

BEFORE THE METRO COUNCIL

DENYING URBAN GROWTH BOUNDARY) RESOLUTION NO. 98-2706
LOCATIONAL ADJUSTMENT CASE 98-2:)
DENNIS DERBY, DOUBLE D DEVELOPMENT, INC.)
AND ADOPTING THE HEARINGS)
OFFICER'S REPORT INCLUDING FINDINGS) Introduced by Mike Burton,
AND CONCLUSIONS) Executive Officer

WHEREAS, Metro received a petition for a locational adjustment for 14.84 acres located southwest of the intersection of Stafford and Rosemont roads in unincorporated Clackamas County, as shown in Exhibit A; and

WHEREAS, Metro staff reviewed and analyzed the petition, and completed a written report to the Hearings Officer, recommending denial of the petition due to existence of similarly situated contiguous land to the site that was not included in the petition; and

WHEREAS, Metro held a hearing to consider the petition on June 24, 1998, conducted by an independent Hearings Officer; and

WHEREAS, The Hearings Officer submitted his report on July 24, 1998, recommending denial of the petition for 14.84 acres; and; now, therefore,

THE METRO COUNCIL HEREBY RESOLVES AS FOLLOWS:

1. To accept the Hearings Officer's *Report and Recommendation*, as attached herein as Exhibit B; and
2. The Hearing Officer's *Findings, Conclusions & Final Order*, attached herein as Exhibit C, be adopted denying the petition in Case 98-2: Dennis Derby, Double D Development, Inc.

ADOPTED by the Metro Council this ____ day of _____, 1998.

Jon Kvistad
Presiding Officer

ATTEST:

Approved as to Form:

Recording Secretary

Daniel B. Cooper
General Counsel

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Proposed Adjustment

Case # 98-2
Derby



-  Subject Property
-  Urban Growth Boundary

EXHIBIT A

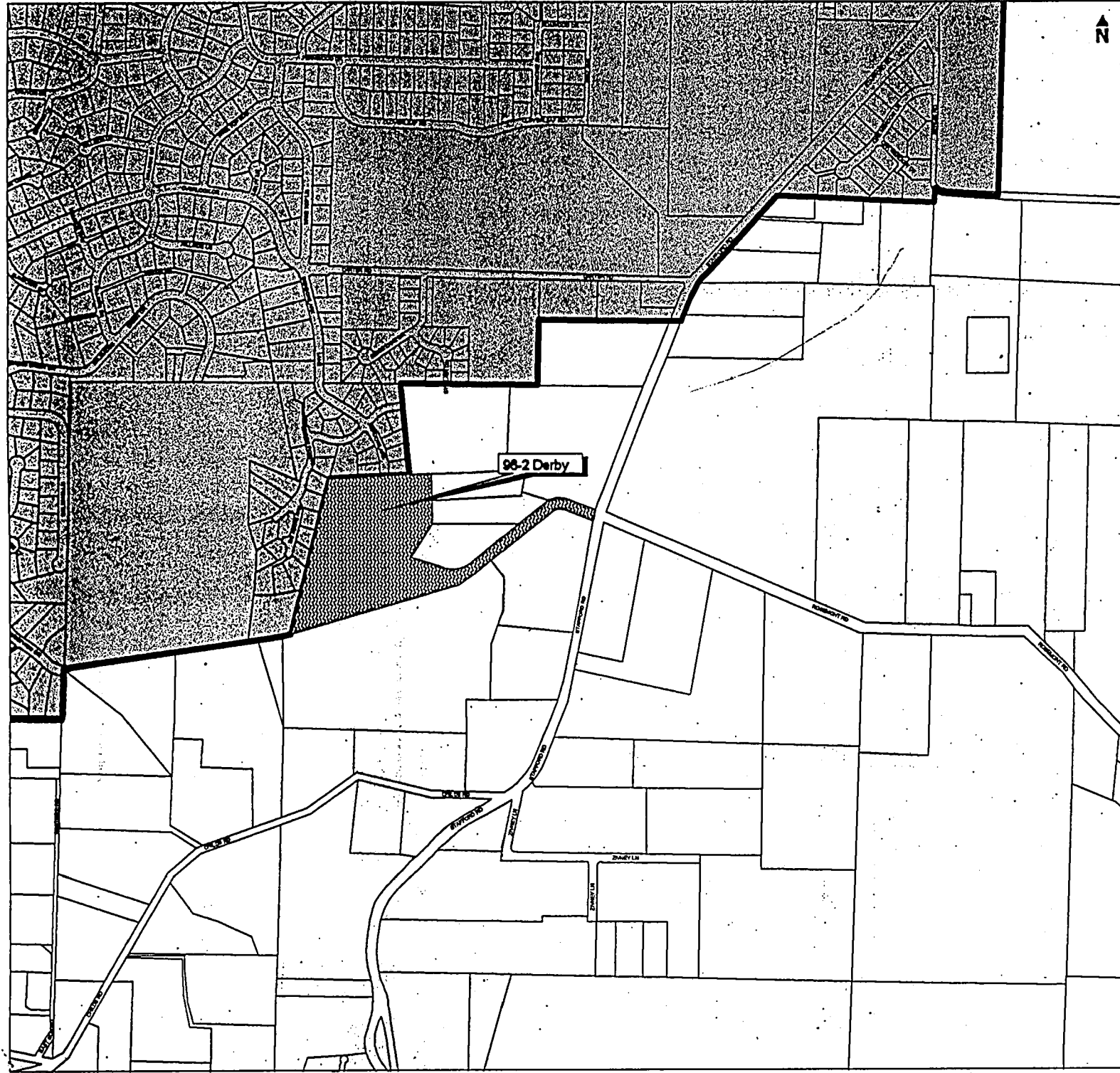


1" = 800 feet



METRO

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BEFORE THE METRO COUNCIL

In the matter of the petition of Dennis Derby for a)	HEARINGS OFFICER'S
Locational Adjustment to the Urban Growth Boundary)	REPORT AND
southwest of the intersection of Stafford and Rosemont)	RECOMMENDATION
Roads in unincorporated Clackamas County)	Contested Case No. 98-02

I. INTRODUCTION AND SUMMARY

This report contains a summary of the findings the hearings officer recommends to the Metro Council to deny a petition for a locational adjustment to the Urban Growth Boundary ("UGB"). The petition raises the following major issues:

- Whether the petition includes all contiguous similarly situated lands. The hearings officer and Metro staff found that there are contiguous similarly situated lands that should be included in the petition; the petitioner disagreed.
- Whether granting the petition results in a superior UGB and a net improvement in the efficiency of public facilities and services relevant to the adjustment. The hearings officer found that it does not result in sufficient net improvement; therefore, the proposed UGB is not superior to the existing one.
- Whether granted the petition must result in the maximum land use efficiency as argued by Metro staff. The hearings officer found the petition is not required to result in maximum land use efficiency.

Related to the foregoing issues is the significance to be given the fact that the subject property is one of several contiguous properties that Council has designated as "Tier One" properties in Urban Reserve Area 33. When Council adopted the Urban Reserve and Tier One designations, it did not amend the standards for locational adjustments. Thus it is unclear what, if any, impact Council intended those designations to have on the application of the locational adjustment standards. This is the first petition to raise the issue clearly. The hearings officer and Metro staff concluded designation as a Tier One property is a significant fact relevant to the standards for a locational adjustment. The petitioner has the same belief, although he would reach different conclusions after considering the Tier One designation.

II. SUMMARY OF BASIC FACTS

1
2
3 1. On March 10, 1998, Dennis Derby ("petitioner") filed a petition for a locational
4 adjustment to the Lake Oswego metropolitan area UGB. The petitioner proposes to add to
5 a 14.84-acre parcel identified as tax lot 610 (the "subject property") to the UGB. It is now
6 situated in unincorporated Clackamas County adjoining the UGB and Lake Oswego. If
7 included in the UGB, the subject property would be annexed to the City of Lake Oswego.

8
9 a. The Clackamas County Comprehensive Plan designation and zoning for
10 the subject property is RRFF5 (Rural Residential/Farm Forest, 5-acre lot size). The subject
11 property is in an exception area to Statewide Goals 3 and 4. Adjoining land in the City of
12 Lake Oswego is designated and zoned R-10 (Residential, 10,000 square foot minimum lot
13 size) and R-15 (Residential, 15,000 square foot minimum lot size). There is one steeply
14 sloped 1.6-acre parcel in Lake Oswego southwest of the subject property (TL 900) to
15 which public services can be provided only through the subject property. Other properties
16 already in the UGB have urban services.

17
18 b. The subject property contains a single family residence. The majority of
19 the subject property is open pasture. The subject property includes a roughly 60-foot wide
20 access strip that crosses Pecan Creek and intersects Stafford Road. The site slopes down
21 from the northwest to the southeast at slopes of 12 to 25 percent. The subject property is
22 not served by public services. The petition was accompanied by comments from the City
23 of Lake Oswego which certified it can provide urban services in an orderly and timely
24 manner. The city supports the petition. If the locational adjustment is approved, petitioner
25 proposes to develop the subject property as a residential subdivision and to extend a public
26 road through the site to the intersection of Stafford and Rosemont Roads, to extend public
27 water through the site to form a looped system with existing off-site lines, to extend public
28 sewer into the site serving 6.2 acres of the site with gravity sewers and 3.5 acres of the site
29 with a pumped (STEP) system, and to dedicate a portion of the site as open space.

30
31 2. Metro hearings officer Larry Epstein (the "hearings officer") held a duly noticed
32 public hearing on June 24, 1998 to receive testimony and evidence in the matter of the
33 petition. Eleven witnesses testified in person or in writing, including two staff members
34 from Metro, the petitioner's representatives, and six area residents. The hearings officer
35 closed the record at the conclusion of the hearing. No one requested that the hearings
36 officer continue the hearing or hold open the record.

1 **III. SUMMARY OF APPLICABLE STANDARDS AND RESPONSIVE FINDINGS**

2
3 1. A locational adjustment to add land to the UGB must comply with the relevant
4 provisions of Metro Code ("MC") sections 3.01.035(c) and (f). The following findings
5 highlight the principal policy issues disputed in the case.
6

7 2. MC § 3.01.035(c)(1) requires a petitioner to show (1) that granting the petition
8 would result "in a net improvement in the efficiency of public facilities and services" and
9 (2) that the area to be added can be served "in an orderly and economic fashion." There
10 was no dispute that the subject site can be served in an orderly and economic fashion.
11 There is a dispute whether granting the petition results in a net improvement in efficiency of
12 sanitary sewer, open space and police and fire service. The petitioner argues it would. The
13 hearings officer found it would not result in a sufficient net improvement to warrant
14 approval, particularly with regard to sanitary sewer service, relying in part on past Council
15 decisions that have addressed this issue. However the hearings officer's finding relies on a
16 balancing of the facts and the policy. A different balance could be struck.
17

18 3. MC § 3.01.035(c)(2) is entitled "maximum efficiency of land use" and requires
19 the amendment to facilitate permitted development of adjacent land already in the UGB.
20 Metro staff argued the title of the section is an approval standard. The petitioner and the
21 hearings officer disagreed with staff. There is no dispute that granting the petition would
22 facilitate needed development on a 1.6-acre parcel already in the UGB. But there was a
23 dispute about whether this results in maximum land use efficiency. The hearings officer
24 found the petition does comply with § 3.01.035(c)(2), and that the title of section is not an
25 approval standard, based on prior Council decisions in other cases.
26

27 4. MC § 3.01.035(c)(3) requires an analysis of environmental, energy, social and
28 economic impacts of granting the petition, particularly with regard to transit corridors and
29 hazard or resource land. There is no dispute that the petition complies with this standard.
30

31 5. MC § 3.01.035(c)(4) requires retention of agricultural land. There is no dispute
32 that, because the subject property is in an exception area, this standard does not apply.
33

34 6. MC § 3.01.035(c)(5) requires urban development of the subject property to be
35 compatible with nearby agricultural activities. There is no dispute that the petition complies

1 with this standard, because of the nature of nearby agricultural activities and the functional
2 and physical separation between the site and those activities.

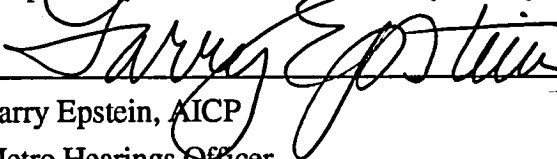
3
4 7. MC § 3.01.035(f)(2) requires the proposed UGB to be superior to the existing
5 UGB. The hearings officer found the proposed UGB is not superior, because it does not
6 comply with all of the above criteria, particularly § 3.01.035(c)(1).

7
8 8. MC § 3.01.035(f)(3) requires a proposed locational adjustment to include all
9 contiguous similarly situated lands. Petitioner argued that the site is not contiguous to other
10 land in Tier One; and that, if it is contiguous, the site is not similarly situated, because, in
11 large part, no other land can be used to serve TL 900. The hearings officer found that there
12 are contiguous similarly situated properties that are not included in the petition based on the
13 factors in section 3.01.035(c). Other Tier One lands in Reserve Area 33 are contiguous,
14 because they share a common property boundary with the subject site. They are physically
15 similar. They share public service needs that can be fulfilled most efficiently and
16 economically by including most if not all of those Tier One properties in the UGB. If the
17 similarly situated lands are included in the petition, it will substantially exceed 20 acres,
18 which is the maximum permitted area for a locational adjustment under MC section
19 3.01.035(b). Based on prior cases and the facts of this case, the hearings officer found the
20 petition does not comply with MC sections 3.01.035(b) and (f)(3).

21
22 **IV. ULTIMATE CONCLUSION AND RECOMMENDATION**

23
24 For the foregoing reasons, the hearings officer concludes the petitioner failed to bear the
25 burden of proof that granting the petition would comply with all of the relevant approval
26 standards in Metro Code section 3.01.035 for a locational adjustment. Therefore the
27 hearings officer recommends the Metro Council deny the petition, based on this Report and
28 Recommendation and the Findings, Conclusions and Final Order attached hereto.

29
30 Respectfully submitted this 24th day of July, 1998.

31 
32 _____
33 Larry Epstein, AICP
34 Metro Hearings Officer

BEFORE THE METRO COUNCIL

1
2
3 In the matter of the petition of Dennis Derby for a) FINDINGS,
4 Locational Adjustment to the Urban Growth Boundary) CONCLUSIONS &
5 southwest of the intersection of Stafford and Rosemont) FINAL ORDER
6 Roads in unincorporated Multnomah County) Contested Case No. 98-02
7

I. BASIC FACTS, PUBLIC HEARINGS AND THE RECORD

8
9
10 1. On March 10, 1998, Dennis Derby ("petitioner") completed filing a petition for a
11 locational adjustment to the Urban Growth Boundary ("UGB"), including exhibits required
12 by Metro rules for locational adjustments. See Exhibit 1 for the original petition for
13 locational adjustment (the "petition"). Basic facts about the petition include the following:
14

15 a. The land to be added to the UGB is described as Tax Lot 610, Section
16 16, T2S-R1E, WM, Multnomah County (the "subject property"). It is south of and adjoins
17 the southern terminus of Meadowlark Lane, west of the intersection of Stafford and
18 Rosemont Roads. The UGB forms the north and west edges of the subject property. Land
19 to the north and west is inside the UGB and the City of Lake Oswego. See Exhibits 1, 13
20 and 19 for maps showing the subject property. All of the adjoining land within Lake
21 Oswego has access to urban services relevant to the locational adjustment except tax lot
22 900, which adjoins the southwest corner of the Derby site.
23

24 (i) TL 900 originally was part of lot 14 of the Ridge Pointe
25 subdivision in the City of Lake Oswego. See Exhibit 17 for a copy of the plat. When
26 created, lot 14 had frontage on Ray Pointe Drive and access to utilities in that right of way.
27

28 (ii) At some time since the plat was filed in 1985, the city approved
29 a partition of lot 14 into two parcels, one of which is now referred to as TL 900. After the
30 partition, TL 900 did not have frontage on a city street. Easements were not reserved for
31 access from TL 900 to Ray Pointe Drive or to city services in that right of way. Therefore
32 TL 900 is landlocked, and it does not have access to city services. It is unclear why the
33 city would have approved creation of such a lot, but, based on the record, the lot exists as
34 described herein.
35

1 b. The subject property is a roughly rectangular shaped parcel 700 to 900
2 feet north-south by about 600 to 900 feet east-west with a roughly 60-foot wide access
3 strip extending east from the southeast corner of the site to the north side of Stafford Road
4 at its intersection with Rosemont Road. The site contains 14.84 acres. It is in an exception
5 area to Statewide Planning Goals 3 and 4. It is designated "Rural Residential/Farm Forest"
6 on the acknowledged Clackamas County Comprehensive Plan Map and is zoned RRFF5
7 (Rural Residential/Farm Forest, 5-acre lot size). The subject property is part of Urban
8 Reserve No. 33. It is located in that part of Urban Reserve No. 33 which is designated as
9 a "first tier" site by the Metro Council.

10
11 c. The subject property slopes down to the southeast from a high of about
12 585 feet above mean sea level ("msl") at the northwest corner to a low of about 450 feet
13 msl along the south boundary. Moving eastward along the access strip, the topography
14 continues to drop towards the western fork of Pecan Creek. (See exhibit 19). The creek is
15 located at roughly 410 feet msl where it crosses the access strip portion of the site. East of
16 the creek the topography rises again to an elevation of roughly 440 feet msl where the
17 access strip abuts Stafford Road. Slopes on the site range from 12 to 25 percent.

18
19 d. The petition was accompanied by comments from affected jurisdictions
20 and service providers. See Exhibits 6, 8 and 9.

21
22 i. The City of Lake Oswego City Council adopted Resolution 98-10
23 in support of the petition. See exhibit 6.

24
25 ii. The City of Lake Oswego also commented as a service provider.
26 See exhibit 8. The City commented that urban services could be provided to the subject
27 property in an orderly and economic fashion. The comments are summarized below:

28
29 (1) The project would provide the opportunity for
30 transportation connectivity to adjacent local streets, parks and open spaces. "This would
31 have some impacts on transportation efficiencies in the local area." Connectivity "has the
32 opportunity to enhance fire and police protection in the local area." The exact nature of the
33 impacts is dependent on final development review approval by the City.

1 (2) Extension of gravity flow sewers to serve the subject
2 property "might" make it possible for other first tier urban reserve lands to connect to
3 gravity sewers.

4
5 (3) Approval of the petition would improve efficiency of
6 water service delivery to properties within the existing UGB and would create a looped
7 water line from the existing main in Stafford Road.

8
9 (4) Development of this project "would make it possible...to
10 develop a 9.8-acre [park] parcel ...at the corner of Stafford and [Rosemont]...pursuant to a
11 City adopted Master Plan."

12
13 iii. The Clackamas County Board of Commissioners adopted an
14 order in which it declared no objection to the petition. See exhibit 9.

15
16 2. Metro staff mailed notices of a hearing to consider the petition by certified mail
17 to the owners of property within 500 feet of the subject property, to the petitioner, to
18 Clackamas County, to the City of Lake Oswego and to the Department of Land
19 Conservation and Development ("DLCD"). See Exhibits 11 and 14. A notice of the
20 hearing also was published in *The Oregonian* and *The Lake Oswego Review* at least 10
21 days before the hearing.

22
23 3. On June 24, 1998, Metro hearings officer Larry Epstein (the "hearings officer")
24 held a public hearing at the Lake Oswego City Hall to consider the petition. All exhibits and
25 records of testimony have been filed with the Growth Management Division of Metro. The
26 hearings officer announced at the beginning of the hearing the rights of persons with an
27 interest in the matter, including the right to request that the hearings officer continue the
28 hearing or hold open the public record, the duty of those persons to testify and to raise all
29 issues to preserve appeal rights, the manner in which the hearing will be conducted, and the
30 applicable approval standards. The hearings officer disclaimed any *ex parte* contacts, bias
31 or conflicts of interest. Ten witnesses testified in person.

32
33 a. Metro planner Carol Krigger verified the contents of the record and
34 summarized the staff report (Exhibit 13), including basic facts about the subject property,
35 the UGB and urban services, and comments from the City of Portland. She testified that
36 the petitioner showed that the proposed locational adjustment complies with all but one of

1 the applicable approval criteria. She testified the petitioner failed to show that all similarly
2 situated land contiguous to the subject property is included in the petition, largely because
3 five physically similar and contiguous properties in Reserve Area 33 are designated “first
4 tier”, and those property’s are not included in the petition. If they were included, the
5 petition would exceed the acreage limit for a locational adjustment. She argued:

6
7 i. All of the first tier properties in this area should be brought into
8 the UGB, planned and developed as a single unit.

9
10 ii. In particular, TL 700 northeast of the subject property is similarly
11 situated and should be included in this petition. St. Clair Drive is stubbed at the north
12 boundary of TL 700: This street could be extended through TL 700 and the subject
13 property, enhancing multi-modal circulation and connectivity and access for emergency
14 vehicles. In addition, extension of existing sewer lines from St. Claire Drive would allow
15 more of the subject property to be served with gravity flow sewers.

16
17 iii. Approval of the petition would facilitate needed development on
18 land within the existing UGB, Criteria 4. However including only the subject property,
19 excluding the five other parcels within the first tier urban reserve, would not result in
20 maximum efficiency of development within the UGB.

21
22 b. Planner Richard Givens, engineer Greg Weston and attorney Wendie
23 Kellington appeared on behalf of the petitioner, Dennis Derby.

24
25 i. Mr. Givens described the location of existing public services
26 available to serve the subject property. He opined that the ideal situation would include all
27 of the first tier urban reserve properties. However the subject property is unique. Only the
28 subject property can provide access and public services to TL 900, a landlocked parcel
29 within the existing UGB, eliminate the long cul-de-sac street (Meadowlark Lane), and
30 allow construction of a looped water system. These improvements cannot be provided by
31 development of the other contiguous first tier properties. Therefore the adjacent first tier
32 properties are not “similarly situated.”

33
34 ii. Mr. Weston testified that only the subject property can provide a
35 connection between the Ridge Point development and Stafford Road. He testified that the
36 existing sewer main in St. Clair Road could be extended to provide gravity flow sewer

1 service to a larger percentage of the subject property. However this sewer line was never
2 intended to be extended. The system would have to be reconstructed to serve the subject
3 property. He opined that the subject property could be developed with roughly 22 lots.
4 Four of the lots would require a STEP system that does not rely on gravity flow.

5
6 iii. Ms. Kellington noted that that the Metro Code defines “first tier”
7 properties as those that “can be most cost-effectively provided with urban services...” She
8 argued that the first tier urban reserve designation creates legislative presumptions (1) that
9 public services can be provided in an orderly and economic manner to properties so
10 designated and (2) that including such properties will maximize the efficiency of develop-
11 ment. Therefore the petition complies with Metro Code sections 3.01.035(c)(1) and (2).

12
13 (1) She argued the subject property is unique and must be
14 considered on its own merits. Other adjacent first tier lands are not similarly situated and
15 cannot provide services to TL 900 west of the site and within the existing UGB. Only this
16 site can provide access to the dedicated but undeveloped right of way across TL 900 and to
17 undeveloped Cook Park west of TL 900. She noted that Lake Oswego’s vacant buildable
18 lands inventory identifies TL 900 as suitable for residential development. But, without the
19 access that can be provided across the subject site, TL 900 cannot develop.

20
21 (2) She argued that TL 700 east of the site is not contiguous
22 to the subject property, because the two properties only touch for a small distance. Even if
23 it is contiguous, including TL 700 in the UGB would not enhance services to land already
24 in the UGB (e.g., TL 900). That fact that including TL 700 in the UGB would increase the
25 efficiency of sewer service, by allowing gravity flow sewer to serve more of subject site,
26 that is not relevant, because the subject site is not already in the UGB.

27
28 (3) She argued that TL 1100 is not similarly situated,
29 because it is planned for development as a park. She cited the recent Metro staff report
30 regarding the Tsugawa petition as support for this argument.

31
32 (4) The subject property is separated from the adjoining Tls
33 607, 608 and 609 by a driveway. Therefore it is not contiguous, based on the staff report
34 for the Tsugawa petition.

1 (5) Citing the Council's decision in the West Linn-
2 Wilsonville School District petition, she argued that abutting properties should not be
3 considered similarly situated because they are needed for the locational adjustment to
4 comply with applicable standards or to fulfill the petitioner's goals.

5
6 (6) She noted that there is no guarantee that all first tier
7 lands will be included in the UGB. She argued that approval of the petition will not
8 foreclose adjacent lots from being included in the UGB through the master plan process.

9
10 c. Jeffrey Evershed, the owner of TL 900, testified in support of the
11 petition. He argued the petition needs to be approved to allow him to develop his property.

12
13 d. Delmore Smith argued that the purpose of the UGB is to benefit the
14 community. The petition will only benefit the applicant, a private developer. He argued
15 that there is inadequate infrastructure to serve additional development in the area. He urged
16 the hearings officer to recommend denial of the petition.

17
18 e. David Adams urged the hearings officer to recommend denial of the
19 petition. He argued that the UGB should not be expanded.

20
21 f. Al Patchet argued that the UGB is intended to avoid piecemeal growth.
22 It is not intended to accommodate individual developers.

23
24 g. Katie Sharp, the owner of TL 607 east of the site, expressed concern
25 that her property will be surrounded by but excluded from the UGB. She questioned
26 whether and how the remainder of the first tier properties would be brought into the UGB.

27
28 h. Metro planner Ray Valone opined that the remaining first tier properties
29 could be brought into the UGB through legislative action of the Metro Council or through a
30 petition for a major amendment brought by a local government or developer.

31
32 i. Rick Cook argued that the City's water line in Stafford Road serves more
33 than just the PGE substation. He and other properties in the area receive public water from
34 this water main. He questioned the density of development that could occur on the subject
35 property. He questioned how much of the site could be served by gravity flow sewers.

36

1 5. On July 24, 1998, the hearings officer filed with the Council a report,
2 recommendation, and draft final order denying the petition for the reasons provided therein.
3 Copies of the report and recommendation were timely mailed to parties of record together
4 with an explanation of rights to file exceptions thereto and notice of the Council hearing to
5 consider the matter.

6
7 6. The Council held a duly noticed public hearing to consider testimony and timely
8 exceptions to the report and recommendation. After considering the testimony and
9 discussion, the Council voted to deny the petition for Contested Case No. 98-2 (Derby),
10 based on the findings in this final order, the report and recommendation of the hearings
11 officer, and the public record in this matter.

12 13 II. APPLICABLE APPROVAL STANDARDS AND RESPONSIVE FINDINGS

14
15 1. Metro Code section 3.01.035(b) and (c) contains approval criteria for all
16 locational adjustments. Metro Code section 3.01.035(f) contains additional approval
17 criteria for locational adjustments to add land to the UGB. The relevant criteria from those
18 sections are reprinted below in italic font. Following each criterion are findings explaining
19 how the petition does or does not comply with that criterion.

20
21 *Area of locational adjustments. All locational adjustment additions*
22 *and administrative adjustments for any one year shall not exceed 100 net*
23 *acres and no individual locational adjustment shall exceed 20 net acres...*
24 Metro Code section 3.01.035(b)

25
26 2. No locational adjustments or administrative adjustments have been
27 approved in 1998. Therefore not more than 100 acres has been added to the UGB
28 this year. The petition in this case proposes to add 14.84 acres to the UGB, which
29 is less than 20 acres. Therefore, as proposed, the petition complies with Metro
30 Code section 3.01.035(b). However, if all similarly situated land is included in the
31 adjustment, the area of the adjustment would exceed 20 acres. See the findings
32 regarding Metro Section 3.01.035(f)(3) for more discussion of the "similarly
33 situated" criterion.

34
35 *Orderly and economic provisions of public facilities and*
36 *services. A locational adjustment shall result in a net improvement in the*

1 *efficiency of public facilities and services, including but not limited to,*
2 *water, sewerage, storm drainage, transportation, parks and open space in*
3 *the adjoining areas within the UGB; and any area to be added must be*
4 *capable of being served in an orderly and economical fashion.*

5 Metro Code section 3.01.035(c)(1)

6
7 3. The subject property can be served by public water, storm and sanitary sewers,
8 roads and parks based on the comments from the City of Lake Oswego.

9
10 a. Water service is available to the site via a 12-inch main in Stafford Road
11 (outside the UGB) and an 8-inch line in Meadowlark Lane that stubs at the site boundary.

12
13 b. Sanitary sewer service is available from an existing line in Meadowlark
14 Lane that stubs at the site boundary. Gravity service is available to about 6.2 acres of the
15 site. Homes on the 3.5 acres of the site built below 515 feet above mean sea level (msl)
16 would have to pump effluent to the sewer system using a STEP system.

17
18 c. Storm water can drain from the site to an existing drainageway near
19 Rosemont Road and, from there, to the Tualatin River. This drainageway already serves
20 development inside the UGB. If the site is annexed and developed, Lake Oswego would
21 regulate drainage impacts under its development regulations in a manner consistent with
22 DEQ rules for the Tualatin River basin and with the city's National Pollutant Discharge
23 Elimination System (NPDES) permit.

24
25 d. If the site is annexed and developed, Lake Oswego would require
26 dedication and improvement of roads on the site. These roads will lead to existing public
27 streets, including Meadowlark Lane and Stafford/Rosemont Roads, that can accommodate
28 the relatively small increment in additional traffic resulting from the development.

29
30 e. Lake Oswego has stated in writing that it can serve the site with park and
31 open space features if it is annexed. There is no substantial evidence to the contrary.

32
33 f. Lake Oswego has stated in writing that it can serve the site with fire and
34 police services if it is annexed. There is no substantial evidence to the contrary.

1 4. Based on the foregoing, the subject site is capable of being served with public
2 infrastructure. All of that service can be achieved in an orderly fashion. All of that service
3 can be achieved in what the Council finds is an efficient manner except sewer service.
4

5 a. Use of pumps and a STEP sewer system is not as efficient as use of a
6 gravity flow system, because pumps require regular maintenance and replacement, and
7 because they consume energy that would not be consumed if sewage is transported by
8 gravity. Therefore sewer service to the site is not the most efficient means practicable.
9

10 b. Metro Code section 3.01.035(c)(1) does not expressly require that
11 service to the site be the most efficient; it merely requires that it be efficient. It could be
12 argued that, if the site can be served, that is *per se* efficient. On the other hand, if all that is
13 required by section 3.01.035(c)(1) is any form of service, the word "efficient" would have
14 no meaning. To provide efficient sewer service, that service should rely on gravity flow to
15 the greatest practicable extent. This is consistent with the Council's actions in approving
16 prior locational adjustments.¹
17

18 c. In this case, more of the site could be served by a gravity flow sewer
19 system if TL 700 is included in the UGB, a sewer line is extended south from the existing
20 pump station at the end of St. Claire Drive, and the pump station there is enhanced to
21 accommodate the greater flow. This is more consistent with the goal of achieving efficient
22 urban service systems than is creation of another pumped system. Therefore, although the
23 site can be served with sewer, it cannot be served efficiently unless adjoining land (TL 700)
24 is included in the UGB, too, so more of the site can be served by a gravity flow sewer.
25

26 5. The Council has not adopted rules describing how to assess the relative
27 efficiency of urban services. In the absence of such rules, the Council must construe the
28 words in practice. It does so consistent with the manner in which it has construed those
29 words in past locational adjustments to the extent the facts in this case are similar to the
30 facts in prior cases.
31

¹ E.g., Contested Case 88-04 (Bean), Contested Case 94-01 (Starr/Richards) and Contested Case 95-02 (Knox Ridge). In Case 94-01, Council found that land already in the UGB could be served by a pumped sewer system without including the subject site in the UGB. But, because including the subject site in the UGB allowed gravity flow service to that land already in the UGB, the petition resulted in more efficient sewer service.

1 a. The Council concludes that the locational adjustment does result in a net
2 improvement in the efficiency of water services in the adjoining areas already in the UGB,
3 because the locational adjustment allows the creation of a looped water system, joining
4 lines in Stafford Road and in Meadowlark Lane through the site.

5
6 b. Including the subject property in the UGB will increase the net efficiency
7 of transportation services, because the locational adjustment allows the extension of
8 Meadowlark Lane through the site to the intersection of Rosemont and Stafford Roads,
9 creating a more interconnected road system and reducing congestion and out of direction
10 travel for residents of the nearby city subdivisions. Also it could facilitate improvement of
11 a public street from the site to undeveloped Cook Park across TL 900 to the west, which
12 would enhance access to the park for residents of the city.

