E. Error to Include Area 1 Farmland to Accommodate Need for**
11 **Multi-Modal Path**

12 Area 1 is predominantly agricultural land composed of Class I and II
13 soils. One of the reasons given for including agricultural land in Area 1 into the
14 UGB was to “provide a means to complete a portion of the Coburg Loop Multi-
15 Modal Path.” Record 751

16 Petitioners point out the proposed multi-modal path crosses agricultural
17 lands in other places that are not being included in the UGB and that under
18 OAR 660-012-0065(3)(h), “[b]ikeways, footpaths and recreation trails” are
19 specifically authorized transportation improvements on rural land, so there is
20 no need to include agricultural soils in Area 1 to develop the multi-modal path.

21 We agree with petitioners. This subassignment of error is sustained.

1 **F. Conclusion**

2 Petitioners have successfully challenged a large number of the findings
3 that respondents adopted to exclude 97 acres of exception lands in North Area
4 5 and South Area 5 from consideration under ORS 197.298(1), and to include
5 prime agricultural lands in parts of Area 6 and Area 1, notwithstanding that
6 ORS 197.298(2) prioritizes exception lands. Petitioners have successfully
7 challenged findings respondent adopted to justify including land with better
8 quality agricultural soils in Areas 6 and 1, while not including land with poorer
9 quality agricultural soils in Area 7, whereas ORS 197.298(2) puts a higher
10 priority on including lands with poorer quality agricultural soils first. Finally,
11 we have sustained petitioners’ challenges to respondents’ reliance on ORS
12 197.298(3) to include lands with lower priority under ORS 197.298(1) in place
13 of lands with higher priority under ORS 197.298(1) to meet identified need for
14 multifamily housing, a multi-modal path and the east-west bypass.

15 Remand is therefore required under the second assignment of error for
16 respondents to correct those findings if they can, eliminate any findings that it
17 cannot correct, and adopt any supplemental findings they may wish to adopt to
18 support a UGB expansion that is consistent with ORS 197.298(1) and relevant
19 Goal 14 factors. To the extent our discussion above has not made this point
20 clearly enough, respondents appear to view Goal 14, Boundary Location Factor
21 3 “[c]omparative environmental, energy, economic and social consequences”
22 and Goal 14 Boundary Location Factor 4 “[c]ompatibility of the proposed

1 urban uses with nearby agricultural and forest activities occurring on farm and
2 forest lands outside the UGB” and ORS 197.298(3) as a more available
3 vehicles for not following the ORS 197.298(1) priorities for including
4 exception lands first and including poorer agricultural lands before including
5 better agricultural lands than is actually the case. In applying the Goal 14
6 Boundary Location Factors, respondents must do more than identify possible
7 environmental, energy, economic or social consequences, and possible
8 incompatibilities with agricultural activities if exception lands or poorer quality
9 agricultural soils are included according to the ORS 197.298(1) priorities.
10 Respondents must establish that such considerations justify deviating from the
11 statutory priorities, notwithstanding the legislature’s expressed preference for
12 those priorities. Respondents should not underestimate the difficulty of making
13 such a demonstration. A similar caution is appropriate for attempts to use ORS
14 197.298(3) to avoid the ORS 197.298(1) priority scheme.

15 The second assignment of error is sustained in part.

16 **THIRD ASSIGNMENT OF ERROR**

17 Respondents included Area 8 in the UGB to meet the projected need for
18 land for commercial and industrial purposes (employment lands). Area 8 is
19 located east of Interstate 5 and includes 106 acres. In their third assignment of

1 error, petitioners challenge the adequacy of the factual base for including Area
2 8 under Goals 9 and 14.²⁰

3 As the Court of Appeals noted in *Zimmerman v. LCDC*, 274 Or App 512,
4 514, 361 P3d 619 (2015):

5 “* * * Goal 14 (Urbanization) requires a city to adopt and
6 maintain an urban growth boundary around its city limits “to
7 provide land for urban development needs and to identify and
8 separate urban and urbanizable land from rural land.” OAR 660–
9 015–0000(14). Establishment and change of a UGB must be based
10 on a number of factors, including a “[d]emonstrated need for * * *
11 employment opportunities.” *Id.* Under OAR 660-024-0040(5), in
12 turn, the determination of that need “must comply with the
13 applicable requirements of Goal 9 and OAR chapter 660, division
14 9, and must include a determination of the need for a short-term
15 supply of land for employment uses consistent with [OAR] 660–
16 009–0025.”

17 Accordingly, a city estimates future employment to determine the need for
18 employment lands in order to comply with the applicable Goal 14 and 9
19 requirements.

20 Here, respondents adopted a number of documents in support of their
21 decisions, including the economic lands component of the 2010 Coburg
22 Urbanization Study (2010 Study) (Record 308-634), the 2014 Regional
23 Economic Analysis (REA) (Record 635-666), and the 2014 Coburg
24 Urbanization Study Update (2014 Update) (Record 289-307). Respondents
25 explain that the 2010 Study documented the nature of industrial lands needed,

²⁰ The ORS 197.298(1) priority scheme is not an issue under this assignment of error.

