

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE ) Ordinance No. 12-1296  
URBAN GROWTH BOUNDARY IN THE )  
VICINITY OF THE CITY OF LAKE ) Introduced by Chief Operating Officer Martha  
OSWEGO UPON APPLICATION BY THE ) Bennett with the Concurrence of Council  
CITY OF LAKE OSWEGO ) President Tom Hughes

WHEREAS, Urban Growth Management Functional Plan Title 14: Urban Growth Boundary provides a mechanism to amend the urban growth boundary (UGB) through a "major amendment" process; and

WHEREAS, the City of Lake Oswego filed an application for a major amendment to the UGB pursuant to Metro Code Section 3.07.1430; and

WHEREAS, the application was considered by a hearings officer appointed by Metro at a public hearing in Lake Oswego on September 20, 2012; and

WHEREAS, on November 1, 2012 the hearings officer submitted a proposed order recommending approval of the application, together with findings of fact and conclusions of law in support of a decision by the Metro Council that the application satisfies the requirements of the Metro Code; and

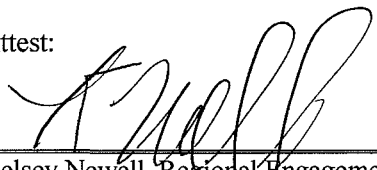
WHEREAS, the Council considered the proposed order and testimony at a public hearing on December 6, 2012 under the procedural requirements of Metro Code Section 3.07.1430.U; now, therefore,


THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The UGB is hereby amended, as indicated in Exhibit A, attached and incorporated into this Ordinance, to add 9.8 acres to the UGB for development of an indoor tennis facility and related neighborhood park amenities.
2. The Findings of Fact and Conclusions of Law in Exhibit B, attached and incorporated into this ordinance, explain how this amendment to the UGB complies with applicable provisions of the Regional Framework Plan, Metro Code, and applicable statewide planning laws.

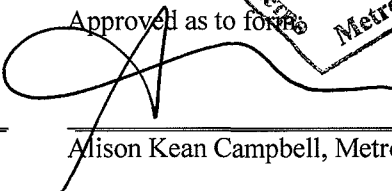
ADOPTED by the Metro Council this 6 day of December 2012

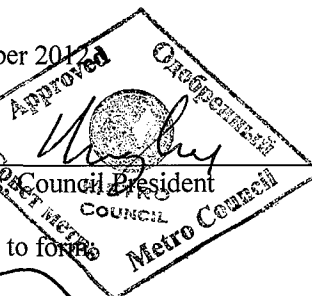
Attest:

  
Kelsey Newell, Regional Engagement  
Coordinator

  
Tom Hughes, Council President

Approved as to form

  
Alison Kean Campbell, Metro Attorney





**Exhibit B to Ordinance 12-1296**

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for  
METRO**

IN THE MATTER OF ) **PROPOSED ORDER**  
THE APPLICATION FOR MAJOR )  
AMENDMENT TO THE URBAN )  
GROWTH BOUNDARY FILED BY ) OAH Case No. 1202947  
CITY OF LAKE OSWEGO ) UGB Case No. 12-01

**HISTORY**

On June 12, 2012, the City of Lake Oswego (the City), through city manager David Donaldson, submitted an Application for a Major Amendment to the Metro Urban Growth Boundary (UGB), proposing an addition to the UGB of approximately 9.8 acres of property. The proposed use of the property is to accommodate an indoor tennis center and related neighborhood park amenities. Metro published a Notice of Public Hearing for Tuesday August 14, 2012, at 7:00 p.m. in the Lake Oswego Council Chambers, 380 A Avenue, Lake Oswego (Lake Oswego Council Chambers). Metro published a Notice of Postponed Public Hearing for Thursday September 20, 2012 at 6:00 p.m. to be held at the same location.

The matter was referred to the Office of Administrative Hearings (OAH) for a hearing on August 30, 2012. Senior Administrative Law Judge (ALJ) A. Bernadette House of the OAH was assigned to the matter. On September 20, 2012, at 6:00 p.m., ALJ House convened a public hearing at the Lake Oswego Council Chambers.

Applicant: City of Lake Oswego

Applicant's Representative: Angelo Planning Group

Appearing at Hearing on behalf of Applicant:

Jack D. Hoffman, Mayor;

Mary Dorman, project manager for Angelo Planning Group;

Sally Moncrief, City Councilor; and

Kim Gilmer, director, Parks and Recreation Department.

Representative for Metro

Tim O'Brien, principle regional planner

*In the Matter of City of Lake Oswego, Proposed Major Amendment to the Urban Growth Boundary*

OAH Case No. 1202947

Page 1 of 40

Individuals giving public comment:

Individuals giving public comment<sup>1</sup>

1. Jay Minor – in favor (with accompanying written statement)
2. Brian Dunkley – opposed (with accompanying written statement)
3. Andrew Gibson, Stoel Rives, LLP, for the Atherton Heights Homeowners Association (HOA) opposed (record left open for submission of written statement)
4. Anita Derry – opposed
5. Jeannann McCoy – opposed
6. Paul Kachel – in favor
7. Rick Cook – opposed (with additional written statement)
8. Doug Jost – in favor
9. Charlie Kachel – in favor
10. Cyndi Murray – in favor
11. Tia Ross – opposed
12. Carolyne Jones – opposed
13. Liz Lamade – in favor
14. Josie Dix – in favor
15. Lili Bekuhrs – in favor
16. Jim Zupancic, on behalf of Stafford Hills Club, LLC. – opposed (with accompanying written statement.)
17. Kathy Schaub – in favor
18. Mary Olson – opposed
19. Gary McKenzie – in favor
20. Gunnar Brinck – in favor
21. Charles Ormsby – opposed (requested record to be left open for submission of written statement - none received.)
22. Evie Fuson – in favor

## **EVIDENTIARY STANDARDS**

Testimony and evidence must be directed toward the applicable criteria or other criteria that the person believes apply to the proposal. Metro Code 3.07.1430(L)(2). A person wishing to represent an organization, orally or in writing, must show the date of the meeting at which the organization adopted the position presented and authorized the person to represent it. Metro Code 3.07.1430(J).

## **EVIDENTIARY RULINGS**

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<sup>1</sup> Appendix I is a list of exhibits submitted by the parties and written testimony submitted by members of the public.

Prior to, and during, the September 20, 2012 public hearing, several individuals submitted testimony as representatives of an organization. The following written testimony, marked as the exhibit listed, was submitted without documentation of the date of the meeting at which the organization adopted the position represented and authorized the person to present it, per Metro Code section 3.07.1430(J): Exhibit H, letter of September 19, 2012, from Brian Dunkley, as Secretary of the Atherton Heights Homeowners Association (Atherton HOA), is marked for the record. It was not considered as the position of the Atherton HOA but was considered as Mr. Dunkley's personal testimony.

## **ISSUE**

Whether the City of Lake Oswego's proposal to add approximately 9.8 acres of land to the Metro UGB for the purpose of developing a tennis facility meets the criteria for a major amendment to Metro's Urban Growth Management Plan. Metro Code 3.07.1430.

## **FINDINGS OF FACT**

(1) On June 4, 2012, David Donaldson, city manager acting on behalf of City, filed a petition to amend the UGB to include 9.8 acres for an indoor tennis and neighborhood park facility. City is the property owner. The subject property, also known as known as the Rassekh Park Property (the property), consists of one tax lot (Tax Lot 21E16D 01100) located at the corner of SW Stafford Road and SW Rosemont Road. The property is located within the boundaries of the City of Lake Oswego. (Ex. A1, Ex. D.)

(2) The property was initially included in the UGB through Metro Ordinance 98-799D, adopted on December 17, 1998. In 2006, the City requested a UGB trade under the Minor Adjustment process to remove the property from the UGB and include six tax lots totaling 13.9 acres inside the UGB. The purpose of the 2006 request was to build a recreational facility that was better suited on the larger site due to environmental impacts on the larger parcel. On May 18, 2006, the request was approved and the majority of the 13.9 acres added to the UGB are composed of the Hazelia Field at Luscher Farm that includes a dog park, football-soccer artificial fields, natural area-wildlife viewing, playground area, restrooms, and trails and paths. (Ex. D.)

(3) In 2009, Metro, as required by Oregon land use law, assessed the region's capacity to accommodate the number of people anticipated to live or work inside the UGB over the next 20 years. The Metro forecast projected population and employment growth over a 20-year timeframe; conducted an inventory of vacant, buildable lands inside the UGB; assessed the capacity of the then-current UGB to accommodate population and employment growth; determined whether additional capacity was needed and documented the results of the analyzes in the Urban Growth Report. Metro Council

accepted the 2009 Urban Growth Report and completed the 5-year legislative process required by State law in 2010-2011. (Ex. A1 at 29.<sup>2</sup>) Through that most recent legislative process, Metro addressed residential and employment growth, with a particular focus on large sites for traded-sector industrial uses. (*Id.*, D at 2.)

(4) Metro's focus on industrial and housing needs precluded opportunities for cities to present specific needs related to parks. (Test. of Dorman.)

(5) The next legislatively required analysis of land supply will not occur before December 2014. (Ex. D at 3.) The current proposal is for the purpose of adding land to the boundary for a recreational need. In 2009, the Metro UGB Report estimated that 1,300 acres of vacant land inside the UGB would be used for future parks. The 2009 estimate was based on local ability to provide for future parks through system development changes. It was not based on a compilation of needs indicated by individual cities and counties. The report was intended to be a reasonable estimate and not a precise accounting and does not preclude demonstration of a specific need of a city or county that cannot be satisfied in another part of the region. Even if the next Metro Council five-year review were to include consideration for park needs, and it may not, including a line item in an urban growth report for parks will not necessarily result in parks for citizens to enjoy. (*Id.*, at 3, 4; Test. of O'Brien, Dorman.)

(6) The Major Amendment process provides a mechanism by which a local jurisdiction may bring land into the UGB for specific park needs that are not anticipated in the cyclical legislative UGB expansion considerations. The City based its proposal on studies and other information regarding a specific long range need for providing tennis facilities to meet present and future populations based on established methodologies for the proposed use and coordinated population demographic projections used in the City's Comprehensive Plan Update (August 2010) and Parks Plan (2025). (Ex. D3 at 4.)

(7) In 2008, the City Council directed staff to conduct a long-term feasibility study for the Municipal Golf Course with the goal of developing options for improved profitability of the golf course as well as investigating the feasibility of co-locating a new indoor tennis facility at the golf course site. The City hired the consulting team of PBK Architects, Inc., National Golf Foundation, and Tennis Planning Consultants, Inc., to conduct the Golf and Tennis Feasibility Study<sup>3</sup> (GTF Study). As part of its analysis, the team considered each facility individually, including current operations and proposed

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<sup>2</sup> As cited in the City's proposal, *see 2010 Growth Management Assessment*, Metro (August 2010) at <http://library.oregonmetro.gov/files/ugr.pdf>. The 2009 Urban Growth Report, relied upon in the *2010 Growth Management Assessment*, was accepted by the Metro Council on December 10, 2009. (<http://news.oregonmetro.gov/1/post.cfm/metro-council-accepts-regional-forecast-and-urban-growth-report>).

<sup>3</sup> *The Golf and Tennis Feasibility*, PBK Architects, Inc., National Golf Foundation, and Tennis Planning Consultants, Inc., prepared for the City of Lake Oswego (December 15, 2009.)

options for improving the long term financial capabilities of both facilities. (Ex. A1 at 1, 2.)

(8) The consulting team identified minimum site requirements for alternative sites for an indoor tennis facility. The minimum requirements included considerations for future expansion from 8 courts to 10-12 courts to avoid the current situation where expansion on the current site to meet increased need is not possible. The team recommended a total of 4.10 acres for the facility, possible expansion, parking, and landscaping buffer zones. (Ex. A1 at 7.)

(9) The consulting team, with input from the City's Parks and Recreation Advisory Board (PRAB) and a 16-member Golf-Tennis Subcommittee identified and evaluated six alternative sites based on the proposed minimum site requirements. The team focused on sites already owned by the City for cost considerations but also considered an additional site, the National Guard Armory Site, not currently owned by the City but within city limits. (Ex. A1 at 7.)