13
14 c. It is not apparent from the record that including the subject property in
15 the UGB will increase the net efficiency of surface water management/storm drainage,
16 parks/open space, and fire/police protection for land already in the UGB, except by:

17
18 (i) Marginally increasing the population served by those facilities
19 and thereby spreading their cost over a slightly larger population base, making them
20 somewhat more economical to residents of land already in the UGB; however, this impact
21 is not enough by itself to conclude these services will be more efficient if the property is
22 included in the UGB based on prior locational adjustment cases (see, e.g., Contested Case
23 88-02 (Mt. Tahoma) and Contested Case 95-02 (Knox Ridge)); and

24
25 (ii) The road improvements reasonably likely to follow from
26 inclusion of the site in the UGB will enhance vehicular access to and through the area,
27 particularly for fire and police services and for residents of the city to reach the undevel-
28 oped part of Cook Park and to open spaces and parks outside the existing UGB. Perhaps
29 this access would lead to development of the park, but there is not evidence to this effect in
30 the record. Council also recognizes that improved access has its cost. That is, it can
31 increase the need for security and maintenance of facilities to which access is now possible.

32
33 d. Including the subject property in the UGB will not increase the net
34 efficiency of sanitary sewer service, because it does not result in needed sewer facilities
35 (except for TL 900, see below) or substantially greater sewer system efficiencies than
36 without the site.

1
2 e. TL 900 is a lot already in the UGB. It is not served by nor is it capable
3 of being served by water, roads, sewer, storm drainage, parks or police and fire services
4 (at least not unless the owner of lot 14 in Ridge Pointe grants an easement for those
5 purposes). If the Derby parcel is included in the UGB, TL 900 could be served by all of
6 these facilities. Although not precisely an improvement in efficiency *per se*, including the
7 Derby parcel in the UGB would make available service to a lot already in the UGB to
8 which such services are not now available. It is more efficient to have land in the UGB
9 served by urban facilities. To that extent, Council finds the locational adjustment would
10 result in a net improvement in the efficiency of urban services in a small area in the UGB.

11
12 (i) However Council also finds this net improvement in efficiency is
13 negligible. Only one steeply-sloped 1.6-acre lot in the UGB benefits from inclusion of the
14 Derby parcel in the UGB. To include 14.84 acres in the UGB to serve principally one lot
15 turns the approval criteria on their head. It uses an elephant to crush a mouse. Council
16 relied on this sort of *de minimis* improvement (in that case regarding transportation system
17 efficiency) to reject the petition in Contested Case 95-02 (Knox Ridge). This sort of
18 balancing test also is urged by comments from the Department of Land Conservation and
19 Development.²

20
21 f. Under these circumstances, Council finds that including the Derby parcel
22 in the UGB does not result in a sufficient net improvement in sewer, storm drainage, parks
23 or police and fire services to warrant approval. Council concludes the petitioner failed to
24 carry the burden of proof that the petition complies with Metro section 3.01.035(c)(1).

25
26 *Maximum efficiency of land uses. The amendment shall facilitate*
27 *needed development on adjacent existing urban land. Needed development,*
28 *for the purposes of this section, shall mean consistent with the local*
29 *comprehensive plan and/or applicable regional plans.*

30 Metro Code section 3.01.035(c)(2)

31
32 6. Council finds that including the subject property in the UGB does facilitate
33 needed development on adjacent existing urban land (i.e., TL 900). Urban services cannot
34 be provided to that lot under existing conditions without approving the petition.

² In his letter dated June 24, 1998, Jim Sitzman characterizes the issue as "whether or not the facts in this case improve utilization of land in the UGB in any important ways..." (emphasis added)

1
2 a. The petitioner argued that the proposed adjustment would facilitate future
3 development of adjoining Tier One lands. Council finds this is irrelevant to the petition,
4 because adjacent Tier One lands are not within the existing UGB and are therefore not
5 “existing urban land”.

6
7 b. Metro staff argued that “inclusion of the subject site alone does not
8 necessarily provide maximum efficiency of land uses with regard to regional plans. Staff
9 believes that maximum efficiency can be accomplished only by including similarly situated
10 land [outside] the UGB.” In effect Metro staff argued that section 3.01.035(c)(2) includes
11 two standards. One standard is found in the title of the section, and one is found in the text
12 of the section. The standard in the title requires the Council to find that including the
13 subject site in the UGB results in the maximum efficiency of land uses. It is that standard
14 that Metro staff believe the petition does not fulfill, because all of the Tier One lands in
15 Reserve Area 33 would be served more efficiently if they were planned for as a unit, as
16 envisioned by Council when it identified the Tier One lands and provided for their
17 imminent transition to urban development.

18
19 c. Council finds the foregoing argument by staff is incorrect, based on
20 prior locational adjustment cases. Having reviewed the manner in which all cases since
21 1988 have addressed Metro Code section 3.01.035(c)(2) or its predecessor, there is no
22 support for the conclusion that the title of the section is intended to be an approval
23 standard.³ It is the text that contains the standard, not the title. The title is a convenient (if
24 somewhat inaccurate) summary of the text, but it has no status independent of the text.

³ In Contested Case 88-03 (St. Francis), the finding in response to a substantially similar standard in what was then section 3.01.040(a)(2) starts by saying that granting the petition “would be consistent with promoting the maximum efficiency of land uses”, but that conclusion is supported by a finding that simply says approving the petition “facilitates development and stability of that community.”

In Contested Case 88-04 (Bean), the finding in response to section 3.01.040(a)(2) concludes the petition complies, because including that site “would facilitate needed development of adjacent existing urban land, thereby maximizing the use of adjacent land already with the UGB.” That is, there was no separate analysis of the efficiency issue. By serving land already in the UGB, the locational adjustment is presumed to result in maximum efficiency of land use. The same sort of finding was made in Contested Case 89-01 (Gravett).

In Contested Case 90-01 (Wagner), the findings in response to section 3.01.040(a)(2) focus on the text of the section. The title is treated as a matter addressed in the ultimate finding of fact and law, but the focus is on the relationship of the subject site in that case and development of land already in the UGB. There was no specific analysis of maximum efficiency.

In Contested Case 90-03 (Washington County), the findings in response to section 3.01.040(a)(2) included a statement that granting the petition “would be consistent with promoting the maximum efficiency of land

1
2 ***Environmental, energy, social & economic consequences.*** Any
3 *impact on regional transit corridor development must be positive and any*
4 *limitations imposed by the presence of hazard or resource lands must be*
5 *addressed.* Metro Code section 3.01.035(c)(3)
6

7 7. Council finds including the subject property in the UGB would not have any
8 impact on regional transit corridor development, because the nearest regional corridor is
9 distant from the site (at Boones Ferry Road and Highway 43). Council further finds that
10 the subject property is not subject to hazards and does not contain resource lands identified
11 by Clackamas County. The presence of a high water table can be addressed through
12 techniques commonly used in the region during final engineering of foundations.
13

14 ***Retention of agricultural land.*** *When a petitioner includes land with*
15 *Agricultural Class I-IV soils designated in the applicable comprehensive*
16 *plan for farm or forest use, the petition shall not be approved unless it is*
17 *factually demonstrated that:*
18

19 (A) *Retention of any agricultural land would preclude urbanization*
20 *of an adjacent area already inside the UGB, or*
21

22 (B) *Retention of the agricultural land would make the provision of*
23 *urban services to an adjacent area inside the UGB impracticable.*
24

25 Metro Code section 3.03.035(c)(4)
26

27 8. The subject property contains Class III and IV soils. However the Clackamas
County comprehensive plan designates the subject property and surrounding non-urban

uses by facilitating road improvements that increase the safety and maintain the speed of access to property already in the UGB..." There was no separate analysis of whether other property could achieve the same purpose at lesser cost, with greater improvements, etc.

In Contested Case 95-01 (Harvey), the finding in response to section 3.01.035(c)(2) recognizes that including the subject site in the UGB "facilitates development on adjacent existing urban land." There is not even a mention of maximizing efficiency.

In Contested Case 95-02 (Knox Ridge), the title of the criterion is not even mentioned. The analysis of compliance with section 3.01.035(c)(2) in that case focused on the ability of land in the UGB to be served by public facilities by means other than crossing the property that was the subject of that petition.

1 lands as Rural Residential Farm Forest-5. This is not considered an exclusive farm or
2 forest use designation. Therefore Council finds this criterion does not apply.

3
4 *Compatibility of proposed urban uses with nearby agricultural*
5 *activities. When a proposed adjustment would allow an urban use in*
6 *proximity to existing agricultural activities, the justification in terms of this*
7 *subsection must clearly outweigh the adverse impact of any incompatibility.*
8 Metro Code section 3.01.035(c)(5)

9
10 9. There are limited agricultural activities on nearby lands south of the subject
11 property on land zoned RRFF-5 and on land zoned EFU; but these activities are relatively
12 small or low in intensity and most of the land on which these activities are conducted are
13 separated from the subject property by distance, Stafford Road and a drainageway such that
14 development on the subject property will not have a significant adverse impact on existing
15 agricultural activities. Therefore Council finds the petition complies with this criterion.

16
17 *Superiority. [T]he proposed UGB must be superior to the UGB as*
18 *presently located based on a consideration of the factors in subsection (c) of*
19 *this section. Metro Code section 3.01.035(f)(2)*

20
21 10. Based on the evidence in the record, Council finds that the proposed UGB is
22 not superior to the existing UGB, because:

23
24 a. The proposed UGB would not align with any natural or man made
25 features of the landscape. The proposed boundary is an arbitrary line based on the artificial
26 boundaries of the tax lot.

27
28 b. The proposed UGB would not result in service and land use efficiencies
29 for the public commensurate with the size and nature of the locational adjustment.

30
31 c. The proposed UGB would reduce the area of Tier One properties in
32 Reserve Area 33. Therefore it would reduce the scale and nature of efficiencies that could
33 be realized by planning for the Tier One area as a unit. Moreover it would reduce some of
34 the incentive to undertake planning for the contiguous Tier One properties by removing
35 from the tier the one property whose owner is most anxious to develop.

1 d. It does not include all similarly situated land.

2
3 *Similarly situated land. The proposed UGB amendment must include*
4 *all similarly situated contiguous land which could also be appropriately*
5 *included within the UGB as an addition based on the factors above. Metro*
6 *Code section 3.01.035(f)(3)*
7

8 9. Council finds the evidence in the record shows insufficient difference between
9 adjacent Tier One properties in Reserve Area 33 and the subject site. That is, the subject
10 site and contiguous properties are similarly situated. Therefore the Council concludes the
11 petition does not include all similarly situated properties.
12

13 a. Contrary to the argument by petitioner, TL 607, 608, 609, 700 and 1100
14 are contiguous to the subject site, because they share a common legal boundary with the
15 subject site. They adjoin a portion of the site. The criterion should not be construed to
16 require contiguity at more than one point along the legal boundary of a site, because that
17 would gut the criterion.
18

19 b. The property proposed for addition in prior cases had some natural or
20 man-made physical feature that separated the subject property from adjoining non-urban
21 land. See, e.g., Contested Case 94-01 (*Starr/Richards*) (I-5 freeway provided a significant
22 physical separation between the subject property and adjoining non-urban land), Contested
23 Case 95-01 (*Harvey*) (existing railroad tracks) and Contested Case 87-4 (*Brennt*) (steep
24 slopes). In this case, the subject site is physically indistinguishable from adjoining non-
25 urban land in the Tier One portion of Reserve Area 33.
26

27 (i) Although there is a 10-foot wide driveway along the west edge
28 of lots TL 607, 608 and 609, this driveway is an insignificant obstacle. It is far less
29 substantial than the circumstances found to separate a local adjustment site from contiguous
30 properties in prior cases. This is unlike a highway, street or railroad track that results in a
31 significant physical barrier and an intervening ownership.
32

33 c. Council acknowledges that including the subject site in the UGB
34 provides a unique benefit to TL 900. That is, only if the subject property is included in the
35 UGB will TL 900 have access to urban services. To that extent, this fact distinguishes the
36 subject property from other properties in Tier One of Reserve Area 33. However this

1 distinction does not end the analysis. After all it is a common tenet of real estate law that
2 every property is unique. No doubt each property on the edge of the UGB has some
3 unique characteristic related to adjoining land in the UGB or urban service efficiencies. If
4 the Council construed the Code to allow any such unique circumstance to preclude a
5 finding that properties are similarly situated, it would gut the criterion. The subject site
6 may be similarly situated to other adjoining properties in the UGB notwithstanding it is
7 different from them as it relates to TL 900. In this case, Council finds the subject property
8 is so physically similar to contiguous properties in Tier One of Reserve Area 33, and it is
9 so similar in terms of sewer, water and road needs of contiguous properties in Tier One of
10 Reserve Area 33 that, on balance, TL 607, 608, 609, 700 and 1100 are similarly situated
11 contiguous properties that should be considered for inclusion in the UGB as one action.

12
13 d. Council rejects petitioner's argument that the contiguous properties in
14 Tier One of Reserve Area 33 should not be treated as similarly situated simply because
15 including other properties in the petition would cause it to exceed the 20-acre limit on
16 locational adjustments. That is precisely the reason for the "similarly situated" criterion,
17 i.e., to avoid repeated piecemeal expansions of individual properties.

18 19 III. CONCLUSIONS

20
21 Based on the foregoing findings, the Council adopts the following conclusions.

22
23 1. Public services and facilities, including water, sanitary sewer, storm drainage,
24 transportation, schools, and police and fire protection, can be provided to the subject
25 property in an orderly and economical fashion.

26
27 2. On balance, Council concludes the petition does not comply with MC section
28 3.01.035(c)(1), because the petitioner did not carry the burden of proof that including the
29 subject site in the UGB will result in a net improvement in the efficiency of public sanitary
30 sewers, storm drainage, open space or police and fire services.

31
32 3. The petitioner showed that the proposed addition will facilitate needed
33 development on adjacent existing urban land. Therefore Council concludes the petition
34 does comply with MC section 3.01.035(c)(2).

ATTACHMENT "A" TO THE FINAL ORDER
IN THE MATTER OF CONTESTED CASE 98-02 (Derby) :
EXHIBITS

Exhibit No. Subject matter

- 1.....Petition for locational adjustment dated March 10, 1998
- 2.....City of Lake Oswego Planning Memo dated February 4, 1998
- 3.....City of Lake Oswego Planning Commission Minutes dated February 9, 1998
- 4.....City of Lake Oswego City Council Minutes dated February 10, 1998
- 5.....City of Lake Oswego City Council Minutes dated February 17, 1998
- 6.....City of Lake Oswego Resolution 98-10
- 7.....Letter from Ron Bunch to Ray Valone dated February 19, 1998
- 8.....Service provider comments from Lake Oswego dated February 24, 1998
- 9.....Clackamas County Board of Commissioners Order No. 98-47
- 10.....Letter from Carol Krigger to Rick Givens dated March 25, 1998
- 11.....e-mail from John Lewis to Carol Krigger dated June 11, 1998
- 12.....Letter from Richard Givens to Carol Krigger dated June 11, 1998
- 13.....Metro Staff Report dated June 15, 1998 with attachments
- 14.....DLCD Notice of Proposed Amendment
- 15.....Letter from Jeffrey A. Evershed dated June 19, 1998
- 16.....Notice of Public Hearing
- 17.....Luscher Farm Master Plan dated July 15, 1997
- 18.....Letter from James Sitzman, DLCD, dated June 24, 1998
- 19.....Memo from Wendie Kellington dated June 24, 1998 with attachments
- 20.....Plat of Ridge Point subdivision
- 21.....Map of First Tier Urban Reserves dated March 6, 1997
- 22.....Map of UGB and Reserve Areas in vicinity of Lake Oswego
- 23.....Map of Urban Infill Opportunities in City of Lake Oswego
- 24.....Plat of Ridge Point subdivision dated June, 1985
- 25.....Photos of site and surrounding properties
- 26.....Map of "Derby Property" dated June 22, 1998
- 27.....Witness sign-up cards (9)



METRO

Metro Growth Mgmt.

AUG 11 1998

EXCEPTION FORM

Metro provides this form for parties to Urban Growth Boundary contested cases who wish to file an exception to the proposed order and findings of the hearings officer.

Standing to file an exception and participate in subsequent hearings is limited to parties to the case.

UGB Contested Case Number: 98-2

Date: August 10, 1998

Name: Dennis Derby, Double D Development

Address: 12670 SW 68th Parkway, Suite 100
Portland OR 97223

The basis of an exception must relate directly to the interpretation made by the hearings officer of the ways in which the petition satisfies the standards for approving a petition for a UGB amendment. Exceptions must rely on the evidence in the record for the case. Only issues raised at the evidentiary hearing will be addressed because failure to raise an issue constitutes a waiver to the raising of such issues at any subsequent administrative or legal appeal deliberations. (Metro Code 3.01.060(c))

Parties filing an exception with Metro must furnish a copy of their exception to all parties to the case and the hearings officer.

Please state your exception (attach additional sheets as necessary):

SEE ATTACHED

Growth Management Services Department
Metro
600 NE Grand Avenue
Portland, OR 97232-2736

Exception Explanation

INTRODUCTION

This exception is submitted on behalf of Dennis Derby, Double D Development (Derby). Applicant Derby appreciates Metro staff's and the hearings officer's efforts regarding his application for a locational adjustment. However, the hearings officer's decision is wrong in a number of respects and contains inconsistent applications of Metro Code standards in large measure based on information outside the record. It is respectfully submitted the hearings officer based his legal analysis exclusively or nearly so on matters not in the record apparently gathered by the hearings officer sometime between the date the record closed and the issuance of his recommendation. This is highly improper, unfair and diminishes the credibility of the process. Therefore, Derby requests the Metro council make a decision approving his application under the record below.

Essentially, if the Council finds (1) enabling development of an otherwise undevelopable residential parcel within the UGB included on the City of Lake Oswego's buildable lands inventory and on the City's Functional Plan Table 1, (2) enabling a dedicated public access to Cooks Butte Park, Stafford Road and Luscher Farm Park to be realized, are net benefits to the existing UGB, and (3) that a combination of gravity and pump sewer systems are not regional pariahs, then the Council will approve the locational adjustment. This is the case because only inclusion of the subject Derby parcel within the UGB will enable (1) and (2) above to occur. It is also true that gravity sewer service cannot be increased any more than through the proposed locational adjustment, then by forcing the subject property only be admitted into the UGB under a major or legislative amendment with other parcels. In fact, the reality is the converse. Sewer service from the Ridge Point subdivision through the Derby property is the only way to enable gravity service to the subject property.

Moreover, the hearings officer erroneously interpreted the law and facts and struck what he termed the "balance" by incorrectly applying applicable standards and applying a policy disfavoring locational adjustments on first tier land. The policy he applied is different than the Metro Council has legislatively adopted in directing the manner in which the UGB is to admit land. The hearings officer acknowledges that under at least on one criteria, even under his interpretation, "[a] different balance could be struck." If the approval standards are applied as written consistent with the record, including the recent Metro locational adjustment decisions that are in the record, the subject application must be approved. The recommendation of denial interprets Metro's Goal 14 implementing locational adjustment standards, especially standards concerning orderly and efficient development and protection of farm land, in a manner inconsistent with state law the locational adjustment regulations are designed to implement. ORS 197.829. The latter because, among other things, the effect of the hearings officer's interpretation is that steeper first tier exception lands that cannot be served 100% by gravity cannot be approved. The corollary is the good, flat Willamette farm land is where locational adjustments are preferred by Metro. This is an incorrect reading of the MC, Functional and Framework Plan, Charter, Ruggos and State law.

The hearings officer decision determining that (1) the proposal does not provide a net efficiency to the existing UGB, (2) the UGB after the adjustment will not be superior to the

existing UGB, and (3) there are similarly situated properties that are not included in the proposed locational adjustment, are based on incorrect, inconsistent, and improperly selective interpretation and application of law and are not based on substantial evidence in the record.

A. Hearings Officer Decision

The hearings officer denied the proposed locational adjustment based on Metro Code (MC) 3.01.035(c)(1), even though the proposal indisputably adds a net improvement in public facilities inside the existing UGB based on improvements in water, sewer, storm water, fire, police and transportation delivery systems. The hearings officer simply did not think the net improvement to the UGB was good enough because he was unimpressed with the sewer system delivery and the parcel (TL 900) within the UGB that would become developable. The hearing's officer's interpretation insists on far more from a locational adjustment (required to be on 20 acres of land or less) than is warranted by the plain language of the MC or precedents in the record and is unreasonable.

The hearings officer's determination is based on an erroneous finding that the proposal does not improve sewer efficiency even though the subject property makes it possible for an otherwise unserviceable parcel located within the UGB (TL 900), included in the City of Lake Oswego's buildable lands inventory and included in the Function Plan Table 1 calculations, to obtain sewer and other services and develop. The hearings officer's recommendation also denies the proposal based on findings that (1) making unserviceable land within the UGB serviceable so that it will be developed consistent with its plan and zoning designation, and (2) enabling a public road connection connecting the city's Cooks Butte Park with Stafford Road and Luscher Farm, is de minimus and not enough of a "net improvement" to the existing UGB; not enough to establish a "superior UGB" and not enough of a difference to separate the subject from first tier parcels in the area that provide none of these benefits to the existing UGB.

Regarding the latter, the hearings officer erroneously found because the subject property is in a 50 acre first tier area that is, in his view, physically similar, the portion of the area that is first tier must be developed as a whole with all the other first tier land. He made this determination even though the subject property is the only one of these first tier properties enabling Tax Lot 900 within the existing UGB to develop, and the only one that provides contemplated connectivity to a city park. Having concluded the first tier must be developed together, the hearings officer observes that the first tier is more than 20 acres and cannot qualify for a locational adjustment. Under this interpretation, the first tier will never be approved under a locational adjustment because the first tier will always exceed the 20 acre minimum standard applicable to locational adjustments. This is contrary to the MC. The lack of value the hearings officer's interpretation places in the transportation connectivity with Lake Oswego's Cooks Butte park is contrary to RTP and TPR as well as city and county requirements supporting and requiring connectivity.

What would constitute enough of a "net improvement," or a "superior UGB" or what could sufficiently distinguish the subject property that could be delivered by a locational adjustment of less than 20 acres, is impossible to understand under the hearings officer's decision.

B. Orientation of the Subject Property

The subject property is Tax Lot 610. Tax Lot 900 is located just to the west of the subject property and within the existing UGB. There is no dispute Tax Lot 900 cannot be served with water, sewer, storm water, fire, police or a road, in the absence of the urbanization of the subject property, TL 601. There is no dispute a dedicated, but undeveloped, public access to Cooks Butte Park running through TL 900 (within the UGB), cannot be developed or improved to allow connectivity with Cooks Butte Park, without inclusion of the subject property within the UGB. There is no dispute that only the inclusion of the subject property in the UGB will solve either of these absolute development impediments to and on Tax Lot 900 which is located within the existing UGB. It is these undisputed benefits provided only by the subject property to Tax Lot 900 located within the existing UGB, that were determined by the hearings officer here to be unmeritorious benefits to the existing UGB and not good enough to distinguish the subject property from other property in the area which provides no similar benefits to Tax Lot 900 or Cooks Butte Park. The hearings officer erroneously piggybacked the benefits provided to the existing UGB only by the Derby property, to the rest of the first tier property in the area and decided the benefits to the existing UGB provided by the Derby parcel would only be important if the entire first tier was added.

C. The Exception

1. Paragraphs A and B above are incorporated herein by this reference.

2. The legal analysis forming the basis for the recommendation of denial is impermissibly based on matters outside the record and raises new issues not raised during the public hearing. This is contrary to the MC. Specifically, the hearings officer states each of his recommended findings against the proposal are based on his analysis of previous individually selected location adjustment decisions, which were never placed into the Metro record, never discussed at the Metro hearing on the application, never raised by staff as a basis for denial and never seen by the applicant or his representatives. Such reliance on matters outside the record and the raising of new issues that the proposal must be consistent with, based upon unseen and unknown old Metro hearings officer decisions, is improper and fundamentally unfair and adds standards to be met which do not exist. See Metro Code (MC) 3.01.055(10) and (12); Nicholson v. Clatsop County, 148 Or App 528 (1997); United States Constitution Amendment 5 and 14; Oregon Constitution Article 1, sec 8 and other provisions in both requiring fairness in decisionmaking affecting protected rights of liberty and property, as well as protections of procedural and substantive due process. Derby's objection to this is a continuing objection.

If Metro seeks to supplement the record, Derby will object. The time to make the record under the Metro Code was during the hearings officer proceeding below. Derby spent considerable time and money investing in and complying with Metro's rules, based on the record established below. If Metro allows the extra-record items relied on by the hearings officer or considers the hearings officer's erroneous findings and conclusions based on these items, Derby request under protest and without waiver of rights to continue to object including in an appeal to LUBA, an opportunity to review all of the hearings officer and Metro decisions on locational adjustments and to submit supplemental analysis and argument concerning the same. However, based on what record below Derby is entitled to rely on as a matter of right, it is unknown

whether the extra-record materials are properly construed and applied as the hearings officer construed and applied them. It is also unknown whether there are other precedents that would be helpful to Derby that were not explained in the hearings officer decision. The hearings officer's analysis and conclusions that MC standards are not met based on matters outside the record may not be considered and are inherently unreliable.

Derby placed into the record and discussed below the most recent Metro location adjustment decision (West Linn Wilsonville School District decision, hereinafter West Linn/Wilsonville) and a recent staff report strongly recommending approval of a locational adjustment for second tier land (Tsugawa). Neither West Linn/Wilsonville or Tsugawa applied locational adjustment standards in the manner proposed in the Derby case. Both the West Linn/Wilsonville hearing officer decision and Tsugawa staff report applied the MC locational adjustment criteria in a manner fundamentally different from the manner in which the locational adjustment standards were applied by staff and the hearings officer to the Derby proposal at issue herein.

Specifically, net improvement was satisfied in the West Linn/Wilsonville case even though it was admittedly unclear whether there would be any increased transportation efficiencies to the existing UGB, due to the proposed locational adjustment. In Tsugawa, staff simply concluded that:

“The petitioners’ claim, that there would be a net improvement in efficiency of public facilities and services, has been sufficiently demonstrated. Parks, police and fire services can be provided without any negative impact. Water, transportation, sewer and storm drainage service cannot only be provided with no negative economic impact, but will result in an increase in efficiency for the land area currently inside the UGB.”

This was staff's position even though the “net” improvement was minor. The fact is a net improvement was good enough in that case. There is no appropriate justification that a net improvement is not good enough here and the Derby proposal should be held to a higher, unwritten standard.

Physical similarity of nearby properties was not the test in West Linn/Wilsonville or Tsugawa, but it was the test in Derby. Similarly, that benefits to the existing UGB were de minimus was not the focus or test in either case. Finally, the Tsugawa staff report opines that a geometrically correct UGB where the subject property can be served with facilities in an orderly and efficient manner was enough to show a “superior UGB.” The superior UGB standard was satisfied by the West Linn/Wilsonville decision based on a finding the proposed location was the best location for the proposed school based on school location criteria. The UGB is indisputably superior if the Derby adjustment is approved because TL 900 within the UGB may be developed consistent with its plan and zone designations and Cooks Butte Park will have needed connectivity to Stafford Road and Luscher Farm Park. Of the three (West Linn/Wilsonville, Tsugawa, and Derby) only Derby provides a real benefit to the UGB in that it provides the ability for an otherwise undevelopable parcel within the UGB to develop and for a park to connect to a major arterial as it is designed to do. The Metro locational regulations were written with a

proposal such as the Derby proposal in mind. It is difficult to understand why this locational adjustment would not be approved by Metro.

The hearings officer in Derby gave no explanation of why he chose to apply the MC differently to Derby than to the West Linn/Wilsonville locational adjustment decision or to why the MC should not be at least interpreted and applied consistently with the Tsugawa staff analysis, which involves a second tier property. This leaves the strong impression that locational adjustment applications are capable of a result oriented approach, rather than consistently applied regulations.

3. It is unknown how the hearings officer gathered the selected, extra-record hearing officer decisions he used to deny the Derby proposal. It appears such extra-record materials could not have been obtained without extra-record, post hearing and record closure contacts. Extra-record contacts with a hearings officer is impermissible. If the hearing officer engaged in ex parte contacts to deny the proposal as it appears, then such contacts would invalidate the conclusions in his decision which he recommends to the Metro Council be adopted.

Certainly, no such contacts were disclosed prior to the closure of the record and there was no opportunity to respond to the extra-record information relied upon by the hearings officer. The concern is not trifling. Unquestionably, an opportunity to respond would have lead to supplementation of the record with the extra-record documents the hearings officer reviewed and considered; Derby and others would have had an opportunity to review those materials and explain their relevance, if any, explain any distinguishing aspects and locate additional previous locational adjustments favorable to Derby and to put those on the table as well. Horizon Construction v. City of Newberg, 114 Or App 249; MC 3.01.055; MC generally; ORS 192.680 and 685; ORS 197; ORS 215.422(3), (5); ORS 227.180(3), (5); ORS 268; ORS 183.

4. The hearings officer's denial recommendation is based on selective interpretation and application of MC criteria to the Derby proposal in a manner dissimilar to recent previous and ignored interpretations and applications of identical criteria in West Linn/Wilsonville and Tsugawa. Specifically, the legal analysis in the hearings officer's recommendation is stated to be based on select previous Metro hearings officer decisions which the hearings officer found to be adverse to Derby, without consideration or application of very recent previous Metro analyses favorable to Derby which had been placed into the record. The manner in which the MC was applied suggests result oriented decisionmaking rather than appropriate and consistent application of standards as reflected in the record. Selective interpretation and application of Metro standards in this manner is impermissible. Holland v. City of Cannon Beach (CA A100752); MC; ORS 268; ORS 197; Metro Functional and Framework Plans; Metro Charter; Federal and Oregon Constitutional provisions regarding equal privileges and immunities and equal protection and procedural and substantive due process.

5. The hearings officer impermissibly added by interpretation standards not in effect at the time the application was submitted. There was no requirement on the date of submittal that locational adjustments of first tier land will not be approved because all first tier land must be master planned before admission into the boundary, regardless of the fact that the

individual parcel seeking admission into the boundary is a first tier parcel consisting of fewer than 20 acres. This interpretation is unreasonable and wrong.

Also, there is no requirement in the Metro Code on the date the application was submitted or any other time that the MC words “net improvement” in the existing UGB meant “a much greater than net improvement” in the existing UGB or that a “superior” UGB meant something more than a “superior” UGB. Moreover, the hearings officer’s creation of a de minimus standard impermissibly interprets away the word “net” and “superior” and is wrong. Loud v. City of Cottage Grove, 26 Or LUBA 152.

6. The hearings officer’s decision is inconsistent with the Functional Plan targets for local jurisdictions, including Table 1. The hearings officer determines it is not a net improvement to the existing Metro UGB or a superior UGB, to add the subject first tier parcel to the UGB when it is the only option to enable development of property within the UGB (TL 900), consistent with the city’s acknowledged buildable lands inventory and Metro’s Functional Plan, including Table 1. If the locational adjustment adds a net improvement to the UGB and is a superior UGB, the locational adjustment must be approved. It is not for the hearings officer to decide UGB policy about what net improvement is better than another.

Accordingly, the hearings officer decision is wrong and intrudes into the policy making function of the Metro Council by replacing legislatively adopted Metro policy with the hearings officer’s policy about which parcels within the UGB are important to develop and which are not. It also intrudes on the Metro Council’s policy enactments insisting the difficult to develop exception lands be developed, by apparently erroneously requiring locational adjustments only go forward only if gravity sewer is 100% available. The record is clear. There is no way to make gravity sewer 100% available to the subject or TL 900 property, regardless of what other first tier lands develop in the area.

7. The hearings officer erroneously concludes the net increase in efficiency to the existing UGB provided by the Derby parcel is marginal or negligible and somehow less of a net improvement by his characterization. His characterization is guided by no standards or criteria and is entirely arbitrary and subjective. The hearings officer concludes the unique benefits to the existing UGB provided by the Derby parcel are not enough to distinguish it from other first tier parcels in the area. This causes the hearings officer to erroneously conclude the UGB will not be superior after adjustment with the Derby parcel. The hearings officer’s determination is contrary to the MC, functional plan, statewide planning goals 10, 11 14 and DLCDC administrative rules concerning the importance of development of lands on a city’s buildable lands inventory and statutes regarding the same, that enabling an undevelopable parcel in the UGB to be developed as described above is “not enough by itself to conclude these services will be more efficient if the property is included in the UGB based on prior locational adjustment cases.” See ORS 197.829 and other authorities. Diminishing by interpretation the significance of land included on an acknowledged buildable lands inventory and on Metro’s Functional Plan Table 1 is wholly improper.