1 citing Record 467. While the 2010 Study identified a surplus of employment
2 land, it also noted the city’s employment lands might not be suitable for some
3 kinds of uses.²¹ Respondents also note that the 2014 Update took into account
4 changing economic conditions, with the assumption that Coburg would restore
5 a large number of jobs that were lost during the 2007 recession and projected
6 additional job growth based on Oregon Employment Department (OED)
7 projections for Lane County Job Growth. Record 305-306. The 2014 update
8 analyzes regional economic projections and provides:

²¹ Record 467 (part of the 2010 Study) includes the 2010 comparative analysis for land supply and demand and long term projections for 2010-2030 and includes the following findings:

“The City of Coburg has a surplus of land within all employment categories, however the surplus for Industrial Uses is not seen as sufficient in size or characteristic to accommodate the City’s economic opportunities.

“The City should add approximately one lot or tract of land consisting of 20-70 acres of land to accommodate flexibility in responding to industry employment opportunities during the planning period (2010-2030).

“ * * * * *

“Long Term Supply/Demand Summary[:]The City of Coburg is currently faced with a supply of buildable land designated for commercial and office purposes that is insufficient to meet future long-term demand. The City is also faced with a limited supply of available and appropriate buildable land designated for industrial purposes.” (Emphasis added.)

1 “The findings of the Regional Economic Analysis for Coburg
2 culminate in two recommended scenarios which are outlined as
3 follows:

4 “Scenario A – Job Recapture with OED Forecast Update. This first
5 scenario is modeled to align with the forecast methodology
6 provided with the 2010 Urbanization Study. Assumptions integral
7 to this updated forecast estimate are that:

8 “Coburg job loss experienced during the recession will be
9 recaptured (to refill vacated space) so that forecast job
10 growth occurs as an add-on to pre-recession peak
11 employment conditions requiring net added industrial and
12 commercial land as was previously assumed with the 2010
13 Urbanization Study.

14 “Lane County employment forecast projections are updated
15 for consistency with the most current available OED
16 regional forecast – reflecting higher county-wide job growth
17 rates than were utilized with the 2010 Urbanization Study
18 (as is also consistent with DLCDC Safe Harbor provisions for
19 estimating EOA land needs).

20 “Scenario B – Economic Opportunity with Regional Large Site
21 Market Capture. A second scenario is predicated as an economic
22 opportunity for Coburg to serve regional needs for large 20+ acre
23 sites that require I-5 freeway access in addition to capturing its
24 Safe Harbor share of regionally forecast job growth:

25 “This enhanced economic opportunity is consistent with the
26 findings of the 2010 Urbanization Study that Coburg has
27 been, and could remain, competitive for large manufacturing
28 and distribution-related industrial firms, particularly if 20+
29 acre sites were designated and made available for industrial
30 development.

31 “Coburg’s competitive opportunity is reinforced by
32 economic analyses recently prepared for other jurisdictions
33 in Lane County – all of which confirm a demand for but

1 relative dearth of 20+ acre sites situated in close proximity
2 to the I-5 transportation corridor.

3 “Scenario B of the REA includes three sub-scenarios, one which
4 assumes 10% regional large site industrial capture, one which
5 assumes 20% regional large site industrial capture and one that
6 assumes a fairly aggressive 30% regional large site industrial
7 capture.

8 “Neither scenario presented in the Regional Economic Analysis is
9 expressly rejected by the City of Coburg in this addendum. At
10 their cores both scenarios are generally consistent with the primary
11 assumptions of the current Urbanization Study. Table A.17
12 outlines scenarios details, including total regional large site
13 acreage demand, an assumed vacancy percentage, and local
14 industrial land supply (from the buildable lands analysis).

15 “ * * * * *

16 “All of the scenarios evaluated support the continued need for a
17 UGB expansion of at least 40 acres to as much as 195 acres based
18 on forecast need for large industrial sites within Coburg and the
19 Central Lane County region.” Record 305-306 (footnotes omitted).

20 The 2010 study had predicted a total of 247 industrial jobs and 368 commercial
21 jobs, totaling 615 new jobs over twenty years. The 2014 Update includes the
22 following observation:

23 “If Coburg’s job growth rate were adjusted upwards to reflect the
24 updated overall growth expectations for Lane County * * *, the
25 employment gain within Coburg’s UGB would double from the
26 previous projection of an added 615 jobs to 1,292 net added jobs
27 over a 20-year planning horizon. It is noted by LCOG staff that a
28 truly sector specific forecast was not possible given the
29 information that economist Eric Hovee was provided. The figure
30 1,292 based on Lane County’s AAGR [average annual growth
31 rate] reflects an estimate assuming the highest realization of
32 Coburg matching Lane County growth rates. That number (1,292),

1 in all likelihood would be smaller, and could potentially be
2 significantly smaller.” Record 303-304.

3 Intervenor and respondents (respondents) explain that the 2014 Update
4 confirmed the 2010 analysis, did not recommend any particular regional
5 scenario, but expressly stated that none were rejected and concluded that all of
6 the scenarios were generally consistent with the original assumptions regarding
7 employment land needs presented in 2010.