(10) Based on its commission, the consultant team analyzed and projected the market share available to each facility (golf and indoor tennis), evaluated current facility operations, and proposed options for improving the long term financial capabilities of both facilities. The tennis market study considered the following factors: population within the market area (15 minute drive-time); median income within market area; tennis population as a percentage of total population based on median income; existing indoor tennis facilities within the market area; and effective tennis players per court within the market area. (Ex. A1 at 2.)

(11) Tennis Planning Consultants (TPC) defined the Lake Oswego Tennis Market (LOTM) as the areas within the City zip codes 97034 and 97035 because those areas closely match Lake Oswego Urban Service Boundary. In 2009, the total population within the market area was approximately 42,861. The estimated number of tennis players, which for purposes of the study was determined to track closely with median income, was 7,238 within the City's tennis market. (Ex. A1 at 2.) TPC's methodology and conclusions were based on industry standards and the projections of demand represent the best planning information that is available. (Ex. P at 3.)

(12) Currently there are 13 indoor tennis courts within the City's tennis market, including the 4 indoor courts at the existing City facility and 9 indoor courts at the Mountain Park Racquet Club. These 13 courts serve the estimated 7,238 players which translate to a ratio of 557 players per court. TPC's norm for ratio of player to court ratio for indoor tennis facilities is 200 or up to 250 players at full occupancy per indoor court. Additionally, TPC determined the City has a very strong market for additional indoor tennis courts. (Exs. A1 at 2, P at 2.)

(13) The 2009 feasibility study considered the additional indoor courts at the

Stafford Hills Racquet Club (SHC). The SHC was under construction at the time of the study but is projected, when completed in November 2012, to include 7 indoor tennis courts as part of a full-service athletic club. The facility is not located within the City market area as defined in the study. However, the feasibility study, accounted for the projected 7 additional indoor courts at SHC (due to the close proximity to the immediate market area) in addition to existing area courts at the Mountain Park Racquet Club (9 courts), and the 8 courts from the proposed Rassekh property indoor. The total number of 24 courts equates to about 300 players per court based on existing demand from the Lake Oswego tennis market. (Ex. A1 at 2.)

(14) TPC accounted for three indoor tennis facilities, located outside of the market area, but which draw some players from within the market area. Only a portion of those clubs affect the market area due to factors such as location, tennis programs, and tennis facilities. The existing demand for indoor tennis facilities with the City's market area is more than twice the normal player per court ratios. (Exs. P at 7, D at 5.)

(15) Expansion of the existing City indoor tennis facility at Springbrook Park is prohibited by City Charter. (Ex. B.) Past attempts to remove the limitation have not been successful. (Ex. A1 at 1.) In addition, the current facility has limited lobby space and faces compliance issues with accessibility requirements under the Americans with Disabilities Act (ADA). (Test. of Gilmer.)

(16) Usage of the existing indoor facility fluctuates seasonally, with lower indoor court usage during summer months. Data for summer 2012 showed an increase in the number of individuals taking classes, despite a lower number of class offerings. (Test. of Gilmer; Ex. O at 3, 6.)

(17) Year round court use averages 50 % nationally. The City's current facility year round use averaged 66.10% in 2011. According to TPC data, national average use for an indoor facility during the playing season (September through May) is 70%. For the period 2006 through 2011, the City's facility use has averaged over 80% in four of the past five years during the playing season, and was at 81.75% in 2011. TPC found that historically the City's indoor facility operated at near capacity for court rentals and tennis players cannot easily reserve court time during prime season of September through May. (Test. of Gilmer; Ex. O at 4, 5.)

(18) Class enrollment capacity has not been at 100%. TPC found that the limited number of current courts, four, limits the number, types, and times of classes that can be offered are factors limiting enrollment for classes. Despite these limitations, the existing facility had, at the time of the 2009 study, increased its efficiency and program offerings which resulted in a 35% increase over the five prior years while maintaining relatively low hourly court rates. (Ex. P at 10.)

(19) The consulting team reported its findings in the Golf and Tennis Feasibility



Study (the Study). The team’s review of each site and summarized findings are included in the City’s amendment proposal. (Ex. A1 at 8-10.) Each site was reviewed for location, ownership, usable area, and site characteristics. The team concluded that three locations, the Rassekh, the West end Building (WEB), and the National Guard Armory properties were the best potential sites for the proposed new indoor tennis facility. The team also recommended sale of the existing facility and other details to facilitate uninterrupted services and potential funding sources for the anticipated costs of the project. (Ex. A1 at 11.)

(20) The alternatives analysis in the GTF Study started with six sites, with five of the sites inside the existing UGB including: Iron Mountain Park Site, Lake Oswego Golf Course Driving Range, West Waluga Park Site, National Guard Armory Site and the West End Building site. The sixth site is the subject property, the Rassekh Site that is inside the city limits but outside the UGB. (Ex. A1 at 7, D at 5.)

(21) Of the six alternative sites analyzed, the Golf and Tennis Feasibility Study concluded:

The Rassekh, West End Building (WEB) and National Guard Armory properties represent the best potential sites for a proposed new indoor tennis facility in the Lake Oswego tennis market. This conclusion is based on an in-depth market study of the Lake Oswego tennis market demographic population/income levels, a study of exiting and proposed indoor tennis projects within the Lake Oswego tennis market for the proposed facility, and an analysis of estimated construction and operating costs for a proposed new facility.

(Ex. D at 6, citing to the GTF Study.)

(22) The GTF Study recommended sale of the existing 2.81 acre site with the four-court Lake Oswego Indoor Tennis Center (LOITC), leasing it back from the purchaser for the short term, and building a new eight-court indoor tennis center at one of the three recommended sites. The GTF Study estimated that sale of LOITC property would produce an estimated \$1 million for the City. The funds could be applied to the new construction and lower the overall costs of financing and operating the new indoor tennis center. (Ex. D at 6.)

(23) The information from the GTF Study was incorporated into the Indoor Tennis Center Site-Study by PRAB. PRAB developed the following comparison cost summary chart:

**Table 1:** provides a cost summary for the three site options.

Table 1: Cost Summary of Site Options

Project Site Name/Location:	Comparison		
	Area	Cost/Square Foot	Total
<b>Armory Site – Design Option “A”</b>			
Direction Construction Cost			\$4,032,122
Site Development Cost			\$547,491
Soft Cost Allocation	69,100 GSF	\$66	\$775,905
Purchase of Land			\$500,000
<b>Total Cost Project Cost</b>			<b>\$5,855,518</b>
<b>WEB Site – Design Option “B”</b>			
Direction Construction Cost			\$4,750,254
Site Development Cost			\$1,141,930
Soft Cost Allocation	69,700 GSF	\$85	\$900,349
<b>Total Cost Project Cost</b>			<b>\$6,792,533</b>
<b>Rassekh Site – Design Option “C”</b>			
<b>-- Baseline</b>			
Direction Construction Cost			\$2,985,076
Site Development Cost			\$1,063,264
Soft Cost Allocation	73,290 GSF	\$55	\$810,033
<b>Total Cost Project Cost</b>			<b>\$4,858,373</b>

(Ex. A1 at 19, citing to *Indoor Tennis Center – Site Study*, at 44, City of Lake Oswego Parks & Recreation Department (August 28, 2010)<sup>4</sup>

(24) The PRAB reviewed the Study and approved separate recommendations to the City Council relating to golf and tennis in November 2009. Among the recommendations endorsed by the City Council were the following:

- a. A new 8 court indoor tennis facility should be constructed to address the unmet need for more indoor tennis courts. The facility should be sited and designed to accommodate an expansion to at least 10-indoor courts in the future.

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<sup>4</sup> [http://www.ci.oswego.or.us/calendar/councilmtgs/2010CCMinutes/Tennis\\_Report.pdf](http://www.ci.oswego.or.us/calendar/councilmtgs/2010CCMinutes/Tennis_Report.pdf)

- b. The new 8-court indoor tennis facility should include lobby/pro shop, viewing area/banquet room, adequate restroom, changing room and shower facilities, and possibly a small fitness/warm up area.
- c. The new facility should be located on property that is separate from the Golf Course. The Rassekh property, West End Building, and the Armory National Guard site(s) are identified as good potential locations for a new tennis facility.
- d. The new facility should be paid for without taxpayer dollars, preferably with a combination of the sale of the existing indoor court property, Tennis Fund capital reserves, and revenue bonds.
- e. The project should take a phased approach to provide for major decision points along the way.

(Ex. A1 at 11.)

(25) The City, following PRAB's recommendations, retained an architect to develop specific site plans and refine development costs for each of the top three properties identified in the Study. The final report for the Indoor Tennis Center – Site Study (Site Study<sup>5</sup>) considered a specific set of factors set out by the City and summarized the data into key findings. (Ex. A1 at 12-19.)

(26) After the City Council and PRAB considered the results of the Site Study, the City Council identified the Rassekh Site as the preferred option for the indoor tennis center. The City gave primary consideration to the Rassekh site's lower development costs and site opportunities relative to the usable site area, compared with the other two alternatives, because the project will be financed with tennis revenues. Among the listed project costs, direct construction costs alone were estimated at \$2,985,076 for the Rassekh property versus \$4,032,122 for the Armory Site, and \$4,750,254 for the WEB Site. (Ex. A1 at 19.)

(27) On February 7, 2012, the City Council established its annual goals and work plan for 2012, which included further steps to support the proposed project. The City Council directed staff to prepare and submit an application to Metro to include the Rassekh property within the UGB. (Ex. A1 at 19.)

(28) The City has engaged in an extensive three year process, including a market and feasibility study for the proposed indoor tennis center, evaluated alternative sites, and refined site plans, construction costs estimates and financing options. Further steps

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<sup>5</sup> See *Indoor Tennis Center – Site Study prepared for City of Lake Oswego*, Brian C. Jackson, Architect, LLC. (August 28, 2010.)

necessary to continue with the project include, among other things, architectural design and land use permitting processes. The inclusion of the Rassekh property within the UGB is necessary before beginning those additional steps. The proposed use of the property, if it is approved for addition to the UGB, will then be subject to the local land use process, which includes opportunity for public input. That process will require a significant amount of time. (Ex. A1 at 1-27).

(29) The City proposes to finance the project as an enterprise, based on tennis revenues, with revenue bonds. Current interest rates and the competitive bid environment for construction projects are favorable. (Exs. A1 at 29, P at 12, 13.) The City successfully used the enterprise funding model with the existing tennis center and retired the revenue bonds in 2005. (Ex. A1 at 42.)

(30) Metro Staff determined that the City's petition was for a non-housing need and was intended to meet needs that cannot wait until the next analysis of land supply. (Ex. D at 3.)

(31) The City's Comprehensive Plan, originally completed over 35 years ago, is currently under a State-mandated review process. The Comprehensive Plan work program, approved by the Department of Land Conservation and Development in 2010, is to be completed by 2013. The first year of the process focused on developing and testing a Community Vision for 2035, including a preferred land use scenario and developing a conceptual vision Map. The concentration of park, education and other community facilities near Stafford Road and Overlook Drive is identified as a "community hub." (Ex. A1 at 24, citing *Community Vision for 2035*, City of Lake Oswego.<sup>6</sup>)

(32) The City has also completed a Parks Plan 2025, concurrent to the Comprehensive Plan update. The City has coordinated planning efforts, including the use of consistent population and demographic forecasts. Key themes resulting from public outreach and information from the Parks Plan 2025 work have been included in the proposed text amendments for Comprehensive Plan Goals & Policies relating to Recreation. Those themes include:

- A focus on filling gaps in recreation services by adding new facilities to existing parks or partnering with other providers; creating parks that serve multiple needs rather than acquiring new park land.