The determination that TL 900 is needed for urban development has already been legislatively adopted by the Metro Council and the City of Lake Oswego, through MPAC and the adoption of the Functional Plan Table 1. It is impermissible to say the critical property (subject

property) needed to enable TL 900 within the UGB to develop may not be admitted into the UGB because TL 900 is not really needed or sufficiently important in the hearings officer's view.

8. The hearings officer's decision in this regard is contrary to the Metro Charter, Metro's and MPAC's bylaws and rules of conduct as well as state and local requirements of coordination and cooperation. It is impermissible for a Metro hearings officer to determine a parcel within the existing UGB that MPAC has designated as one to develop as established on Functional Plan, Table 1 and the Urban Growth Report, is not valuable enough to be made developable and to deny a requested locational adjustment on that basis.

9. Because the hearings officer's decision is contrary to the city's buildable lands inventory, the Metro Functional Plan and Table 1, these documents must be amended to reflect the decision and the decision must be coordinated with MPAC and the City of Lake Oswego and Clackamas County and this has not occurred. This is important because the decision reshuffles local obligations and assumptions regarding fair share obligations to develop land within the existing UGB. When one jurisdiction cannot do what it is obligated to do, others must step forward and absorb more than bargained for. If the hearings officer's view is applied universally in the future, the integrity of the buildable lands inventories of all jurisdictions and Functional Plan, including performance and compliance aspects as well as Table 1, would be compromised. Therefore, the hearings officer's interpretation is unreasonable because, among other things, it is contrary to the buildable lands inventory and Functional Plan. ORS 174.010; 174.020

10. The determination that making TL 900 within the UGB urbanizable consistent with the buildable lands inventory, Functional Plan and Table 1, is de minimus and unimportant, marginal or negligible and, therefore not worthy of a locational adjustment in the first tier, is a de facto amendment of the city's buildable lands inventory, the Functional Plan and Table 1. Therefore, it requires an amendment to each of these before refusal to enable urbanization of such land within the UGB may be a permissible basis for denial of a local adjustment as here. See Loud v. City of Cottage Grove, 26 Or LUBA 152.

11. The hearings officer's decision is inconsistent with the Metro Urban Growth Report because the hearings officer does not agree that buildable land on a city's inventory, the Functional Plan and Table 1 is worthy of being made developable under the locational adjustment process. His disagreement on this policy issue led him to the erroneous conclusions it is unnecessary to approve the subject locational adjustment to allow (1) otherwise undevelopable TL 900 to develop and, (2) to enable the publicly dedicated road connection to Cooks Butte Park mapped over TL 900 to be developed consistent with open space and park standards as well as standards insisting on transportation connectivity, including the RTP, TPR as well as location transportation plans.

12. The hearings officer's interpretive requirement that all first tier lands be master planned before they may be admitted into the boundary is unreasonable and contrary to the MC. It is also internally inconsistent under the hearings officer's application of the MC because if land is first tier, that does not automatically transform physical characteristics of that land. If the first tier matters in evaluating the similarly situated standard, it matters because the planning designation of the property is different from land next door to it. However, the hearings

officer ignored such use or planning based distinctions when it helped a denial analysis. On the other hand, he focused exclusively on physical characteristics when they furthered denial based only on the physical characteristics of first tier land.

Physical characteristics are either the exclusive measure of similarity or they are not. If the MC is appropriately applied, physical characteristics are not the sole test. Unique benefits to land within the existing UGB and first tier status would both have relevance to an appropriately and correctly applied MC. But, in any case, whatever the hearings officer chooses to do, at a minimum he must be consistent with the significance he attaches to the role of physical characteristics.

Moreover, if Metro had wished to impose its standards in a manner that gave independent significance to the first tier such that they could not be admitted into the UGB under locational adjustments, then master planning requirements would have been applied to locational adjustments and not explicitly only applied to major and legislative amendments. The hearings officer misconstrued all of MC 3.01 as it relates to the first tier and locational adjustments. The hearings officer made it either impossible or unreasonably burdensome for first tier land to be admitted into the UGB. The effect of the hearings officer's interpretation of the MC is that only second tier lands will be admitted into the UGB under the locational adjustment process, contrary to the MC. There is no basis for the hearings officer's interpretation of how the first tier applies to this locational adjustment.

13. The hearings officer's conclusion that MC 3.01.035(c)(1) requires a Metro determination that sewer service to the subject site will be the most efficient means of service there is, reads words into the MC that are not there, is unreasonable and is inconsistent with previous interpretations of this standard. See West Linn/Wilsonville and Tsugawa. The standard asks whether there will be net improvement in services within the UGB. The hearings officer admits the proposal meets this standard, but erroneously concludes it does not provide enough of a net improvement in his view. However, he provides no clue of how an individual request for a locational adjustment could meet this standard if providing a net improvement is not good enough. This findings deficiency establishes a wholly incorrect interpretation and application of the MC.

The combination of gravity and pump systems that would serve the subject property and provide critically needed service to Tax Lot 900, is efficient within the meaning of MC 3.01.035(c)(1) as it is properly applied. The hearings officer conclusion that the resultant net efficiency in sanitary sewers, storm drainage, open space or police and fire services is similarly not enough under the proposed locational adjustment is also wrong and inexplicable. The subject property can be efficiently provided with all of these services regardless of whether the rest of the first tier is added. Certainly, there is a net efficiency because the existing UGB will then have all of these services available to an otherwise undevelopable parcel within the UGB and a city park will have an important access to provide needed fire, police and transportation service and connections to Cooks Butte Park and Stafford Road, something that otherwise simply does not exist except on planning documents. What more the subject or any property could do to show it provides a net efficiency to the existing UGB is unknowable. Under the hearings officer analysis no land would ever be brought into the UGB under a locational adjustment because a larger area can always be piggybacked onto the locational adjustment area.

Moreover, the hearings officer is mistaken the record does not establish that gravity service will be utilized to the greatest extent practicable, even if that is the standard. The record establishes gravity will be used everywhere on the subject and TL 900 property it is possible (on 6.2 acres of the subject property), certainly to the “greatest extent practicable.” However, where steeper grades make gravity impossible, a pump system will be used. A pump system in these circumstances is very common and efficient.

Under the hearings officer analysis, Metro would never be able to use any of the “land that is left” in the UGB because if it is hard to develop, it isn’t efficient to develop. Similarly, Metro would not develop its exception lands in or outside of the first tier if there was no option other than development using gravity sewer. Good farmland is a great candidate for gravity sewer. Under the hearings officer’s analysis, steeper exception areas like the subject cannot urbanize as a locational adjustment and this is erroneous. The hearings officer’s interpretation of this standard is contrary to the locational factors of Goal 14, among other things, which they implement. A contrary interpretation to implemented state regulation is not sustainable. ORS 197.829. Additional explanation in this regard is in the attached OTAK letter which is incorporated herein by this reference and is attached as Attachment A. The letter is based on submittals in the record and is designed to respond to the hearings officer’s determinations in the challenged decision.

14. The hearings officer made findings regarding the efficiency of pump and STEP systems, which statements appear to be based on information not contained in the record and which statements are erroneous. See hearings officer recommendation page 9 at paragraph 4(a). There is nothing to establish a more efficient or practicable means of providing sewer service to the subject property exists. The evidence in the record is uncontroverted that the combination of pump and gravity systems which would service the subject property and Tax Lot 900 located within the UGB are both possible and efficient and there are no other reasonable or practicable options. Additional explanation in this regard is in the attached OTAK letter which is incorporated herein by this reference and attached as Attachment A.

15. The hearings officer erred by determining land uses, including land being included within the city’s buildable lands inventory on nearby properties, are irrelevant to whether property is similarly situated.

16. The hearings officer erred by determining a roadway separating properties does not constitute a physical separation. Tsugawa.

17. The hearings officer’s determination about contiguous properties is wrong. The properties identified by the hearings officer are not all contiguous, but rather they are separated by a road, among other things. Neither West Linn/Wilsonville nor Tsugawa applied such a restrictive reading of the MC contiguity requirement.

18. The hearings officer’s determination that the properties he believes to be “contiguous” are similarly situated to the subject property applies an incorrect legal analysis of the MC and is wrong.

19. The hearings officer decision is inconsistent with the Functional Plan and state and local law regarding open spaces and parks and transportation connectivity. This because the subject parcel is the only parcel enabling transportation connectivity between the city's Cooks Butte Park, Stafford Road and Luscher Farm Park, consistent with a public dedication imposed by the city on Tax Lot 900 located within the UGB. The hearings officer erred in determining there is no evidence in the record to support that providing the means for the city to realize its planned access to Cook Park through Tax Lot 900 enhances city plans for public use of Cooks Park as a park. The following is undisputed evidence in the record: (1) Cooks Park is a designated city park; (2) public access to Cooks Park from the east and north is contemplated over a public dedication the city obtained over Tax Lot 900; and (3) that publicly dedicated access to Stafford Road cannot occur at all unless it occurs over the subject Derby property, among other things.

20. The hearings officer misconstrued DLCD's comments. DLCD urged Metro to add the subject land to the UGB. Nothing in DLCD's letter suggests DLCD believed Metro could ignore the net improvement to the UGB the subject property provides based on a finding it was an "unimportant net improvement." DLCD asked Metro to bring the subject property into the boundary. The proposed locational adjustment meets Metro's standards and DLCD says Metro ought to find a way to bring it into the UGB, not to stretch to find ways to exclude it. The hearings officer turns the point of the DLCD letter on its head by using it to deny the requested locational adjustment.

21. Metro is required to add 1/2 of the land needed for its UGB to have a 20 year supply by the end of this year. This requirement alone means Metro should interpret its locational adjustment criteria in a reasonable way, at least consistent with West Linn/Wilsonville and the Tsugawa Staff Report, to enable the addition of badly needed land that has the extra benefit of making undevelopable land in the UGB developable, among other things. While locational adjustments add a small amount of land to the UGB, the locational adjustment process is designed to enable Metro to accommodate already planned growth when the existing UGB stands in the way of that. If applied correctly, the 100 acres of land included each year under locational adjustments will make undevelopable parcels in the existing UGB developable, as here. Neither Tsugawa nor the West Linn/Wilsonville adjustments boast this. While it is unreasonable to ask locational adjustments, which must be on land less than 20 acres, to solve the entire regional need for an inventory of residentially developable land, they can help and Metro should enable adjustments like the proposed Derby adjustment to go forward based on a reasonable interpretation of Metro standards. The hearings officer's decision sets the region back. It determines making developable an otherwise undevelopable, but inventoried, parcel within the existing UGB is not important enough to justify a locational adjustment. This is wrong.

22. The hearings officer observed even though the subject Derby parcel provides unique benefits to the UGB and is itself uniquely situated to accomplish UGB benefits that cannot otherwise be realized, unique benefits cannot establish land is not similarly situated, or creates a net benefit to the UGB. The hearings officer goes on to assert every piece of real property is unique. The hearings officer appears to reason because real property is unique no real property is any different than any other. The syllogism is amusing:

Only similarly situated property may be included in the UGB.

All real property is unique and, therefore, alike.

Therefore, all real property is similarly situated.

This interpretation is absurd and wrong per se under the MC. The Metro Code asks whether particular property is similarly situated to other property and asks whether particular property will provide a net benefit to the UGB. Under the hearings officer's analysis no piece of real property could ever reach either threshold. This selective and strained interpretation of the MC is wrong and inconsistent with the precedents in the record.

23. The exceptions in the attached letter from Derby are incorporated herein by this reference. This letter is Attachment B.

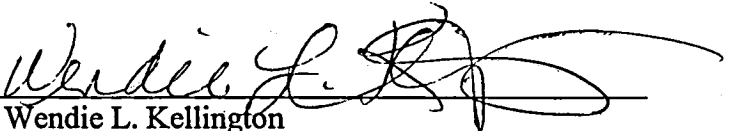
24. The hearings officer decision in most respects is identical to staff's recommendation of denial. In this regard, the attached written explanation of why the staff recommendation is erroneous is incorporated herein by this reference. This explanation is Attachment C.

D. Summary

It is respectfully submitted the hearings officer's decision should not be considered by the Metro Council because of its extensive reliance on unverifiable information outside the record. It is respectfully requested the Council approve the application for the Derby locational adjustment on the subject 14.84 acres of first tier exception land. Approval will enable the subject property and TL 900 located within the existing UGB to develop as the City wishes under its buildable lands inventory and Metro's Functional Plan and enables a desired park, fire and police transportation connection to Cooks Butte Park.

Respectfully submitted this 10th day of August, 1998.

SCHWABE, WILLIAMSON & WYATT, P.C.


Wendie L. Kellington
Of Attorneys for Applicant Derby

SCHWABE, WILLIAMSON & WYATT, P.C.

MEMORANDUM

TO: Larry Epstein, Metro Hearings Officer
FROM: Wendie L. Kellington
DATE: June 24, 1998
SUBJECT: First Tier Urban Reserve (Derby) locational adjustment
FILE NO.: 020488-113226

Background

The subject property, tax lot 610, is 14.84 acres in size and is planned and zoned RRFF-5. The subject property is located within the "First Tier" urban reserves located just outside of the City of Lake Oswego. The subject property adjoins the existing UGB at its north and west side.

On the subject property's southwest corner is tax lot 900. Tax lot 900 is a land locked lot zoned and planned for residential use that is located within the existing city limits of the City of Lake Oswego and within the existing UGB. Tax lot 900 has no access whatsoever and no feasible way to connect to sewer utilities. This is because the only way to provide either access or sewer service to tax lot 900 is to plow through existing newer homes in the Ridge Pointe subdivision in a manner that is neither planned nor feasible. In development of the subject property there are opportunities that do not otherwise exist to the UGB to create an access road connecting tax lot 900 to public streets and to stub sewer service to tax lot 900. The opportunity for a unique efficiency at the City of Lake Oswego's western boundary is a special benefit not applicable to or shared by the other first tier urban reserves in the Lake Oswego area that are cited in the staff report.¹

The absence of inclusion of the subject property within the UGB means the UGB at its boundary between tax lot 900 and the subject property has an unresolvable inefficiency that is inconsistent with local and regional plans. This wasteful inefficiency is inconsistent with regional plans because the Functional Plan, Table 1 includes assumptions about urbanization of the balance of the City of Lake Oswego. That assumption includes that the subject property will develop consistent with its residential planning and zoning designation. Without including the subject property within the UGB, the Functional Plan assumption that tax lot 900 will urbanize consistent with its planning and zoning designations is erroneous. This is not a de minimis issue. If one by one the region is not prepared to remedy inefficiencies in the existing boundary, then

¹ The applicant proposes as a condition of approval that at the time the subject property is developed according to its urban plan and zoning designation with a residential subdivision, that it must be developed in a manner that stubs sewer and a road to the shared property line between tax lot 900 and the subject tax lot 610.

Memo to: Larry Epstein, Metro Hearings Officer
June 24, 1998
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the Functional Plan simply cannot achieve its stated objectives. In addition, regional plans make it clear that urbanization of urban land is one of the region's foremost objectives. Making this objective work occurs through locational adjustments which, by design, exist to make the UGB better. Accordingly, this locational adjustment can play a small, but significant part, in the realization of that Regional objective at the portion of the UGB adjacent to the subject property.

The City of Lake Oswego supports this locational adjustment request. See App 1 (Lake Oswego approval documents.)² Clackamas County did not object to the proposal. Clackamas County's recommendation is in the record.

While the applicant disagrees with staff's thoughts about how some of the locational adjustment criteria have been applied here, the applicant sincerely appreciates the staff's time and energy in reviewing the application and its willingness to meet with the applicant to discuss the application. The areas of disagreement between the applicant and staff primarily have to do with the role of the first tier determination in a locational adjustment petition; the meaning of the "similarly situated" and "maximum efficiency" standards, and consistent application of these standards to individual petitions.

The applicant believes the MC as written and the previous applications of MC standards allow a focus on the unique benefits an individual locational adjustment petition, for 20 or fewer acres of land, provides to the area of the UGB to which it is adjacent. We do not believe the locational adjustment standards require aggregation of all nearby first tier lands regardless of whether those lands also furnish a special benefit to the existing UGB. We believe that this distinction, based on the MC 3.01.035(c) standards, is an adequate, appropriate difference to establish other such lands are not similarly situated to other first tier lands in the area.

If Metro wishes to bring in other first tier lands in a legislative amendment, the inclusion of the subject property in this locational adjustment, measured on its merits, will not prevent that from occurring. Master planning requirements apply to applications involving a request for more than 20 acres of land to be included in the boundary. After the proposed locational adjustment, there will still be nearly 30 acres of first tier land which can be master planned. All the applicant here is asking for is for a fair and consistent analysis of his locational adjustment application, based on the existing standards as they are written. His application is one of the first, under the first in time first in right rule added to the MC in March of this year, his application should be one of the first Metro approves.

² The minutes incorrectly state the recommendation to Metro that the proposal be approved was a unanimous decision of the City Council. Councilor Atherton voted against the recommendation and the recommendation was 6 ayes and 1 nay in favor of the approval recommendation.

Legal Context

The locational adjustment process is located in the Metro Code (MC) Chapter 3.01 entitled "Urban Growth Boundary and Urban Reserve Procedures." MC 3.01.005 provides as its purpose:

"This chapter is established to provide procedures to be used by Metro in making amendments to the Metro Urban Growth Boundary (UGB) * * *. This chapter is also established to be used for the establishment and management of Urban Reserves, pursuant to OAR 660-21-000 to 660-21-100 and Ruggo Objective 22.

MC 3.01.005(b) goes on to identify the objectives of the UGB as:

"Provide sufficient urban land for accommodating the forecast 20-year urban land need * * *.

"* * * * *

The MC continues by identifying to objectives of the urban reserves as follows:

"* * * * *

"Limit the areas which are eligible to apply for inclusion to the Urban Growth Boundary consistent with ORS 197.298, and to protect resource lands outside the urban reserve areas.

"* * * * *

In March 1997, Metro designated the subject property as a "First Tier" urban reserve. The applicable portions of the amended Metro Code define such First Tier properties as:

"those urban reserves to be first urbanized because they can be most cost-effectively provided with urban services by affected cities and service districts as so designated and mapped in a Metro Council ordinance." (Emphasis supplied.)

There is no dispute the subject property is a first tier urban reserve so mapped and designated by the Metro Council in a Metro ordinance.

Approval criteria explicitly related to "urban reserve" areas include Metro Code (MC) 3.01.012(c)(2) which requires UGB amendments occur on land designated as an urban reserve, unless a special land need is shown. This standard mirrors nearly identical state statutory requirement in ORS 197.298 which make it clear that urbanization must occur on land

designated as urban reserve, subject to exceptions not relevant here. Administrative rules contain similar requirements. Certainly, nothing relieves Metro of the obligation to comply with statutory standards. Kenagy v. Benton County, 115 Or App 131, 136 (1992). MC 3.01.012(d) requires the following:

“First tier urban reserves shall be included in the Metro Urban Growth Boundary prior to other reserves unless a special land need is identified which cannot be reasonably accommodated on first tier urban reserves.”

MC 3.01.035 makes clear locational adjustments are acknowledged to provide the framework for certain minor amendments to the boundary in the place of statewide planning Goals 2 and 14. However, nothing about locational adjustments obviates the compliance with state statutes, urban reserve administrative rules or the specially applicable Metro standards regarding UGB amendments, including the first tier standards. Metro may not ignore the importance of the first tier in this locational adjustment proceeding.

The locational adjustment standards (MC 3.01.035(c)) require the following determinations:

- (1) That the proposed locational adjustment results in the orderly and economic provision of public facilities and services and result in a net improvement in the efficiency of public facilities including sewer and roads, within the existing adjoining areas of the UGB.
- (2) Entitled maximum efficiency of land uses, this standard requires a proposed locational adjustment to “facilitate needed development on adjacent existing urban land.” The standard goes on to define needed development as follows: “for purposes of this section, [needed development] shall mean consistent with the local comprehensive plan * * *.” (Emphasis supplied.)
- (3) Entitled ESEE consequences, this standard requires any impact on regional transit corridor development must be positive and any limitations from natural hazards must be addressed.
- (4) Retention of agricultural land.
- (5) Compatibility with nearby agricultural activities.

Additional standards of MC 3.01.035(f) require the following additional determinations:

- (6) Based on the "consideration of the factors" above in MC 3.01.035(c), the proposed UGB must be superior to the UGB as presently located
- (7) "The proposed UGB amendment must include all [(1)] similarly situated, contiguous land [(2)] which could also be appropriately included within the UGB as an addition [(3)] based on the factors above."

Each of these standards are considered separately below.

1. The proposed locational adjustment results in the orderly and economic provision of public facilities and services and result in a net improvement in the efficiency of public facilities including sewer and roads, within the existing adjoining areas of the UGB.

The subject property is located on first tier urban reserve land. Accordingly, the Metro Council has already made a determination the subject property provides the orderly and economic provision of public facilities and services. That determination is not subject to collateral attack here. Similarly, in the context of an individual locational adjustment application, it should not be necessary to prove that point again; as the has already been legislatively made for and about the subject property. If the first tier was supposed to be irrelevant to locational adjustments, the ordinance would say so rather than making the first tier explicitly applicable to all UGB amendments.

The attached legislative history regarding the adoption of the first tier is instructive. Attachment 2 is a copy of a Memorandum from John Fregonese to the executive officer and the Chair of the Growth Management Committee. The memo is entitled "Proposed Modifications to Metro Code for Orderly Implementation of Urban Reserves." That memo explains it includes "bulleted concepts that the Office of General Counsel can use to draft the actual legislation. Included on page 2 is a "bulleted" concept "that Urban Reserves be divided into two phases, those that may be needed within five years and those that will not."

App 3 is a memorandum from John Fregonese to the Chair of MPAC dated January 16, 1997. Mr. Fregonese recommends that MPAC ask the Council to include a "short term need" parcel list for a portion of the urban reserves most likely to be urbanized first." He goes on to state:

"That MPAC should direct MTAC to continue with its assessment of the urban reserves as tentatively identified by the Metro Council, recommending the next set of sites which could be brought within the Metro [UGB]. (This might be about 4,000 acres.)"

Finally, App 4 are minutes of the February 27, 1997 Council meeting. Between January and February, the council had apparently asked MTAC to study and recommend sites that were

especially efficient to urbanize. In this regard, Councilor Susan McLain explained that the current definition of first tier urban reserves which she proposed to the Council, "helped give more definition to the first tier" and "It did exactly what Council wanted to do, distinguish a first tier of more serviceable and cost-effective land." (Emphasis supplied.)

The point is, the MC definition of first tier was intended to make certain determinations presuming orderly and efficient serviceability of first tier land. If an interpretation is adopted that the first tier does not presume orderly and efficient serviceability, then the first tier definition and system is truly meaningless. It is a well established principle of statutory and ordinance interpretation that in interpreting a law, meaning should be given to all of its parts.

The subject property is well capable of being served in an orderly and economical fashion according to the first tier designation. In addition, the City of Lake Oswego has made it clear it can easily provide public facilities and services in an economical and efficient manner. See App 1.

In addition, even regardless of the first tier designation, the inclusion of the subject property within the UGB facilitates the economic and orderly provision of public facilities because it provides the opportunity for a more efficient delivery of water, sewer and transportation to the urban area. It enables a underutilized, unamortized 12" water line to be used and paid for by the public it was designed to serve. It enables unserviceable urban land located within the UGB to be serviced with sewer and transportation connections to Meadowlark Road.

This is because the owner of the subject property has agreed to provide a road stub to the shared property line of tax lot 900 and 610 at the time the subject property is developed with the anticipated residential subdivision and Metro may condition the locational adjustment on such a stub. Further, the owner of the subject property has agreed to stub sewer service to the shared property line of tax lot 900 and tax lot 610 at the time the subject property is developed with the anticipated residential subdivision and Metro may condition this locational adjustment on such a stub. In the absence of approval of this locational adjustment, tax lot 900 is landlocked behind new, developed subdivision homes, and there is no possibility of road or sewer connection access to tax lot 900 from within the existing UGB. Addition of the subject property to the UGB enables such connections in the ordinary and planned course of the subject property's development. The looped water system is something the city plans to accomplish with the urbanization of this land and it will probably be facilitated through SDCs among other things. The urbanization of the subject property provides the required catalyst for the public to more efficiently use its investment in this water system.

This standard looks to whether there will be a net improvement to the area within the existing UGB. There is no dispute that there will be. This standard is met.

2. The proposed locational adjustment “facilitate[s] needed development on adjacent existing urban land.” Needed development is explicitly defined “for purposes of this section, [needed development] shall mean consistent with the local comprehensive plan * * *.”

The subject property is first tier land. The reason for the designation of first tier land was to conclusively establish land where there is no question about maximum efficiency of public facilities and services. This standard is not appropriately used nor is it designed to force locational adjustments in first tier areas to prove other efficiencies at areas of the boundary where the subject property is not even adjacent. See West Linn-Wilsonville School District App 6.

This standard focuses on the increases in efficiencies that the subject property provides on the parts of the boundary where it touches. As with the Tsugawa and West Linn-Wilsonville adjustments discussed below, the focus is properly on the particular benefits the subject property provides to the part of the boundary it touches. This standard is not properly and has not previously been applied to require the subject land establish that it create efficiencies to such large areas of the boundary that the subject property is no longer eligible for a locational adjustment. See App 5 and 6. The manner in which the standards were applied here actually presume the opposite from the legislatively determined meaning and function of the first tier. As applied here in the staff report, the first tier is presumed to be inefficient to urbanize in the absence of the entire first tier area. This interpretation is inconsistent with the MC 3.01.035 standards as well as inconsistent with the application of these standards to other similar applications. See App 5 and 6.

Adjacent urban land to the subject parcel, tax lot 900, is planned and zoned for residential use. Tax lot 900 has no access to public facilities and services to enable its development consistent with its comprehensive plan and zoning designation. It cannot develop therefore consistent with the regional plan that all residentially zoned land be developed.

In fact, it is undisputed the subject property is the only property adjacent to the UGB that can solve the inefficiency in the UGB at the location of tax lot 900. It is also undisputed that the property which can remedy this inefficiency in the existing UGB is the subject parcel as first tier land. There is no other first tier parcel or parcel within the boundary that can solve this inefficiency in the boundary.

Accordingly, there can be no dispute the inclusion of the subject property within the Metro UGB “facilitates needed development on adjacent urban land.” Staff’s conclusion to the contrary is based on the mistaken assumptions that:

“inclusion of the subject site alone does not necessarily provide maximum efficiency of land uses with regard to regional plans. Staff believes that maximum efficiency can be accomplished only by including similarly situated land inside the UGB.” (Emphasis supplied.) Staff report page 6.

Staff's mistakes are principally (1) in assigning a different definition to "maximum efficiency" in the context of locational adjustments than the MC explicitly provides, (2) proposing a different interpretation of this standard than has been applied in other applications, (3) apparently assuming the subject locational adjustment may only comply with this standard if it includes all other first tier land nearby regardless of whether such land is contiguous to the subject land; (5) that other first tier land to which staff refers is indeed similarly situated, and (6) that consistency with "regional plans" has a meaning that makes locational adjustments on single parcels of first tier impossible.

If staff may treat the subject application as it has the West Linn- Wilsonville application and if it may rely on the locational adjustment definition of what maximum efficiency is, then it is reasonably certain staff would feel differently about this application. Applying the MC standard, the proposed location adjustment meets it. In addition, as explained below, staff mistakenly interpreted the meaning of "similarly situated" without reference to its limiting and defining context.

- (3) Standard requiring any impact on regional transit corridor development must be positive and any limitations from natural hazards must be addressed.
- (4) Retention of agricultural land.
- (5) Compatibility with nearby agricultural activities.

Staff correctly determined these standards are satisfied by the proposal.

- (6) Based on the "consideration of the factors" above in MC 3.01.035(c), the proposed UGB must be superior to the UGB as presently located

Because the proposal satisfies each of the "factors" to be "considered" in 3.01.035(c) as listed and explained above and provides a special benefit not otherwise attainable in the urban area under factor 1, a consideration of the locational adjustment factors establishes that the proposed UGB will be superior to the UGB as presently located. This factor in particular requires an examination of that portion of the UGB to which the proposed adjustment is proximate. This is because that is the only area of the UGB which is measured to determine whether the resultant UGB is "superior."

- (7) "The proposed UGB amendment must include all [(1)] similarly situated, contiguous land [(2)] which could also be appropriately included within the UGB as an addition [(3)] based on the factors above."

For land to be considered in the similarly situated calculus, it must be "contiguous" land. "Contiguous" is not defined by the Metro code. However, because the proposal is for a locational adjustment, and because locational adjustments may not exceed 20 acres, a reasonable

interpretation of "contiguous" means adjacent land which together with the subject land totals no more than 20 acres in size. See Wet Linn Wilsonville Locational Adjustment Order. Moreover the Webster's Ninth New Collegiate Dictionary, p 283 defines "contiguous" as:

"1: being in actual contact: touching along a boundary or at a point
2: of angles: adjacent 3: next or near in time or sequence 4:
touching or connected throughout in an unbroken sequence."

The parcels suggested by staff as being contiguous to the subject parcel include parcels separated by private roads, one of which serves three different parcels (tax lots 607-609). This private road runs between the subject parcel on tax lots 607-609, effectively separating it from those parcels. See Tsugawa application App 5. The other is a private road running between tax lot 1100 and 1000 serving tax lot 700. There is no reason to treat parcels separated by private roads any differently from parcels separated by other roads, for purposes of the "contiguous" definition. This is especially true since the Tsugawa recommendation does not rely upon that difference. Properly, the subject property is not "contiguous to the other parcels suggested by the staff report. It is also relevant that all of the parcels considered in the staff report to be contiguous and similarly situated in the instant case are in separate ownerships. See West Linn-Wilsonville Locational Adjustment Order App 6.

Moreover, one of parcels identified by staff is planned for different purposes. This parcel, the parcel belonging to the city, we understand was acquired by park funds and is being held for park purposes. Finally, as with the West Linn Wilsonville School District Application and Tsugawa, the subject application serves particular and distinct planning objectives that are not shared by the other parcels identified in the staff report. Those distinctions include the special and unique benefit to tax lot 900.

However, even if these parcels are contiguous, they are not "similarly situated." The meaning of "similarly situated" is guided by the "factors" of MC 3.01.035(c) listed and explained above. There is no dispute that the subject property provides a unique and special benefit to property located within the existing UGB that the other parcels identified by staff do not share.

There is no dispute that, as the term is defined by the Metro Code, the subject property provides land to the UGB that will facilitate "needed development" within the UGB. The properties suggested by staff as similarly situated cause a net degradation in the boundary because they provide no similar benefit. It is indisputable those parcels have nothing to do with this special consideration under the factors above, especially (1) and (2).

Therefore, staff's analysis to deny the proposed adjustment is not based on consideration of the factors from MC 3.01.035(c). The term "similarly situated" refers to the particular impacts the proposed adjustment has on the boundary.

If the analysis supplied by staff in the only locational adjustment application that staff is recommending for approval, the subject property should also be approved. App 5 is the staff report and Metro Order supporting the Tsugawa adjustment proposal. It is difficult to understand

the recommendation of approval for one and denial for the subject property, this even though the Tsugawa application is not for first tier land.

On the similarly situated criteria in Tsugawa, staff looks at the particular benefits to the UGB at its shared location with the subject property. In Tsugawa, staff focuses on the geometrical configuration of the UGB as the reason for including the Tsugawa parcel and concludes adjacent and contiguous properties should not be included because adjacent property is separated by a roadway and the property adjacent to the roadway property is zoned for EFU; AF-5 and Rural Commercial. First, if separation of a roadway means parcels are not similarly situated, then the subject parcel should be similarly treated. Additionally, there is no contention that the adjacent property beyond the road is somehow different from the Tsugawa parcel. The major difference seems to be that the subject property creates a geometrically correct boundary.