8 Petitioners’ third assignment of error is a series of loosely connected
9 challenges, focusing in large part on what petitioners contend are unresolved
10 inconsistencies in the 2010 Study, REA, and 2014 Update. Respondents answer
11 that petitioners’ confusion regarding the jobs forecasts is of petitioners’ own
12 making, and that the UGB decision is supported by an adequate factual basis.
13 Respondents contend that the economic land component of the decision and its
14 adopted findings are consistent with Goal 14 Urbanization and its
15 implementing administrative rules. Respondents quote OAR 660-024-0040 as
16 the governing rule for determining land need for industrial lands, emphasizing
17 that a local government is required to provide a reasonable justification for the
18 job growth estimate but Goal 14 does not require that job growth estimates
19 necessarily be proportional to population growth.²² Below we have attempted

²² OAR 660-024-0040(5) provides in relevant part:

“ * * * the determination of 20-year employment land need for an urban area must comply with applicable requirements of Goal 9 and OAR chapter 660, division 9, and must include a

1 to identify each of petitioners’ separate arguments under this assignment of
2 error.

3 **A. Adequacy of the Decision for Review (Petition for Review 39-**
4 **43)**

5 Petitioners argue that the 2014 Update reveals that only ranges of
6 forecasts and land needs were presented and none were actually selected
7 (“Neither scenario presented in the Regional Economic Analysis is expressly
8 rejected by the City of Coburg in this addendum. At their cores both scenarios
9 are generally consistent with the primary assumptions of the current
10 Urbanization Study. * * * All of the scenarios evaluated support the continued
11 need for a UGB expansion of at least 40 acres to as much as 195 acres based on
12 forecast need for large industrial sites within Coburg and the Central Lane
13 County region.”) Record 306. Therefore, petitioners argue, the decision is not
14 adequate for review.

15 Respondents answer that the city and intervenor submitted letters to
16 clarify the evidence in the record that supported the decision, and that those
17 letters were incorporated as findings. Those letters are at Record 757-782 and

determination of the need for a short-term supply of land for
employment uses consistent with 660-009-0025. *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. * * *.*” (Emphasis added.)

1 further clarify the role of the 2010 study and the 2014 update as supporting the
2 decision.

3 We consider the decision and its supporting documentation adequate for
4 review. It is not unusual for decision makers to be presented documents that
5 present a range of possible options. Here the number of acres identified as
6 needed varies, because those documents were prepared at different times and
7 are based on different data and different assumptions. The fact that the 2014
8 update modifies the 2010 analysis and results in new projected figures does not
9 make those documents “internally inconsistent.”

10 Nonetheless, petitioners also argue that “it is not possible to tell which
11 jobs forecasts and land needs were ultimately selected to form the basis of the
12 decision and why.” Petition for Review 41. Respondents have not identified
13 any part of the challenged decision that clearly and expressly selects between
14 the different employment projections presented by the 2010 Study, REA and
15 2014 Update or the different estimates of the number of acres required to meet
16 projected employment needs. However, intervenor submitted a letter to the
17 board of commissioners, which it adopted as findings. A portion of that letter
18 is set out below:

Coburg Industrial Scenarios with Regional Large Site Industrial Capture

Comparative Scenario / Option	Coburg Large Site Industrial Capture %			
	A	B1	B2	B3
Added Regional Market Capture Rate	0%	10%	20%	30%
Regional Large Site Acreage Demand	463	463	463	463
Net Coburg Regional Acreage Demand	-	46.3	92.5	138.8
Coburg Share Adjusted for 10% Vacancy	-	51.4	102.8	154.2
Plus Local Industrial Need (Forecast A)	68.7	68.7	68.7	68.7
Total Coburg Industrial Demand	68.7	120.1	171.5	222.9
Less Estimated Coburg Industrial Lands	(28.4)	(28.4)	(28.4)	(28.4)
Equals Net Added Acreage Need	40.3	91.7	143.1	194.5

1

2

“Note that the table includes updated information regarding the City's local industrial land need and available industrial land within the City's existing UGB.

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“The REA concluded:

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“A 10-20% capture of regional market demand appears to be a reasonable minimum expectation for Coburg. This base level of market capture is supported by the previous demonstrated attractiveness of this community for large scale regional industries, better proximity to Linn as well as Lane County labor force, current and prospective lack of Eugene sites in proximity to I-5, and UGB expansion/infrastructure challenges affecting the Springfield and Goshen (as well as Eugene) alternatives.’ Regional Economic Analysis, p. 24.” Record 773-74.

17

Because respondents ultimately selected Area 8, with 106 acres, it is sufficiently clear that respondents determined the need for employment land was consistent with Options B1 and B2, and whatever assumptions and studies justified those figures.

18

19

20

21

This subassignment of error is denied.

1 **B. Failure to Use Current Job Numbers**

2 Petitioners next argue that respondents improperly used higher pre-
3 recession job numbers when applying the OAR 660-024-0040(9) safe harbor
4 option under the Goal 14 administrative rule. The REA Scenario A
5 employment forecast was developed based on the Oregon Employment
6 Department (OED) 1.66% average annual growth rate (AAGR) forecast for
7 Lane County, relying on OAR 660-024-0040(9)(a), which provides that:

8 “A local government may estimate that *the current number of jobs*
9 *in the urban area* will grow during the 20-year planning period at
10 a rate equal to * * * [t]he county or regional job growth rate
11 provided in the most recent forecast published by the Oregon
12 Employment Department[.]” (Emphasis added.)