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<sup>6</sup> *Community Vision for 2035*, City of Lake Oswego, [http://www.ci.oswego.or.us/sites/default/files/fileattachments/planning/cityprojects/12161/exhibit\\_f-2\\_lo\\_community\\_vision\\_for\\_2035.pdf](http://www.ci.oswego.or.us/sites/default/files/fileattachments/planning/cityprojects/12161/exhibit_f-2_lo_community_vision_for_2035.pdf). Also see *2035 Vision Map* at [http://www.ci.oswego.or.us/sites/default/files/fileattachments/planning/cityprojects/12161/exhibit\\_e-1\\_2035\\_visionmap.pdf](http://www.ci.oswego.or.us/sites/default/files/fileattachments/planning/cityprojects/12161/exhibit_e-1_2035_visionmap.pdf).

- Identification of the three essential services that residents should have close access to from their homes; play for children, nature experience, and exercise and sports.
- Improving bike and pedestrian access to parks throughout the City.
- Identifying goals to provide facilities that promote community health, provide year-round recreational opportunities, and provide multiple services to a broad range of people.

(Ex. A1 at 24.)

(33) Metro staff reviewed the City's process and resulting proposal to include the Rassekh property into the UGB. Staff determined that the City had shown that the needs demonstrated under Metro Code 3.07.1425(B)(1) and (2) could not reasonably be accommodated on land already inside the UGB. (Ex. D at 6.)

(34) City also evaluated four additional areas in Urban Reserve 4A that are city owned and could be considered as possible alternative sites. The City prioritized minimizing overall development costs for the public project, focusing on properties already owned by the City. Properties in the urban reserve that are not city owned and would require public acquisition were not considered viable alternative from a financial perspective. (Ex. A1 at 41, 42)

(35) Areas 1 and 2, as identified in Exhibit E, are within the adopted Urban Reserve Area (URA) #4A. They were purchased by the City with open space bond funds and any future use is restricted by the conditions of the bond for open space only. (Ex. E at 3.)

(36) In addition Area #2 is encumbered with a deed restriction. The deed restricts future use for open space only and directs that no development of any kind except trails, picnicking, perimeter landscaping and safety lighting may occur on the property. (Ex. E at 9.) Therefore these two areas could not accommodate an indoor tennis center and related neighborhood park amenities and cannot be deemed to better meet the need for efficient accommodation of the identified land needs for the proposal. (*Id.*, at 3, 9.)

(37) City staff analyzed each area regarding suitability for orderly and economic provision of public service facilities and services as required under Metro Code 3.07.1425(C). Area #1, with frontage on both Childs Road and Hilltop Road (residential/local streets), has topographic conditions (steep sloped area) which would make access to an indoor tennis center and related neighborhood park amenities difficult. There is no existing public transportation service to the area. When asked, TriMet indicated that Stafford Road could accommodate buses if service were to be provided.

Area #1 does not have frontage on Stafford Road. (Ex. E at 4.)

(38) Area # 2 has limited frontage on Atherton Drive, which would need to be extended into the site to provide adequate circulation. There is no existing public transportation to the area. As with Area # 1, Area # 2 also lacks frontage on Stafford Road. (Ex. E at 9.)

(39) Water and sewer services would be difficult and expensive to provide to Area #1 due to lack of proximity to existing services and the high costs of providing infrastructure to such a highly sloped area. Extending necessary public facilities to the area would be less orderly and economical than providing these services to the Rassekh property. (Ex. E at 4.) For Area # 2, sewer and water service exist either within Atherton Drive (water) or internal to the Atherton subdivision (sewer) approximately 200 feet north of the analysis area. Proximity and topographical barriers would affect infrastructure costs, making the extension of necessary public facilities to the area less orderly and economical than providing these services to the Rassekh property. (*Id.* at 9.)

(40) Staff analyzed each site for environmental consequences. Area # 1, has severe topographical challenges (steep slopes) that would make it ill suited to active recreation uses such as the proposed indoor tennis center. Developing the indoor tennis center on more topographically challenging sites would increase environmental impacts from more cut and fill. Correspondingly, costs for the project would increase due to increased site preparation, creating economic disadvantages for the overall financial viability of the project. (Ex. E at 5.)

(41) Area #2, as demonstrated in the staff report, has similar geographical challenges as Area #1, resulting in similar environmental impacts and cost increases. (Ex. E at 9.)

(42) Regarding energy consequences of developing each alternative site, staff determined neither Area #1 nor Area #2 are well served by transportation infrastructure, nor can either area be readily served by water and sewer infrastructure due to the lack of proximity to existing services and infrastructure costs that would be incurred due to topographic considerations. (Ex. E at 5, 9.)

(43) Regarding economic consequences, properties with the analysis Area #1 were purchased with open space bond funds and are restricted by the conditions of the bond for open space only. Area #2 is likewise restricted, and is further encumbered by deed restrictions which prohibit development such as that proposed for the indoor tennis center. (Ex. E at 5, 9.)

(44) Regarding social consequences, neither Area #1 nor Area #2 had inherent social advantages when compared with the Rassekh property. The City selected the Rassekh property following extensive analysis and public input as the most appropriate

for the proposed project. (Ex. E at 6, 10.)

(45) Areas #1 and #2 are both zoned Rural Residential Farm and Forest – 5 acres (RRFF-5) and are surrounded by similarly zoned properties. The proposed uses as outlined for the project would have minimal impact on surrounding agricultural and forest activities. (Ex. E at 6, 10.)

(46) Areas #1 and #2, due to use bond and deed restrictions, cannot be used to accommodate housing or employment opportunities. (Ex. E at 6, 10.)

(47) Areas #1 and # 2 are not close enough to designated Metro Centers or Corridors in the Lake Oswego area to have a direct impact on the purposes of those centers or corridors. (Ex. E. at 6, 10.)

(48) Staff considered the requirement regarding protection of farmland that is most important for continuation of commercial agriculture in the region. Areas # 1 and #2 are included within the Stafford area. Clackamas County has determined that the entire Stafford URA is comprised of Conflicted Agricultural land and is not suitable for long-term agricultural or forestry operations based on a number of factors. Stafford URA is generally developed with rural residences, very few parcels are greater than 20 acres and commercial agriculture activities limited. Surrounding development, parcelization and potential future residential development at the URA boundaries further limit agricultural potential in this area. Agricultural potential is further reduced by the location of I-205 which isolates the area from rural lands to the south. In addition, the Oregon Department of Forestry has not identified any Mixed Forest/Agriculture or Wildland Forest within the area. Topographical features of both sites and current zoning would also increase the difficulty of farming/agricultural operations. (Ex. E at 6, 7.)

(49) Regarding avoidance of conflict with regionally significant fish and wildlife habitat, Area # 1 does not include any identified regionally significant fish or wildlife habitat areas. (Ex. E at 7) Area # 2 is designated a Moderate Value Habitat Conservation Area. The area is small and can be avoided if development of the site were to occur. Under the deed restrictions, this area may be to be included in a trail/open space system in the future. (Ex. E at 7, 11.)

(50) Area # 3 contains small areas of Sensitive Lands and Habitat Conservation Areas in both the northern and southern portions. This area represents a small portion of the entire area and could be avoided if development of the site were to occur. Mile significant, these features could be protected and incorporated in any future site planning and development. (Exs. E at 16, D at 21)

(51) Regarding a clear transition between urban and rural lands, using natural and built features to mark the transition, Area #1 represents a “finger” that extends away from the existing UGB. The area would need to be brought into the UGB as part of a

larger amendment process that would include property in the surrounding are to create such a transition. (Ex. E at 7.) Likewise, Area #2 does not provide a clear transition and would require a similar inclusion into a larger amendment process. The Rassekh property provides a clearer transition because it the major roadways (Stafford and Rosemont) provide a defined edge to urban development. (*Id.* at 11.)

(52) Area #3 includes the original Luscher Farm and is comprised of six tax lots totaling approximately 84 acres. Specific development challenges for the northern portion of Area #3 (set out in Exhibit E at 12, 13) would result in more costly development relative to the Rassekh property. The increased costs would likely make the cost of developing the project exceed the identified project funding sources. In addition, the City has undertaken master planning efforts that have been extensively reviewed by the community. The public review process has identified a number of potential uses for the area including passive, urban agricultural use. There are certain development restrictions covering the portion of the Area #3 that is adjacent to Stafford and Rosemont Roads and immediately across the Stafford Road from the Rassekh property. These restrictions would limit the ability to accommodate an indoor tennis center and related neighborhood park amenities as proposed on the Rassekh site. Community support is also very strong for existing current urban agricultural activities on at least 10-acres of this site. (Ex. D at 8, Ex. E at 12, 13.)

(53) In relation to compatibility of the proposed urban use, and in comparing the Rassekh site to Area # 3, Area # 3 is zoned Exclusive Farm Use (EFU) with a portion of the area, approximately 26 acres in the southwest corner, zoned EFU1HL overlay. Properties to the east and south are similarly zoned property. As noted earlier, the southern portion of Area #3 is the core area for the Luscher Farm community garden and urban agriculture activities. The public process for the Luscher Area master planning effort strongly indicated a desire to keep a similar use if and when the property was ever brought inside the UGB. As well, Urban Agriculture has become a large public priority for this portion of Luscher Farm. There is currently a 10-acre CSA, 180-plot community garden, children's garden, Clematis botanical collection, and an Oregon Tilth organic demonstration garden. The community has strongly indicated a desire to retain these activities and to further develop the educational aspects of the Urban Agriculture program. (Exs. A1 at 51, D at 16.)

(54) Regarding Area # 4, it is not contiguous to either the existing UGB or city limits. An amendment to bring this area into the UGB would create an island of urban land outside of the UGB, which is not allowed under Metro Code. (Ex. E at 18.)

(55) City staff considered the location of the alternative sites compared to the Rassekh site. The Rassekh site is not as centrally located as some of the alternative sites that were considered. It is located on a major roadway and is easily accessible to the entire community. Staff determined that the proposed development of the indoor center at this location will complement existing and potential future community uses at the



southerly entrance to the City. For example, co-locating several community-scale recreational facilities in the Luscher Farm area will allow for the efficient accommodation of these needs. Parking areas, restrooms, and other support facilities can potentially be shared between the various park uses (including tennis center, Luscher Farm and Hazelia Field) reducing the amount of land needed relative to siting each park use separately. Co-location will also make it more efficient to provide on-going maintenance and management of the park & recreation facilities. (Exs. A1 at 43, D at 9, E at 14.)

(56) Staff considered site features for ease of development. The Rassekh site allows for the efficient accommodation of the needed facilities on the land due to the relative lack of natural resource and slope constraint. These topographical features allow for efficient construction of a tennis center suited to level, open sites. In comparison to the alternative sites, the Rassekh property can efficiently accommodate the needed tennis center (as demonstrated by the 2010 Indoor Tennis. Center Site Study) and the site allows room for future expansion on the same site rather than requiring additional land for future expansion. (Exs. A1 at 43, D at 9, E at 14.)

(57) Considering the current proposed development and possible future expansion, development of the Rassekh site allows for the natural resources on the site to be protected, preserved, and integrated into the larger design of the tennis center and other park facilities. The existing topography of the Rassekh site provides an opportunity to recess a portion of the tennis facility and to assure a site and building design that is compatible with and related to agricultural/cultural/historic uses at Luscher Farm. (Exs. A1 at 43, D at 9, E at 14.)

(58) The proposed UGB amendment will reinforce the concentration of more active recreational uses close to Stafford Road, in proximity to the existing residential neighborhood, church, high school, Hazelia Field and golf course. The existing farm uses in the North Stafford area are generally small in size (most parcels are less than 20 acres) and are not involved in large-scale commercial operations. Agriculture operations on these farms include hay production, horse raising and boarding, and tree nurseries. (Exs. A1 at 51, D at 16, 17.)

(59) All providers of public facilities and services for the proposed amendment area have indicated that they can serve the Rassekh property in an efficient manner. (Ex. C.) All providers either support or are neutral towards the proposed UGB amendment. According to the City's Engineering Department, the area proposed for inclusion in the UGB can be served in a comparably cost effective manner without detracting from other areas in the UGB. The service provider comments document that the subject property proposed to be included in the UGB can be served with public facilities and services in an orderly and economic manner and will have no impact on the delivery of facilities and services to other lands that are already within the UGB. (*Id.*, Exs. A1 at 44, D at 10.)