The subject proposal is also geometrically correct. The UGB "doglegs" around the subject parcel³ However, inclusion of the subject property also provides a substantive correction to the boundary through enabling provision of urban services to urban land. There appears to be no Metro Code reason for treating the subject property less favorably than the Tsugawa proposal. Staff is mistaken in assigning disproportionate significance to the shape of the boundary rather than the substantive efficiency of services which is the focus of the MC 3.01.035(c) factors.

App 6 is the staff report and hearings officer decision regarding the West Linn-Wilsonville School District's request for approval of a locational adjustment for a 17 acre parcel for a school site. The 17-acre parcel did not even include all of the land owned by the school district. The 17-acre parcel did not include all of the property within the small URSA 30 urban reserve in which it is situated. There was no real dispute the other contiguous land to the subject parcel was really no different in character from the land subject to the locational adjustment request. However, there staff appropriately determined that to include the other land would foreclose the locational adjustment process for that land because it would exceed the 20 acre limitation. Staff and the Metro hearings officer properly determined there was no legitimate reason for forcing the school district to go through a legislative amendment process when as measured on its own merits, the proposal met Metro's locational adjustment standards.

On June 17, 1998, the court appeals issued its decision in Holland. v. City of Cannon Beach, (CA A100752). In Holland, the court dealt with the standard of review of conflicting or selective interpretations of local code provisions. The court made it clear that Clark deference was unwarranted in those situations. The court stated:

³ The applicant has been told anecdotally that the subject parcel's prior owner actually petitioned CRAG to be removed from the boundary because the previous owner had concerns about paying city taxes. The boundary reflects something unusual like this as the subject property is actually seemingly carved out of the boundary in a dogleg. geometrically, the boundary will certainly look better if the subject property is include.

“Under ORS 197.829(1)(a)-(c) and Clark and its judicial progeny, LUBA and this court are required to affirm a local governing body’s interpretation of local land use legislation unless the interpretation is so ‘clearly wrong’ as to be beyond reasonable acceptance. * * * We have recognized -- and it is somewhat self-evident -- that there can be tenable alternative interpretations that differ from one another by 180 degrees, either one of which would be equally affirmable under that standard. However, what we have not recognized, and what we implicitly questioned in Alexanderson and Friends of Bryant Woods Park, is that local governments may apply both interpretations interchangeably on different occasions and still obtain LUBA’s and the courts’ deferential review of either or both variations.

“* * * *” (Emphasis in original.)

The attached staff report and hearings officer determinations make it clear that it is unnecessary to include land that might otherwise be “similarly situated” if there is an “appropriate” planning reason for doing so. Staff and the hearings officer both determined that because the petition for a locational adjustment for the school site does not “address” master plan standards and was for less than 20 acres, that “this petition could not appropriately include additional land (greater than 20 acres) based on the above locational adjustment criteria.” In other words, an individual petition for a locational adjustment need not be lumped with other land that puts it outside of the 20 acre locational adjustment maximum. Moreover, it was relevant that not all of the contiguous” land was in the same ownership as the school district’s proposed site. The “similarly situated” threshold has never been so high as to require all nearby land, regardless of separate ownerships or the overarching purpose for including the particular land, within the boundary. There is no justification for applying such a rationale here.

CONCLUSION

A proposed locational adjustment should be measured on its merits. Refusing to approve locational adjustments because they are for first tier land is contrary to the MC 3.01 standards. First tier land should not be penalized because of its status. Refusing to recognize unique benefits a proposed locational adjustment property furnishes to the UGB fails to apply the standards of MC 3.01.035(c) to the similarly situated and maximum efficiency standards, contrary to the express requirements of the MC.

Moreover, the failure to approve a locational adjustment that has undisputed special benefits to fallow urban land is also contrary to MC 3.01 and the Functional Plan. Moreover, there is no justification for applying a different definition of “maximum efficiency” than the MC itself provides. There is no justification for applying a different “maximum efficiency” and “similarly situated” definition than has previously been applied in the Tsugawa and West Linn-Wilsonville School district adjustment applications. Finally, there is no justification for refusing to acknowledge substantive benefits to the UGB, but to only recognize geometric benefits.

Memo to: Larry Epstein, Metro Hearings Officer

June 24, 1998

Page 12

It is respectfully submitted that a reading of the MC giving weight to all parts, including the recent parts regarding the role and meaning of first tier urban reserves, is most appropriate and enables the region to further its policy of including as much urbanizable land as possible to meet clearly undisputed unmet short term needs for urbanizable land. See App 7.

DOUBLE D DEVELOPMENT INC.

August 6, 1998

Members of the Metro Council
600 NE Grand Avenue
Portland, OR 97232-2736

RE: Locational Adjustment Petition 98-2

Dear Metro Council,

As the applicant in the above case, I am writing to take exception to the Hearings Officer's report, recommendations and proposed findings. In an effort to be brief and concise, I will address these in the order they appear in the Summary of Applicable Standards and Responsive Findings (page 3 of the report).

Sanitary Sewer Service: In addressing MC 3.01.035(c)(1), the Hearings Officer finds that the petition *"would not result in a sufficient net improvement to warrant approval, particularly with regard to sanitary sewer service, relying in part on past Council decisions that have addressed this issue. However the hearing's officer's finding relies on a balancing of the facts and policy. A different balance could be struck."* On page 9 in the report he finds on this same issue that more of the subject site could be served by gravity flow sewer with the inclusion of Tax Lot 700.

The evidence submitted on this issue documented the following:

1. Approximately 6.2 acres of my site can be served by gravity and 3.5 acres by using single lot pumps in the homes (pumps would be required primarily for daylight basement facilities).
2. Tax Lot 700 can only be served by the existing pump station at the end of St. Claire Drive. This pump station would only serve the upper portion of Tax Lot 700. This station would have to be upgraded to serve Tax 700 and my site. Service to my site through Tax Lot 700 would require pumping (not gravity) to operate.
3. The design for development of my site would not be materially different nor would there be any additional units developed with sewer service through Tax Lot 700. The area of my property is 15.8 acres. Removing 1.8 acres for the improved access road

to Stafford Road, and 2 acres for the present home on the site (required to accommodate the site configuration, drainfield and well for this home), leaves 12 net acres. Assigning 20% of this (2.4 acres) as open space (required by the City of Lake Oswego) leaves 9.6 acres for lot development.

In conclusion, any sanitary sewer service provided by or through Tax Lot 700 would not be gravity service and would not produce a different development outcome on this site. In addition, the roughly 9.7 acres that can be served by the existing gravity service at my property's boundary is the entirety of the site's developable area. The site topo attached to this letter illustrates the above issues and the letter from Gregg Weston, Director of Engineering at OTAK, addresses the evidence he submitted at the hearing.

Proposed UGB Must be Superior to Existing UGB (MC 3.01.035(f)(2)): The hearing's officer finds that the petition does not meet this requirement "*particularly 3.01.035(3)(1)*", (the sanitary sewer issue above), and on page 14, it "*would not align with any natural or man made features of the landscape*", the "*proposed UGB would not result in service and land use efficiencies for the public commensurate with the size and nature of the locational adjustment*", that the proposed locational adjustment would reduce the area of Tier One properties in Reserve Area 33, and the proposal does not include all similarly situated land.

The evidence submitted on this issue documented the following:

1. Sanitary sewer service is covered above.
2. Similarly situated land issues are addressed below
3. The entire area of this site proposed for development would follow the natural grade from the present jog the UGB makes at the SW corner of the petition site to the site intersection with Tax Lot 700 on the NE corner (excluding the road and open space). This proposed line follows the natural topography, storm and sanitary sewer drainage service areas a lot closer than the present line.
4. The entirety of this site can develop and land (presently undevelopable) inside the UGB (Tax Lot 900) can only be developed if my subject property is urbanized.
5. Nothing about the proposed locational adjustment changes the ability of any other Tier One properties in Area 33, or any other area, to develop at a later time independent of this subject site. There is no loss in efficiency.

In conclusion, this proposed UGB would be superior because it follows natural grade and topography, provides for urban services to land presently inside the UGB, can be serviced efficiently by gravity sanitary and stormwater services and is unique among all other Tier One properties in Area 33 in these circumstances.

Similarly Situated Land, MC 3.01.035(f)(3). The hearing's officer finds that there is *"insufficient difference between adjacent Tier One properties in Reserve Area 33 and the subject site and contiguous properties are similarly situated"*. In addition he finds on page 16 that the other contiguous properties are similarly serviced by water, sewer, and road needs of contiguous properties in Tier One of Reserve Area 33.

The evidence submitted on this issue documented the following:

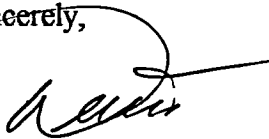
1. Only the subject site provides needed urban services to land presently inside the UGB.
2. Only the subject site has gravity flow sewer service at its boundary that serves the majority of the site and all of its developable area
3. Only the subject site provides improved direct road access to Stafford road for an area inside the UGB, future access to Cooks Butte Park in the City of Lake Oswego and needed public access to new park land (Luscher Farm Parcel) the City has purchased on Stafford road at the NW corner of the Rosemont intersection.

In conclusion, this site is unique in meeting all the code criteria and there not other similarly situated contiguous lands as defined by the criteria in the Metro Code.

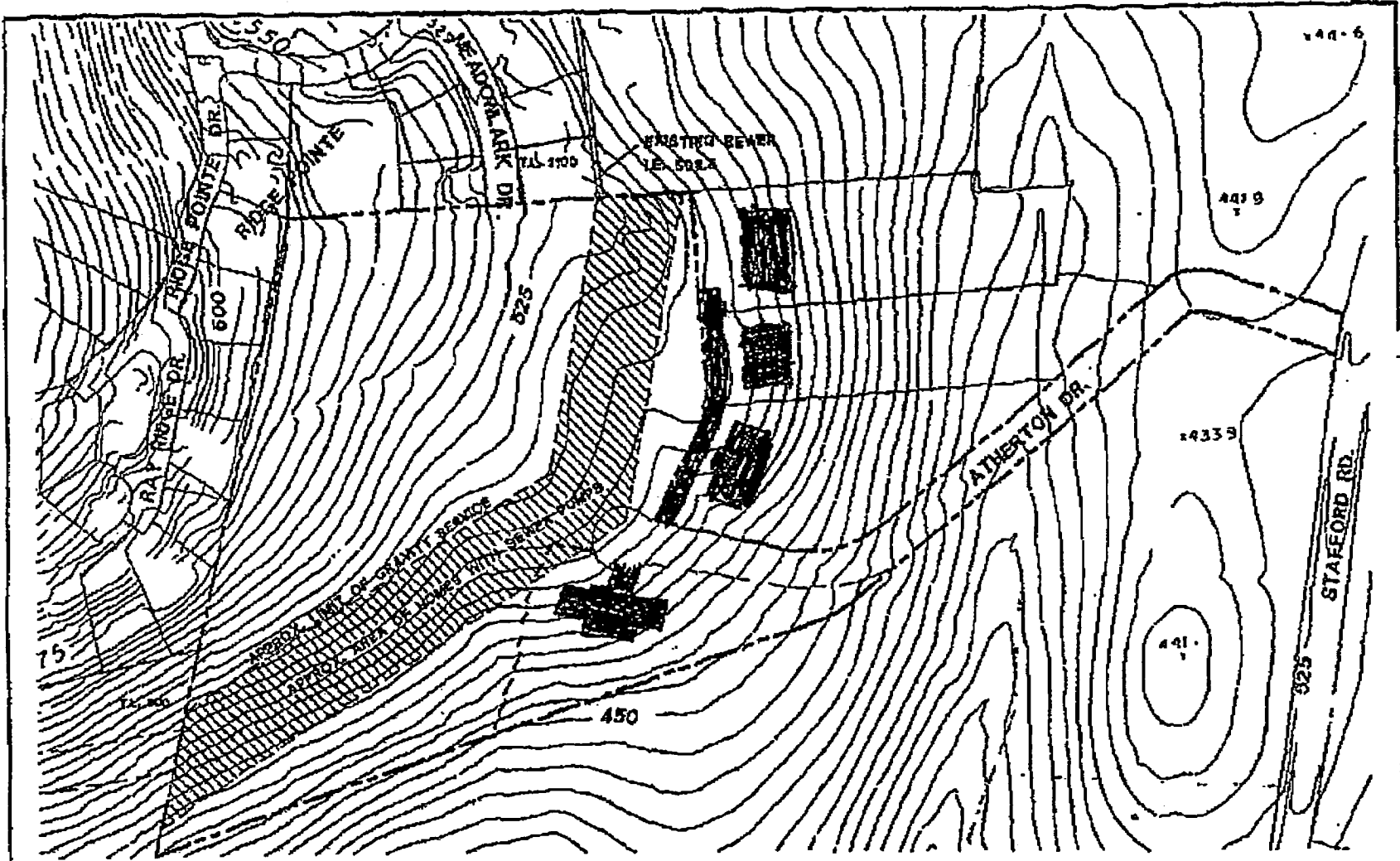
To summarize this letter, I would request that the Council review the evidence and the criteria objectively as written. There is no standard anywhere that says Tier One properties cannot ever urbanize unless they all urbanize as a group. Imposing such a standard by interpretation turns the whole first tier and locational adjustment rules on their head and is very unfair. Please accept this petition on its merits. It would not have been submitted if the pre-application process had not suggested that it met all of the Metro Code requirements and had the support of the City of Lake Oswego.

Thank you for your consideration.

Sincerely,

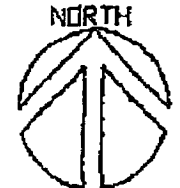


Dennis L. Derby



EXISTING HOME AND ADJOINING PROPERTIES

**SEWER SERVICE
CASE 98-2 DERBY**



SCALE: 1" = 200'



August 7, 1998

Metro Council
Metro
600 NE Grand Avenue
Portland, OR 97232-2736

Re: ***UGB Case 98-02:Derby — Otak Project No. L9522***

As requested by Mr. Dennis Derby, Otak has reviewed the Hearings Officer's Report and Recommendation, and the Findings, Conclusions and Final Order. Our review comments are restricted to the sanitary sewer extension to the Derby site and the 1.6 acre parcel identified as Tax Lot 900.

The above-mentioned documents refer to the efficiency of extending sanitary sewer service to the Derby site and Tax Lot 900. The documents indicate that most efficient extension of the sanitary sewer line is from St. Claire Drive through Tax Lot 700 rather than from the Ridge Point development directly adjacent to the Derby site. The position carried forward as part of the decision indicates that the extension of the sanitary sewer line from St. Claire Drive and the inclusion of Tax Lot 700 in the boundary adjustment, would provide gravity sewer service to a larger portion of the Derby site. The contention is that this would eliminate the need for individual sewer pumping systems on a portion of the Derby site and Tax Lot 900. As part of this efficiency argument, it is asserted that individual pump systems would require regular maintenance and consume energy that would not be consumed if the site were served by a gravity system. It must be noted that pumping would only be required for the daylight basement portions of any house constructed on the downhill side of the gravity sewer line. After careful review of the Hearing Officer's Report and the information in the record we conclude that the findings relative to sewer service to Derby site and Tax Lot 900 are incorrect.

Upon re-review of the area mapping and the existing sanitary sewer systems from the record, we continue to find that the existing sanitary sewer pump station at St. Claire Drive was not designed to carry flows from land situated outside the UGB. To upgrade this station to serve a larger area would most likely require a rebuild of not only the station, but also replacement of the pressure sewer main leading from the pump station to its outfall

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H:\PROJECT\9500\9522\DERBYMTR.LTR



into a gravity sewer system. Such an upgrade could increase the area served by the pump station, however, it would be very unlikely it could serve more than two-thirds of Tax Lot 700 with a gravity sewer line to the pump station due to the cross slope of Tax Lot 700. In addition, the required pump station upgrade and extension of a sewer line to the Derby site and Tax Lot 900 would result in all of these properties being served by a pump system rather than the gravity service available from the connection in the Ridge Point development. The additional cost of upgrading a temporary pump station, reconstruction of the pressure main, the associated street construction, and the resulting pumping of all sewer flows from the Derby site and Tax Lot 900 is much less efficient than the extension of a gravity line directly adjacent to the Derby site.

Thank you for your attention to this issue and your consideration of our comments.

Sincerely,

Otak, Incorporated

A handwritten signature in dark ink, appearing to read 'R. Weston', written in a cursive style.

R. Gregg Weston, P.E.
Director of Engineering

RGW:blb

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 1998, I served the foregoing

EXCEPTION on the following party at the following address:

Dennis Derby
Double D Development
12670 SW 68th Parkway, Suite 100
Portland OR 97223

Rick Givens
Planning Resources, Inc.
13395 S. Leland Road
Oregon City OR 97045

Rick Cook
18451 SW Stafford Road
Lake Oswego OR 97034

Jeffray Evershed
655 Cherry Circle
Lake Oswego OR 97034

David Adams
19621 SW Hazelhurst Lane
West Linn OR 97068

Greg Weston
OTAK, Inc.
17355 SW Boones Ferry Road
Lake Oswego OR 97035

Ron Bunch
Long Range Planning Manager
City of Lake Oswego
PO Box 369
Lake Oswego OR 97034

Doug McClain
Clackamas County
902 Abernethy Road
Oregon City OR 97045

Katie Sharp
5705 Broadway Street
West Linn OR 97068

Al Patchett
17901 Stafford Road
Lake Oswego OR 97034

Dell Smith
380 Rosemont Road
West Linn OR 97068

HEARINGS OFFICER:
Larry Epstein, P.C.
Attorneys at Law
233 SW Oak Street, Suite 200
Portland OR 97204

by mailing to them a true and correct copy thereof, certified by me as such, via first-class mail.


Wendie L. Kellington

CERTIFICATE OF FILING

I hereby certify that on the 10th day of August, 1998, I filed the original plus eight copies of the foregoing EXCEPTION with Metro via first-class mail at the following address:

Ray Valone
Growth Management Services Department
Metro
600 NE Grand Avenue
Portland OR 97232-2736


Wendie L. Kellington

TABLE OF APPENDICES

- App #1 Portion of Minutes of 2-10-98 special meeting of Lake Oswego City Council re: locational adjustment request; 2-12-98 memo from R. Bunch, Lake Oswego Long Range Planning Manager, to D. Schmitz, Lake Oswego City Manager, re: proposed UGB locational adjustments; Lake Oswego Resolution 98-10 dated 2-17-98 re: City's position of no opposition to Derby and Buford locational adjustment applications; two responses to Requests for Comment from Service Provider from Lake Oswego for Derby and Buford locational adjustment applications; and 2-19-98 letter from R. Bunch to R. Valone of Metro's Growth Management Services re: Lake Oswego's support of the Derby and Buford locational adjustment applications
- App #2 1-7-97 J. Fregonese memo to M. Burton and S. McLain re: "Proposed Modifications to Metro Code for Orderly Implementation of Urban Reserves"
- App #3 1-16-97 J. Fregonese memo to R. Drake, MPAC Chair, and MPAC members re: MPAC subcommittee recommendations about Urban Reserves
- App #4 Portion of Minutes of 2-27-97 Metro Council meeting re: meaning of First Tier Urban Reserves
- App #5 5-28-98 Metro staff report to Hearings Officer re: UGB locational adjustment, Tsugawa Case 98-4
- App #6 6-17-97 Metro Staff Report and 7-11-97 Hearings Officer Report and Recommendation re: West Linn - Wilsonville School District locational adjustment UGB Case 97-1: West Linn, and Ordinance No. 97-712, dated 10-2-97, adopting the Hearings Officer's Recommendation
- App #7 Metro Resolution 98-2640B, entitled "For the Purpose of Establishing Timelines for Meeting Metro's Obligation to Expand the Urban Growth Boundary," an accompanying Growth Management Committee Report dated 6-3-98, and an accompanying Staff Report dated 5-20-98
- App #8 5-12-98 E. Wilkerson memo to M. Burton re: UGB Amendment Recommendation
- App #9 Various photographs (to be submitted at hearing)
- App #10 Lake Oswego Transportation Master Plan (to be submitted at hearing)

CITY OF LAKE OSWEGO
February 10, 1998
CITY COUNCIL MINUTES

DRAFT

Mayor W. K. Klammer called the special City Council meeting to order at 6:00 p.m. February 10, 1998, in the City Council Chambers. Councilors Prosser, Atherton, Lowrey, Chizum, Mayor Klammer, and Rohde were present. Councilor Chrisman was absent. Staff present included Doug Schmitz, City Manager, Jeff Condit, City Attorney, Tom Coffee, Asst. City Manager, Kris Hitchcock, Information Services Director, Ron Bunch, Sr. Planner, and Mark Schoening, City Engineer.

III. STUDY SESSION

1. Possible Urban Growth Boundary Amendments

Ron Bunch, Senior Planner, reported the Planning Commission decision not to make a recommendation on the proposed Derby and Buford Urban Growth Boundary locational amendments. Instead, they found that public facilities and services were available to these properties, as well as to the city-owned Rassekh property. He said that the Commission did not make a recommendation because of a conflict between a 1988 Council policy and the 1994 Comprehensive Plan.

Mr. Bunch explained that the Council policy stated that the City would make no comments on the merits of minor amendments but merely ascertain the ability to provide services. The Plan policy stated that the Commission would be utilized to develop a formal recommendation to the Council for Urban Growth Boundary amendments that affected Lake Oswego and to provide an opportunity for public input. He said that the Commission has requested from the Council clarification of the process and role of the Commission in its review of Urban Growth Boundary amendments, even though the 1994 policy did supersede the 1988 policy.

Mr. Bunch pointed out that the staff report to the Commission contained a staff recommendation for approval of these first tier urban reserve lands based on the finding that services were available. He noted that, in the past, the City has supported amendments to the Urban Growth Boundary to include first tier lands. He stated that these lands were not included in the suit against Metro. He referenced an October 26, 1994 memo from Mayor Schlenker and Mayor Klammer's November 21, 1996, testimony to the Metro Council which supported urban reserve designation of the 50 acres, of which these parcels were part.

Mr. Bunch noted the correspondence from Patt Thomas regarding this matter, which would be forwarded to Metro at the appropriate time.

Mr. Bunch reviewed on the map the locations of the 15.7 acre Derby property, the 8 acre Buford property, the 10 acre Rassekh property, and the 50 acres of urban reserve supported by the City (including the Bethlehem Church property). He mentioned that this was an opportunity for the City to request a locational adjustment to include the Rassekh property in the Urban Growth Boundary.

Mr. Bunch reviewed the Metro process for locational adjustments, pointing out that only Metro was responsible for reviewing the application on its merits. He said that Council's only role was to make a recommendation to Metro by the March 15 deadline. Their three options were to take no stand, to recommend approval or to recommend denial. He said that staff would return on February 17 for a final Council decision. He mentioned that Clackamas County would also forward a recommendation to Metro, following Lake Oswego's action.

In response to Councilor Chizum's request, Mr. Bunch clarified the conflict between the 1988 Council policy and the 1994 Comprehensive Plan policy. He observed that in 1994, the Comprehensive Plan Review Committee had wanted to make sure that the Planning Commission had the opportunity to review these matters, rather than kicking the entire matter back to Metro. He said that the Commission declined to make a decision because they were confused about their role. Tom Coffee, Assistant City Manager, mentioned that the Commission also split on how they should respond to this issue. The finding on the availability of public services was the only common ground they could reach. He reiterated that it was the Council's decision on what recommendation to make to Metro.

Councilor Lowrey commented that the growth policy (passed in December by the Council) stated that the City would not go past its Urban Services Boundary. These properties were outside it. Mr. Bunch explained that it has been the City's position for the past five years that this area was an appropriate area for an amendment to the urban growth boundary. Jeff Condit, City Attorney, said that not including the City's position on this matter in the growth policy was an oversight.

Councilor Atherton asked what the good planning reasons were for including these properties in the Urban Services Boundary. Mr. Bunch reviewed the three issues associated with the staff recommendation. He said that urban services could be made available to all the sites. Over a long period of time, these sites have been considered for development. They were located immediately adjacent to the Urban Services Boundary and the city limits. The sites were of sufficiently small size to have minimal impacts on transportation and public services.

Councilor Atherton objected to including these properties because adding small parcels in a hodge-podge fashion conflicted with the City's intent to master plan large areas. Mr. Coffee explained that these properties were within the 50 acres recommended by the City as the limit for expansion into the Stafford area. He said that he thought that the location of the road and the ability to serve these properties with gravity sewer were good reasons for setting the limit here.

Mr. Coffee said that the ten or so years ago, the City asked developers to wait on making application regarding these properties until the City could evaluate the entire Stafford area. Having done so, the City concluded that these properties were acceptable sites for inclusion within the boundary. Mr. Coffee reiterated that inclusion of these properties within the boundary has been the City's position for four to five years.

Councilor Atherton contended that in planning for a large area, these properties would be wanted for open space because of the steep slopes, the adverse impacts on flooding and the upper watershed, and impacts on the viewshed. He stated that this was a locational adjustment on top of a previous locational adjustment. He said that the locational adjustment process was intended to perfect the boundaries, thus leaving a loophole for "leapfrogging" locational adjustments. He said that master planning for large areas was intended to look at the cumulative impacts, and to move away from adding on 20-acre sites at a time.

Councilor Prosser asked where the previous locational adjustment had been. Councilor Atherton indicated on the map where that was located.

Councilor Atherton questioned why this application came to Council so late, and if there had been adequate public notice. Mr. Bunch said that notice was provided for the public meeting held at the Planning Commission last night, per the Comprehensive Plan policy. Mr. Coffee stated that staff

DRAFT

scheduled these applications for the Commission and Council as soon as they could, following the application. Mr. Bunch said that Metro worked to its own timeline.

Mr. Coffee reiterated that the responsibility to hold the public hearing lay with the Metro Council because it had the final decision on whether or not to grant the locational adjustments. Mr. Bunch observed that this issue has come to the Commission, the Council, and the community on several occasions during the years that the City has worked with the Stafford Area Task Force on this matter. He reiterated that these 25 acres (split into two applications) were first tier urban reserves. He confirmed to Councilor Atherton that Metro allowed only 20 acre or less parcels to be considered for locational adjustments.

Councilor Atherton asked why they needed to request an adjustment for the Rassekh property, since they could develop it now if they chose to. Mr. Bunch said that having the Rassekh property within the urban growth boundary would facilitate its development for parks and recreation purposes, particularly in the City's ability to extend water to the property. Mr. Coffee pointed out that the adopted Luscher Farm Master Plan contemplated development of this property. Therefore, it was logical to consider it at this time.

Councilor Atherton reiterated his objection to dealing with small property owners on an individual basis as opposed to larger area planning. He said that in the Comprehensive Plan people had an expectation of where the Urban Services Boundary would be located. He said that it was well advertised that development outside the boundary would pay full costs of development. Mr. Coffee said that staff could not draw any conclusions at this time, as they were not faced with a specific proposal. Mr. Condit pointed out that issues of density and public infrastructure would be addressed during the Urban Services Boundary amendment and the zoning. He said that the point was that the sites could be served. In addition, the properties were in the one part of the Stafford area that the City has always supported as coming into the Urban Growth Boundary as part of planning for the whole area.

Councilor Atherton contended that the reason Lake Oswego agreed to include these lands was because it was acquiescing to Metro. He reiterated that this was not a good planning decision. Mr. Condit explained that staff had tried to determine what area of the Stafford Triangle Lake Oswego could serve without a huge negative impact on and cost for services. In addition, staff recognized that there was likely to be some sort of Metro Urban Growth Boundary expansion. Staff did not object this one area to bringing into the Urban Growth Boundary. The Council could change its position, but this was the position that the City has held for the last four years.

Councilor Atherton reiterated that this process in the region put jurisdictions in the position of making untenable planning decisions that did not make any sense. He said that he did not see why they should continue to "kowtow" to Metro simply because Mayors have sent letters to Metro. Mr. Coffee reiterated that this was where the City decided to draw the line in the sand. He recommended sticking with the line because they were dealing with politics. If the City changed its position on the line every time there was a new Council, then the City would lose credibility in its stance that no urbanization should occur in the Stafford Triangle beyond that line. Councilor Atherton concurred that politics was the major factor involved, and spoke to telling people that that was what was really going on.

Councilor Atherton argued that going forward with this amendment was a technical violation of the Comprehensive Plan. Mr. Coffee disagreed, stating that it has been clear for five years that the City always intended to include this area. Councilor Atherton reiterated that adding on little pieces at a time was not proper planning.

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Councilor Prosser asked what the implications were for the three options before the Council regarding this matter. Mr. Bunch conjectured that the Council's comments, negative or positive, would probably have some influence. He noted that the finding that services were available was now on the record for Metro's use in reviewing the applications against their standards. Mr. Condit concurred. He conjectured that if the Council opposed the adjustment, Metro would probably look elsewhere, as they had three times as many applications for locational adjustments as they granted.

Councilor Prosser pointed out that including the Rassekh property lead to discontinuous pieces of Tier 1 lands outside the boundary. He asked a series of questions about the potential development of the parcels comprising the 50 acres. Mr. Bunch conjectured that the three parcels under consideration would probably develop at relatively the same density as the remainder of the Derby property. Mr. Coffee said that, unless the City wished to purchase the land as open space, the City would apply the density through annexation and zoning. He stated that slope and viewshed issues would be considered during the subdivision process as usual. He said that he did not know what Bethlehem Church's plans were for any expansion, although it is limited by their septic system. The day care facility placed a strain on the septic system.

Councilor Rohde asked what the current zoning was. Mr. Bunch said it was Rural Residential Farm and Forest, 5 acres minimum (RRFF-5).

Councilor Rohde asked what reasons the property owners gave at the time for opting out of having their property included in the Urban Growth Boundary. Staff indicated that they did not know but cited anecdotal evidence that the property owners simply did not want their properties developed.

Councilor Rohde asked if any of the property qualified for farm tax deferral. Mr. Condit said that probably all of the land qualified but explained that with an RRFF-5 designation, the property owner had to prove that it deserved farm tax deferral. Mr. Coffee said that the only property he was aware of in farm deferral was the Lowenberg property. He said that staff would bring back information on the taxes and tax rates for these properties on February 17.

Councilor Rohde asked if RRFF lands were valued at a different rate. Mr. Condit explained that the chief driving force behind the value of RRFF lands was how developable they were. He mentioned that land values in this area have escalated rapidly since its designation as an urban reserve.

Councilor Rohde asked if these properties fell under Metro's guidelines for master planing. Mr. Coffee explained that, while Metro has stated that all urban reserves should be masterplanned before Urban Growth Boundary adjustments, they have provided for locational adjustments. This meant that there was probably an exception for locational adjustments in the Metro Code.

In response to Councilor Rohde's question on gravity sewer, Mr. Coffee explained gravity sewer systems relied on the pull of water downhill. He noted that was more cost effective than having to pump sewage. He confirmed that there were areas within the City that pumped sewage. Councilor Rohde commented that since gravity sewer was cited as a reason for not including certain areas, the Urban Growth Boundary was not logical if they already pumped sewage within the city. He questioned whether they could draw a line around Lake Oswego showing what they could serve through gravity sewers.

Mr. Coffee explained that gravity sewers were only one of the factors in the discussion on the urbanization of the Stafford Triangle. He conceded that there were areas east of Stafford Road that could

be served by gravity sewer. However, other factors included transportation issues and the cumulative effects of large areas being urbanized. He said that gravity sewers were a logical limiting factor before they got very steep slopes downhill and significant pumping costs. He said that there was a break at the Derby property where staff thought was a logical point to draw the line.

Mr. Coffee stated that in the city, pumping was only allowed if it was pre-existing or there was no other alternative. He explained that recently staff insisted that developers put in a gravity sewer in a location where pumping would actually have been cheaper in the short term. However pumping was not in the long-term interest of the city. He said that the city policy was not to allow pumping in the city unless there was no feasible alternative. He added that economics was not one of the criteria.

Councilor Rohde asked if they could require developments to provide connectivity to roadways. Mr. Coffee said yes, but mentioned that the issue was most often neighborhoods not wanting the connections.

Councilor Rohde commented that he did not see the City's actions as "kowtowing" to Metro but rather as trying to work cooperatively with Metro as a team player.

Mayor Klammer said that he saw nothing wrong with the two recommendations on page 1. He commented that Mayors wrote letters on these matters only after the majority of the Council approved the letter. He wondered why the error in the 1994 Comprehensive Plan went so long before it was caught.