13 Petitioners assert that respondents erred, because the REA correctly applied the
14 1.66% AAGR over a period of 20 years to result in a thirty-nine percent
15 increase in jobs, but then applied that percentage to the 2006 jobs estimate
16 (3,316 jobs) that existed at the height of the economic boom rather than the
17 2012 jobs estimate (1,207 jobs), the most recent job count available. Petitioners
18 argue that due to this error, respondents over-estimated the amount of the
19 projected jobs in the 20-year planning period by almost a factor of three.

20 Intervenor responds:

21 “* * * That safe harbor is prescribed for the first of the three Goal
22 9 employment land considerations * * *—a city’s population
23 based employment needs. The safe harbor does not apply to either
24 of the two other Goal 9 considerations—whether there are suitable
25 site types or regional employment opportunities. * * *”
26 Intervenor-Respondent’s Brief 36.

1 Intervenor also contends that in *Zimmerman* the Court of Appeals “addressed
2 this specific issue” and explained that local governments had discretion to
3 factor in economic booms and downturns in applying economic projections
4 when establishing an adequate factual basis for a UGB expansion. Intervenor
5 states that the REA’s economic trends and forecast analysis was based on the
6 most recent (at that time) and readily available employment data compiled by
7 OED, and compared it with the most recent information from Oregon Office of
8 Economic Analysis.

9 We agree with petitioners that respondents erred by failing to use “the
10 current number of jobs” as required by OAR 660-024-0040(9)(a). Since the
11 safe harbor was used in this case to generate the city’s population-based
12 employment needs, we do not understand intervenor’s first argument. And
13 *Zimmerman* is inapposite, as that case concerned whether allegedly stale data
14 constituted “best available * * * information” under OAR 660-009-0010(5).²³
15 Whether “the current number of jobs in the urban area” must be used in

²³ OAR 660-009-0010(5) provides:

“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 jurisdiction's planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of this division.”

1 applying the OAR 660-024-0040(9)(a) safe harbor provision was not an issue
2 in *Zimmerman*.

3 This sub-assignment is sustained.

4 **C. Error to Add Regional Large-Site Industry Capture to**
5 **Employment Based on Safe Harbor**

6 Petitioners next assert the REA improperly inflated the safe harbor jobs
7 estimate by assuming Coburg will attract regional employers, in the future, who
8 are seeking large industrial sites. Petitioners rely on *Friends of Yamhill County*
9 *v. City of Newberg*, 62 Or LUBA 5 (2010), stating that the safe harbor does not
10 allow the simultaneous use of other methods.

11 Intervenor clarifies that the REA recognizes that the Scenario A
12 projection is based on anticipated economic growth derived from expected
13 population growth and does not capture all types of economic growth that may
14 be occurring in the region. Intervenor notes that the Scenario B regional
15 analysis is performed to accommodate larger regional industrial facilities that
16 have flexibility to locate anywhere in the region and beyond and have
17 particular siting requirements. Intervenor argues:

18 “* * * Importantly, neither Goal 14 nor Goal 9 state that if the safe
19 harbor is used for the population based component of the Goal 9
20 analysis, that it precludes further application of the remaining
21 Goal 9 rule provisions that mandate a sufficient supply of
22 adequate sites by type and that encourage local governments to
23 pursue regional economic opportunities. * * *” Intervenor-
24 Respondent’s Brief 36.

1 We agree with intervenor that the OAR 660-024-0040(9)(a) safe harbor
2 does not preclude taking into account additional demand for employment land
3 that may be generated by regional forces that may have little or nothing to do
4 with the city’s population growth. As intervenor argues, the Goal 9 rule, OAR
5 660-009-0015 (1) and (2) expressly permit such considerations.²⁴

²⁴ OAR 660-009-0015(1) and (2) provide:

“(1) Review of National, State, Regional, County and Local Trends. The economic opportunities analysis must identify the major categories of industrial or other employment uses that could reasonably be expected to locate or expand in the planning area based on information about national, state, regional, county or local trends. This review of trends is the principal basis for estimating future industrial and other employment uses as described in section (4) of this rule. A use or category of use could reasonably be expected to expand or locate in the planning area if the area possesses the appropriate locational factors for the use or category of use. Cities and counties are strongly encouraged to analyze trends and establish employment projections in a geographic area larger than the planning area and to determine the percentage of employment growth reasonably expected to be captured for the planning area based on the assessment of community economic development potential pursuant to section (4) of this rule.

“(2) Identification of Required Site Types. The economic opportunities analysis must identify the number of sites by type reasonably expected to be needed to accommodate the expected employment growth based on the site characteristics typical of expected uses. Cities and counties are encouraged to examine existing firms in the planning area to identify the types of sites that may be needed for

1 Petitioners’ reliance on *Friends of Yamhill County* is misplaced. LUBA
2 simply concluded in *Friends of Yamhill County* that “the Oregon Employment
3 Department job growth projection rate authorized by OAR 660-024-
4 0040(9)(a)(A) and the coordinated population forecast projection rate
5 authorized by OAR 660-024-0040(9)(a)(B) are mutually exclusive
6 alternatives.” 62 Or LUBA at 30. We concluded the city could not switch
7 back and forth between those methodologies for different industries. *Id.* at 30-
8 31. That is not what occurred here. We agree with intervenor on this point, and
9 also agree that *Friends of Yamhill County* does not support the proposition that
10 a government cannot use both the safe harbor provision to project the city’s
11 population growth based employment land needs and seek to capture additional
12 regional employment opportunities by allocating land to capture such regional
13 employment growth.