(60) The City maintains an existing 12" water line in Stafford Road abutting the subject parcel's east street frontage. There is also an existing 8" water line located in Atherton Drive along the parcel's south street frontage. The water lines are supplied by reservoirs in the City View/Bergis pressure zone. The system has adequate capacity and pressure to serve the property. (Exs. A1 at 44, D at 10, 11.)

(61) The City has an 8" diameter collection system that was stubbed to the west property line of this parcel, and provides gravity flow to a pump station located at the end of Sienna Drive. (Exs. A1 at 44, D at 11.)

(62) A tributary of Pecan Creek crosses through the western fringe of the parcel, and flows to the south. The western portion of the parcel drains directly into this tributary. The eastern portion of the parcel drains to a roadside ditch along Stafford Road, and then enters a constructed conveyance system for the roundabout located at the intersection of Stafford Road and Atherton Drive. This drainage then outfalls back into a roadside ditch along the east side of Stafford Road and continues to flow south, eventually entering Pecan Creek. (Exs. A1 at 44, D at 11.)

(63) The subject property has frontage on Stafford Road a two lane rural road with gravel shoulders. Stafford Road is designated as a minor arterial in the City's Comprehensive Plan. The subject property also has frontage on Atherton Drive, a City local street. A roundabout was constructed at the intersection of Stafford/Rosemont/Atherton in 2003 and there are existing and planned trails and pathways in the vicinity of the subject property. There is no existing public transportation service to the proposed amendment area. TriMet submitted comments on the initial application and indicated that Stafford Road could accommodate buses if service were to be provided. TriMet did not comment on the amended application. (Exs A1 at 44, D at 11.)

(64) The City of Lake Oswego Police Department already handles calls to the subject property because it is within the city limits and due to the city's ownership of the land. The Police Department does not anticipate that including the subject property within the UGB to develop a new indoor tennis center would require any additional police resources. (Exs. A1 at 434, D at 11.)

(65) Both the City's Fire Department, and the Tualatin Valley Fire and Rescue (TVF&R) indicated that their existing facilities have capacity to serve the proposed amendment area without detracting from service levels within the UGB. (Exs. A1 at 44, 45, D at 11.)

(66) The Lake Oswego Parks and Recreation Department indicated that including the subject property in the UGB will enable the department to more effectively meet the parks and recreation needs of its community, in particular development of a larger indoor tennis center which is not possible within the existing UGB. The subject property is

currently zoned Parks & Natural Area (PNA) under Lake Oswego Code. The PNA restricts land use to: Protect, preserve, conserve and enhance natural areas, greenways, and park. It permits a wide range of passive and active recreational uses, and accessory uses on properties for the future use and enjoyment of the city and its residents. The PNA zone implements Statewide Planning Goal 8, Recreation Needs. It also establishes a master planning process for park planning and development. (Exs. A1 at 45, D at 11.)

(67) The proposed amendment area would not generate any additional students. The Lake Oswego School District indicated that while the proposed amendment would not directly increase housing or have a direct impact on enrollment, the District is supportive of the amendment. (Exs. A1 at 45, D at 11.)

(68) Metro staff found that the City provided an alternative analysis of additional city owned lands within adjacent urban reserve area 4A. Metro staff also determined that, as the identified need is a city owned facility that will provide services to the Lake Oswego community it was appropriate that the analysis only addresses the urban reserve area that is contiguous to the city limits, and not any other urban reserve area. (Ex. D at 12.)

(69) Metro staff also noted that, for the alternatives analysis, the City focused on city owned sites within urban reserve 4A and did not evaluate any privately owned properties. Metro staff determined this was a reasonable process given the significant additional cost of acquiring property in an urban reserve where the potential for future urban development would increase the value of the property to a point where the project would not be feasible with the expected "enterprise" funding sources. Based on the five sites that were analyzed, Metro staff concluded that the analysis showed that the Rassekh property best meets the need for considering orderly and economic provision of public facilities and services based on the efficiency of providing public services such as sanitary sewer and water and that the petition addressed the factor as necessary. (Ex. D at 11.)

(70) Analysis of the Rassekh Property for environmental consequences shows that the proposed UGB amendment parcel is more environmentally suitable than other portions of the proposed Stafford Urban Reserve area that lie adjacent to Lake Oswego. This conclusion is based on the topography and natural resources in other parts of the proposed Urban Reserve, including the area currently zoned for rural residential use. (Exs. A1 at 49, D at 14.)

(71) The rural residential areas southwest of Stafford and Rosemont Roads have steep slopes and more riparian corridors than the proposed UGB amendment area to the north side of Rosemont Road. Active recreation uses such as an indoor tennis center would not be well suited to steeper slopes. Developing the proposed indoor tennis center on more topographically challenging sites would increase environmental impacts due to greater amounts of cut and fill and would also increase construction costs, creating

economic disadvantages for the overall financial viability of the project. (Exs. A1 at 49, D at 14.)

(72) The Lake Oswego Comprehensive Plan identifies stream corridors, tree groves, and wetlands on the proposed UGB amendment site. Through the land use review process for major park development in the PNA zone, these resources will be protected and integrated into the overall site development plan. As proposed in the Draft Luscher Area Master Plan, the riparian area on the Rassekh property will be enhanced ecologically by removing blackberry and other invasive species, and replanting with native plants. An interpretive trail loop will take visitors through the restored area and offer natural resource educational opportunities. The internal park trails will connect to pathways along Atherton Drive and Stafford Road and allow access to Cooks Butte Park, Stevens Meadow and to the Stafford Basin Trail to the east. (Exs. A1 at 49, D at 14, 15.)

(73) City staff also analyzed development of the Rassekh site regarding impact for energy consequences. As noted previously, staff determined that the proposed amendment area is already well served by transportation infrastructure and can readily be served by water and sewer infrastructure from Lake Oswego (see Service Provider Comments, Exhibit C). Additionally, the site is located in proximity to other city facilities in the area. Staff determined that this proximity can help to reduce travel distances between facilities and related energy consumption. (Exs. A1 at 49, D at 15.)

(74) For the Rassekh site, the costs to construct and serve the needed public recreational facilities would also be lower for the proposed UGB amendment site than for other parts of the Stafford urban reserve due to the relatively level land with few natural resource constraints and the proximity of existing urban services. Bringing the site into the UGB would also provide economic benefits to the City of Lake Oswego because the City expects to finance construction of the indoor tennis center via revenue bonds that are repaid with tennis user fees. Of the three sites considered in the Indoor Tennis Center - Site Study, the Rassekh site is preferred from the perspective of overall development costs and financial viability. The City also considered the current low interest rate environment as an optimal factor for allowing for the City to proceed with this improvement entirely on the basis of "enterprise "funding, without burdening the general fund. (Exs. A1 at 49, 50, D at 15.)

(75) The proposed UGB amendment site has social advantages over other parts of the Stafford urban reserve. The subject property currently represents a "notch " in the existing UGB and is bounded by developed roadways and urban development on two sides. The City purchased the property for park and open space uses and the site was initially envisioned for development of up to two athletic fields. The site is within the city limits and is zoned for Park & Recreation uses. (Exs. A1 at 50, D at 15.)

(76) Staff analysis and previous studies have identified the existing Lake Oswego Indoor Tennis Center as an important part of the City's overall recreational programming

for life-long active recreation and community livability. The City has maximized use of the existing Indoor Tennis Center and the 4 indoor courts cannot adequately accommodate the community need. The City has undertaken careful and methodical analysis and planning to address the overall need, evaluated alternatives, and projected anticipated costs and financing options for the proposed project. Based on thorough analysis and public input, the City Council concluded that the Rassekh site is the most suitable site for the proposed new indoor tennis center. The City believes that including this site within the UGB will enable the City to move forward with the project and maintain and enhance the overall viability of the indoor tennis program to serve the existing community and also make more indoor and active recreation opportunities available to new users. (Exs. A1 at 50, D at 15.)

(77) Metro staff determined that the City had provided an alternative analysis of additional city owned lands within adjacent urban reserve area 4A. As the identified need is a city owned facility that will provide services to the Lake Oswego community, Metro staff found it appropriate that the analysis only addressed the urban reserve area that is contiguous to the city limits, and not any other urban reserve area. (Ex. D at 15.)

(78) For the alternatives analysis, Metro staff determined that the City appropriately focused on city owned sites within urban reserve 4A and did not evaluate any privately owned properties. Staff concluded this was a reasonable process given the significant additional cost of acquiring property in an urban reserve where the potential for future urban development would increase the value of the property to a point where the project would not be feasible with the expected "enterprise" funding sources. Staff found that, based on the five sites that were analyzed, the City's analysis shows that overall the Rassekh property best meets the need considering comparative environmental, energy, economic and social consequences due mainly to less environmental and economic consequences. (Ex. D at 16.)

(79) The City analyzed the compatibility of the proposed urban use with nearby agricultural and forest activities occurring on land outside the UGB designated for agriculture or forestry pursuant to a statewide planning goal. The land adjacent to the Rassekh property to the east of Stafford Road and south of Rosemont Road is outside the UGB and zoned Exclusive Farm Use; existing uses include Luscher Farm, small-scale "lifestyle" farms and rural residences. The proposed UGB amendment will reinforce the concentration of more active recreational uses close to Stafford Road, in proximity to the existing residential neighborhood, church, high school, Hazelia Field and golf course. The existing farm uses in the North Stafford area are generally small in size (most parcels are less than 20 acres) and are not involved in large-scale commercial operations. Agriculture operations on these farms include hay production, horse raising and boarding, and tree nurseries. (Exs. A1 at 51, D at 16, 17.)

(80) The City determined that the approximately 10 acre Rassekh property represents a "notch" in the existing UGB. The site is bounded by major roads and urban

uses on two sides. There are no forest activities occurring on nearby land. The agriculture activities on Luscher Farm include a relatively unique combination of "urban agriculture" uses. The mix of passive and active open space and recreational uses that exist are already an important part of Lake Oswego, and will assume a more important social and community role over the next 20 years. The proposed indoor tennis center on the Rassekh site will compliment the overall mix of uses and maintain the compatibility and transition between urban and rural uses. (Exs. A1 at 51, D at 17.)

(81) The centers and corridors most closely related to the alternative analysis areas are the Lake Oswego and Lake Grove Town Centers; the A Street and SW Boones Ferry Road Main Streets; and the OR 43, SW Boones Ferry Road, and Country Club Road Corridors. The Lake Oswego Town Center lies roughly 2 and 1/2 miles (along roadways) from the proposed amendment area; the Lake Grove Town Center is roughly 3 - miles away. (Exs. A1 at 51, D at 18.)

(82) As noted by the City, the 2040 Growth Concept describes the purposes of Town Centers, Main Streets, and Corridors as follows:

- Town centers: Town centers provide localized services to tens of thousands of people within a two- to three-mile radius \* \* \* One-to three--story buildings for employment and housing are characteristic. Town centers have a strong sense of community identity and are well served by transit.
- Main streets: Similar to town centers, main streets have a traditional commercial identity but are on a smaller scale with a strong sense of the immediate neighborhood \* \* \* Main streets feature good access to transit.
- Corridors: Corridors are major streets that serve as key transportation routes for people and goods \* \* \* Corridors are served extensively by transit.

(Exs. A1 at 51, 52, D at 18.)

(83) Areas #1, # 2, and #3 are not close enough to any of the Centers or Corridors to have a direct impact. Area # 4 is not contiguous to either the existing UGB or city limits. An amendment to bring Area # 4 into the UGB would create an island of urban land outside of the UGB, which is not allowed under Metro Code. (Exs. A1 at 51, 52, D at 18.)

(84) The Rassekh site is not close enough to any of the Centers or Corridors to have a direct impact. (Exs. A1 at 52, D at 18.)