Councilor Chizum asked why they did not bring in all of the 50 acres, since these three parcels comprised 35 acres of the 50. Mr. Coffee said that the property owners had to initiate the request. He explained that this was a Metro process that limited adjustments to 20 acre or less parcels. Anything larger required a legislative amendment to the Urban Growth Boundary, which the City could request but it was a bigger process.

Councilor Chizum commented that there could be no large development in this area (per Councilor Atherton's comments) because there was no land left, unless the entire Stafford Triangle developed. He emphasized that the City has said that it did not want the Triangle developed. He supported moving forward with the requests.

Councilor Atherton asked what good did it do the community to allow these parcels in. Councilor Chizum said that if one used that argument, then no house building should be allowed because it did nothing for "me". Councilor Atherton contended that this did nothing for the community, and brought no benefits except to "kowtow" to Metro.

The Council discussed whether to direct staff to make application for the Rassekh property. Councilor Rohde commented that he sort of agreed with Councilor Atherton but for different reasons. Councilor Atherton mentioned that the Rassekh property could be irrigated whether it was in or out of the boundary. Councilor Prosser said that he supported including the Rassekh property because having it inside the Urban Growth Boundary meant it would be developed using the city process instead of the county process.

The Council agreed by majority consensus to direct staff to proceed with the three properties (adding the Rassekh property). Councilor Atherton dissented.



DEPARTMENT OF PLANNING AND DEVELOPMENT

MEMORANDUM

TO: Doug Schmitz, City Manager

FROM: Ron Bunch, Long Range Planning Manager *Ron*

RE: Proposed Urban Growth Boundary Locational Amendments

DATE: February 12, 1998

INTRODUCTION AND ACTION REQUESTED

The following summarizes direction the City Council gave to staff at its February 10, 1998 work session regarding the above applications for Urban Growth Boundary Locational amendments. Attached is a resolution which reflects the consensus of the Council in this matter. It is recommended that the Council adopt the resolution and forward it to Metro.

BACKGROUND/DISCUSSION

The majority of the City Council at its February 9, 1998 work session reached a consensus to communicate to Metro that it does not oppose applications for locational urban growth boundary amendments filed by Dennis Derby of Double D Development and Gary M and Betty L. Buford. The Council also directed staff to prepare the necessary applications to Metro to make application to Metro for a UGB amendment to include approximately 10 acres of City owned land at the Northeast corner of Rosemont and Stafford Roads (Rassekh property). The purpose of the City's application is to facilitate the development of this property for a City park. In summary, the Council based its decision on the facts that:

1. These lands are among approximately fifty acres that Lake Oswego agreed to be designated as first tier urban reserves prior to the City joining the LUBA appeal regarding Metro's 1997 Urban Reserve Decision;
2. Urban Services can be made available to the properties and system wide capacity exists to accommodate development that would eventually result from these properties being included in the UGB. Furthermore, the use of existing and adjacent

urban services will not impose costs upon existing residents or have negative impacts on the City's quality of life;

3. The parcels are of such relatively small size compared to the proposed Stafford Urban Reserve that needed master planning and site planning will be accommodated at such time these lands are added to the City's Urban Services Boundary and actual development applications are submitted for City review.

Attached is a resolution proposed for adoption, which reflects the above Council direction.

pc: file ccrptugb.doc

RESOLUTION 98 - 10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAKE OSEWGO TO COMMUNICATE TO THE METRO COUNCIL THAT IT SUPPORTS APPLICATIONS BY DENNIS DERBY AND GARY M. AND BETTY L. BUFORD TO METRO TO MAKE LOCATIONAL AMENDMENTS TO THE URBAN GROWTH BOUNDARY (UGB), AND; DIRECT THE CITY MANAGER TO MAKE APPLICATION FOR A LOCATIONAL UGB AMENDMENT TO INCLUDE CITY OWNED PROPERTY TO FACILITATE ITS DEVELOPMENT AS A PUBLIC PARK

WHEREAS, Dennis Derby and Gary M. and Betty L. Buford have made application to Metro for locational UGB amendments to include properties within the First Tier Urban Reserve as shown by Exhibits "A" and B; and

WHEREAS, Metro has been given the authority by the State Legislature to manage the location of the Portland Metropolitan Urban Growth Boundary and procedures for such are established in Title III, Planning of the Metro Code, Chapter 3.01, and;

WHEREAS, the Metro Code establishes that the role of local Portland metropolitan area local governments is to advise Metro in its deliberations on UGB amendments, and;

WHEREAS, The City of Lake Oswego Planning Commission met to deliberate on these UGB amendments and also to recommend whether the City should propose a UGB amendment to include City owned property (Rassekh property), Exhibit "A" to facilitate its development as a public park, and found that public facilities and services are available to these sites, and;

WHEREAS, The Council reached consensus at its February 10, 1998 work session that:

1. These lands are among approximately fifty acres that Lake Oswego agreed to be designated as first tier urban reserves prior to the City joining the LUBA appeal regarding Metro's 1997 Urban Reserve Decision;
2. Urban Services can be made available to the properties and system wide capacity exists to accommodate development that would eventually result from these properties being included in the UGB. Furthermore, the use of existing and adjacent urban services will not impose costs upon existing residents or have negative impacts on the City's quality of life;
3. The parcels are of such relatively small size compared to the proposed Stafford Urban Reserve that needed master planning and site planning will be accommodated at such time these lands are added to the City's Urban Services Boundary and actual development applications are submitted for City review.

BE IT RESOLVED that the City Council supports locational amendment of the UGB to include lands identified in the Derby and Buford applications and, that the City Manager make application to Metro for a locational amendment to include the above referenced City owned land for the purpose of facilitating its development as a public park.

Considered and enacted at the regular meeting of the City Council of the City of lake Oswego on the 17th day of February, 1998.

AYES: Chrisman, Atherton, Lowrey, Chizum, Mayor Klammer,
Rohde, Prosser

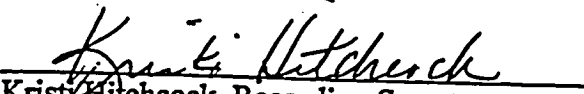
NOES: None

EXCUSED: None

ABSTAIN: None


W.K. Klammer, Mayor

ATTEST:

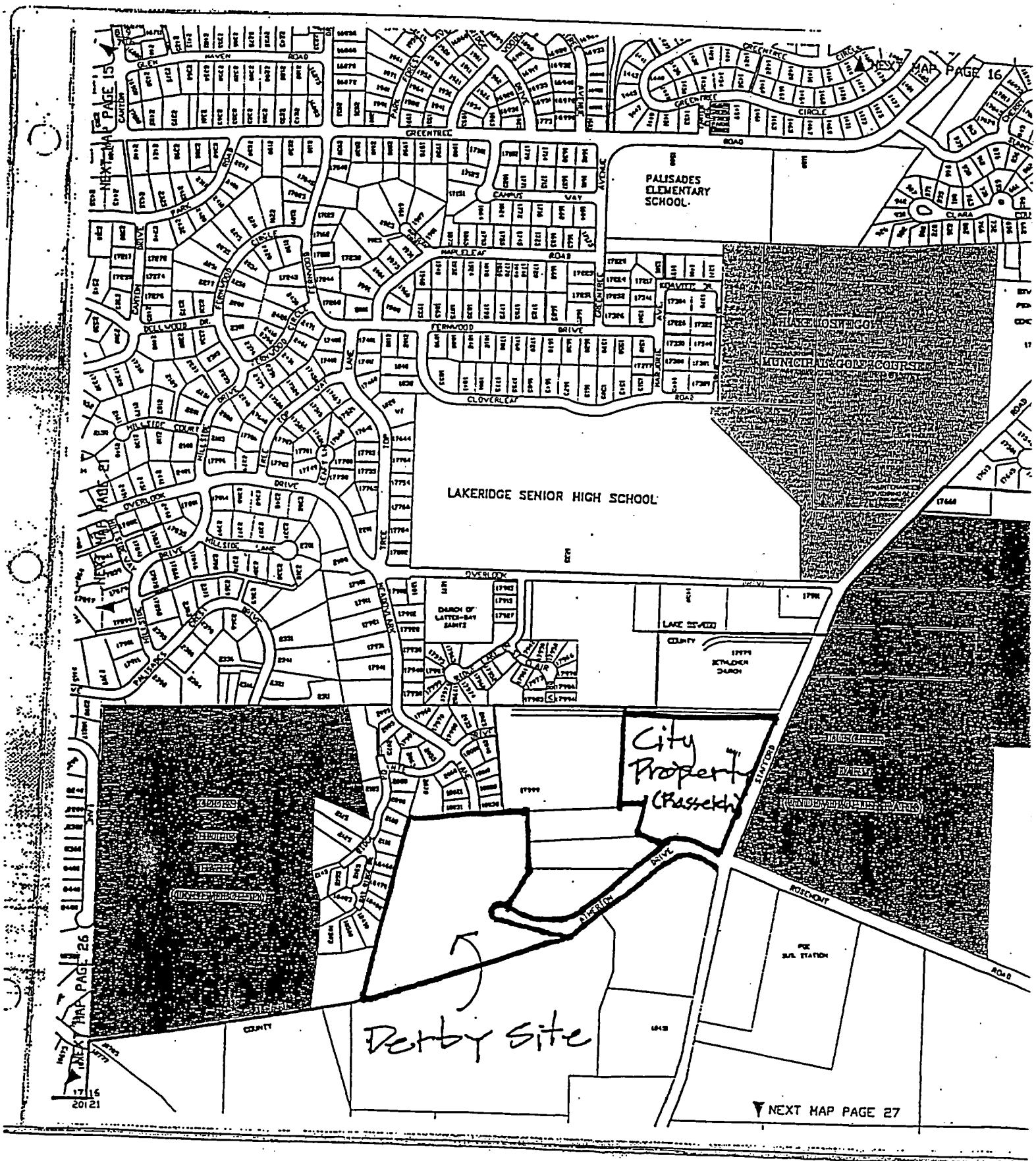

Kristi Hitchcock, Recording Secretary

APPROVED AS TO FORM:


Jeffrey G. Condit, City Attorney

R98ugba

Exhibit A



17 16
20121

NEXT MAP PAGE 27



T2SR1E
SECTION 20
ADDRESS ATLAS

5/1/96



GEOGRAPHIC
INFORMATION
SYSTEM

REQUEST FOR COMMENT FROM SERVICE PROVIDER

19 1998

KE OSWEGO
& Development

(Part I to be completed by petitioner and submitted to each service provider. Part II to be completed by the service provider and returned to Growth Management Section, Metro, 600 N.E. Grand Avenue, Portland, Oregon 97232.)

PART I

To: City of Lake Oswego
Name of Service Provider

From: Rennig Realty, Double D. Developments
Name of Petitioner

Attached is a copy of a petition for an amendment to the Metro Urban Growth Boundary (UGB). Please review this petition and submit your comments on it to Metro as soon as possible, but NO LATER THAN _____.

In general, land placed inside the UGB will develop to a residential density of at least four units a net acre or for urban commercial or industrial use, as determined by local zoning. Land outside the UGB cannot be served by sewer, and generally, cannot be developed at more than one unit to the net acre. In reviewing this petition, please consider: (1) whether its approval would make it more efficient (less expensive) or less efficient (more expensive) to serve other, adjacent areas for which service is planned or expected; and (2) whether there would be an orderly and economic way to extend your service to the area included in the petition if the petition were approved.

Thank you for your help. Please call the Growth Management Services Department at Metro, 797-1700, if you have any questions.

PART II

I have reviewed the attached petition for a locational adjustment to Metro's UGB. In reviewing the petition, I have reached the following conclusions (mark an "X" in the appropriate space and indicate your reasons):

1. Approval of the petition would make it ___ more efficient (less expensive on a per unit basis), ___ less efficient (more expensive on a per unit basis), or ___ would have no efficiency impact (same expense on a per unit basis) to serve other adjacent areas inside the UGB for which service is planned and expected, for the following reasons: _____

Please see Attached
Supplemental Pages

2. If the petition were approved, the area ___ could, or ___ could not be served by us in an orderly and economic fashion, for the following reasons: _____

Please See Attached Supplemental Pages

3. My position on the application is:

I Support Approval

I Oppose Approval

I am Neutral

I Support with Conditions

Comments and explanation (explain any conditions): _____

Please See Attached Supplemental Pages.

Signed _____

D. Schmitt

Date _____

24 Feb 98

Title _____

City Mgr.

**SUPPLEMENTAL PAGES
REQUEST FOR COMMENT FROM SERVICE PROVIDER**

Proposed Urban Growth Boundary Locational Amendment by Dennis Derby, Double D Development (Tax Lot 610, Map 2 1E 16C)

Part II

3. Approval of the petition will provide some potential for efficiency impacts to serve adjacent areas within the Urban Growth Boundary and First Tier Urban Reserve Lands for which service is planned or expected, for the following reasons:
- **Transportation:** The project would provide the opportunity for multi-modal transportation connectivity to adjacent local streets, parks and open spaces. This would have some impacts on transportation efficiencies in the local area. The exact nature of these improvements would be dependent on final development review approval by the City of Lake Oswego. Also, development of this project provides opportunities for the developer to participate in needed improvements to improve the safety and capacity of the local road system. As stated in the application, transportation connectivity has the opportunity to enhance fire and police protection in the local area.
 - **Sanitary Sewer:** Development of the subject property would require gravity sanitary sewer service per City standards. If gravity sanitary sewer is extended it is possible that there are lands within the Lake Oswego first tier urban reserve that would be able to make connection.
 - **Water Service:** As with sanitary sewer, water service can be made available to site. This would result in water service and fire protection being made available to other lands within the Urban Growth Boundary. Water service as proposed by the applicant would provide for a looped water line from a main located in Stafford Road.
 - **Other Public Facilities and Services (Parks and Recreation and Open Space, Surface Water Management, Power and Communication Services).** The development of this project would make it possible for the City of Lake Oswego to develop a 9.8-acre parcel it owns at the corner of Stafford and Resonant for parks and recreation purposes pursuant to a City adopted master plan. Surface water management would be accomplished pursuant to City Codes, which are in conformance with Tualatin River Basin Rules and its NPDES permit. Power and communication services are available from local providers.

4. If the petition were approved, the area could be served by the City of Lake Oswego in an orderly and economic fashion.

There are several legislative and quasi-judicial land use steps that must occur before the area can be developed including:

- a) Amendment of the City's Comprehensive Plan to include the parcel within the Urban Services Boundary and concurrent application of a plan designation;
- b) Annexation to the City of Lake Oswego and concurrent application of a zone designation, and;
- c) Development Review approval.

Because services are available to be extended to the site, the applicant will have the responsibility of assuring that they will be extended to the development in an orderly and economic fashion pursuant to the City's standards. As referenced above transportation system improvements caused by future development of this property will be required. Furthermore, because the proposed site is relatively small, there exists system-wide capacity to accommodate the project's public facility impacts. Furthermore, payment of System Development Charges will ensure that the City will be reimbursed for use of the existing and pay its commensurate share of system wide capital improvements.

3. The City of Lake Oswego's position on the application is that it supports approval.

Please refer to the above for comments and explanation.

pc: file Ugbsupma.doc

REQUEST FOR COMMENT FROM SERVICE PROVIDER

19 1998
LAKE OSWEGO
& Development

(Part I to be completed by petitioner and submitted to each service provider. Part II to be completed by the service provider and returned to Growth Management Section, Metro, 600 N.E. Grand Avenue, Portland, Oregon 97232.)

PART I

To: City of Lake Oswego
Name of Service Provider

From: Gary M. and Betty L. Buford.
Name of Petitioner

Attached is a copy of a petition for an amendment to the Metro Urban Growth Boundary (UGB). Please review this petition and submit your comments on it to Metro as soon as possible, but **NO LATER THAN** _____

In general, land placed inside the UGB will develop to a residential density of at least four units a net acre or for urban commercial or industrial use, as determined by local zoning. Land outside the UGB cannot be served by sewer, and generally, cannot be developed at more than one unit to the net acre. In reviewing this petition, please consider: (1) whether its approval would make it more efficient (less expensive) or less efficient (more expensive) to serve other, adjacent areas for which service is planned or expected; and (2) whether there would be an orderly and economic way to extend your service to the area included in the petition if the petition were approved.

Thank you for your help. Please call the Growth Management Services Department at Metro, 797-1700, if you have any questions.

PART II

I have reviewed the attached petition for a locational adjustment to Metro's UGB. In reviewing the petition, I have reached the following conclusions (mark an "X" in the appropriate space and indicate your reasons):

1. Approval of the petition would make it ___ more efficient (less expensive on a per unit basis), ___ less efficient (more expensive on a per unit basis), or ___ would have no efficiency impact (same expense on a per unit basis) to serve other adjacent areas inside the UGB for which service is planned and expected, for the following reasons: _____

Please see Attached Supplemental Pages.

2. If the petition were approved, the area ___ could, or ___ could not be served by us in an orderly and economic fashion, for the following reasons: _____

Please See Attached Supplemental Pages

3. My position on the application is:

I Support Approval

I Oppose Approval

I am Neutral

I Support with Conditions

Comments and explanation (explain any conditions): _____

Please See Attached Supplemental Pages

Signed DJ Schmitz

Date 24 Feb 98

Title City Mgr.

**SUPPLEMENTAL PAGES
REQUEST FOR COMMENT FROM SERVICE PROVIDER**

Proposed Urban Growth Boundary Locational Amendment by Gary M. and Betty L. Buford (Tax Lots 300, 500, 600, 800, 294, 601, 700 and 602, 2S 1E 20AB)

Part II

3. Approval of the petition will provide some potential for efficiency impacts to serve adjacent areas within the Urban Growth Boundary and First Tier Urban Reserve Lands for which service is planned or expected, for the following reasons:
- **Transportation:** The project would provide the opportunity for multi-modal transportation connectivity to adjacent local streets. This would have some impacts on transportation efficiencies in the local area. The exact nature of these improvements would be dependent on final development review approval by the City of Lake Oswego. Also, development of this project provides opportunities for the developer to participate in needed improvements to improve the safety and capacity of the local road system. As stated in the application, transportation connectivity has the opportunity to enhance fire and police protection in the local area.
 - **Sanitary Sewer:** Development of the subject property would require gravity sanitary sewer service per City standards. If gravity sanitary sewer were extended, the developed parcels, currently on septic tanks would have access to public sewer.
 - **Water Service:** As with sanitary sewer, water service can be made available to site. Water service to these parcels would result in a higher level of fire protection provided to these lands.
 - **Other Public Facilities and Services (Parks and Recreation and Open Space, Surface Water Management, Power and Communication Services).** Surface water management would be accomplished pursuant to City Codes, which are in conformance with Tualatin River Basin Rules and its NPDES permit. Power and communication services are available from local providers. Parks and Recreation services are available within the city of Lake Oswego

4. If the petition were approved, the area could be served by the City of Lake Oswego in an orderly and economic fashion.

There are several legislative and quasi-judicial land use steps that must occur before the area can be developed including:

- a) Amendment of the City's Comprehensive Plan to include the parcel within the Urban Services Boundary and concurrent application of a plan designation;
- b) Annexation to the City of Lake Oswego and concurrent application of a zone designation, and;
- c) Development Review approval.

Because services are available to be extended to the site, the applicant will have the responsibility of assuring that they will be extended to the development in an orderly and economic fashion pursuant to the City's standards. As referenced above transportation system improvements caused by future development of this property will be required. Furthermore, because the proposed site is relatively small, there exists system-wide capacity to accommodate the project's public facility impacts. Furthermore, payment of System Development Charges will ensure that the City will be reimbursed for use of the existing and pay its commensurate share of system wide capital improvements.

3. The City of Lake Oswego's position on the application is that it supports approval.

Please refer to the above for comments and explanation.

pc: file Ugbbsup2.doc



DEPARTMENT OF PLANNING AND DEVELOPMENT

February 19, 1998

Ray Valone
Growth Management Services
Metro Regional Center
600 NE Grand Avenue
Portland, OR 97232-2736

Dear Ray:

Re: Dennis Derby and Gary M. and Betty L. Buford Petitions for Urban Growth Boundary
Locational Adjustments

On February 17, 1998 the City Council approved Resolution 98-10 (Attached) which states that the City of Lake Oswego supports applications to Metro by Dennis Derby and Gary M. and Betty L. Buford for make locational amendments to the Urban Growth Boundary. Please also find attached the record of the City's deliberation of these matters at the Planning Commission and the City Council. Please note that at the Planning Commission two citizens spoke to the proposed amendments. The attached minutes reflect their comments.

Also appended are the "Request for Comment From the Service Provider" forms for each application. Please be advised that the City of Lake Oswego is proceeding to develop its application for a locational amendment to include property it owns within the UGB. As previously conveyed the City's intention is to develop this parcel for parks and recreation purposes.

Thank you for assistance.

Sincerely,

Ron Bunch
Long Range Planning Manager

pc: Tom Coffee, Assistant City Manager
Dennis Derby, Double D Development
Gary M. and Betty L. Buford
File lmetrorv.doc


Memorandum

To: Susan McLain, Chair, Growth Management Committee
Mike Burton, Executive Officer

From: John Fregonese, Director, Growth Management Services

Date: January 7, 1997

Re: Proposed Modifications to Metro Code for Orderly Implementation of Urban Reserves



In response to your request, I have completed a list of amendment topics to Metro Code Chapter 3.01, which contains procedures for the Urban Growth Boundary. As this was last amended before the 2040 Growth Concept, the Metro Charter, and the Urban Growth Management Functional Plan were adopted, there are several changes that are necessary. In addition, there is only the briefest mention of Urban Reserves in our Code, and both the procedures for adoption of Urban Reserves, and its relationship to subsequent amendments of the Urban Growth Boundary need to be detailed. Furthermore, several realities about annexation, urban service provision, and the effects of changes in property tax laws such as Measure 5 and Measure 47 and how they affect local governments' ability to provide services need to be addressed. What follows is bulleted concepts that the Office of General Counsel can use to draft the actual legislation.

The following are the highlights of the proposed changes:

- Section 3.01.005 (c): A purpose statement for Urban Reserves should be added to the Metro Code.
- Section 3.01.010 (z): This should establish the Urban Reserves as a 30 to 50 year total land supply, in accordance to recent changes in the Urban Reserve Rule adopted by LCDC.
- Section 3.01.012: This is a new section that should be added that governs the adoption and administration of Urban Reserves.

January 7, 1997

- Section 3.01.012 (b): This should:
 - establish the standards for the findings for the amount of land required,
 - require that the capacity estimate will be carried out the same way as capacity estimates for the Urban Growth Boundary,
 - establish that the minimum density used for calculating the capacity of Urban Reserves is 10 dwelling units per netdevelopable acre, and,
 - establish that Metro may phase the designation of Urban Reserves, and does not have to designate the entire land supply at once.
- Section 3.01.012 (d) would establish:
 - a requirement that the cities, counties, and special districts that will provide governance and services be identified within two years of adoption of Urban Reserves,
 - that the Urban Reserves be divided into two phases, those that may be needed within five years, and those that will not,
 - that conceptual plans be drawn up for the first phase Urban Reserves. This conceptual plan would include: land use, affordable housing, commercial and industrial land, street connectivity, natural area protection, public facilities plans and costs, and school land and capital needs.
- Section 3.01.012 (e), would require that the conceptual plan be completed prior to the legislative amendment of the urban growth boundary.
- Section 3.01.015, is the procedure for legislative amendment of the Urban Growth Boundary by the Metro Council. Several modifications need to be made in order to to implement the Urban Reserves and insure that local governments are able to provide services in a timely and coordinated fashion.
- Section 3.01.015 (c), should be added which would require that Metro concurrently adopt a functional plan affecting the area to be added that establishes standards for implementation of the conceptual plan, similar to the Urban Growth Management Functional Plan.


January 7, 1997

- Section 3.01.015 (d) should be added, which adds several findings to the legislative amendment process;
 - that the amendment is within the Urban Reserves;
 - that either the city to provide general governance is able to provide services, or a binding, enforceable agreement is reached between the city and the county for the eventual annexation of the area into a city;
 - that the area can be annexed to a city or, if necessary, to Metro or other special districts;
 - that public services can be provided, that their financing is feasible, and if a general subsidy is required of the area to be urbanized, that the responsible local government is willing to impose the increased taxes or rates,
 - and that school districts can serve that area.
- Section 3.01.015 (e) (2), should be added which would require referral of a legislative amendment to MPAC for their advice and consultation, in keeping with the spirit of the Charter.
- Section 3.01.015 (e) (5), should be added to insure that the resolution of intent procedure is used in order that the areas to be brought into the Urban Growth Boundary are annexed to the appropriate cities, special districts, or Metro prior to the actual modification of the boundary.



METRO

TO: Rob Drake, Chair, MPAC and members

FROM: John Fregonese, Director, Growth Management Services 

DATE: January 16, 1997

SUBJECT: MPAC Subcommittee recommendations about Urban Reserves

As you know, The Metro Council referred their Urban Reserve findings for MPAC review prior to Metro Council final action in February. A subcommittee of MPAC members met on Monday and Wednesday, January 13 and 15, to discuss the Urban Reserves. Those participating included Commissioner Hales, Commissioner Hammerstad, Councilor McLain, Mayor McRobert and Commissioner Peters. My compilation of the Subcommittee discussion includes the following:

1. That MPAC should recommend to the Metro Council that the Metro Code should be amended to: a) recognize Urban Reserves, b) calculate the amount of land for Urban Reserves, c) establish a "short term need" parcel list of for a portion of the Urban Reserves most likely to be urbanized first; d) require that "concept plans" be developed for any urban reserves prior to expansion of the Metro Urban Growth Boundary, and e) require that annexation or guarantee of annexation to a city or special districts shall occur prior to inclusion within the Metro Urban Growth Boundary.
2. That MPAC should recommend to the Metro Council that the minimum number of acres needed to supply Urban Reserve needs should be designated. (This should be calculated to provide an additional 10 years over and above the 20 year land need.)
3. That MPAC should recommend to the Metro Council that no legislative amendment of the Urban Growth Boundary should be occur before December, 1998. This would give time for local jurisdictions to demonstrate compliance with the Urban Growth Management Functional Plan and for market responses.
4. That MPAC should direct MTAC to continue with its assessment of the Urban Reserves as tentatively identified by the Metro Council, recommending the next set of sites which could be designated as the next phase for urbanization after First Priority lands are brought within the Metro Urban Growth Boundary. (This might be about 4,000 additional acres.)
5. That MPAC recommend to the Metro Council that no Urban Growth Boundary amendment (legislative or quasi-judicial) be approved until the Metro Code is revised as noted above.

Also attached are a Memo to Councilor Susan McLain from Larry Shaw, draft Metro Code language revisions and materials completed by Michael Butts based on MTAC and a special workshop conducted last week, and MTAC "first priority" lands suggestions.

Mayor Drake
January 16, 1997
Page 2

I look forward to discussion of these materials at your next meeting.

Thank you.

c: Jon Kvistad, Presiding Officer and Metro Councilors
Mike Burton, Executive Officer

Councilor McLain said that those three items were moved so public would have an opportunity to react to the information in front of Council today. The Amendments to Exhibit A which were on the second motion the Council took and put these on the table. She had series of amendments to address after hearing the public testimony, hearing from MPAC last night, and also reviewing this work ourselves. She started with Larry Shaw's memo, subject: Attached Exhibit A Amendments.

Motion: Councilor McLain moved Metro Code 3.01.010(e) be amended to read as follows: "First Tier Urban Reserves means those urban reserves to be first urbanized because they can be most cost-effectively provided with urban services by affected cities and service districts as so designated and mapped in a Metro Council ordinance."

Seconded: Councilor McCaig seconded the motion.

Discussion: Councilor McLain said that this helped give more definition to the first tier urban reserves and would fit in nicely with the sentence "designated and mapped in a Metro Council ordinance". It did exactly what Council wanted it to do, distinguish a first tier of more serviceable and cost-effective land.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

Motion: Councilor McLain moved to amend 3.01.012(c)(3) "urban reserve map" to say "urban reserve ordinance" which was a mistake that needed to be cleared up.

Seconded: Councilor Washington seconded.

Discussion: None.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

Motion: Councilor McLain moved to amend 3.01.012(c)(4) to become 3.01.012(d), as follows:

"(d) First Tier
First tier urban reserves shall be included in the Metro Urban Growth Boundary prior to other urban reserves unless a special land need is identified which cannot be reasonably accommodated on first tier urban reserves." Again technical.

Seconded: Councilor Washington seconded the motion.

Discussion: None.

Vote: The vote was 7 aye/ 0 nay/ 0 abstain. The motion passed unanimously.

Motion: Councilor McLain moved to amend 3.01.012(e)(2) to add the following:

"An urban services agreement consistent with ORS 195.065 shall be required as a condition of approval for any amendment under this



METRO

Date: May 28, 1998

**STAFF REPORT TO THE
HEARINGS OFFICER OF METRO**

SECTION I: APPLICATION SUMMARY

CASE: **FILENAME:** Tsugawa
Urban Growth Boundary Locational Adjustment Case 98-4

PETITIONERS: **REPRESENTATIVE:**
Jim and Amy Tsugawa Dan Chandler
13480 N.W. Burton Street O'Donnell Ramis Crew Corrigan & Bachrach
Portland, OR 97229 1727 N.W. Hoyt Street
Portland, OR 97209

PROPOSAL: A locational adjustment to the Urban Growth Boundary (UGB) for a 15-acre site, plus approximately 1.5 acres of road right-of-way.

LOCATION: The property is located at the southeast corner of the intersection of N.W. Cornelius Pass Road and West Union Road in Washington County. (Attachment A)

PLAN/ZONING DESIGNATION: Washington County AF-5 (Agriculture/Forest 5 acre).

APPLICABLE REVIEW CRITERIA: Metro Code 3.01.035.

SECTION II: STAFF RECOMMENDATION

Staff recommends that the Hearings Officer forward a recommendation to the Metro Council for approval of Case 98-4: Tsugawa.

SECTION III: BACKGROUND INFORMATION

Site Information: The 15-acre site is located within Washington County southeast of the intersection of N.W. Cornelius Pass Road and West Union Road. It consists of Tax Map/Lot 1N214D 1201. The site is bounded on the north by West Union Road, on the east and south by R-5 residential land, and on the

west by MP SID industrial land and by CI general commercial land. Zoned AF-5 (Agriculture/Forestry under Washington County's Comprehensive Plan, the site is currently being used as an orchard.

The Tsugawa property is included within Urban Reserve No. 64, which was designated by the Metro Council on March 6, 1997. Urban Reserves are land areas that have been identified as areas that will be available for inclusion into the UGB when a land need is identified. In December 1997, the Metro Council concluded that there was a land need present. The Council specified that the UGB is deficient in the amount of land needed to accommodate additional 32,370 households and 2,900 jobs. To date, no land has been added to the UGB.

Proposal Description: The petitioners propose to bring the site into the UGB and develop the site with residential uses. If the proposal is approved, the site will be zoned for residential use. The applicant intends for the property to be developed with 60 to 75 residential dwelling units. Washington County, or the City of Hillsboro, if the site is annexed, will make the final zoning determination. The City of Hillsboro has expressed a willingness to annex this property.

If the petition is approved, the strips of land between the centerlines of West Union and Cornelius Pass Roads and the subject site will be included in the UGB. This area of land is approximately 1.5 acres.

Local Government Statement: The Washington County Board of Commissioners voted 3-0 to recommend no comment on the petition.

SECTION IV: APPLICABLE REVIEW CRITERIA

The criteria for a locational adjustment to the UGB are contained in Metro Code 2.01.035. The criteria with citation, petitioner responses (*italics*) and staff analysis follow.

- 1. An addition of land to make the UGB coterminous with the nearest property lines may be approved without consideration of the other conditions in this subsection if the adjustment will add a total of two gross acres or less, the adjustment would not be clearly inconsistent with any of the factors in subsection (c) this section, and the adjustment includes all contiguous lots divided by the existing UGB. [3.01.035(f)(1)]**

The petitioners do not address this criterion.

Staff Response

The petition is for a single tax lot 15 acres in size. Accordingly, this section is not applicable.

- 2. For all other locations, the proposed UGB must be superior to the UGB as presently located based on a consideration of the factors in subsection (c) of this section. [3.01.035(f)(2)] (Factors described as criteria 5-9 following.)**

The petitioners, in their application, state that the adjustment will provide a consistent UGB that follows West Union Road, rather than veering around this parcel. The petitioner adds that the Tsugawa amendment will increase the efficiency of water and sewer service, stormwater and transportation systems.