14 This subassignment of error is denied.

15 **D. Double Counting Job Numbers for Large Lot Industrial**

16 Petitioners also argue that the use of both the projected local
17 employment needs (Scenario A) in addition to regional needs (Scenario B)
18 double counts those large lot industrial jobs because large lot industrial jobs are
19 already a subset of Scenario A.

20 Intervenor-Respondent responds:

expansion. Industrial or other employment uses with compatible site characteristics may be grouped together into common site categories.”

1 “Turning to Petitioners’ arguments here, the City’s original
2 demonstrated need for one or two 20-plus acre sites is a population
3 based industrial land need for target industrial uses that have
4 certain parcel size requirements. Its purpose is to replace the land
5 lost to local businesses use of those site types and to provide
6 similar types of sites to meet future local needs. However, REA is
7 looking at additional large site employers that might otherwise
8 locate somewhere else on the west coast but may locate in Coburg
9 if the conditions are right. In that respect, the regional opportunity
10 does not draw from the normal population growth within the cities
11 of Coburg, or even Eugene or Springfield. The regional need does
12 not already include the normal need for similar types of uses that
13 are based on population or employment projections as Petitioners’
14 arguments contend; regional need is in addition to the local need.
15 Thus the number of jobs that may be created by a regional
16 opportunity are not already included in the initial EOA analysis –
17 there is no double counting.” Intervenor-Respondent’s Brief 40.²⁵

18 We are not sure we fully understand either petitioners’ or intervenor’s
19 arguments on this point. Petitioners have the burden of demonstrating error.
20 We conclude petitioners have failed to demonstrate that respondents
21 improperly double-counted large-lot industrial jobs.

22 This subassignment of error is denied.

23 **E. Failure to Consider Rezoning Surplus Commercial Land**
24 **Already Inside the UGB**

25 Petitioners’ next subassignment of error is seven lines long, but bolstered
26 by additional arguments in a footnote. We reject the footnote arguments as
27 insufficiently developed to merit review. Petitioners’ complaint appears to be

²⁵ Intervenor also points out that petitioners misread REA’s Scenario B1 to assume Coburg “will capture 463 large-lot jobs,” whereas the REA actually indicates a regional need for 463 acres.

1 that respondents did not adequately consider rezoning surplus commercially
2 designated lands to meet the identified need for employment lands.

3 Intervenor states that the 2010 Study concluded that the available
4 employment land inside the UGB will most likely be developed for smaller
5 businesses and would not be available for large lot industrial development.
6 Intervenor also argues the incorporated findings of the 2014 Update at Record
7 761-762 explain highway commercial lots identified by petitioners in the
8 proceeding totals only 22.5 acres and are insufficient to meet the need of a
9 minimum single 20 net buildable acre industrial site.

10 We conclude that petitioners have not established that respondents failed
11 to adequately consider rezoning existing commercially designated land to meet
12 some of the identified future need for employment land.

13 **F. Failure to Account for Existing Regional Large Lot Supply**

14 Petitioners finally argue that the challenged decision improperly ignores
15 that there are other communities in Lane County that can accommodate large
16 lot industrial sites, and that the findings fail to address this information and do
17 not explain how there can be an unmet regional need for 463 acres of large lot
18 industrial land when nearly that amount already exists within Lane County.

19 “[T]he record contains detailed evidence documenting that there
20 are already at least 450 acres of 20+ acre industrial sites presently
21 available in Lane County: a) 181 acres currently for sale in Eugene
22 and Creswell; b) 62 acres in Springfield; and c) 214 acres in
23 Goshen, most of it already served by I-5 and rail.” Petition for
24 Review 48 (original emphasis omitted).

1 Intervenor contends that petitioners rely on an isolated table in the REA
2 and do not consider what follows. According to intervenor, the REA shows
3 that the City of Springfield has a deficit of 450 acres for large lot industrial
4 development, not 62 available acres. Intervenor contends the REA shows that
5 Eugene has determined it needs to expand its UGB to add 457 acres to meet its
6 needs and that the 181 acres petitioners identify are already needed to meet
7 Eugene’s needs. Finally, intervenor contends that the evidence petitioners rely
8 on to establish that that 214 acres of land is available in Goshen for large lot
9 employment development shows those acres are already developed.

10 We agree with intervenor that petitioners have not established that
11 respondents failed to adequately consider existing available land to meet
12 regional land for large lot employment land needs.

13 This subassignment of error is denied.

14 **FOURTH ASSIGNMENT OF ERROR**

15 ORS 197.732, Goal 2, Part II; and OAR Chapter 660, Division 4 all
16 authorize local governments to take “exceptions” to the statewide planning
17 goals. As defined by OAR 660-004-0005(1),

18 “An ‘Exception’ is a comprehensive plan provision, including an
19 amendment to an acknowledged comprehensive plan, that:

20 “(a) Is applicable to specific properties or situations and does not
21 establish a planning or zoning policy of general
22 applicability;

23 “(b) Does not comply with some or all goal requirements
24 applicable to the subject properties or situations; and

1 “(c) Complies with ORS 197.732(2), the provisions of this
2 division and, if applicable, the provisions of OAR 660-011-
3 0060, 660-012-0070, 660-014-0030 or 660-014-0040.”