(85) The Rassekh property is already within the city limits and is not designated or protected as farmland. EFU lands in proximity to the Rassekh property are located

within the proposed Stafford Urban Reserve (area 4A). According to Clackamas County findings for adoption of the urban reserves, the entire Stafford urban reserve area is comprised of Conflicted Agricultural Land, meaning it is not suitable for long-term agricultural or forestry operations due to existing on-site land use patterns, adjacent land use patterns and lack of agricultural infrastructure. The designated urban reserve area is generally developed with rural residences, there are very few parcels greater than 20 acres, and commercial agriculture activity is limited. The few commercial operations that do exist are compromised by surrounding development, parcelization and potential future residential development at the UGB edge. Agricultural potential in this area is further reduced because it is effectively cut off from rural lands to the south by Interstate 205, making it too small and isolated to stand alone as a viable commercial agricultural operation. In addition, the Oregon Department of Forestry does not identify any Mixed Forest/Agriculture or Wildland Forest located within this area. (Exs. A1 at 54, D at 19, 20.)

(86) There is an area of regionally significant fish and wildlife habitat on the Rassekh site. The City has delineated the boundaries of several of the resources on the site. Lake Oswego Community Development Code section 50.05.010: Sensitive Lands Overlay Districts protects riparian and wetland resources as well as tree groves based on the results of the required Economic, Social, Environmental, and Energy (ESEE) Process Analysis in compliance with Statewide Land Use Planning Goal 5. In addition, the City of Lake Oswego has tree protection standards (Chapter 55) that would provide a higher level of protection for upland trees than currently exists under Clackamas County code. (Exs. A1 at 54, D at 21.)

(87) Through the land use review process for the new indoor tennis center; the City will avoid conflict with the regionally significant fish and wildlife habitat. As part of the Indoor Tennis Center - Site Study, the sensitive lands were removed from the assumed buildable site area. (Exs. A1 at 54, D at 21.)

(88) The Rassekh property will provide a clear and logical transition between urban and rural lands using both natural and built features. The proposed UGB will parallel Stafford Road and Atherton Drive, and the Indoor Tennis Center site will be adjacent to urban uses to the west and north. The roundabout intersection at Rosemont and Stafford will help emphasize the transition by serving as an unofficial "signal" that a change in the character of the land is occurring. In addition, the Luscher Farm buildings are highly visible from both Rosemont and Stafford Roads and are considered a focal point for the community and help define the agricultural history of this area. These farm buildings will serve as another visual queue that a shift is taking place between urbanized areas to the north of Rosemont Road and rural areas to the south. (Exs. A1 at 55, D at 22.)

(89) The proposed area for inclusion in the UGB is within an urban reserve. The proposed area is not within a rural reserve. The proposed area for UGB expansion will

not create an island of urban land outside the UGB or an island of rural land inside the UGB. (Exs. A1 at 55, D at 22.)

(90) Existing uses in the vicinity of the subject property are described as follows:

- Existing uses to the west side of Stafford Road, between Atherton and Overlook Drive, include a church and preschool, a retirement facility, and an established single family residential neighborhood. Cooks Butte Park is located up the hill further to the west. Lakeridge High School and the Lake Oswego Municipal Golf Course are also located to the west side of Stafford Road, north of Overlook Drive. All of these uses are within the existing UGB.
- Existing uses to the east side of Stafford Road, between Rosemont and Overlook Drive, include the City-owned Luscher Farm and Hazelia Field and park Existing uses on Luscher Farm include the historic farm, community gardens, community supported agriculture (GSA)-program, Clematis collection, gardening classes, trails, etc. Existing uses at Hazelia Field include the artificial turf athletic field, parking area, restrooms, dog parks and trails. Hazelia Field is currently within the UGB and Luscher Farm is outside of the UGB.
- Existing uses to the south of Rosemont Road include a mix of rural residential and agricultural uses. Other uses at the southeast quadrant of the Stafford/Rosemont roundabout include a retail nursery and a power substation (PGE). Uses south of Atherton Drive include the historic Cook residence and City park (Stevens Meadow). The area south of Rosemont Road and Atherton Drive is outside of the UGB.

(Exs. A1 at 30, D at 24.)

(91) The City's intended use for the Rassekh property is as an indoor tennis center and neighborhood park. A tributary of Pecan Creek is located on the west side of the property and will provide a natural separation and wooded buffer between the recreational facility and established residential neighborhoods to the west. A church is located immediately north of the proposed tennis center site and the two institutional types of uses are compatible. The City will explore options for shared parking and potentially a shared access driveway to serve the two uses. The City is committed to working with the Palisades neighborhood to assure compatibility of the tennis center with the residential neighborhood and rural setting and minimize impacts. The City cites as example of its commitment for compatibility one of the reasons it selected the Rassekh property. The City identified the Rassekh property as a preferred site for the tennis center is because of the unique site features. The relatively large parcel and natural contours and existing vegetation provide opportunities to recess the building and use vernacular architecture that is compatible with rural/agricultural structures and uses, including agricultural structures at Luscher Farm. (Exs. A1 at 30, D at 24.)



(92) Major park improvements are categorized as conditional uses in the Park and Natural Area Zone. The conditional use process requires a public hearing and provides a forum for a site specific focus on compatibility issues and measures to minimize impacts of major park improvements. Issues that are considered through the conditional use process include traffic and parking, lighting, building design, protection of trees and sensitive areas, and landscaping and buffering. During that process, the city may impose design and development standards such as vegetative buffers, transportation improvements, protection of natural amenities, and other requirements to ensure compatibility. (Exs. A1 at 31, D at 24.)

(93) In summary, the City has determined that the change in the location of the UGB to accommodate an indoor tennis center on the Rassekh property will not result in a dramatic change in the type and scale of passive recreation, active recreation and open space/natural resource uses that were proposed in the 1997 Luscher Farm Master Plan. The proposed indoor tennis center use on the site, while oriented to residents of Lake Oswego, will still reflect the rural nature of the area and will provide a softer transition between urban and rural development instead of a hard "edge" that is visible in many parts of the region. Once included in the UGB, additional land use reviews will provide the opportunity for consideration of more detailed site and building plans and specific measures to assure compatibility with uses of adjacent land. (Exs. A1 at 31, D at 24.)

(94) The proposed UGB expansion is not for school facilities nor will it add land for industrial use. (Ex. A1 at 30.)

(95) The City has developed a concept plan for the proposed UGB amendment. (included within Ex. A1, Figures 11 and 12, at 37, 38) in compliance with Title 11 of the Urban Growth Management Functional Plan (UGMFP) 3.07.111A. The City matched the scale of the plan to the scale of the proposed amendment (less than 10 acres), the City ownership of the parcel, and the proposed park, open space and recreational uses. The subject property is already within the city limits and is designated and zoned PNA. Under the 1997 Luscher Farm Master Plan, active recreational uses were anticipated for the subject property. The proposed type of active use, an indoor tennis center instead of athletic fields, was the result of more specific studies of alternative sites for both the tennis center and athletic fields. The bonds used to purchase the site included restrictions which preclude alternative uses such as conversion to housing or employment, or sale of the land. (Ex. A1 at 33.)

(96) Under the guidance provisions of Metro Code 3.07.1110(C), the City has included the following provisions:

- General locations of public facilities and services -- The plan (at Fig. 12) identifies the general location of public facilities and services on and abutting the parcel proposed to be included in the UGB, including

water and sewer lines. Additionally, the service provider comments from the City's Engineering Department address the adequacy of existing facilities and services (see Exhibit C).

- Mode, function, and general location of state transportation facilities, arterials, regional transit facilities, trail facilities, and freight intermodal facilities – The plan (at Fig. 13) identifies the general location of the existing roads (Stafford Road and Atherton Drive) abutting the land to be included in the UGB. There are no state transportation facilities, regional transit lines or freight intermodal facilities in proximity to the proposed UGB amendment. Fig. 17 shows potential access points into the site and regional and local trail connections along the site boundaries.
- System facility connections – Fig. 12 identifies the potential access connections to the roadway network and possible connection points to the water and sewer system. The service provider comments from the City Engineering Department address facility connections and adequacy in greater detail (See Exhibit C). The criteria, under the Lake Oswego Development Code,<sup>7</sup> for approval of a Master Plan in the PNA include, but are not limited to, the following:

iii. The improvements and uses proposed for the site are capable of being served by the existing or planned transportation systems, public facilities and services;

\* \* \* \* \*

v. A master plan shall include an analysis of the projected average daily vehicle trips to be generated by the proposed uses to be authorized under the master plan and their distribution pattern, and the impact of the traffic on the capacity of the street system which would serve the uses[.]

- Preliminary methods to finance --- Similar to the existing 4-court indoor tennis center in Lake Oswego, the proposed 8-court indoor tennis center on the Rassekh property would be paid for by a revenue bond based on funds generated from tennis operations. Because interest rates are currently very low and construction bids are competitive, the Parks and Recreation Department expects that the timing would be very good for proceeding with the revenue bond method to finance the proposed indoor tennis facility. The *Indoor Tennis Center – Site Study* includes a discussion of

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<sup>7</sup> Lake Oswego Development Code, section 50.02.003(3) Master Plan Criteria, Park and Natural Zone Area, (Revised December 2011), <http://www.codepublishing.com/or/lakeoswego/?f>

financing options for the indoor tennis center based on two Lake Oswego revenue bond programs.

(Ex. A1 at 34.)

(97) TPC, through real estate research in Lake Oswego, determined that the City can reasonably expect to receive an estimated \$1 million from the 2.81-acre site of the existing LOITC if it can be zoned R-10 (8 lots @ approximately \$125,000 per lot). Design and construction costs for the new tennis center can further be reduced by applying \$500,000 in reserves from the Tennis Fund, which can be generated by slightly increasing fees over a period of 1-2 years to augment current reserves in the Tennis Fund. This strategy has already been implemented, with these funds earmarked as “capital reserves” for the project.

(98) The City’s Parks and Recreation Department has demonstrated a history of successfully financing and operating a strong indoor tennis program. In addition to having retired the previous revenue bonds for the existing LOITC, the facility operation has contributed approximately \$25,000 in net revenues to the general fund over the past five years. Financial projections for the construction and operation of new facility are not expected to impact the City’s general fund or property taxes. (Ex. A1 at 34, 35.)

(99) Updated data on the current LOITC usage (defined as “hours of court time”) shows the following: from 2006 through 2012, total percentage of capacity<sup>8</sup> use for winter-spring was 2006 - 76%, 2007 - 78%, 2008 - 81%, 2009 - 73%, 2010 - 79%, 2011 - 80%, 2012 - 78%. For 2006 through 2012, total capacity use for summer was 2006 - 12%, 2007 - 22%, 2008 - 20%, 2009 - 20%, 2010 - 21 %, 2011 - 20 %, 2012 - 16 %. In summer 2012, the summer Adult Drill & Play class was cancelled, bringing the hours used in adult classes down to 85, versus a range of a low in 2007 of 125 to a three year consistent high of 149 for each of 2008, 2009, and 2012. (Ex. O at 4.)

(100) Total percentage of year-round court usage for 2006- 2011 (as of September 21, 2012) was as follows: 2006 - 62.61%, 2007 - 66.86%, 2008 - 66.36%, 2009 - 63.42%, 2010 - 66.49%, 2011 - 66.10%. Total percentage of playing-season usage for 2006-2011 was as follows: 2006 - 79.24%, 2007 - 81.98%, 2008 - 82.18%, 2009- 78.08%, 2010- 81.76%, 2011 - 81.75%. The national average court usage, according to TPC is 70% for the playing season and 50% for year round averages. (Ex. O at 4.)

(101) There was a decline in class participation for 2010 to the summer of 2012. Additional data shows programmatic uses have increased such as the number of hours of seasonal court use and league play. The overall need for a new tennis facility has not declined. (Testimony of Gilmer; Ex. O at 2.)

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<sup>8</sup> Percent capacity was calculated as the percentage of court hours used in comparison to available hours (4 courts x 16 hours/day x number of days in season). (Ex. O at 4.)

(102)The City addressed additional concept planning requirements (set out in an additional six bullet points) in its proposal. The City’s proposal is sufficient to address Title 11 concept planning requirements. The proposed acreage is minimal compared to similar concept plans developed for other areas in Washington County, which included many complex factors. The current proposal addresses property that is already included within city limits, is publicly owned, and is designed for park and recreation uses. (Ex. A1 at 35.)