Staff Response

Based on analysis of the petition and other information obtained by staff, staff concludes that approval of this application will result in a UGB that is superior to the UGB at its present location. It

is evident that the site can be efficiently served in an orderly and economic fashion with sewer, storm drainage, water, police, fire and parks. Likewise, it is apparent that there will be an increase in the net efficiency of the water, transportation, sewer and storm drainage systems.

It is questionable as to whether or not approval of this petition will facilitate needed development inside the current UGB. It is unlikely, however, that approval will have any adverse effects on development.

Based on the consideration of the factors taken as a whole, criterion 2 has been satisfied by the petitioner.

- 3. The proposed UGB amendment must include all similarly situated contiguous land that could also be appropriately included within the UGB as an addition based on the factors above. [3.01.035(f)(3)] (Factors described as criteria 5-9 following.)**

The petitioners state that the UGB takes a detour around this single parcel. They also state in their petition that there are no nearby properties with sewer and water stubbed to them, and therefore the neighboring properties are not similarly situated.

Staff Response

This criterion sets a condition for the amount of acreage that must be included in a petition for an UGB amendment. The basis for deciding on the amount of land is consideration of the factors in criteria 5-9 below. The intent of this criterion is twofold: first, to prevent carving out a piece of land 20 acres or less in order to qualify for a locational adjustment; and second, to minimize subsequent petitions for locational adjustments on adjacent land that should have been considered together with the original proposal. These reasons are intended to prevent using the locational adjustment process as a tool for expansion of the UGB without demonstrating regional land need and without undertaking necessary urban reserve plans.

Staff notes that this parcel is surrounded on three sides by the current UGB. The adjacent property on the fourth side is separated from the site by a roadway to the north. Land that is zoned for Exclusive Farm Use, AF-5, and RCOM (Rural Commercial) surround the neighboring property. Staff, therefore, agrees that contiguous land to the proposed site is not appropriate for inclusion with this proposal, based on criteria 5 through 9.

- 4. Locational adjustments shall not exceed 20 net acres. [3.01.035(b)]**

The petitioners propose to include Tax Lot 1201 of section 14D of Township 1 North, Range 2 West for a total of 15 acres, as shown on the submitted map.

Staff Response

Staff confirms the proposal comprises 15 acres and complies with the 20-acre restriction. This criterion is satisfied.

5. **Orderly and economic provision of public facilities and services.** A locational adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to water, sewerage, storm drainage, transportation, parks and open space in the adjoining areas within the UGB. Any area to be added must be capable of being served in an orderly and economical fashion. [3.01.035(c)(1)]

The petitioners state that all services would be provided to the site in an orderly and economic fashion. The following is a summary of the petitioners' and service providers' responses to criterion 5. The Tualatin Valley Water District, the Washington County Sheriff and the Washington County Fire District #2, support approval of the petition. The Unified Sewerage Agency takes no position on the petition. The City of Hillsboro supports approval of the petition. The City has also indicated that it will annex the site if the petition is granted, and provide any necessary public services to the site that will not be provided by public service districts.

- **Sanitary Sewer & Storm Drainage** – *The petitioners state that 70-75 percent of the property can be served by an existing 8" sewer line currently stubbed to the southeastern corner. Servicing the remainder of the property will involve either a lift station, or the extension of sewer lines along West Union or Comelius Pass Roads. The applicants assert that either of these options will enhance the provision of sewer to surrounding unserved properties. The petitioners also state that the existing sewer system was designed and stubbed to this parcel and, therefore, it would be an inefficient use of the resources already expended, if this property is not brought within the UGB. The Unified Sewerage Agency has stated that because any improvements needed will be paid for or constructed by the applicants, there would be no negative economic impact to the existing system. Storm Drainage will be conveyed via roadside ditches to a stream corridor that flows under West Union Road and down to Holcomb Lake. Development of this parcel will complete the development of the small basin south of N.W. West Union Road. Addressing the water quality and quantity issues will allow more efficient use of the existing facilities in N.W. West Union Road, including the roadway crossing for the stream corridor.*
- **Water** – *The Tualatin Valley Water District supports approval of the petition. The applicants state, reinforced by John M. Godsey, P.E., that development of this subject parcel will result in a connection of a line from N.W. Landing Drive to Comelius Pass Road and/or West Union Road. This connection will improve flow characteristics in the existing lines in the abutting subdivision by providing an improved network of circulation. Increasing the network and connecting it to the 18-inch water mains will improve water quality in the existing lines by allowing increased circulation, and it will improve the fire fighting capabilities of the network by adding parallel routes, which will increase flow potential.*
- **Fire Protection** – *Washington County Fire District #2 supports approval of the petition, and states that the area could be served in an orderly and economic fashion.*
- **Police Protection** – *Police services are provided by the Washington County Sheriff's Office Enhanced Sheriffs Patrol District. As the Sheriff would continue to serve this area, there will be no efficiency impact. The Sheriff's office supports approval of the petition and states that the subject property can be served in an orderly and economic fashion.*
- **Parks/Open Space** – *Tualatin Hills Park & Recreation District indicates that there would be no efficiency impact, as they already service the property. The District supports approval of the petition, but conditions their support by stating that they would not support annexation to the City of Hillsboro. The District states that the area could be served in an orderly and economic fashion.*

- **Transportation** – *The applicants state that development of the property will increase efficiency of the transportation system through connection of an existing subdivision with Cornelius Pass Road. According to the applicants, the County plans to realign Jacobsen Road to connect with Cornelius Pass Road adjacent to the subject property. The combination of this realignment with the development of the subject property and subsequent new street connections would allow greater access to Highway 26 for existing properties inside the UGB.*

The applicant references a Transportation Impact Analysis report from Kittleson & Associates. The analysis shows that development of this property will not affect a change to the current Level Of Service (LOS) for the intersection of Cornelius Pass and West Union Roads. This intersection currently operates at LOS F, which means that signal warrants for the four-way stop are currently met. The report concludes that with the improvements included in the Washington County Transportation Plan, the West Union/Cornelius Pass intersection will function at LOS A.

The petitioners also claim that the inclusion of the Tsugawa property can provide enhanced pedestrian and bicycle connectivity as required by the Transportation Planning Rule. Both West Union and Cornelius Pass Roads are currently void of sidewalks and shoulders only at the frontage of the Tsugawa property. Development of the subject property will facilitate the completion of sidewalks and shoulders on both roadways.

Washington County staff, upon review of the draft traffic analysis, declared that there was not sufficient information to determine whether or not the proposal is consistent with the requirements of the Transportation Planning Rule with respect to County roads. Specifically, the County was not able to determine if the Cornelius Pass and West Union intersection would be consistent with the planned LOS for these roads.

In addition to the site being capable of service in an orderly and economic fashion, the petitioners state that a net improvement in the efficiency of public facilities and services would be realized in the adjoining subdivision inside the current UGB.

Staff Response

Given the information contained in the petitioners' submittals and additional information obtained by staff, it appears that the site is capable of being served in an orderly and economic fashion with sewer, storm drainage, water, police, fire, parks and transportation. Services are available and adequate to serve the site according to statements signed by these service providers. The City of Hillsboro has also confirmed a desire to annex and provide any necessary public services to the subject property. Staff concludes that transportation services can be provided in an orderly and economic fashion.

The petitioners' claim, that there would be a net improvement in efficiency of public facilities and services, has been sufficiently demonstrated. Parks, police and fire services can be provided without any negative impact. Water, transportation, sewer and storm drainage service can not only be provided with no negative economic impact, but will result in an increase in efficiency for the land area currently inside the UGB.

The petitioners have demonstrated that the subject site is capable of being served with public facilities and services in an orderly and economic manner, and that the adjustment would result in a net improvement in their efficiency. Staff concludes that this criterion is satisfied.

6. **Maximum efficiency of land uses.** The amendment shall facilitate needed development on adjacent existing urban land. Needed development, for the purposes of this section, shall mean consistent with the local comprehensive plan and/or applicable regional plans. [3.01.035(c)(2)]

The petitioners state that development of the site will facilitate the development of urban land to the west, across Cornelius Pass Road. This will be accomplished by enhancing the transportation system and by providing storm water retention in the lower portion of the property, thus allowing development of the urban land to the west.

The applicants note that this parcel is within an Urban Reserve, an area planned for inclusion to the UGB by Metro. Inclusion of the property, therefore, is consistent with Metro's identified regional land need, the 2040 Growth Concept, Regional Urban Growth Goals and Objectives, and the Urban Growth Management Functional Plan.

Staff Response

While development of this property may not have any negative impacts on the development of land inside the existing UGB, it does not appear that the property if brought into the UGB will facilitate needed development. The case presented is that improving the roadway, water, sewer and storm drainage will assist with the neighboring development. Washington County staff, however, has stated that development is already occurring within the area in accordance with the Comprehensive Plan.

For the above reasons, staff concludes that this criterion is not satisfied.

7. **Environmental, energy, economic and social consequences.** Any impact on regional transit corridor development must be positive and any limitations imposed by the presence of hazard or resource lands must be addressed. [3.01.035(c)(3)]

The petitioners state that there are not any regional transit corridors near this site. In addition, there are no mapped hazard areas on the subject property, and it is not resource land.

Staff Response

Washington County maps show no flood plains or drainage hazard areas on the site.

The nearest regional transportation corridors, as defined by Metro's 2040 Growth Concept, are N.W. 185th Avenue to the east and N.W. Cornell Road to the south. Neither of these regional transit corridors are within one mile of the site, therefore, the proposed development would have no effect.

The petitioners' submittal adequately addresses the factors of criterion 7. For this reason, staff concludes that this criterion is satisfied.

8. **Retention of agricultural land.** When a petition includes land with Agricultural Class I-IV soils designated in the applicable comprehensive plan for farm or forest use, the petition shall not be approved unless it is factually demonstrated that:

(A) Retention of any agricultural land would preclude urbanization of an adjacent area already inside the UGB, or

(B) Retention of the agricultural land would make the provision of urban services to an adjacent area inside the UGB impracticable. [3.01.035(c)(4)]

The petitioners state that the property was part of a 1986 "Irrevocably Committed" exception granted by the State Department of Land Conservation and Development. Therefore, the property is not agricultural land; thus this standard does not apply.

Staff Response

Metro maps, which are based on Washington County soil classification data, show the site consisting of a mixture of Class I and II soils. However, the land is identified AF-5 which is not considered Farm or Forest in Washington County's Comprehensive Plan. Therefore, the factors of criterion 8 do not apply to this application.

- 9. Compatibility of proposed urban uses with nearby agricultural activities. When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of all factors of this subsection must clearly outweigh the adverse impact of any incompatibility. [3.01.35(c)(5)]**

The parcel is surrounded by the UGB on the east, south and west, and is bordered by West Union Road to the north. The land across is exception land. Petitioners claim that any other agricultural land in the vicinity is impacted by the existing residential subdivision to the east. The addition of this parcel to the UGB would not result in any further impact.

Staff Response

Staff notes that while the adjacent land is zoned AF-5, the land is currently being used for agricultural purposes. In addition, there is land to the northeast that is zoned EFU and is also in agricultural production. It appears, however, that inclusion of the subject site into the UGB will have no greater impact on nearby agricultural activities than is present today. This petition satisfies the criterion for this section.

SECTION V: SUMMARY AND RECOMMENDATION

This petition seeks to bring 15 acres of land into the UGB for the purpose of developing residential dwelling units. The petitioners have provided sufficient evidence to demonstrate that the proposed UGB is superior to the UGB as presently located. It is evident that the site can be efficiently served in an orderly and economic fashion with sewer, storm drainage, water, police, fire and parks. Likewise, it is apparent that there will be an increase in net efficiency to the water, transportation, sewer and storm drainage systems.

The land use efficiency issues contained in criterion 6 are the only ones not sufficiently addressed by the applicant. The petitioner has not shown that needed development on adjacent urban land would be facilitated by the approval of this application. However, there is no evidence to show that needed development would be hindered or adversely impacted by the subject site's development.




Staff is unable to uncover facts about why the existing UGB detours around the Tsugawa property. There are no obvious facts that lend reason to its current location. It would appear that the subject property was in fact similarly situated to the contiguous land that was incorporated when the boundary was adopted on December 21, 1978.

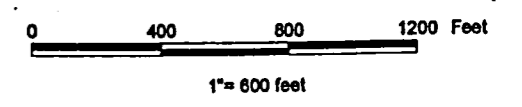
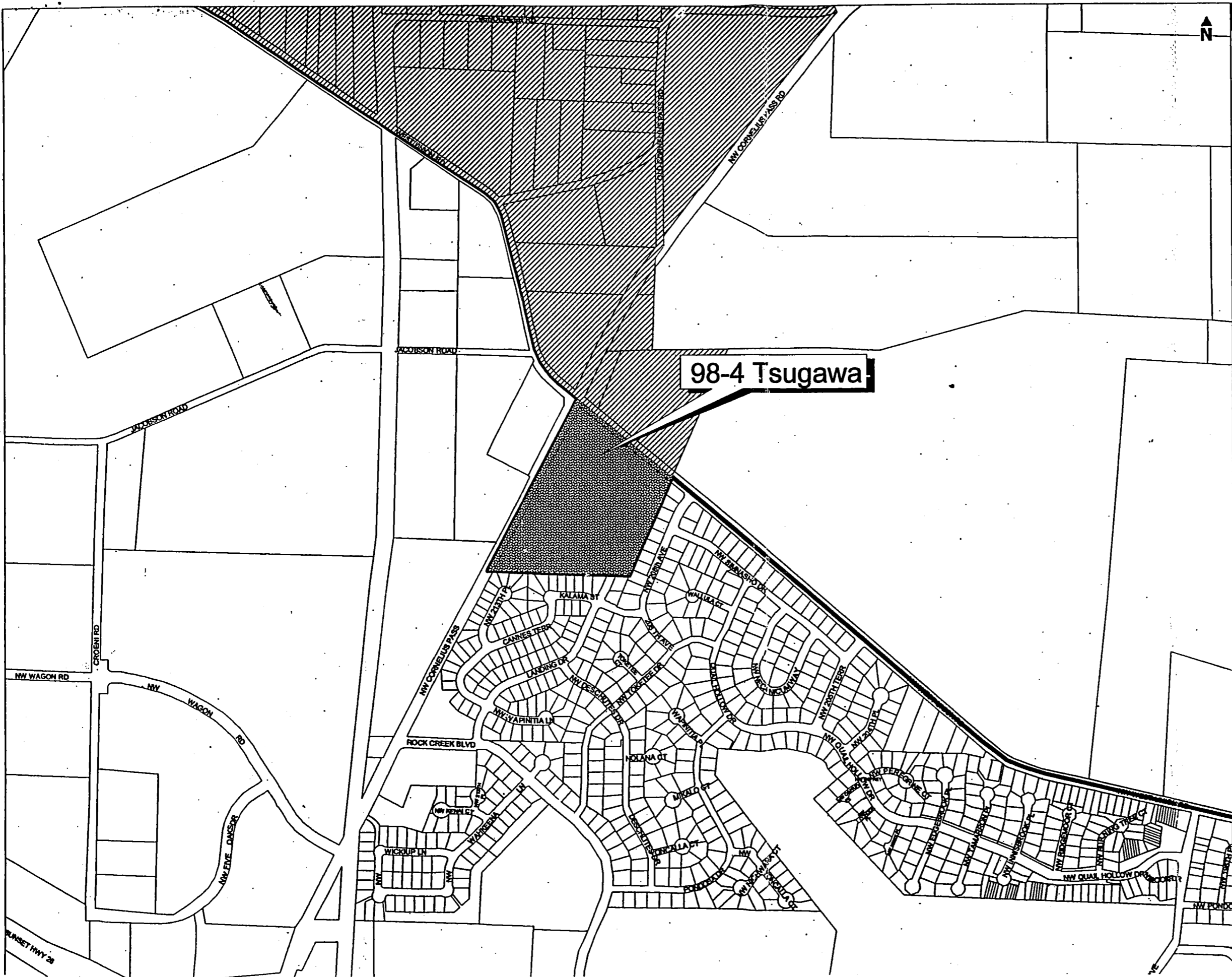
Based on the consideration of all the factors above, the petitioners have demonstrated that the proposed UGB adjustment is superior to the UGB as presently located. Staff recommends, therefore, that the Hearings Officer forward a recommendation to the Metro Council for approval of this petition.

GB/MAW/srb
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Attachment A Site Map

Proposed UGB Locational Adjustment
Case: 98-4 Tsugawa

-  Subject Property
-  Urban Reserve
-  Urban Growth Boundary



METRO

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SECTION III: BACKGROUND INFORMATION

Site Information: The 17.34-acre site is located west of the intersection of Rosemont Road and Day Road along the western boundary of West Linn. It is the eastern portion of a 55.18-acre parcel (Tax Lot 200 of Map No. 2 1E 26). Zoned for rural residential, the site contains a single family residence and several accessory buildings. Most of the site is currently used as pasture for cattle.

The subject site is within Urban Reserve Site 30, one of several land reserves the Metro Council designated for eventual inclusion into the urban growth boundary (UGB) (Attachment B). This reserve has not been designated a first tier site, meaning it will not be among the first ones for inclusion into the UGB.

Proposal Description: The petitioner proposes to adjust the UGB to include a 17.34-acre portion of land for the purpose of accommodating a new middle school for the West Linn-Wilsonville School District. In addition to this land, the district plans on using 4.5 acres of land located immediately northeast of the site and within the UGB for the school buildings. After searching for a middle school site entirely within the UGB which meets the district's standard of 17-22 acres, the city and school district concluded that there is a lack of suitable sites in the attendance area.

The subject property is part of the Tanner Basin Master Plan area. The plan was developed jointly by the City of West Linn and Clackamas County and is part of their comprehensive plans. It applies to the mostly unincorporated land located east of Day Road, all of which is within the existing UGB. In part, the plan addresses the need for schools to accommodate the projected residential growth in the area. The plan identifies a potential site for a middle school near the intersection of Rosemont and Day roads. The petitioner states that additional acreage is needed, however, to site the school. The middle school would serve the future needs of the Tanner Basin as well as the existing and projected development within the district's northern attendance area, which includes north West Linn and some unincorporated land outside the UGB west of Rosemont and Day roads.

Case History: The city originally submitted a petition for inclusion of the subject property on March 15, 1996. The application was deemed incomplete because it lacked a statement by the Clackamas County Board of Commissioners. The city could not obtain a statement before the Metro Code review deadline on April 5, 1996. The city requested and obtained a waiver of the deadline from the Metro Council on May 9, 1996. The new deadline was established at 30 days after the Metro Council designated the urban reserves. The urban reserves were designated on March 6, 1997. The city resubmitted the petition on March 31 and it was deemed complete on April 4, 1997.

Current Status: The school district plans to construct the two middle school buildings on 4.5 acres of land adjacent to the subject site within the UGB. An application for a conditional use permit to construct the school buildings and related facilities were submitted during May of 1997 to Clackamas County and West Linn simultaneously. The RRFF-5 zone allows schools as a conditional use. The proposed site plan shows the buildings will be located within the existing UGB, and the parking lot and playing fields located outside the UGB on the subject property. The target date for school opening has been set by the district for September 1998.

SECTION IV: APPLICABLE REVIEW CRITERIA

The criteria for a locational adjustment to the UGB are contained in Metro Code 3.01.35. The criteria, petitioner responses (italics), and staff analysis follow.

1. Locational adjustments shall not exceed 20 net acres. [3.01.35(b)]

The petition is for 17.34 acres which is less than the 20 acre maximum allowed.

2. Orderly and economic provision of public facilities and services. A locational adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to water, sewerage, storm drainage, transportation, parks and open space in the adjoining areas within the UGB. Any area to be added must be capable of being served in an orderly and economical fashion. [3.01.35(c)(1)]

The petitioner states that the adjustment is needed to provide a public service to the community. Although the school will make demands on public facilities and services, it will provide important educational needs and recreational opportunities. As discussed in the application on pages 19 - 20, the petitioner states that the public facilities and services have adequate capacity to serve the new school by the scheduled date of opening in September of 1998. The petitioner's submittal includes completed forms signed in March 1996 by the potential service providers for the school site. The following list is a summary of service provider information based on the forms and other submittal documents.

- *Water - The City of West Linn signed a statement that existing waterlines, including a 16" line in Rosemont Road and a 12" line in Day Road, are adequate to serve the proposed school. To support the school district's conditional use permit applications, the West Linn City Council adopted a motion on March 3, 1997, to approve a request by the school district to extend city water to the portion of the proposed school site outside the city limits but inside the UGB. In exchange, the district agrees to waive its right to remonstrate against annexation to the city, and prior to receiving occupancy permits, the district must annex the middle school property to the city. The approval of the extra-territorial extension of water is subject to approval by the Portland Metropolitan Area Local Government Boundary Commission.*
- *Sewerage - The city signed a statement that providing sewer to the site would allow the adjacent urban areas to be served more efficiently because it would allow the city to remove a temporary pump station from service and switch to a gravity system. The school's sanitary waste will be discharged into a new Parker Road line. Extension of the sewer line to the school will provide an important segment of the system that will enable the pump station to be retired and the gravity system introduced. This change will enhance the efficiency of the system.*
- *Storm drainage - The city signed a statement that the storm drain system requirements can be met completely on site. The water will be collected from the site and piped to the southwest to the existing drainage swale on the subject property. Before discharge, the water will be detained and treated pursuant to county requirements.*
- *Transportation - The city signed a statement that Rosemont and Day roads provide the necessary transportation needs of the proposed school. The petition states that Rosemont Road, Day Road,*

Parker Road and Santa Anita Drive are planned to be improved. The improvements include widening the first three roads and adding bike lanes, curbs and sidewalks to all four roads. Improvements would be funded and constructed in conjunction with approved development along these roadways. A transportation impact study, conducted by DKS Associates (February 24, 1997), concludes that the school project would not significantly affect operating conditions on the surrounding roads and does not require any capacity improvements. Transit service is not available in the site area, however, the city is negotiating to have bus service for the Tanner Basin area in the future.

- *Parks and Open Space - The school would provide additional recreational opportunities for the surrounding area, including playing fields and a running track. The school district has a policy to make such facilities available to the general public when they are not in use during school hours.*
- *Police Services - The city signed a statement that a middle school is included in its comprehensive plan for this area and it plans to provide adequate police service to serve the school and other adjacent areas inside the UGB.*
- *Fire/Emergency Services - The city signed a statement that fire and emergency services would be adequate to serve the site and that there would be no efficiency impact to do so. The Tanner Basin Plan identifies the need for a new fire station to be located near the intersection of Rosemont, Day and Parker roads. The city has appropriated funds to acquire the site and is actively working toward purchasing it.*
- *Public Education - The middle school will provide improved educational facilities for residents within the school district boundaries.*
- *Other Services - Portland General Electric, Northwest Natural Gas and US West have signed statements that they could adequately serve the site.*

In addition to the site being capable of service in an orderly and economic fashion, the petitioner states that a net improvement in the efficiency of public facilities and services would be realized in the adjoining areas within the UGB. This is especially true for sewer service, transportation, parks and open space and public education.

Given the information contained in the petitioner's submittal of March 31, 1997, and additional information obtained by staff, it appears that the site is capable of being served in an orderly and economic fashion. Services are available and adequate to serve the site, according to statements signed by all service providers in March of 1996. A letter was sent to these providers on May 6, 1997, requesting that they confirm or change their original statements. Replies have been received from the City of West Linn and Clackamas County, confirming their 1996 statements.

The petitioner's claim that there would be a net improvement in efficiency seems to be valid for public education, recreation facilities and sewer service. It is less obvious that a net improvement in efficiency for adjoining areas would be realized for transportation. The petitioner states that whether the school is located here or not, the noted improvements will need to be made to the streets in the area to accommodate development that is currently planned within the UGB. If street improvements are needed to serve planned development within the UGB, it would seem that extension of the UGB and siting of a middle school could use up a portion of the capacity gained from the improvements. While the school district will likely be required to provide or contribute to road improvements along its

frontage with Rosemont and Day roads, this in itself would likely not offset the school's impact to the transportation system. The DKS traffic impact study, however, concluded that the school project would not affect operating conditions on surrounding roads or intersections. This study assumed that the intersection of Rosemont and Day roads would be realigned, as planned by the city, such that Parker Road approach is changed to align with Day Road south of the school site.

The petitioner has demonstrated that the subject site is capable of being served with public facilities and services in an orderly and economic manner, and that the adjustment would result in a net improvement in their efficiency. Staff concludes that this criterion is satisfied.

3. Maximum efficiency of land uses. The amendment shall facilitate needed development on adjacent existing urban land. Needed development, for the purposes of this section, shall mean consistent with the local comprehensive plan and/or applicable regional plans. [3.01.35(c)(2)]

The petitioner states the middle school will serve the residential growth in the north West Linn area as well as the adjacent rural lands in Clackamas County. The proposed school is consistent with the Tanner Basin Master Plan, which was adopted by both the city and county. The county comprehensive plan currently designates the subject property and surrounding land as appropriate for rural residential development. This designation also allows schools as a conditional use.

Based on information from the petitioner and school district, the siting of a middle school at the subject location would facilitate the educational and recreational needs for an expanding urban population. The proposed school is consistent with the Tanner Basin Plan which will guide the development of the immediately surrounding area within the UGB. The school will help facilitate the additional development needed within West Linn to achieve the city's share of the regional housing target capacities contained in the Urban Growth Management Functional Plan. The functional plan was adopted in December of 1996 to implement the Regional Urban Growth Goals and Objectives (RUGGO), which were adopted by the Metro Council to guide the future urban form for the Portland metropolitan area.

Staff believes that the amendment would facilitate needed development on adjacent existing urban land for another reason. The siting of a new middle school is needed to accommodate the expected growth in the district's northern attendance area. The district conducted an alternative site analysis according to its adopted site selection criteria contained in the Long Range School Facilities Plan. Of the five alternative sites analyzed, only the one at the corner of Rosemont and Day roads, which includes the 17.34-acre proposal, meets the district's criteria. The proposed site is needed, therefore, to make the 4.5-acre site viable as a new middle school site.

For the above reasons, staff concludes that this criterion is satisfied.

4. Environmental, energy, economic and social consequences. Any impact on regional transit corridor development must be positive and any limitations imposed by the presence of hazard or resource lands must be addressed. [3.01.35(c)(3)]

The petitioner states that the subject site has been planned and is suitable for development, and it contains no environmentally sensitive resources or natural hazards. The school improvements would be located to the east and uphill of a stream that runs across tax lot 200. The siting of a school involves vehicle trips and therefore has an impact on air quality. This site would be located close to existing and future residential development minimizing the number and length of vehicle trips.

Walking and bicycling opportunities would be improved after the planned street improvements are completed. The school would be within one mile of 45% of its students further enhancing bicycle and pedestrian opportunities..

The school has been included in all future development plans and will not require more service and facility capacity than will be needed for other area development. The school will, therefore, allow for more efficient utilization of constructed public facilities. By providing the educational needs and community center/recreational opportunities for the Rosemont/Tanner Basin area of West Linn, the proposed amendment will have positive social consequences.

Consumption of energy and air quality impacts are inherent with development of any new school. The subject site, however, is located close to a significant percentage of the student population and will eventually serve new development within the Tanner Basin and Urban Reserve Site 30 areas. Because the school would be located within a short distance of much of the population it will serve, there will be a reduction in vehicle miles traveled and an increase in walking and bicycling to the site. This situation will have a beneficial impact on energy consumption and air quality.

Because the proposed site could be served by the planned improvements to facilities and services for other development without increasing capacity, and because the school would be located within one mile of 45% of the student population, there is likely an economic benefit to the public from locating the school at this site. The proposed school site would have a positive social impact for existing and future development in the area due to the educational needs and recreational opportunities it would provide.

The only transit corridor of regional significance is State Highway 43, located approximately one mile to the east of the site. There would be no impact to this corridor as a result of this boundary adjustment. Based on information from Clackamas County, the site does not have any environmental or cultural constraints to development.

For the above reasons, staff concludes that this criterion is satisfied.

5. Retention of agricultural land. When a petition includes land with Agricultural Class I-IV soils designated in the applicable comprehensive plan for farm or forest use, the petition shall not be approved unless it is factually demonstrated that:

(A) Retention of any agricultural land would preclude urbanization of an adjacent area already inside the UGB, or

(B) Retention of the agricultural land would make the provision of urban services to an adjacent area inside the UGB impracticable. [3.01.35(c)(4)]

The petitioner states that this criterion is not relevant because the property and surrounding land is designated for rural residential development in the Clackamas County Comprehensive Plan. While the site contains Class III soil, the county does not consider this land as prime farm or forest land. The county was granted an exception to Statewide Planning Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands) for the land now designated Rural Residential.

The comprehensive plan designation of Rural and zoning district of RFFF-5 (Rural Residential Farm-Forest-5) are intended primarily to maintain the character of rural areas and implement the goals and

policies for residential uses in rural areas. Through its plan goals and policies, the county makes a distinction between Rural designated land and Agriculture and Forest designated land. According to the Rural section of the comprehensive plan, "Rural lands are those which are outside the Urban Growth Boundaries and are suitable for sparse settlement, small farms or acreage homesites with no or hardly any public services and which are not suitable, necessary or intended for urban, agriculture or forest use". The first goal of this section of the plan is to provide a buffer between urban and agricultural or forest uses. In addition, schools are allowed as a conditional use in this zone district.

Staff agrees that the subject site and surrounding parcels, being designated as Rural and RRFF-5, are not designated for exclusive farm or forest use. According to the plan, "This zone is applied to areas designated as Rural on the comprehensive plan map and which have a general parcel size of five acres; are affected by development; contain no serious natural hazards and the topography and soils, are suitable for development, and are easily accessible to a Rural Center or incorporated city". Primary uses allowed include, but are not limited to single-family dwellings, current employment for general farm uses, propagation or harvesting of a forest product, and parks, campgrounds and recreational grounds. Schools are allowed as a conditional use. Currently, the site has a single family residence with accessory buildings, and is being used as pasture land for cattle.

Since the subject site is not designated by the county comprehensive plan for exclusive farm or forest use, and the primary purpose of the zoning district is to provide for rural residential living, staff concludes that this criterion is satisfied.

6. Compatibility of proposed urban uses with nearby agricultural activities. When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of all factors of this subsection must clearly outweigh the adverse impact of any incompatibility. [3.01.35(c)(5)]

The petitioner states that Christmas tree farming and cattle grazing are the two agricultural activities in the area (Attachment C). The subject property and land to the south and west are used as pasture for cattle. Christmas tree uses are to the northwest, south and east. Properties to the north are large acreage homesites with some tree farming. The tree farming to the northeast and east across Day Road is on land within the UGB, which is designated for urban development.

Conditional use applications for siting the school buildings on the 4.5 acres within the UGB have been submitted to the City of West Linn and Clackamas County. Though the application is not technically at issue for this UGB adjustment request, the petitioner believes that it is related to the issue of compatibility of the proposed use with nearby agricultural activities. Based on the information in the conditional use permit application and site plan (Attachment D), the petitioner claims that the proposed adjustment is compatible with nearby tree farm and grazing uses in the following ways:

- The site plan locates school buildings on the land within the UGB adjacent to the subject site. The athletic fields and parking area are located to the south and west on the subject site. This plan is necessary due to the need to locate utilities, especially sewer, on the uphill portion of the site. Storm drain and detention facilities would be located on the subject site, which is sloping westward toward the stream.*
- The state Transportation Planning Rule requires buildings to be located near public streets for easy pedestrian and bicycle access. Locating the school buildings away from streets would be contrary to these requirements.*

- *The athletic fields will provide excellent buffering between any agricultural activities and classroom activities. Due to security issues, a 6-foot high chain link fence will be installed which will eliminate any potential conflicts with adjoining property owners.*
- *A school is allowable as a conditional use in the RRFF-5 zone. The proposed school is consistent with the county's conditional use criteria. Further, the county does not have any specific requirements for non-resource uses to be compatible with farm or forest activities.*

Based on air photo information and site visits, staff confirms that tree farming and grazing activities are taking place on the subject site and adjacent land. These uses are allowed by the county's RRFF-5 zone district. Public and private schools are also allowed as conditional uses subject to special use requirements (Sections 805 and 806) as well as general conditional use criteria (Section 1203). The first set are basic locational, dimensional and parking requirements that are not relevant to this petition. The second set includes the criterion that the proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district. The primary uses include residential, farm and forest uses.