4 Citing language in the decision that can be read to suggest respondents
5 attempted to take an exception to the ORS 197.298(1) priority scheme,
6 petitioners contend that while the exception process is a permissible vehicle for
7 attempting to avoid statewide planning goal requirements, there is simply no
8 authority for taking an exception to a statutory requirement, such as the ORS
9 197.298(1) priority requirement.

10 We understand respondents to take the position respondents were not
11 attempting to approve an exception to ORS 197.298, or any particular
12 statewide planning goal or administrative rule, but rather were simply
13 attempting to respond to the Court of Appeals decision in *McMinnville* “that
14 says clearly that there must be an exceptions analysis as a part of the UGB
15 expansion process.” Respondents’ Brief 68. Intervenor-Respondent takes a
16 different approach and argues that because the version of Goal 14 that applied
17 in this case required that respondents evaluate “alternative boundary locations
18 consistent with ORS 197.298,” it was entirely appropriate for respondents to
19 attempt to approve an exception.

20 The old version of Goal 14 that applied in *McMinnville* provided “a
21 governing body proposing [a] change in the boundary separating urbanizable
22 lands from rural land, shall follow the procedures and requirements as set forth
23 in the Land Use Planning goal (Goal 2) for goal exceptions.” That requirement

1 complicated an already complicated process, and the version of Goal 14 that
2 applies in this case does not include that language or requirement. We agree
3 with respondents that it does not appear that respondents were attempting to
4 approve an exception to ORS 197.298, or any particular goal or rule, but rather
5 mistakenly believed they were required to follow exception procedures and
6 requirements under Goal 14, as analyzed in *McMinnville*.

7 We reject intervenor’s contention that because the applicable version of
8 Goal 14 states an UGB amendment must be consistent with the priority scheme
9 set out in ORS 197.298, the statute thereby becomes eligible for an exception.
10 A local government may not approve an exception to a statute. Because we
11 conclude respondents did not take an exception to the ORS 197.298 priority
12 scheme, which is the premise of petitioners’ fourth assignment of error, the
13 fourth assignment of error is denied.

14 **CONCLUSION**

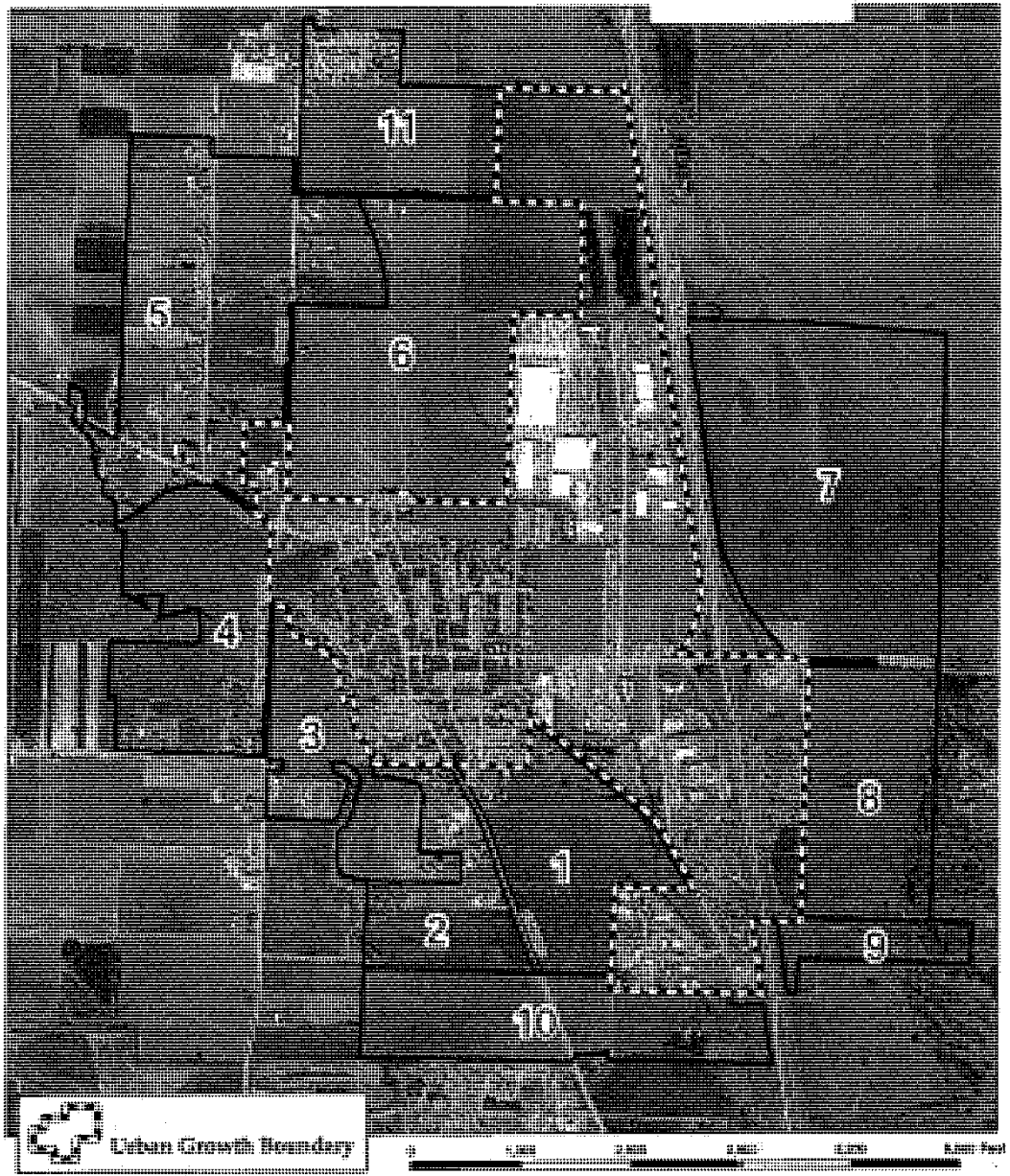
15 Our resolution of petitioners’ assignments of error requires that we
16 remand Ordinance 1315, which among other things amends the UGB. Because
17 we reject petitioners’ challenges under Goal 9 to the TSP, it is less clear
18 whether Ordinance 1314, which adopts amendments to the TSP, must also be
19 remanded. But it is undisputed that, the east-west bypass could not be
20 constructed across rural agricultural land, and therefore depends on the UGB
21 amendment to include the lower part of Area 6. And as noted earlier, the
22 claimed need for the east-west bypass was one of the reasons respondents gave