(103)Following an initial proposal amendment for adding the 93-acre Luscher Farm Area to the UGB, the Clackamas County Board of Commissioners issued, on April 3, 2012, a statement of a lack of support for that amendment due to numerous concerns. The City met with representatives of Clackamas County, as well as those from the cities of West Linn and Tualatin in April 2012. The City also met with the Stafford Hamlet Board in May 2012. Subsequently, the City reduced the proposed scope of the UGB application to include only the 9.8 acre Rassekh property that is already within the City and subject to City land use regulations. (Ex. A1 at 36.)

(104)Traffic impact on the surrounding area is projected to be minimal. The number of courts and the corresponding number of users is low. Users will access the facility throughout the day in small numbers according to the availability of courts. Users will not enter and leave in large numbers at key times such as peak commuting hours or school start and end times. (Testimony of Gilmer.)

(105)Stafford Road and Rosemont Road are major arterial roadways that provide access to the Rassekh site. (Testimony of Dorman.)

### **STANDARD OF REVIEW**

To withstand appeal, a decision must be supported by substantial evidence in the whole record. ORS 197.835(9)(a)(C). Substantial evidence is evidence on which a reasonable person would rely in reaching a decision. *Portland v. Bureau of Labor & Industries*, 298 Or 104, 119. (1984.)

### **APPLICABLE REVIEW CRITERIA**

Metro Code sections 3.07.1245 (B, C, D, E, & F) and 3.07.1440 (A & B). Metro Code sections 3.07.1425 (C) (1-9) are considered locational factors that are weighed and balanced to determine the most suitable location for the UGB expansion. The remaining code sections contain criteria that must be satisfied.

### **OPINION**

Metro Code section 3.07.1440(A) provides that:

The purpose of the major amendment process is to provide a mechanism to address needs for land that cannot wait until the next analysis of buildable land supply under ORS 197.299. Land may be added to the UGB under sections 3.07.1430 and 3.07.1440 only for public facilities and services, public schools, natural areas and other non-housing needs and as part of a land trade under subsection D. An applicant under section 3.07.1430 must demonstrate compliance with this purpose and these limitations.

The City's petition meets the two required criteria contained within section 30.07.1440(A). The City proposed the amendment to add land to the UGB for a recreational need, which is a non-housing need, as required under the Code. As discussed below, the City has also shown that the proposal addresses needs for land that cannot wait until the next analysis of buildable land supply under ORS 197.299 which will occur in December 2014.

As found by Metro staff in its report, the City has completed an extensive amount of work including a marketing and feasibility study for the proposed indoor tennis center, evaluated alternative sites, and refined site plans, construction cost estimates and financing options. Further architectural design or land use permitting steps for the project would be premature and not prudent until there is certainty that the project can move forward. Determination that the property can be brought into the UGB is the next step. If approved, significant additional time will be needed to complete the local land use planning process, which includes the opportunity for public input. Construction financing is planned to be accomplished through revenue bonds, for which current interest rates are affordable and the current contracting market is favorable for lower bids. The evidence supports the City's position that delaying the project until the next regional analysis of land supply (2012) and possible growth management decision (2014-2016), especially when there is no certainty that needs for parks lands will be addressed, is not appropriate or an efficient way for the City to address the needs of its citizens. The major amendment mechanism provided for in the Code is the appropriate means to address this need as utilized by the City.

Metro Code section 3.07.1440(B) provides that:

The applicant shall demonstrate that the proposed amendment to the UGB will provide for an orderly and efficient transition from rural to urban land use and complies with the criteria and factors in subsections B, C, D, E, F and G of section 3.07.1425.

Under the above provision, it is therefore necessary to address all of the factors set forth in Metro Code section 3.07.1425(B) through (G). Each of those factors are addressed separately below.

***Section 3.07.1425(B)(1) Demonstrated need to accommodate future urban population, consistent with a 20-year population range forecast coordinate with affected local governments[.]***

The City met its burden to show that the proposed amendment meets the long-range criteria set out in this provision of the Code. The 2009 Urban Growth Report estimated a necessary area of vacant land within the UGB which could be used, according to local ability, to provide future parks through system development. It was an estimate of need for purposes which results in a reduction of the assumption of the vacant land supply. There is no certainty that the next cyclical analysis will include considerations for parks needs in existing urban areas that may see substantial growth. The Major Amendment process provides an opportunity for a local jurisdiction, such as the City, to bring land into the UGB for specific park needs that are not anticipated in the cyclical analyses. The City's proposal is based on funded studies for the proposed use, and it was planned in coordination with the City's Comprehensive Plan Update (August 2010) and the Parks Plan 2025 (currently under public review), both of which incorporated citizen participation and preferences.

***Section 3.07.1425(B)(2) Demonstrated need for land suitable to accommodate housing, employment opportunities, livability or uses such as public facilities and services, schools, parks, open space, or any combination of the foregoing in this paragraph[.]***

The City met its burden to show a demonstrated land need to accommodate park services. TPC's study and analysis compared the City's market area and existing facilities to national market area user needs and facility ratios. The existing available facilities within the City's market area result in a player to court ratio that is more than twice that of the national average. Market analysis showed the City's market area to have a strong demand for additional indoor tennis courts. The current facility cannot be expanded. The City has shown a demonstrated need for additional land suitable for park services.

***Section 3.07.1425(b)(3) A demonstration that any need shown under paragraphs (1) and (2) of this subsection cannot be accommodated on land already inside the UGB[.]***

The City began its analysis with the Golf and Tennis Feasibility Study consideration of six sites, five of which are located inside the existing UGB. The sixth site is the subject property, the Rassekh property, which is located within the city limits but outside the UGB. Following analysis and consideration of the Study, the PRAB recommended to the City Council three of the potential sites as the most optimal, the West End Building, the National Armory property, and the Rassekh property. The City then commissioned the architectural review and proposal, the Site Study, for the project relative to all three of the top sites. PRAB and the City council then reviewed the Site

Study.

The City Council next identified the Rassekh property as the preferred site due, in part to the lower development costs and site opportunities relative to the alternative sites. Because the proposed funding mechanism is to remain an enterprise fund with no general tax support, the Rassekh Site lower development cost relative to the alternative sites. The City has shown that the needs demonstrated under paragraphs (1) and (2) of subsection (B) cannot be accommodated on land already inside the UGB.

***Section 3.07.1425(C)(1) If the Council determines that there is a need to amend the UGB, the Council shall evaluate areas designated urban reserve for possible addition to the UGB and shall determine which areas better meet the need considering efficient accommodation of identified land needs;***

Because the identified need is a city-owned facility that will provide services to the Lake Oswego community, the city appropriately focused its analysis on areas inside the urban reserve that were contiguous to the city limits. The City also focused its analysis on city-owned sites, and did not evaluate any privately owned properties. Given the additional cost associated with obtaining additional private land, and the City's desire to utilize "enterprise" funding sources, the City's approach was reasonable. The City reasonably concluded that development of the tennis facility would not be economically viable if it had to purchase additional land.

The City's analysis demonstrated that the Rassekh property best meets the identified need considering efficient accommodation of identified land needs. The cost to develop the Rassekh property is significantly less than would be the case with alternative sites. In addition, due to development restrictions related to open space bond funds for two of the alternative sites in addition to deed encumbrances on one of those two alternative sites, and topographic constraints on the alternative sites, make development of alternative sites impractical.

***Section 3.07.1425(C)(2) If the Council determines that there is a need to amend the UGB, the Council shall evaluate areas designated urban reserve for possible addition to the UGB and shall determine which areas better meet the need considering orderly and economic provision of public facilities and services;***

As explained above, the City focused its analysis on city-owned land adjacent the city limits. Because the identified need is a city-owned facility to serve the needs of the Lake Oswego community, that approach is reasonable. Also, because acquiring private land would make the project economically unfeasible, the City reasonably focused its analysis on land already owned by the City. The City's analysis demonstrated that the Rassekh property best meets the identified need considering orderly and economic provision of public facilities and services based on cost of development and the efficiency of providing public services such as sanitary sewer and water.

***Section 3.07.1425(C)(3) If the Council determines that there is a need to amend the UGB, the Council shall evaluate areas designated urban reserve for possible addition to the UGB and shall determine which areas better meet the need considering comparative environmental, energy, economic and social consequences;***

The City provided a detailed analysis comparing the environmental, energy, economic and social consequences to developing a tennis center on the identified properties. In all respects, the Rassekh property best meets the identified need after consideration of those consequences. One alternative site would not be permissible under the Metro Code because it is not contiguous to the current UGB. Three of the other identified alternative sites are on steep terrain, which would require greater amounts of cut and fill, thus resulting in added environmental impacts.

Two of the three alternative sites are not currently well-served by transportation infrastructure. One of the sites is relatively well-served by existing transportation infrastructure, but is not currently served by public transit. None of those three alternative sites can be easily served with existing water and sewer services. In contrast, the proposed site is already well served by transportation infrastructure and can readily be served by water and sewer infrastructure from Lake Oswego.

The proposed site also is preferable from an economic standpoint. Because it is relatively flat, and has easier access to sewer and water infrastructure, the cost to develop the site would be relatively inexpensive in comparison with the other sites. Due to various restrictions imposed when the city acquired the lands, two of the alternative sites could not be used for development of an indoor tennis facility. The remaining site would be prohibitively expensive to develop for that purpose.

The proposed site is bounded by developed roadways and urban development on two sides and was purchased by the City specifically for use as parks and open space. None of the alternative sites provide superior social consequences in comparison with the proposed site.

The City met its burden to establish that the proposed site best meets the identified need in comparison with alternative sites with regard to environmental, energy, economic and social consequences.

***Section 3.07.1425(C)(4) If the Council determines that there is a need to amend the UGB, the Council shall evaluate areas designated urban reserve for possible addition to the UGB and shall determine which areas better meet the need considering compatibility of proposed urban uses with nearby agricultural and forest activities occurring on land outside the UGB designated for agriculture or forestry pursuant to a statewide planning goal;***

Two of the three identified alternative sites are zoned Rural Residential Farm and Forest - 5. Use of those sites for the tennis center would have no impact on nearby agricultural or



forestry activities. However, neither of those sites are viable due to conditions attached to the property at the time the City acquired them. Use of the third alternative site could have some minor impact on nearby agricultural activities. Property adjacent to that site is zoned EFU but is used primarily for urban agriculture programs.

The Rassekh property is adjacent to land zoned EFU, but again, that land is used primarily for urban agriculture programs. In addition, the Stafford Road traffic circle provides somewhat of a buffer to the EFU zoned lands to the east. Based on the five sites that were analyzed, the Rassekh property best meets the identified need considering compatibility with proposed urban uses with nearby agricultural and forest activities occurring on land outside the UGB designated for agriculture or forestry pursuant to a statewide planning goal.

***Section 3.07.1425(C)(5) If the Council determines that there is a need to amend the UGB, the Council shall evaluate areas designated urban reserve for possible addition to the UGB and shall determine which areas better meet the need considering equitable and efficient distribution of housing and employment opportunities throughout the region;***

The City is not seeking to expand the UGB for housing or employment. Consideration of equitable and efficient distribution of housing and employment opportunities is not applicable.

***Section 3.07.1425(C)(6) If the Council determines that there is a need to amend the UGB, the Council shall evaluate areas designated urban reserve for possible addition to the UGB and shall determine which areas better meet the need considering contribution to the purposes of Centers and Corridors;***

None of the potential sites identified by the City are close enough to the 2040 designated Centers or Corridors in Lake Oswego to have a direct impact. Consideration of this factor does not favor any particular site over the others.

***Section 3.07.1425(C)(7) If the Council determines that there is a need to amend the UGB, the Council shall evaluate areas designated urban reserve for possible addition to the UGB and shall determine which areas better meet the need considering protection of farmland that is most important for the continuation of commercial agriculture in the region.***

The proposed site has been designated by Metro as part of the urban reserve. That designation means that the property is not the most important for the continuation of commercial agriculture in the region.