This criterion seeks to assess and evaluate whether an urban use allowed by granting a UGB adjustment would adversely impact and be incompatible with nearby agricultural activities; and whether the use outweighs its impacts with justification dependent on the previous criteria. Based on the foregoing discussion and evaluation of the proposal, staff concludes that the use of this site for a middle school, as proposed by the district, clearly outweighs any adverse impact to the surrounding activities for the following reasons:

- The use of the subject site for a middle school is consistent with all local and regional plans, including a specific area plan for development of the adjacent urban area. It would facilitate needed development on the adjacent land within the UGB by providing for a school that is needed to accommodate the projected increase in students. It would also provide recreational and social needs of the increased population projected for the area. In the longer term, the school would also provide these amenities for the additional urbanization of the area immediately west of the site, which has been designated as an urban reserve.
- The site and school can be served with public facilities and services in an orderly, economic and timely manner according to all service providers. Further, extension of sewer service to the site will help improve efficiency of the existing system that serves the adjacent urban area within the UGB by changing to a gravity system.
- Environmental, energy and social consequences of the proposal would be positive. The school would be within one mile of 45% of the student population, as well as within approximately .25 miles of a planned primary school site, as identified in the Tanner Basin Master Plan. A middle school would yield educational and increased recreational opportunities, thus providing improved social benefits to area residents.
- The existing zoning on the subject property allows a school as a conditional use. The criteria for this use must be met before the county issues permits. Based on information from the county and the district's conditional use permit application, staff believes the proposed middle school would be compatible with nearby tree farming and cattle grazing.

For the above reasons, staff concludes that this criterion is satisfied.

7. An addition of land to make the UGB coterminous with the nearest property lines may be approved without consideration of the other conditions in this subsection if the adjustment will add a total of two gross acres or less, the adjustment would not be clearly inconsistent with any

of the factors in subsection (c) this section, and the adjustment includes all contiguous lots divided by the existing UGB. [3.01.35(f)(1)]

The petition is for 17.34 acres which is greater than the 2 acre or less threshold and, therefore, this criterion does not apply.

8. For all other locations, the proposed UGB must be superior to the UGB as presently located based on a consideration of the factors in subsection (c) if this section. [3.01.35(f)(2)]

The petitioner states that the proposed amendment is an improvement to the current UGB due to four reasons:

1. *Public facilities and services, including schools, will be more efficiently provided to land within the UGB if the school is brought into the UGB and annexed to West Linn.*
2. *Developing a middle school at the site is consistent with acknowledged local plans.*
3. *The environmental, energy, economic and social consequences of the proposal will be positive.*
4. *Agricultural or forest land will not be affected by the proposal.*

The school district conducted a site selection process to determine the location for new schools. The first two parts of the process identified attendance areas and ideal locations for schools within those areas. The third step involved a site specific search and included consideration of five locations for middle schools within the northern attendance area. Based on the district's adopted site selection process, only Site 5 met the criteria. Site 5 includes the 4.5 acres along Day Road plus the 17.34 acres of land, which is the subject of this application.

Based on the petitioner's submittal, information obtained from county staff and service providers, and site visits, staff agrees with statements 1 through 4 above. The district's site selection process, which resulted in identifying Site 5 as the only feasible one, is outlined in the district's application to the city and county for a conditional use permit for the middle school. Staff conducted site visits to all five sites and confirms the district's observations. Any other site outside the UGB would not have the advantage of using the 4.5 acres inside the UGB along Day Road for nearly all of the public facilities.

Staff conducted an independent vacant land analysis of property within the city. Follow-up visits were conducted to observe site characteristics. The analysis shows six locations that are buildable and greater than 10 acres within the entire city (Attachment E). Sites A and B are the only ones inside the district's identified northern attendance area for middle schools. Site A, identified as Site 4 in the district study, is a 10-acre park. Surrounded by residential development, it does not meet the district size criteria. Site B, identified as Site 2 in the district study, consists of four tax lots in different ownership and has about 11 acres of developable land. This site does not meet district size criteria. Sites C, D, E and F are located outside the district's identified attendance area. Site C, approximately 16 acres, is proposed for a residential subdivision. Site D, with about 8.5 developable acres, is located at the top of a hill and has poor accessibility for a school use. Site E and F, containing about 12 and 18 developable acres respectively, are located at the southwest end of West Linn and not feasible to serve the district's northern middle school attendance area.

Based on the information contained in Criteria 2, 3, 4 and 6, staff concludes that this site for a needed middle school is better than any other site within the district attendance area, inside or outside the UGB. This criterion is satisfied.

9. The proposed UGB amendment must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors above. [3.01.35(f)(3)]

The petitioner states that the remainder of the 55.18-acre parcel is not included in this proposal because the school district only needs approximately 20 acres for the new school site, provision of services to the other 37.84 acres is limited by site conditions, the adjacent sites are not in the same ownership, and the site corresponds to the Tanner Basin Plan designation for a school site.

Staff agrees that contiguous land to the proposed site is not appropriate for inclusion with this proposal. The district's size criterion for middle schools, included under Policy 6 of the Long Range School Facilities Plan, is 17-22 acres. This is consistent with the petitioner's request for limiting the proposed UGB adjustment to the 17.34 acres, which when added to the 4.5 acres within the UGB equals 21.84 acres for the entire school site.

In addition to the facts cited by the petitioner, staff notes another reason for not including contiguous land. The site is part of Urban Reserve Site 30 which will eventually be included within the UGB. Any proposal to add more than 20 acres to the UGB, however, must include an Urban Reserve Plan. This plan must address several issues including but not limited to: Provision of minimum residential densities and diversity of housing; provision for commercial and industrial development needs; a transportation plan; public facilities and services plan; school plan; and general locations of roads, housing, commercial and industrial land, open space and public facilities. The current petition does not address these issues, except the school plan, because 17.34 acres is all the land that is being proposed for addition to the UGB. This petition could not appropriately include additional land (greater than 20 acres) based on the above locational adjustment criteria.

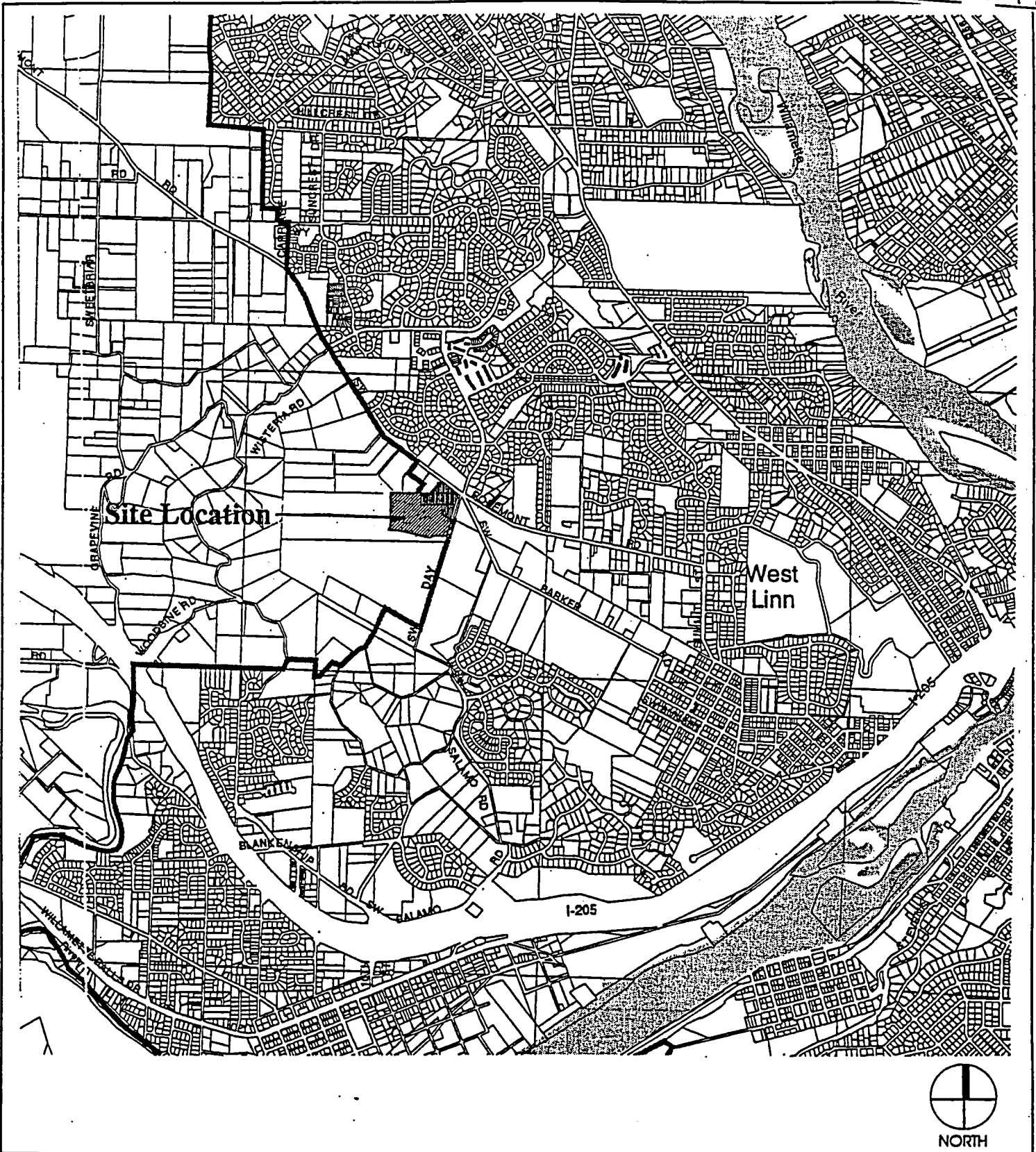
SECTION V: SUMMARY AND RECOMMENDATION

This petition seeks to bring 17.34 acres of land into the UGB for the purpose of siting a new middle school. The service provision, land use efficiency and site impact issues of this petition meet the criteria. Moreover, the petitioner has made a good case that the proposed UGB is superior to the existing one for two reasons: There would be a net improvement in efficiency for public facilities and services, especially for public education, recreation facilities and sewer service; and the subject site is the best one for locating a new middle school based on district criteria and the alternative site selection study.

Criterion 5, Retention of Agricultural Land, is not applicable because the subject site is not identified as exclusive farm or forest land in the county comprehensive plan. The county was granted a statewide goal exception for the land and has designated it for rural residential development. While farm and forest uses are allowed, the county's goal for the Rural designation is use as a buffer between urban uses and agricultural or forest uses. Compatibility of the proposed use with nearby agricultural activities (Criterion 6) has been adequately demonstrated. A school is allowed as a conditional use in the zone district, given that it meets county siting criteria. The county must make a finding that the proposed use would not substantially alter the character of the surrounding area. There is no evidence for Metro staff, however, to conclude that a school use at this site would not be compatible with neighboring Christmas tree farms and cattle grazing. This is based on existing zoning, the character of the area and the submitted conditional use application by the district.

Staff concludes that the proposed UGB adjustment is superior to the UGB as presently located based on consideration of the above criteria. The construction of two new middle schools is needed, according to the district, to accommodate the projected increase in students by 2010. Locations for new schools in the area is severely limited, based on alternative site selection studies. Expansion of the UGB at the subject location would accommodate the district's needs while contributing to the provision of public facilities and services in an efficient manner.

If the Hearings Officer recommends approval of this petition to the Metro Council, staff recommends placing the following condition on the decision: The subject site must be developed with a school use. The petitioner's case was made based on the siting of a middle school. The justification for adjusting the UGB is contingent upon the demonstrated need for land to locate a new school. Staff analyzed the request based on this assumption and concludes that the petitioner has demonstrated this need.



LEGEND



Site Location

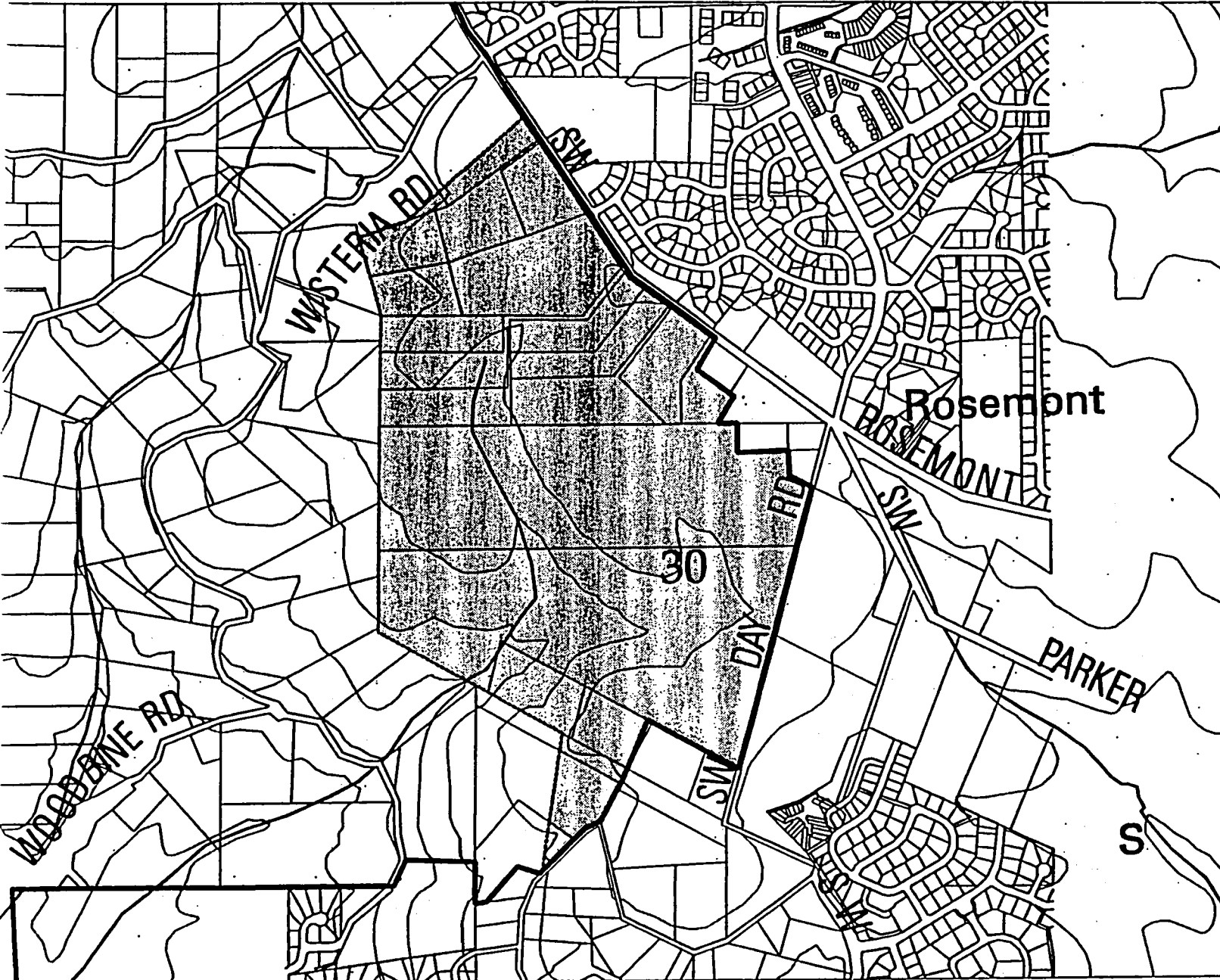


UGB

Source: Metro

MM
McKeever/Morris, Inc.
722 S. W. Second Avenue
Suite 400
Portland, Oregon 97204
(503) 228-7332
fax (503) 228-7365

Figure 1.
Vicinity Map
Locational Adjustment Application
City of West Linn







Regional Land Information System

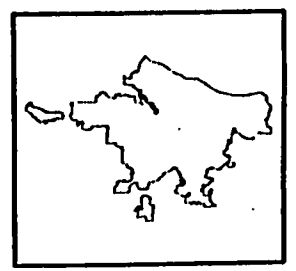
Regional Land Information System

Urban Reserves Tax Lot Boundaries

Staff Recommendation
2-3-97

-  Designated Urban Reserves
-  Resource Lands within Urban Reserves
-  Modified Urban Reserve Boundaries
-  Urban Growth Boundary

MAP #30

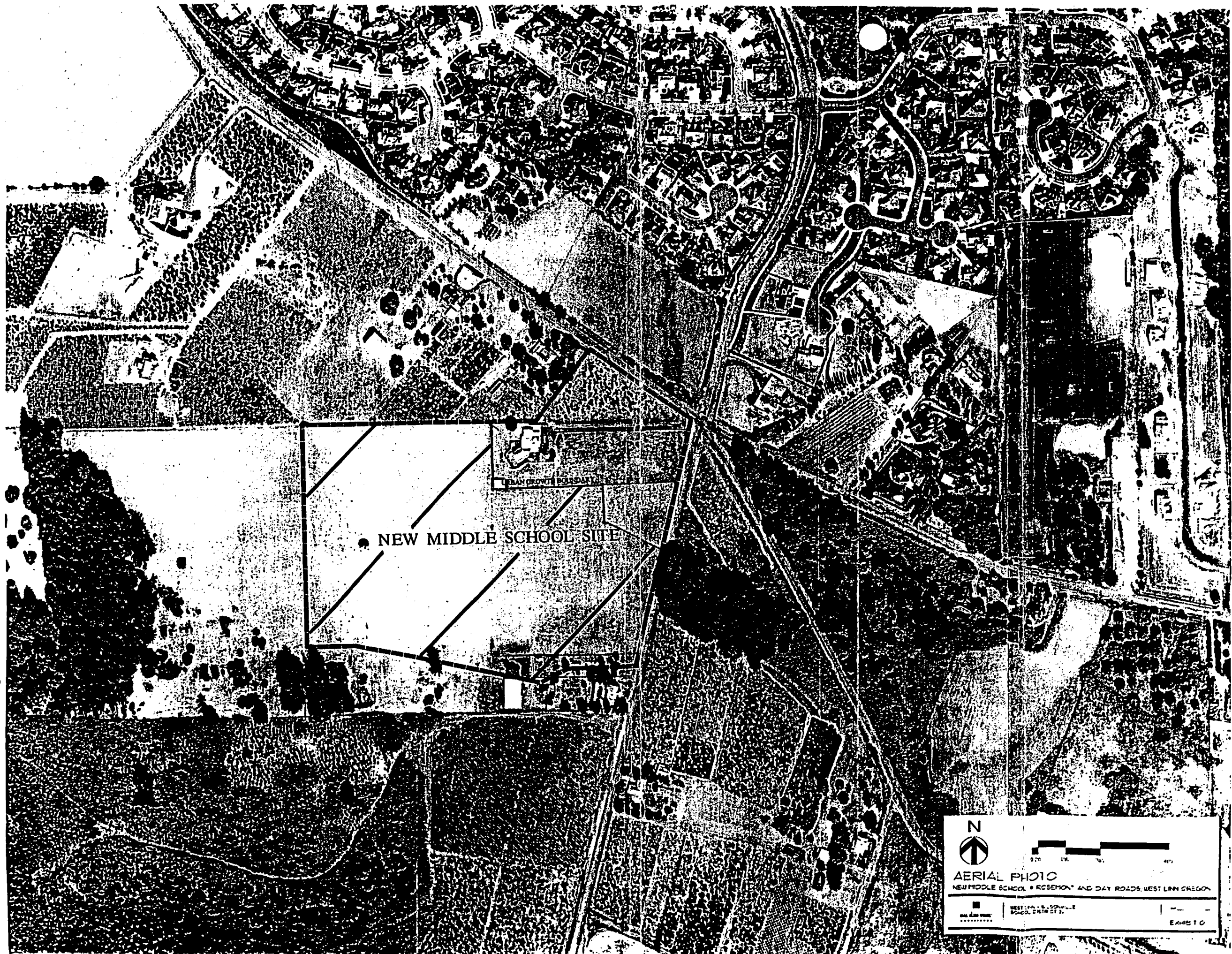


608 NE Grand Ave
Portland, OR 97232-2734
(503) 797-2762



410\plan\site\m.spl, plot date: February 24, 1997


UNAPPROVED



NEW MIDDLE SCHOOL SITE

URBAN GROWTH BOUNDARY

N

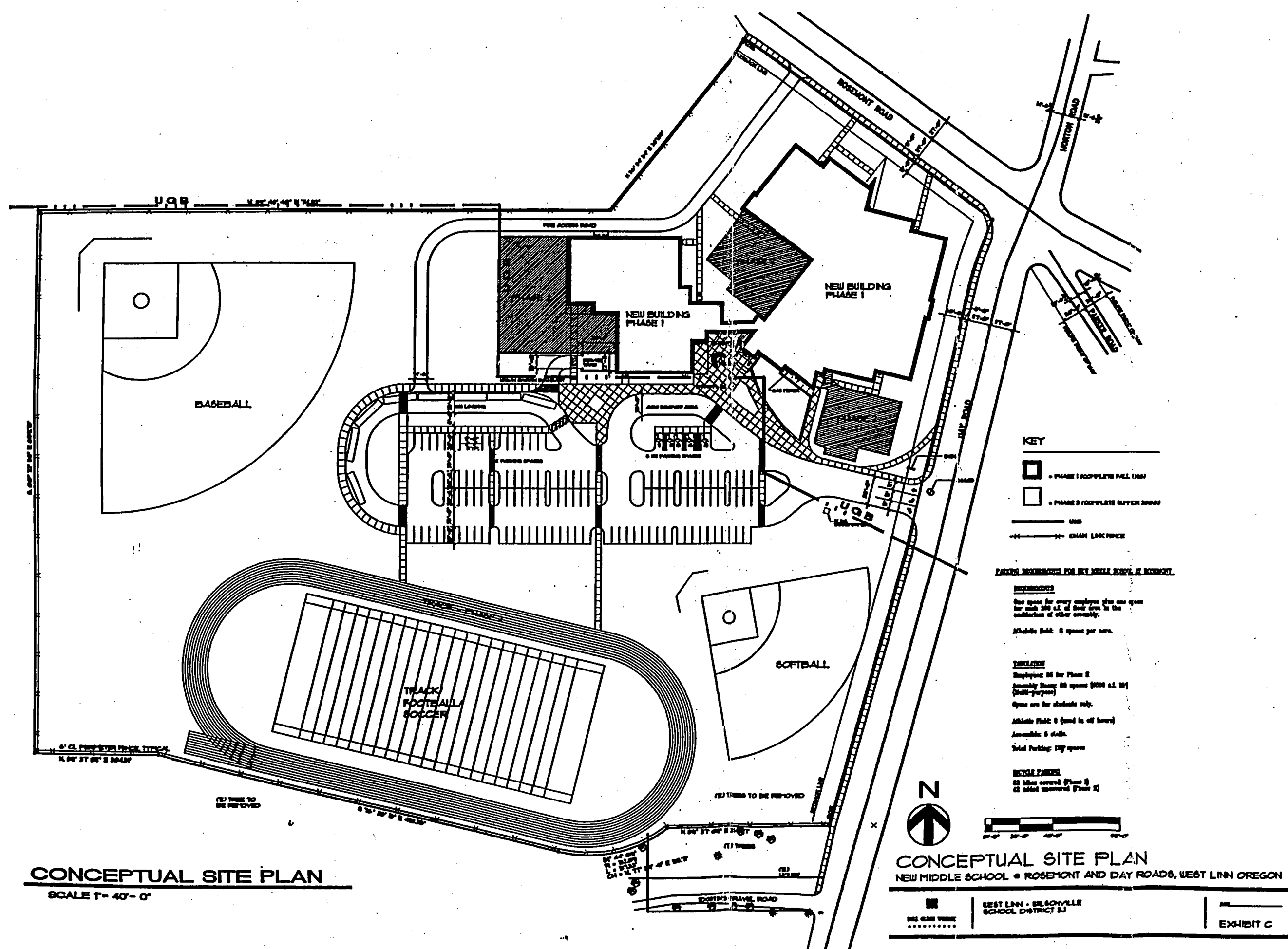


AERIAL PHOTO
NEW MIDDLE SCHOOL • ROSEMON* AND DAY ROADS, WEST LINN, OREGON

0 20 40 60 80

WEST LINN SCHOOL DISTRICT

EXHIBIT C



KEY

- PHASE I FOOTPRINT FULL TRUSS
- PHASE II FOOTPRINT FULL TRUSS
- ROAD
- CHAIN LINK FENCE

PARKING REQUIREMENTS FOR NEW MIDDLE SCHOOL AT ROSEMONT

REGULATIONS
One space for every employee plus one space for each 100 s.f. of floor area in the collection of other assembly.

Athletic Field: 8 spaces per acre.

TABLETS

Employee: 66 for Phase II
Assembly Room: 66 spaces (1000 s.f. sq) (multi-purpose)

Spaces are for students only.

Athletic Field: 8 (used in all hours)

Assembly: 6 stalls

Total Parking: 127 spaces

TRUCK PARKING

62 bays covered (Phase II)
62 bays covered (Phase II)



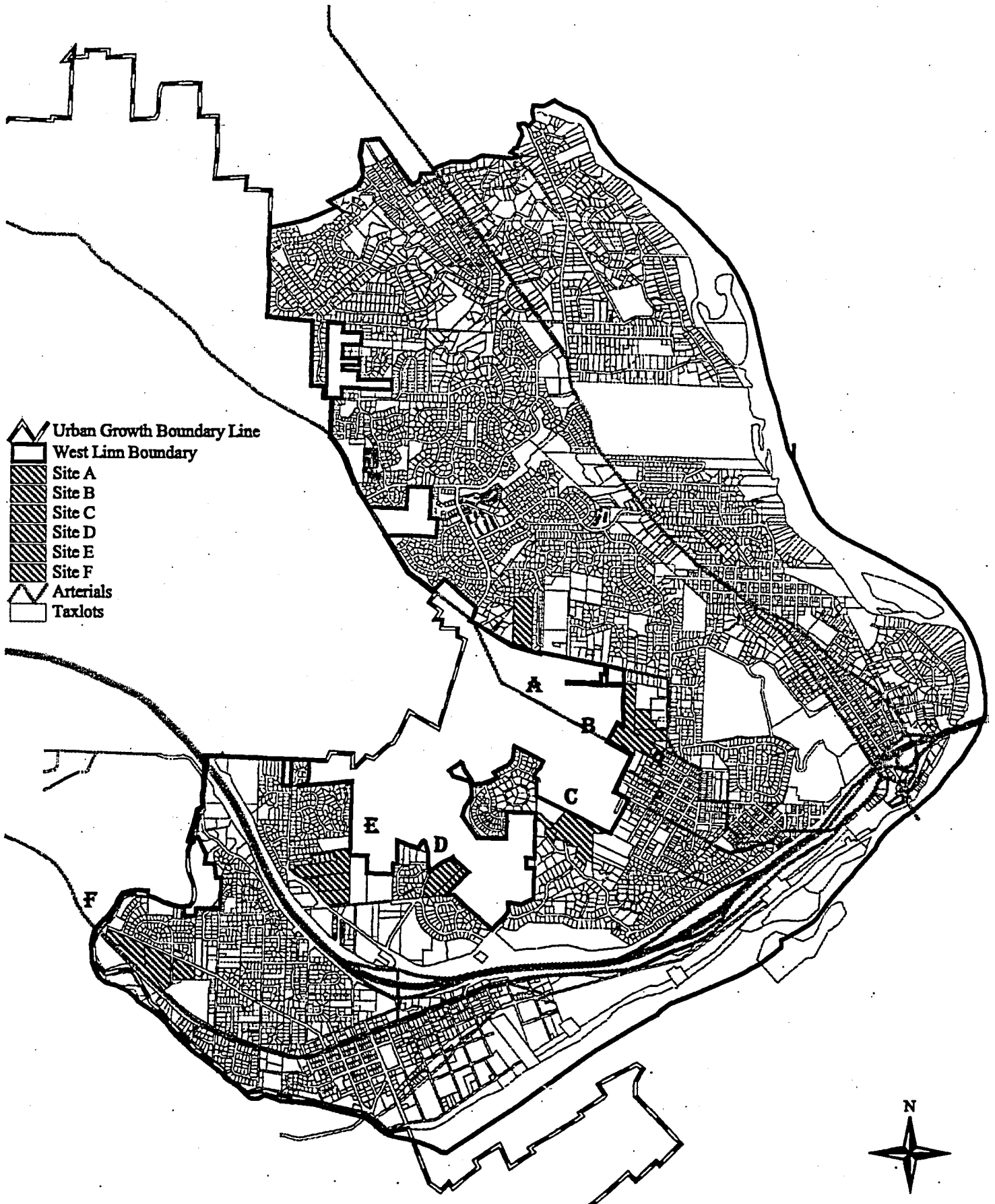
CONCEPTUAL SITE PLAN
SCALE 1" = 40' - 0"

CONCEPTUAL SITE PLAN
NEW MIDDLE SCHOOL - ROSEMONT AND DAY ROADS, WEST LINN OREGON

WEST LINN - SILSVILLE SCHOOL DISTRICT 2J	EXHIBIT C
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West Linn -- Large Vacant Areas

June 3, 1997



JUL 11 1997

**BEFORE THE METROPOLITAN SERVICE DISTRICT
(METRO)**

**In the Matter of the Petition of the CITY)
OF WEST LINN for a locational)
adjustment to the Urban Growth)
Boundary (UGB))
)**

**Contested Case # 97 -1
REPORT AND
RECOMMENDATION OF THE
HEARING OFFICER**

I. Nature of the Case

This is a petition by the CITY OF WEST LINN (Petitioner) to add approximately 17.34 acres to the area within the Urban Growth Boundary. The land is along the western boundary of West Linn, adjacent to and west of Day Road near (in southwesterly direction) the intersection of Day, Rosemont and Parker Roads. It is the eastern portion of a 55.18-acre parcel (Tax Lot 200 of Map No.2 IE 26). Zoned for rural residential, the site contains a single family residence and several accessory buildings. Most of the site is currently used as pasture for cattle.

The subject site is within Urban Reserve Site 30, one of several land reserves the Metro Council designated for eventual inclusion into the urban growth boundary (UGB). This reserve has not been designated a first tier site and will not be among the first ones for inclusion into the UGB.

Proposal Description: The petitioner proposes to adjust the UGB to include this 17.34-acre portion of land for the purpose of accommodating a new middle school for the West Linn-Wilsonville School District. In addition to this land, the district plans on using 4.5 acres of land located immediately northeast of the site and within the UGB for the school buildings. After searching for a middle school site entirely within the UGB which meets the district's standard of 17-22 acres, the city and school district concluded that there is a lack of suitable sites in the attendance area.

The subject property is part of the Tanner Basin Master Plan area. The plan was developed jointly

by the City of West Linn and Clackamas County and is part of their comprehensive plans. It applies to the mostly unincorporated land located east of Day Road, all of which is within the existing UGB. In part, the plan addresses the need for schools to accommodate the projected residential growth in the area. The plan identifies a potential site for a middle school near the intersection of Rosemont and Day roads. The petitioner states that additional acreage is needed, however, to site the school. The middle school would serve the future needs of the Tanner Basin as well as the existing and projected development within the district's northern attendance area, which includes north West Linn and some unincorporated land outside the UGB west of Rosemont and Day roads.

The school district plans to construct the two middle school buildings on 4.5 acres of land adjacent to the subject site within the UGB. An application for a conditional use permit to construct the school buildings and related facilities were submitted during May of 1997 to Clackamas County and West Linn simultaneously. The RRF-5 zone allows schools as a conditional use. The target date for school opening has been set by the district for September 1998.

Petitioner states that if the petition is approved, they will seek annexation to Lake Oswego. Maps showing the land areas attached to the March 31, 1997 Locational Adjustment petition and reproduced in the Staff Report. The legal description of the land is:

Tax Lot 200 of Map 2 1E 26

II. Proceedings and Record

On June 17, 1997, beginning at 7 p.m. following publication and mailing of a notice to property owners who were identified by Petitioner or the hearings officer as living within 250 feet of the proposed addition area, the hearings officer held a hearing on the petition at West Linn City Hall. Approximately 5 witnesses testified for and against the petition.

At the close of the June 17 hearing, the hearings officer left the record open until 5 p.m. on June

25th, at the request of Jeffrey Seymour, attorney for Curtis Hunter. All additional evidence or memoranda were to be submitted to Jeff Valone at Metro and date and time stamped. Nothing received after 5pm on June 25th was to be considered. Once the record was kept open all the participants were given the option of adding to the record in order to strengthen their cases based on the testimony received at the hearing.