1 for including the lower part of Area 6 in the UGB. Given that interdependence
2 of the two ordinances, remand of both ordinances is required.

3 Ordinances 1314 and 1315 are remanded.

4

Appendix 1



**Map 10:
Study Areas
Coburg Urbanization Study**

1 inch = 1,500 feet

COBURG
Village

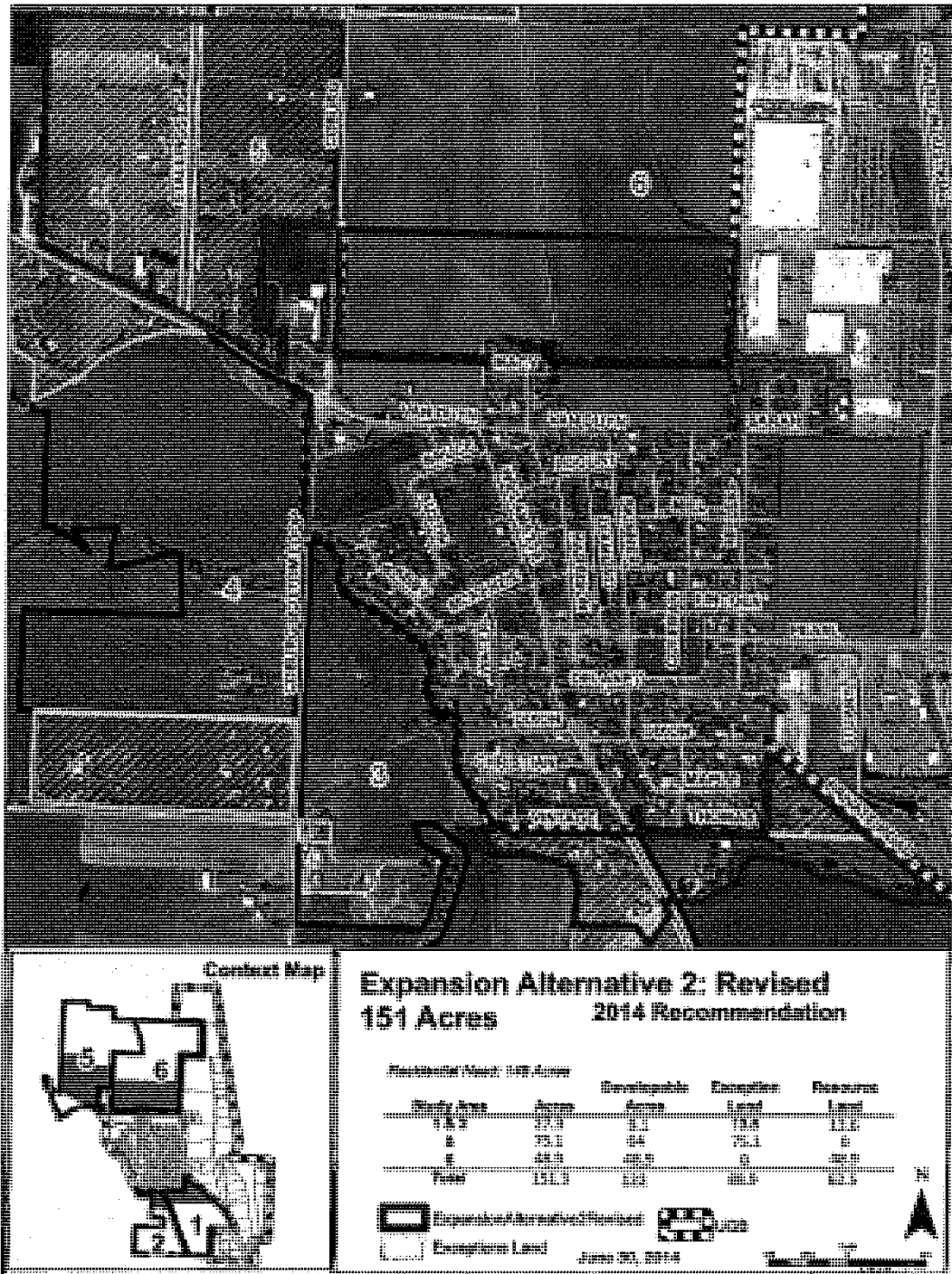
LCOG
LOCAL COUNCIL OF GOVERNMENTS

N

COBURG and LCOG are not responsible for any errors or omissions in this map. The map is provided as a guide only and should not be used for any