***Section 3.07.1425 (C)(8) If the Council determines there is a need to amend the UGB, the Council shall evaluate areas designated urban reserve for possible addition to the UGB and shall determine which areas better meet the need considering avoidance of conflict with regionally significant fish and wildlife habitat;***

Due to use restrictions on two of the three alternative sites, the property may not be used for an indoor tennis center. Impacts to the identified habitat on the third alternative site could be avoided if the site were to be developed.

There is an area of regionally significant fish and wildlife habitat on the Rassekh site. This area represents a small portion of the entire area and could be avoided if development of the site were to occur. Significantly, the City, through the Indoor Tennis Center –Site Study removed the areas of sensitive lands from the portion of the land considered to be buildable. In addition, the City has a development review process in place that can be used to ensure that those sensitive areas are not impacted by the anticipated development. Given that review process, and the and the lack of viable alternatives to the development, the proposed site best meets the identified need while avoiding conflict with regionally significant fish and wildlife habitat.

***Section 3.07.1425 (C)(9) If the Council determines there is a need to amend the UGB, the Council shall evaluate areas designated urban reserve for possible addition to the UGB and shall determine which areas better meet the need considering a clear transition between urban and rural lands, using natural and built features to mark the transition.***

The proposed site forms a “notch” in the UGB. The proposal would, in effect, eliminate that notch without intruding into rural lands; which would be the effect of using the identified alternative sites. In addition, by making the UGB conterminous with the two adjacent roadways, and eliminating the “notch,” use of the proposed site would mark a clear transition between urban and rural lands, using both natural and built features to mark that transition. Of all identified sites, the Rassekh property offers the best available site for providing a clear transition between urban and rural lands.

***Section 3.07.1440 (B)(1) The proposed uses of the subject land would be compatible, or through measures can be made compatible, with uses of adjacent land.***

The City has demonstrated that the use of the subject property can be made compatible with the use of adjacent land. The proposed facility will be subject to the city's conditional use process that requires a public hearing and provides a forum for a site-specific focus on compatibility issues. Because the proposed site is relatively large, the building may be recessed from the property line. The development can take advantage of topography and existing vegetation to make the proposed use compatible with adjacent land uses. There is also the potential to use vernacular architecture that is compatible with the agricultural structures at nearby Luscher Farm which would help minimize any impacts. In short, the size of the property, and the City's conditional use process, provides a reasonable assurance that the use of the property for a tennis center can be made compatible with the uses of adjacent lands.

***Section 3.07.1440 (B)(2)***

*In the Matter of City of Lake Oswego, Proposed Major Amendment to the Urban Growth Boundary*

OAH Case No. 1202947

Page 32 of 40

Metro Code Section 3.07.1440 (B)(2) imposes certain requirements if the amendment to the UGB would add land for public school facilities. That provision does not apply to this case.

***Section 3.01.1440 (B)(3)***

Metro Code section 3.01.1440 (B)(3) imposes certain requirements if the amendment would add land for industrial use. That provision does not apply to this case.

***Sections 3.07.1440 (D) and (E)***

Metro Code Section 3.07.1440 (D) requires the Council to make specific findings if the proposed extension of the UGB would include land not designated as urban or rural reserve. Because the petition in this case concerns land designated as part of the urban reserve, such findings are unnecessary.

Metro Code Section 3.07.1440 (E) prohibits the Council from adding land designated as rural reserve to the UGB. The property at issue has not been designated as rural reserve, so this provision is not applicable.

***Section 3.07.1440 (F)***

Metro Code Section 3.07.1440 (F) prohibits amending the UGB in a way that would create an island of urban land outside the UGB or an island of rural land inside the UGB. The proposed cite is adjacent to the UGB. Expansion of the UGB to include this property will not create an island.

***Citizen testimony in favor of the petition***

Citizen testimony in favor of the petition agreed with the need for the facility as stated by the City and with the location. Citizens provided anecdotal evidence, in one case a 30-year history, of the inability to get indoor tennis court time within the Lake Oswego area. Students testified to the loss of local school tennis teams due to the lack of indoor court availability. Affordability was another factor cited in support of the City's proposal. Citizens in support of the petition agreed that the site provided an optimal location nearby local schools and as a natural transition to more rural lands beyond the Stafford Road/ Rosemont Road areas. Local residents testified that to reserve time at the current LOITC, one must enter a lottery system and many do not get selected. Residents sometimes drive to Vancouver, Washington, up to 30 miles away, to find alternative indoor court availability

***Citizen testimony in opposition to the petition***

*In the Matter of City of Lake Oswego, Proposed Major Amendment to the Urban Growth Boundary*

OAH Case No. 1202947

Page 33 of 40

Citizen testimony in opposition to the petition for a major amendment to the UGB challenged whether the City's proposal met the burden to show the need for land that cannot wait until the next analysis of buildable land supply. Metro Code section 3.07.1440(A). As discussed above, the City met its burden of proof relative to that provision of the Code.

Atherton Heights HOA opposes the City's proposal to amend the UGB. (Written testimony, letter of September 19, 2012, by Elaine Albrich, attorney at law, of Stoel Rives, LLP.) (Ex. G.) The HOA questions the urgency of the application based in part on favorable market conditions and construction markets. The opinion addresses the concern in that portion finding that the City met the criteria for need for land that cannot wait until the next analysis of buildable land supply. Atherton Heights HOA also asserts that the proposed tennis center does not address a "critical City service." There was no showing that "critical City service" is a required criterion under the amendment requirements. The City documented the need and interest in the indoor tennis facility and that amendment is proposed for adding land to the UGB for a park use, one of the acceptable proposed uses. Further, the HOA notes that neither the master planning for the Luscher Farm area (which includes the Rassekh property) nor the City's comprehensive plan update is complete. There was no showing that waiting for these processes to be completed was required. Additionally, the City's proposal demonstrated that the petition is in accord with the currently available projections in both plans.

The Atherton Heights HOA also asserted that the City's analysis of alternative sites and choice of the Rassekh property were not supported by the evidence. As discussed above, I found that the City had met its burden of proof on consideration of each of the necessary criteria.

Citizen testimony in opposition in one instance related to overall concerns of the relationship between Lake Oswego and surrounding communities. The hearing held for this petition for a major amendment to the UGB has no method for accounting for such concerns and no means to affect any such issues outside those requirements within the Code. In the current matter, the petition met the requirements for communication with and approval of specified governmental bodies.

Citizen testimony in opposition also focused on perceived increased traffic in the area, specifically on Stafford Road at the intersection of Rosemont Road. One citizen cited recent traffic studies from Clackamas County indicating a 12 percent increase in traffic on Stafford Road from 2008 to 2011. The source of that data was not provided. In addition there was no data on whether traffic accessing the proposed facility would statistically add to the current traffic volume on Stafford or Rosemont Roads.

Additionally, there was testimony that any increase in traffic attributable to the

proposed indoor tennis center on the Rassekh property would be minimal and would be spread throughout the day rather than concentrated at specific times as might occur with other recreational uses. The City's proposed plan adequately accounted for transportation, including access issues, when evaluating and selecting the proposed site.

Additional citizen testimony in opposition voiced concerns over a lack of an overall traffic and transportation plan for the area known as the Stafford Basin. Although understandable, the concern was not related to a specific requirement under the Code provisions for major amendments to the UGB. More specifically, the proposed development was not projected to have a major impact on the existing traffic patterns. Therefore, the proposed amendment was not required to address this issue and had no means to effect such an overarching potential issue.

Testimony on behalf of the SHC contended that the demand for the facility as presented in the proposal was incorrect and had been significantly diminished by the addition of the nearby private facility developed in West Linn. Staff testimony as well as the proposal data showed that the SHC courts had been accounted for, even overestimated, when calculating demand for the new indoor tennis facility. Considering all of the greater Lake Oswego area court availability, the City's data showed a significantly high unmet need for indoor tennis courts. In addition, the SHC facility is a private facility with higher costs and thus less accessibility than the proposed publicly owned proposed facility.

Citizen testimony was given representing the opinion of members of City Council who disagreed with the City Council's vote in approval of going forward on the petition for the major UGB amendment. As argued by Mayor Huffman, the City Council did vote on the proposal and the majority of the Council voted to proceed with the petition. There was no authority for revisiting dissenting views within the City's governing body within this hearing process.

***Conclusion***

As detailed in the above Proposed Order, and in agreement with the Metro Staff Report of August 30, 2012, I find that the City's Petition for a Major Amendment to expand the UGB to incorporate 9.8 acres (the subject property) to be used for an indoor tennis and neighborhood park facility has met the required criteria under Metro Code sections 3.07.1245 (B, C, D, E, & F) and 3.07.1440 (A & B) in addition to consideration of locational factors under Metro Code sections 3.07.1425 (C) (1-9). Based on the record as a whole, I find substantial evidence supports a recommendation to approve the petition.

**PROPOSED ORDER**

The application by the City of Lake Oswego, dated June 4, 2012, for a Major Amendment to the Metro Urban Growth Boundary (UGB) to the Metro Council, to expand the UGB to incorporate 9.8 acres (the subject property) to be used for an indoor tennis and neighborhood park facility, is recommended for approval.

**A. Bernadette House**

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Senior Administrative Law Judge  
Office of Administrative Hearings

**APPENDIX I**  
**List of Exhibits and Written Testimony**

- A1 Rassekh Park Property Urban Growth Boundary Amendment, Major Amendment, submitted to Metro Council-Summary, Narrative Proposal, and List of Figures (site maps), Lake Oswego Parks and Recreation Staff (June 15, 2012)
- A City's signed application form, Major Amendment to the Metro UGB (June 4, 2012)
- B Lake Oswego Charter, chapter X., Park Development Limitation
- C Service Provider Comments
- D Notarized Affidavit and Mailing List
- E. Supplemental Findings for the Rassekh Park Property UGB Amendment, Lake Oswego Parks and Recreation Staff (July 20, 2012)
- F. Email statement, Mary Ann Kunkel (support), September 17, 2012
- G. Letter, Elaine Albrich, with Stoel Rives, on behalf of Atherton Heights Home Owners Association (Atherton HOA), (not in opposition but with concerns), September 19, 2012
- H. Letter, Brian Dunkley, resident and secretary, Atherton HOA, (opposed) September 19, 2012
- I. Written Testimony, Jay Minor, resident of West Linn, (support), September 20, 2012
- J. Written Testimony, Rick Cook, resident (opposed), September 20, 2012
- K. Letter, James Zupancic, Esq., Zupancic Rathbone Law Group, LLC., for Stafford Hills Club, LLC. (SHC), located in West Linn, (opposed), September 20, 2012
- L. Attachments to SHC September 20, 2012 letter – SHC Key Facts
- M. Email statement, Kasey Holwerda, resident (opposed), September 20, 2012
- N. Email (via Tim O'Brien, Metro) with additional comments from Mary Olson, Lake Oswego City Councilor (September 27, 2012)
- O. Letter and supporting documents in response to questions raised at September 20, 2012 public hearing, Kim L. Gilmer, parks and recreation director,

City of Lake Oswego, September 27, 2012, including the following:

Appendix A – Lake Oswego Tennis Facility Usage Data, 2006 through summer 2012.

Appendix B – Tennis Class & Program Participation

Appendix C – Summer 2012 class enrollment

Appendix D – Summer Classes 2006-2012

P. Indoor Tennis Facility Operations Analysis for the City of Lake Oswego, by The Sports Management Group (2012) and Appendix

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Q. Letter, Lauren Hughes, Board Member, Citizens for Stewardship of Lake Oswego Lands, (September 27, 2012) (marked but not considered<sup>9</sup>)

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<sup>9</sup> Ms. Hughes did not attend or testify at the hearing at September 20, 2012 hearing and could not have requested the record left open for additional testimony under Metro Code 3.07.1430(N).



## APPENDIX II

Public Hearing Re: City of Lake Oswego Petition for Major Amendment to the Urban Growth Boundary

September 20, 2012: 6:00 p.m.