legal or financial purposes. The map is provided as a guide only and should not be used for any legal or financial purposes. The map is provided as a guide only and should not be used for any legal or financial purposes.

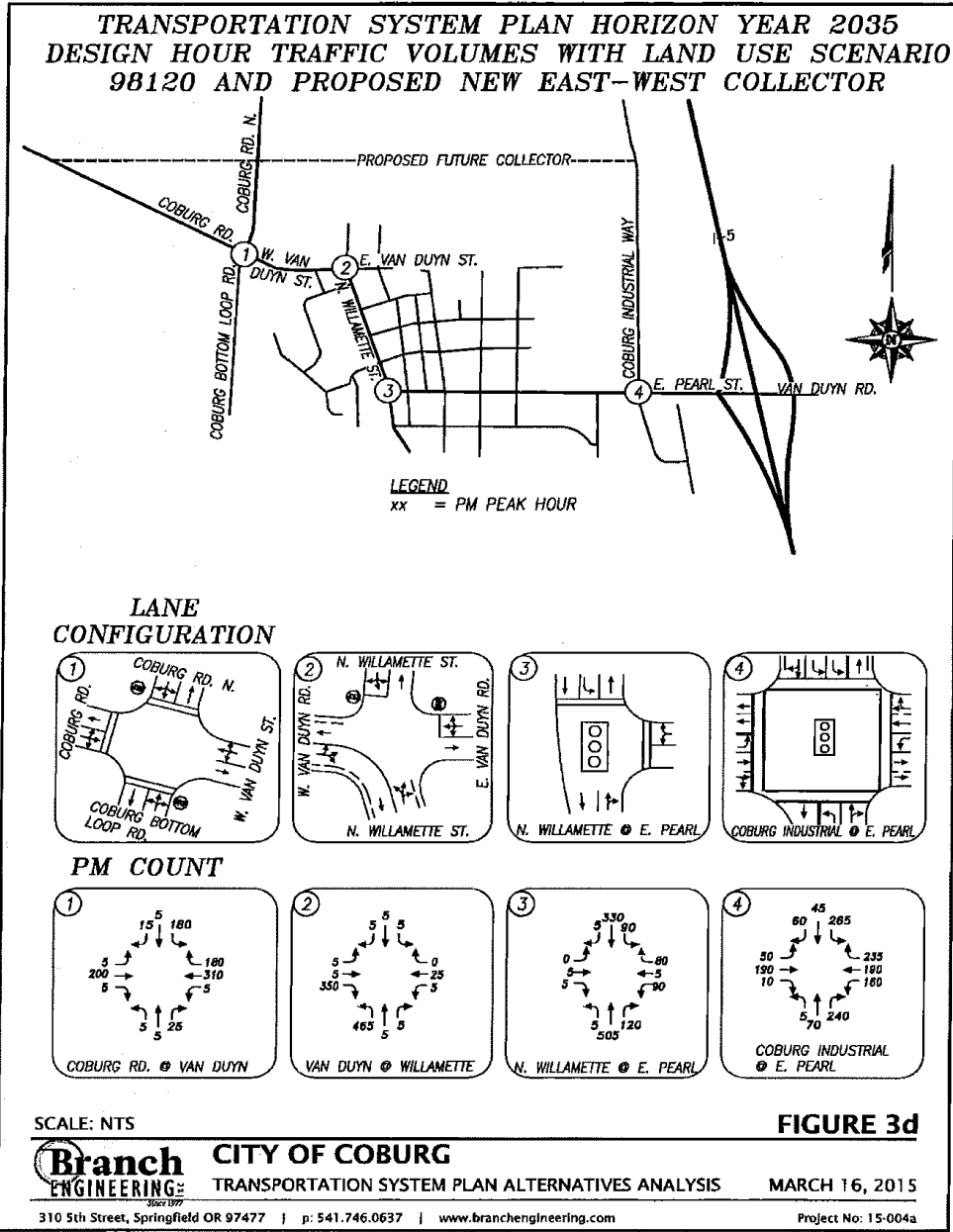
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Appendix 2



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Appendix 3



Z:\2015\15-004a Coburg TSP Traffic Study\15-004a TRAFFIC FIGURES.dwg FIG 3d 3/17/2015 11:50 AM DARR 18.0a (LMS Tech)

3