City of Lake Oswego, Council Chambers, 380 A Avenue, Lake Oswego Oregon

Individuals giving public comment with addresses

1. Jay Minor, 18300 S. Whitten Lane, West Linn, OR 97068
2. Brian Dunkley, 18296 Meadowlark Lane, Lake Oswego, OR 97034
3. Andrew Gibson, Stoel Rives LLP, for Atherton Heights HOA, 1956 Cheryl Court, Lake Oswego, OR 97034
4. Anita Derry, 2195 SW Pattulo Way, West Linn, OR 97068
5. Jeannann McCoy, President, Atherton Heights HOA, 1973 Cheryl Court, Lake Oswego, OR 97934
6. Paul Kachel, 3085 Westview Circle, Lake Oswego, OR 97034
7. Rick Cook, 18451 SW Stafford Road, Lake Oswego, OR 97034
8. Doug Jost, 3140 Westview Circle, Lake Oswego, OR 97034
9. Charlie Kachel, 3085 Westview Circle, Lake Oswego, OR 97034
10. Cyndi Murray, 3140 Westview Circle, Lake Oswego, OR 97034
11. Tia Ross, 1557 SW Wilds Road, Lake Oswego, 97036
12. Carolyne Jones, 2818 Poplar Way, Lake Oswego, 97034
13. Liz Lamade, 2486 Palisades Crest Drive, Lake Oswego, 97034 – in favor
14. Josie Dix, 15750 Springbrook Court, Lake Oswego, 97034
15. Lili Bekuhrs, 15750 Springbrook Court, Lake Oswego, 97034
16. Jim Zupancic, 4949 Meadows Road, #600, Lake Oswego, 97035
17. Kathy Schaub, 2105 Clubhouse Drive, West Linn, OR 97068
18. Mary Olson, 18453 Tamaway Drive, Lake Oswego, Or 97034
19. Gary McKenzie, 7585 SW Middle Greens Road, Wilsonville, OR 97070
20. Gunnar Brinck, 2 Sherwood Court, Lake Oswego, Or 97035
21. Charles Ormsby, 170 SW Birdshild Road, Portland, 97219
22. Evie Fuson, 1255 Chandler Road, Lake Oswego, 97034

*In the Matter of City of Lake Oswego, Proposed Major Amendment to the Urban Growth Boundary*

OAH Case No. 1202947

Page 39 of 40

**CERTIFICATE OF MAILING**

On November 1, 2012 I mailed the foregoing Proposed Order issued on this date in OAH Case No. 1202947.

By: First Class Mail and Via Email

Martha Bennett  
Chief Operating Officer  
Metro  
600 NE Grand Avenue  
Portland, OR 97232

By: Email Only

[Robin.mcarthur@oregonmetro.gov](mailto:Robin.mcarthur@oregonmetro.gov)

[Tim.O'brien@oregonmetro.gov](mailto:Tim.O'brien@oregonmetro.gov)

Lucy Garcia  
Administrative Specialist  
Hearing Coordinator

## **STAFF REPORT**

IN CONSIDERATION OF ORDINANCE NO. 12-1296, FOR THE PURPOSE OF AMENDING THE URBAN GROWTH BOUNDARY IN THE VICINITY OF THE CITY OF LAKE OSWEGO UPON APPLICATION BY THE CITY OF LAKE OSWEGO

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Date: November 20, 2012

Prepared by: Tim O'Brien  
Principal Regional Planner

### **PROPOSED ACTION**

Adoption of Ordinance 12-1296, approving *UGB Case 12-01: City of Lake Oswego*, a major amendment to the urban growth boundary (UGB). The proposed amendment area is shown on Attachment 1.

### **SUMMARY OF PROCESS**

Metro Code provides that applications for UGB amendments are first heard by a hearings officer. After holding a public hearing, the hearings officer prepares a proposed order, with findings of fact and conclusions of law, and forwards the proposed order as a recommendation to the Metro Council, along with the evidentiary record of the hearing. The Metro Council then considers the hearings officer's recommendation and holds an "on the record" public hearing where individuals who participated before the hearings officer are allowed to submit oral and written argument. Such argument must be based on the evidence provided to the hearings officer, and no new evidence may be submitted to the Metro Council.

Final Metro Council action on the proposed UGB amendment is as provided in Section 2.05.045 of the Metro Code. If the Council's decision is to approve the application to amend the UGB, staff has provided a proposed ordinance for Council adoption. The Council may either adopt the hearings officer's findings recommending approval, or instruct Metro staff to prepare revised or supplemental findings in support of approval. The Council may also adopt conditions of approval as part of its decision.

If the Council's decision is to deny the application, the Council must adopt a final order rejecting the hearings officer's recommendation, supported by findings of fact and conclusions of law explaining why the Council believes the criteria have not been met. If the Council believes additional evidence is necessary in order to make a final decision, the Council may remand the decision back to the hearings officer for further proceedings.

### **BACKGROUND AND ANALYSIS**

#### **Proposal Description:**

The City of Lake Oswego filed a petition for a 9.8-acre major amendment to the UGB for an indoor tennis and neighborhood park facility. The site consists of one tax lot within the city limits of Lake Oswego at the intersection of NW Stafford Road, NW Rosemont Road and Atherton Drive. The subject property is identified as the Rassekh property, is owned by the City of Lake Oswego and zoned PNA (Park and Natural Area).

### Public Hearing before the Hearings Officer

The hearings officer, Senior Administrative Law Judge A. Bernadette House, conducted a public hearing at the City of Lake Oswego on September 20, 2012. Metro staff recommended approval of the application. Twenty-two people testified at the hearing, 12 in favor of the application and 10 against. In addition, four people submitted written testimony, one in favor and three against the application. The hearings officer granted a request to keep the record open for seven days; the record closed at 5:00 p.m. on September 27, 2012.

### Hearings Officer Recommendation and Proposed Findings

On November 1, 2012 the hearings officer submitted a proposed order recommending approval of Case 12-01, based upon her findings that all applicable criteria have been met. The Metro Council will hold an “on the record” hearing on the recommendation on December 6, 2012. All parties to the case were notified in writing of the Metro Council hearing date and the notice was posted on Metro’s website. Parties were asked to submit their written argument to Metro seven days in advance of the hearing, in order to provide sufficient time for review and analysis. The hearings officer’s recommendation has been provided to the Council and made available to the parties.

### **SUMMARY**

According to Metro Code 2.05.045(b), the Council shall either:

- Adopt Ordinance 12-1296 to approve *Case 12-01: City of Lake Oswego* based on the findings of fact and conclusions of law set forth in the hearings officer’s proposed order.
- Vote in favor of adopting Ordinance 12-1296 to approve *Case 12-02: City of Lake Oswego* based on revised findings of fact and conclusions of law to be prepared by Metro staff.
- Remand the proceeding to the Hearings Officer for further consideration.
- Vote to adopt a Resolution entering an order to deny *Case 12-01: City of Lake Oswego* based on revised findings of fact and conclusions of law to be prepared by Metro staff.

Also, the Metro Code expressly allows the Council to establish conditions of approval it deems necessary to ensure the UGB expansion complies with state planning laws and the Regional Framework Plan. Metro Code 3.07.1455.C.

### **INFORMATION**

**Known Opposition:** Numerous people testified verbally and in writing in opposition to the proposed UGB amendment at the public hearing before the hearings officer.

**Legal Antecedents:** The Metro Regional Framework Plan and Urban Growth Management Functional Plan Title 14: Urban Growth Boundary authorizes amending the Urban Growth Boundary through a Major Amendment process.

**Anticipated Effects:** The adoption of Ordinance 12-1296 will add 9.8 acres of land to the urban growth boundary in the vicinity of Lake Oswego for an indoor tennis and neighborhood park facility.

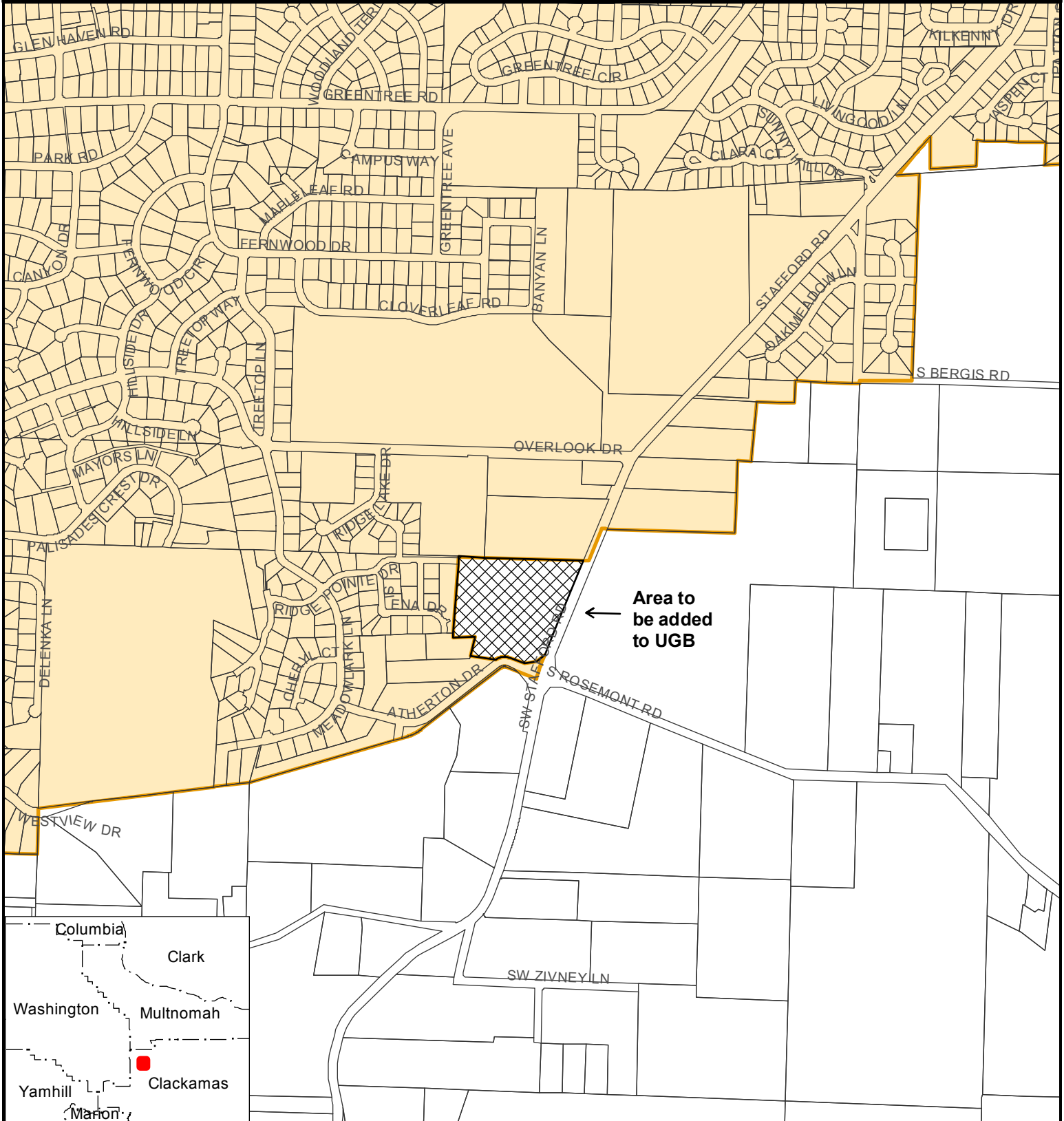
**Budget Impacts:** There is no budget impact from adopting this ordinance.

# Case No. 12-01

2S1E15, 2S1E16




Urban Growth Boundary Major Amendment

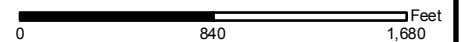
Clackamas County



## Case No. 12-01 UGB Major Amendment

1:10,000

-  Area to be added to UGB
-  Taxlots
-  Urban growth boundary



Data Resource Center  
 600 NE Grand Ave  
 Portland, OR 97232-2736  
 (503) 797-1742  
<http://www.oregonmetro.gov/drc>

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