The following documents either are a part of Metro's public file in this matter, were introduced at the public hearing or were submitted by 5 p.m. on June 25th following the hearing pursuant to the hearings officer's ruling on late evidence:

- Exhibit 1: *Locational Adjustment, Prepared for the City of West Linn and the West Linn-Wilsonville School District (March 31, 1997)*
- Exhibit 2: Letter from Clackamas County from Douglas McClain, confirming county's original position concerning service provision.
- Exhibit 3: Copy of minutes from West Linn City Council special session of March 3, 1997, concerning approval of school district request to extend water to the portion of the proposed middle school site within the UGB.
- Exhibit 4: Letters from West Linn (Scott Burgess and Joe Schiewe) confirming city's original position concerning service provision.
- Exhibit 5: *Tanner Basin Master Plan (October 1991)*
- Exhibit 6: *West Linn Middle School Transportation Impact Study, DKS Associates (February 24, 1997)*
- Exhibit 7: Locational Adjustment Petition supplemental findings, McKeever/Morris, Inc. (June 3, 1997)
- Exhibit 8: Sign-up sheet for testimony at June 17, 1997 hearing
- Exhibit 9: Letter of Responses to Comments from McKeever/Morris, Inc., representing petitioner (June 25, 1997); and copy of *Conditional Use Petition, Prepared for Clackamas County and the West Linn-Wilsonville School District (May 23, 1997)*
- Exhibit 10: STAFF REPORT TO THE HEARINGS OFFICER OF METRO (June 17, 1997)

- Exhibit 11: Letter from Kent Seida to Roger Woehl, with attachments (June 19, 1997)
- Exhibit 12: Letter from Robert Thomas (June 24, 1997)
- Exhibit 13: Letter and Exhibits from Jeffrey Seymour on behalf of Curtis Hunter (June 17th, 1997 and submitted at the hearing. Exhibits related to Notice of Pendency of Action between Curtis Hunter and West Linn - Wilsonville School District)
- Exhibit 14: Letter from Jeffrey Seymour dated June 25, 1997, but faxed to the Hearing Officer on June 27, 1997.
- Exhibit 15: An Archaeological Survey of a Proposed Middle School Location Near West Linn, Oregon, Report No, 1996, David V. Ellis, MPA and Eric E. Forgeng, MA (October 11, 1996) received June 24, 1997.
- Exhibit 16: Videotape of the June 17th, 1997 Hearing

The noticing requirements for the proposed UGB locational adjustment, Case 97-1: West Linn, were fulfilled in the following manner:

- Notice of the proposal was given to the Department of Land Conservation & Development (DLCD) on May 5, 1997, using the Department's form; and a copy of the proposal was included with the form. These submittals were received by DLCD on May 6, 1997.
- Notices of the Hearings Officer hearing were mailed on May 28, 1997, to persons designated in Metro Code 3.01.050.
- Notices of the Hearings Officer hearing appeared in The Oregonian and the West Linn Tidings on June 5, 1997.

IV. Legal Framework

In 1981, Metro first adopted Ordinance No. 81-105, which established procedures and criteria for review of proposed "locational adjustments" to the UGB. The purpose of the ordinance was to provide a method for allowing relatively minor UGB amendments in a manner consistent with UGB amendment requirements established by the Oregon Land Conservation and Development Commission.

LCDC's UGB amendment requirements are contained in Goals 14 (Urbanization) and 2 (Land Use Planning).

The pertinent portions of Goal 14 state:

"14. URBANIZATION

"GOAL: To provide for an orderly and efficient transition from rural to urban land use.

"Urban growth boundaries shall be established to identify and separate urbanizable land from rural land.

Establishment and change of the boundaries shall be based upon consideration of the following factors:

- (1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
- (2) Need for housing, employment opportunities, and livability;
- (3) Orderly and economic provision for public facilities and services;
- (4) Maximum efficiency of land uses within and on the fringe of the existing urban area;
- (5) Environmental, energy, economic and social consequences;
- (6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,
- (7) Compatibility of the proposed urban uses with nearby agricultural activities.

The results of the above considerations shall be included in the comprehensive plan. In the case of a change of a boundary, a governing body proposing such change in the boundary separating urbanizable land from rural land, shall follow the procedures and requirements as set forth in the Land Use Planning Goal (Goal 2) for goal exceptions.

Land within [the UGB] shall be considered available over time for urban uses. Conversion of urbanizable land to urban uses shall be based on consideration of:

- (1) Orderly, economic provision for public facilities and services;
- (2) Availability of sufficient land for the various uses to insure choices in the market place;
- (3) LCDC goals; and,
- (4) Encouragement of development within urban areas before conversion of urbanizable areas."

Goal 2, Land Use Planning, contains "Exceptions" requirements, which are the requirements that Goal 14 specifies must be met for UGB amendment. In 1983, however, the Oregon Legislature adopted ORS 197.732, which itself establishes "exceptions" requirements. Since then, LCDC has incorporated these requirements in OAR 660-04-010(c)(B). That regulation states in pertinent part:

"Revised findings and reasons in support of an amendment to an established urban growth boundary shall demonstrate compliance with the seven factors of Goal 14 and demonstrate that the following standards are met:

- (i) Reasons justify why the state policy embodied in the applicable goals should not apply (This factor can be satisfied by compliance with the seven factors of Goal 14);
- (ii) Areas which do not require a new exception cannot reasonably accommodate the use;
- (iii) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and
- (iv) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts."

Metro adopted standards for evaluating locational adjustments adding land to the UGB, contained in Metro Code Section 3.01.035 (Ordinance No.92-450A, Sec 1) incorporating relevant portions of statewide goals 2 and 14. as follows:

(b) All locational adjustment additions and administrative adjustments for any one year shall not exceed 100 net acres and no individual locational adjustment shall exceed 20 net acres. Natural areas adjustments shall not be included in the annual total of 100 acres and shall not be limited to 20 acres, except as specified in 3.01.035(g), below.

(c) All petitions for locational adjustments except natural area petitions shall meet the following criteria:

- (1) Orderly and economic provision of public facilities and services. A locational adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to, water, sewerage, storm drainage, transportation, parks and open space in the adjoining areas within the UGB. Any area to be added must be capable of being served in an orderly and economical fashion.
- (2) Maximum efficiency of land uses. The amendment shall facilitate needed development on adjacent existing urban land. Needed development, for the purposes of this section, shall mean consistent with the local comprehensive plan and/or applicable regional plans.
- (3) Environmental, energy, economic and social consequences. Any impact on regional transit corridor development must be positive and any limitations imposed by the presence of hazard or resource lands must be addressed.
- (4) Retention of agricultural land. When a petition includes land with Agricultural Class I-IV soils designated in the applicable comprehensive plan for farm or forest use, the petition shall not be approved unless it is factually demonstrated that:
 - (A) Retention of any agricultural land would preclude urbanization of an adjacent area already inside the UGB, or
 - (B) Retention of the agricultural land would make the provision of urban services to an adjacent area inside the UGB impracticable.

- (5) Compatibility of proposed urban uses with nearby agricultural activities. When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of all factors of this subsection must clearly outweigh the adverse impact of any incompatibility.
- (d) Petitions for locational adjustments to remove land from the UGB may be approved under the following conditions:
- (1) Consideration of the factors in section 3.01.035(c) demonstrate that it is appropriate the land be excluded from the UGB.
 - (2) The land is not needed to avoid short-term urban land shortages for the district and any long-term urban land shortage that may result can reasonably be expected to be alleviated through the addition of urban land in an appropriate location elsewhere in the region.
 - (3) Removals should not be granted if existing or planned capacity of major facilities such as sewerage water and transportation facilities will thereby be significantly under-utilized.
- (e) A petition for a locational adjustment to remove land from the UGB in one location and add land to the UGB in another location (trades) may be approved if it meets the following criteria:
- (1) The requirements of paragraph 3.01.035(c) (4) are met.
 - (2) The net amount of vacant land proposed to be added may not exceed 20 acres; nor may the net amount of vacant land removed exceed 20 acres.
 - (3) The land proposed to be added is more suitable for urbanization than the land to be removed, based on a consideration of each of factors of section 3.01.035(c) (1-3 and 5) of this chapter.
- (f) Petitions for locational adjustments to add land to the UGB may be approved under the following conditions:
- (1) An addition of land to make the UGB coterminous with the nearest property lines may be approved without consideration of the other conditions in this subsection if the adjustment will add a total of two gross acres or less, the adjustment would not be clearly inconsistent with any of the factors in subsection (c) this section, and the adjustment includes all contiguous lots divided by the existing UGB.
 - (2) For all other additions, the proposed UGB must be superior to the UGB as presently located based on a consideration of the factors in subsection (c) of this section.
 - (3) The proposed UGB amendment must include all similarly situated contiguous land which could also be appropriately included within the UGB as an add-t-on based on the factors above.

- (g) All natural area petitions for locational adjustments must meet the following conditions:
- (1) Any natural area locational adjustment petition shall be proposed at the initiative of the property owner, with concurrence from the agency proposed to accept the land.
 - (2) At least 50 percent of the land area in the petition, and all land in excess of 40 acres, shall be owned by or donated to a county, city, parks district or the district, in its natural state, without mining, logging or other extraction of natural resources, or alteration of water-courses, water bodies or wetlands.
 - (3) Any developable portion of the lands included in the petition, not designated as a natural area, shall not exceed twenty acres and shall lie between the existing UGB and the area to be donated.
 - (4) The natural area portion owned by or to be donated to a county, city, parks district, or the district must be identified in a city or county comprehensive plan as open space or natural area or equivalent, or in the district's natural areas and open space inventory.
 - (5) The developable portion of the petition shall meet the criteria set out in parts (b), (c) (1), (c) (2) and (c) (3) of section 3.01.035.

V. Hearing and Discussion

The June 17th, 1997 Hearing was videotaped and is marked as Exhibit #16 in the record. After the Hearing Officer reviewed the process and rights of parties, Ray Valone of the METRO staff introduced the Petition, the location and the staff report (Exhibit # 15) recommending approval of the locational adjustment, with the condition that the site must be developed with a school use. A key part of his and the petitioner's testimony related to looking for other appropriate school sites within this attendance area. He confirmed that Metro staff verified the petitioner's search for a vacant and relatively flat twenty acre site within the UGB that was not already committed to another school, and found none other.

Jill Horne, Mayor of West Linn testified that the Petition is in compliance with the West Linn and Clackamas County Comprehensive Plans, that all services can be provided, and that the Tanner Basin Master Plan provides for a school at this site. Keith Liden, the petitioner's consultant testified that he agreed with the findings and recommendations of the staff report. The site selection was consistent with the Tanner Basin Master Plan and the long range school facilities

master plan. Selecting a school site involved identifying an efficient attendance areas and an ideal school location. In West Linn terrain is a key issue, because of slopes. This area is ideal for a school site because of its relative flatness. The site plan dictates where it is.

Attorney Jeffrey Seymour representing Curtis Hunter (See Exhibits #13 & #14) testified that there are two different law suits affecting this site which “ show a significant cloud on the district’s title and right to the property.” He requested that the district’s Petition be denied pending the resolution of the above litigation. As the petitioner correctly responds (See Exhibit #9) the petitioner in this case is the City of West Linn and not the school district and schools title is not relevant to this matter, except as to its subsequent ability to meet the proposed condition of approval relating to the use of this site for school purposes. The school denies there is a cloud on title. In any event, the title may be an issue in the district’s conditional use application for the middle school, but is not relevant to the City of West Linn’s standing to apply for a locational adjustment of an area adjoining the City and Mr. Seymour provides no authority or legal analysis to the contrary.

Mr. Seymour than raised arguments based on the approval criteria. On Criteria #2 he asserted that there is not enough water. As evidence he cites that an unnamed, but major developer had to construct a reservoir, that a building moratorium is being considered in the Horton and Rosemont pressure zones, that unspecified tort claim notice was being served on the City due to lack of water and that Boundary Commission laws are being violated by sewer and water construction outside the city limits. The petitioner responds that the Boundary Commission considers extraterritorial extension of water service after land use approvals. The Hearing Officer notes that the relevant water service providers have stated that water is available and that the remainder of the assertions are speculative opinions unsupported by any evidence in the record or specific references to public documents. As this is a quasi-judicial proceeding, I find that there is no basis on which to dispute specific testimony and comments from the City of West Linn that water is available for the proposed school.

The second point is that the school district plans will alter natural storm water runoff and drainage

in violation of an unspecified law. The petitioner rebuts by saying that the storm drainage system will comply with applicable city and county ordinances and the specific plans can be considered and modified during the conditional use process. The Hearing Officer agrees that this is a matter for a conditional use or site plan review.

On criteria # 3, Mr. Seymour alleges that various Intergovernmental Agreement between the county, the city and school district requiring close coordination between have been violated. Again no evidence is introduced for this opinion, and the Hearing Officers, notes close cooperation on this Petition.

On criteria #4 Mr. Seymour alleges American Indian artifacts on the site. The archeology report, Exhibit #15 recommends that to assure compliance with Oregon statutes there should be systematic excavation of site 35CL225 (See Figure 11) which is on the western end of this site. ORS 97.745 requires halt in construction and notification of state and Indian parties if burial or suspected burial grounds are encountered during construction. Again this is at best a conditional use or a building permit issue.

On criteria # 6 Mr. Seymour's argument is with the accuracy of staff's sloping description for the site, but the relevance of this argument remains a mystery to the Hearing Officer.

On criteria # 8 Mr. Seymour makes an argument that the area across Day Rd. is superior, and that the staff did not accurately describe its sloping. In his testimony Mr. Seymour offered that the school district has not come up with a reason for not choosing the east of Day Rd. site within the urban growth boundary. The significance of that argument is not clear to the Hearing Officer. The Officer notes from his site visit the area east of Day Rd. has greater sloping than the proposed area, see also the slope contours on Figures 5 & 6 of the Petition, showing much sharper sloping to the east and towards Parker Rd. The Officer further notes that the Tanner Basin Master Plan designates the proposed area for the middle school, and that area east of Day Rd would be adjacent to proposed elementary school. Mr. Seymour also alleges conflict of interest by Mr. Sam Nutt, who has an ownership interest in the east of Day Rd. lot and is

allegedly the school district business manager. The Hearing Officer finds that this school site is being proposed by the City of West Linn and that Metro staff independently determined that there are no other sites within the UGB which can serve this attendance area and which meet the requisite school site criteria and finally that the Tanner Basin Master Plan has also designated this site almost 10 years ago.

Mr. Robert Thomas testified next and submitted additional written comments (Exhibit # 12). He made several points. One that letting the school in is just a foot in the door before the entire Urban Reserve area becomes urbanized. Two, that the City of West Linn is in the throws of a water delivery crisis. In his open record submission he alleges that it is "very premature to build a middle school at this site or any other nearby site because it was originally intended to primarily serve new developments in Tanner Basin, which is less than 20% built out." He also alleges that there is now inadequate infrastructure therefore it is very expensive to provide the needed utilities and roads for this site. He also raises the issue of school ownership of the Dollar Street site within the UGB, which he maintains is flatter and generally superior. Mr. Thomas then lurches into a long discussion about motives of various people and their machinations to expand the UGB, which even if true are not connected to any of the approval criteria upon which I need to make this decision. He alleges, without demonstrating that the Dollar Street site would be less expensive to develop for school and alleges all sorts of undue motivation for the choice of the Day Rd. site, including incidently that it would aid in the development of properties of certain individuals. While the consequences that Mr. Thomas adduces may be true, the Officer notes that Tanner Basin Master Plan envisaged other developments on some of the lands identified and that it projected the school site where it is being proposed. The Tanner Basin Master Plan had been incorporated into various City and County plans, and it is not the Hearing Officer's job to dissemble it or second guess the motives behind the infrastructure placement or finance strategy adopted therein. Even if everything Mr. Thomas alleges is true, it is not illegitimate for a municipal government to plan its developments or infrastructure in a manner calculated to aid the completion of said Master Plan (see page 24 - Of the Conditional Use Application - Ex. #9). The Tanner Basin Plan is a given, and the only relevant issue raised is whether this use can be accommodated within the UGB. The record in Appendix A of the Conditional Use Application

(Ex. #9) covers the same locational choice issues as have been raised in this case and the Hearing Officer finds that the selection of this site is consistent with the locational adjustment criteria as shown in the findings below.

In his rebuttal at the hearing, John Jackley responded that there is no moratorium on water, and that a hearing on water availability is scheduled and that the condition of approval relating to school use of the property requires a conditional use approval demonstrating availability of water. The City has an interim arrangement to assure water for the site. All of the schools are now at or over capacity. Other sites that the school may have are also needed for other facilities. Other available properties of this size are steeper. Tanner Basin Master Plan supports this site. Eventual location and nature of Parker Rd. would make east of Day Rd. site difficult. Schools have to go through a Conditional Use and Site Plan Review before Clackamas County and the City of West Linn. Site selection process as well criteria for choosing a school site are relevant to the conditional use applications and are presented in the Appendix A of the Conditional Use Application (Exhibit 9 of this record) showing that the subject site is the most suitable available.

VI. Findings

The criteria for a locational adjustment to the UGB are contained in Metro Code 3.01.35 and are met by the petitioner, as follows:

1. **Locational adjustments shall not exceed 20 net acres. [3.01.35(b)]** The petition is for 17.34 acres which is less than the 20 acre maximum allowed, and under 100 acres per year.
2. **Orderly and economic provision of public facilities and services. A locational adjustment shall result in a net improvement in the efficiency of public facilities and services, including but not limited to water, sewerage, storm drainage, transportation, parks and open space in the adjoining areas within the UGB. Any area to be added must be capable of being served in an orderly and economical fashion. [3.01 .35(c)(1)]**

The petitioner states that the adjustment is needed to provide a public service to the community. Although the school will make demands on public facilities and services, it will provide important educational needs and recreational opportunities. As discussed in the Petition on pages 19-20, the petitioner states that the public facilities and services have adequate capacity to serve the new school by the scheduled date of opening in September of 1998. The petitioner's submittal includes completed forms signed in March 1996 by the potential service provide~ for the school site. The following list is a summary of service provider information based on the forms and other submittal documents.

● Water - The City of West Linn signed a statement that existing water lines, including a 16" line in Rosemont Road and a 12" line in Day Road, are adequate to serve the proposed school. To support the school district's conditional use permit applications, the West Linn City Council adopted a motion on March 3, 1997, to approve a request by the school district to extend city water to the portion of the proposed school site outside the city limits but inside the UGB. In exchange, the district agrees to waive its right to remonstrate against annexation to the city, and prior to receiving occupancy permits, the district must annex the middle school property to the city. The approval of the extra-territorial extension of water is subject to approval by the Portland Metropolitan Area Local Government Boundary Commission.

● Sewerage - The city signed a statement that providing sewer to the site would allow the adjacent urban areas to be served more efficiently because it would allow the city to remove a temporary pump station from service and switch to a gravity system. The school's sanitary waste will be discharged into a new Parker Road line. Extension of the sewer line to the school will provide an important segment of the system that will enable the pump station to be retired and the gravity system introduced. This change will enhance the efficiency of the system.

● Storm drainage - The city signed a statement that the storm drain system requirements can be met completely on site. The water will be collected from the site and piped to the southwest to the existing drainage swale on the subject property. Before discharge, the water will be detained and treated pursuant to county requirements.

● Transportation - The city signed a statement that Rosemont and Day roads provide the necessary transportation needs of the proposed school. The petition states that Rosemont Road, Day Road, Parker Road and Santa Anita Drive are planned to be improved. The improvements include widening the first three roads and adding bike lanes, curbs and sidewalks to all four roads. Improvements would be funded and constructed in conjunction with approved development along these roadways. A transportation impact study, conducted by DKS Associates (February 24, 1997), concludes that the school project would not significantly affect operating conditions on the surrounding roads and does not require any capacity improvements. Transit service is not available in the site area, however, the city is negotiating to have bus service for the Tanner Basin area in the future.

● Parks and Open Space - The school would provide additional recreational opportunities for the surrounding area, including playing fields and a running track. The school district has a policy to make such facilities available to the general public when they are not in use during school hours.

● Police Services - The city signed a statement that a middle school is included in its comprehensive plan for this area and for plans to provide adequate police service to serve the school and other adjacent areas inside the UGB.

● Fire/Emergency Services - The city signed a statement that fire and emergency services would be adequate to the serve the site and that there would be no efficiency impact to do so. The Tanner Basin Plan identifies the need for a new fire station to be located near the intersection of Rosemont, Day and Parker roads. The city has appropriated funds to acquire the site and is actively working toward purchasing it.

● Public Education - The middle school will provide improved educational facilities for residents within the school district boundaries.

● Other Services - Portland General Electric, Northwest Natural Gas and US West have signed statements that they could adequately serve the site.

In addition to the site being capable of service in an orderly and economic fashion, the petitioner states that a net improvement in the efficiency of public facilities and services would be realized in the adjoining areas within the UGB. This is especially true for sewer service, transportation, parks and open space and public education.

Given the unrebutted information contained in the petitioner's submittal of March 31, 1997, and additional information obtained by staff it appears that the site is capable of being served in an orderly and economic fashion. Services are available and adequate to serve the site according to statements signed by all service providers in March of 1996. A letter was sent to these providers on May 6, 1997, requesting that they confirm or change their original statements. Replies have been received from the City of West Linn and Clackamas County confirming their 1996 statements.

The petitioner's claim that there would be a net improvement in efficiency seems to be valid for public education, recreation facilities and sewer service. It is less obvious that a net improvement in efficiency for adjoining areas would be realized for transportation. The petitioner states that whether the school is located here or not, the noted improvements will need to be made to the streets in the area to accommodate development that is currently planned within the UGB. If street improvements are needed to serve planned development within the UGB, it would seem that extension of the UGB and siting of a middle school could use up a portion of the capacity gained from the improvements. While the school district will likely be required to provide or contribute to road improvements along its frontage with Rosemont and Day roads this in itself would likely not offset the schools impact to the transportation system. The DKS traffic impact study, however, concluded that the school project would not affect operating conditions on surrounding roads or intersections. This study assumed that the intersection of Rosemont and Day roads would be realigned, as planned by the city, such that Parker Road approach is changed to align with Day Road south of the school site.

The petitioner has demonstrated that the subject site is capable of being served with public facilities and services in an orderly and economic manner, and that the adjustment would result in a net improvement in their efficiency. The Hearing Officer finds that this criterion is satisfied.

3. **Maximum efficiency of land uses. The amendment shall facilitate needed development on adjacent existing urban land. Needed development, for the purposes of this section, shall mean consistent with the local comprehensive plan and/or applicable regional plans. [3.01 .35(c)(2)]**

The petitioner states the middle school will serve the residential growth in the north West Linn area as well as the adjacent rural lands in Clackamas County. The proposed school is consistent with the Tanner Basin Master Plan, which was adopted by both the city and county. The county comprehensive plan currently designates the subject property and surrounding land as appropriate for rural residential development. This designation also allows schools as a conditional use.

Based on information from the petitioner and school district, the siting of a middle school at the subject location would facilitate the educational and recreational needs for an expanding urban population. The proposed school is consistent with the Tanner Basin Plan which will guide the development of the immediately surrounding area within the UGB. The school will help facilitate the additional development needed within West Linn to achieve the city's share of the regional housing target capacities contained in the Urban Growth Management Functional Plan. The functional plan was adopted in December of 1998 to implement the Regional Urban Growth Goals and Objectives (RUGGO), which were adopted by the Metro Council to guide the future urban form for the Portland metropolitan area.

Metro staff believes that the amendment will facilitate needed development on adjacent existing urban land for another reason. The siting of a new middle school is needed to accommodate the expected growth in the district's northern attendance area. The district conducted an alternative site analysis according to its adopted site selection criteria contained in the Long Range School Facilities Plan. Of the five alternative sites analyzed, only the one at the corner of Rosemont and Day roads, which includes the 17.34-acre proposal, meets the district's criteria. The proposed site is needed, therefore, to make the 4.5-acre site viable as a new middle school site.

For the above reasons, the Hearing Officer also finds that this criterion is satisfied.

4. **Environmental, energy, economic and social consequences. Any impact on regional transit corridor development must be positive and any limitations imposed by the presence of hazard or resource lands must be addressed.**

[3.01.35(c)(3)]

The petitioner states that the subject site has been planned and is suitable for development, and it contains no environmentally sensitive resources or natural hazards. The school improvements would be located to the east and uphill of a stream that runs across tax lot 200. The siting of a school involves vehicle trips and therefore has an impact on air quality. This site would be located close to existing and future residential development minimizing the number and length of vehicle trips. Walking and bicycling opportunities would be improved after the planned street improvements are completed. The school would be within one mile of 45% of its students further enhancing bicycle and pedestrian opportunities..

The school has been included in all future development plans and will not require more service and facility capacity than will be needed for other area development. The school will, therefore, allow for more efficient utilization of constructed public facilities. By providing the educational needs and community center/recreational opportunities for the Rosemont Tanner Basin area of West Linn, the proposed amendment will have positive social consequences.

Consumption of energy and air quality impacts are inherent with development of any new school. The subject site, however, is located close to a significant percentage of the student population and will eventually serve new development within the Tanner Basin and Urban Reserve Site 30 areas. Because the school would be located within a short distance of much of the population it will serve, there will be a reduction in vehicle miles traveled and an increase in walking and bicycling to the site. This situation will have a beneficial impact on energy consumption and air quality.

Because the proposed site could be served by the planned improvements to facilities and services for other development without increasing capacity, and because the school would be located within one mile of 45% of the student population, there is likely an economic benefit to the public from locating the school at this site. The proposed school site would have a positive social impact for existing and future development in the area due to the educational needs and recreational opportunities it would provide.

The only transit corridor of regional significance is State Highway 43, located approximately one mile to the east of the site. There would be no impact to this corridor as a result of this boundary adjustment. Based on information from Clackamas County, the site does not have any environmental or cultural constraints to development.

For the above reasons, the Hearing Officer finds that this criterion is satisfied.

5. **Retention of agricultural land. When a petition includes land with Agricultural Class I-IV soils designated in the applicable comprehensive plan for farm or forest use, the petition shall not be approved unless it is factually demonstrated that:**

(A) Retention of any agricultural land would preclude urbanization of an adjacent area already inside the UGB, or

(B) Retention of the agricultural land would make the provision of urban services to an adjacent area inside the UGB impracticable. [3.01 .35(c)(4)]

The petitioner states that this criterion is not relevant because the property and surrounding land is designated for rural residential development in the Clackamas County Comprehensive Plan. While the site contains Class III soil, the county does not consider this land as prime farm or forest land. The county was granted an exception to Statewide Planning Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands) for the land now designated Rural residential.

The comprehensive plan designation of Rural and zoning district of RRFF-5 (Rural Residential Farm Forest-5) are intended primarily to maintain the character of rural areas and implement the goals and policies for residential uses in rural areas. Through its plan

goals and policies, the county makes a distinction between Rural designated land and Agriculture and Forest designated land. According to the Rural section of the comprehensive plan "Rural lands are those which are outside the Urban Growth Boundaries and are suitable for sparse settlement, small farms or acreage home sites with no or hardly any public services and which are not suitable, necessary or intended for urban, agriculture or forest uses. The first goal of this section of the plan is to provide a buffer between urban and agricultural or forest uses. In addition, schools are allowed as a conditional use in this zone district.

Metro Staff agrees that the subject site and surrounding parcels, being designated as Rural and RRFF-5, are not designated for exclusive farm or forest use. According to the plan, "This zone is applied to areas designated as Rural on the comprehensive plan map and which have a general parcel size of five acres; are affected by development; contain no serious natural hazards and the topography and soils, are suitable for development, and are easily accessible to a Rural Center or incorporated city". Primary uses allowed include, but are not limited to single-family dwellings, current employment for general farm uses, propagation or harvesting of a forest product, and parks, campgrounds and recreational grounds. Schools are allowed as a conditional use. Currently, the site has a single family residence with accessory buildings, and is being used as pasture land for cattle.

Since the subject site is not designated by the county comprehensive plan for exclusive farm or forest use, and the primary purpose of the zoning district is to provide for rural residential living, the Hearing Officer finds that this criterion is satisfied.

6. **Compatibility of proposed urban uses with nearby agricultural activities. When a proposed adjustment would allow an urban use in proximity to existing agricultural activities, the justification in terms of all factors of this subsection must clearly outweigh the adverse impact of any incompatibility. [3.01.35(c)(5)]**

The petitioner states that Christmas tree farming and cattle grazing are the two agricultural activities in the area (Attachment C). The subject property and land to the south and

west are used as pasture for cattle. Christmas tree uses are to the northwest, south and east. Properties to the north are large acreage home sites with some tree farming. The tree farming to the northeast and east across Day Road is on land within the UGB, which is designated for urban development.

Conditional use applications for siting the school buildings on the 4.5 acres within the UGB have been submitted to the City of West Linn and Clackamas County. Though the Petition is not technically at issue for this UGB adjustment request it is included in the record, and the petitioner believes that it is related to the issue of compatibility of the proposed use with nearby agricultural activities. Based on the information in the conditional use permit application and site plan (Attachment D), the petitioner claims that the proposed adjustment is compatible with nearby tree farm and grazing uses in the following ways:

- The site plan locates school buildings on the land within the UGB adjacent to the subject site. The athletic fields and parking area are located to the south and west on the subject site. This plan is necessary due to the need to locate utilities, especially sewer, on the uphill portion of the site. Storm drain and detention facilities would be located on the subject site, which is sloping westward toward the stream.
- The state Transportation Planning Rule requires buildings to be located near public streets for easy pedestrian and bicycle access. Locating the school buildings away from streets would be contrary to these requirements.
- The athletic fields will provide excellent buffering between any agricultural activities and classroom activities. Due to security issues, a 6-foot high chain link fence will be installed which will eliminate any potential conflicts with adjoining property owners.
- A school is allowable as a conditional use in the RRFF-5 zone. The proposed school is consistent with the county's conditional use criteria. Further, the county does not have any specific requirements for non-resource uses to be compatible with farm or forest activities.

Based on air photo information and site visits staff and the Hearing Officer confirm that tree farming and grazing activities are taking place on the subject site and adjacent land. These uses are allowed by the county's RRFF-5 zone district. Public and private schools are also allowed as conditional uses subject to special use requirements (Sections 805 and 808) as well as general conditional use criteria (Section 1203). The first set are basic locational, dimensional and parking requirements that are not relevant to this petition. The second set includes the criterion that the proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or precludes the use of surrounding properties for the primary uses listed in the underlying district. The primary uses include residential, farm and forest uses.

This criterion seeks to assess and evaluate whether an urban use allowed by granting a UGB adjustment would adversely impact and be incompatible with nearby agricultural activities; and whether the use outweighs its impacts with justification dependent on the previous criteria. Based on the foregoing discussion and evaluation of the proposal, staff concluded that the use of this site for a middle school, as proposed by the district, clearly outweighs any adverse impact to the surrounding activities for the following reasons:

- The use of the subject site for a middle school is consistent with all local and regional plans, including a specific area plan for development of the adjacent urban area. It would facilitate needed development on the adjacent land within the UGB by providing for a school that is needed to accommodate the projected increase in students. It would also provide recreational and social needs of the increased population projected for the area. In the longer term, the school would also provide these amenities for the additional urbanization of the area immediately west of the site, which has been designated as an urban reserve.
- The site and school can be served with public facilities and services in an orderly, economic and timely manner according to all service providers. Further, extension of sewer service to the site will help improve efficiency of the existing system that serves the adjacent urban area within the UGB by changing to a gravity system.

●Environmental, energy and social consequences of the proposal would be positive. The school would be within one mile of 45% of the student population, as well as within approximately .25 miles of a planned primary school site, as identified in the Tanner Basin Master Plan. A middle school would yield educational and increased recreational opportunities, thus providing improved social benefits to area residents.

●The existing zoning on the subject property allows a school as a conditional use. The criteria for this use must be met before the county issues permits. Based on information from the county and the district's conditional use permit application, the proposed middle school would be compatible with nearby tree farming and cattle grazing.

For the above reasons, the Hearing Officer finds that this criterion is satisfied.

7. **An addition of land to make the UGB coterminous with the nearest property lines may be approved without consideration of the other conditions in this subsection if the adjustment will add a total of two gross acres or less, the adjustment would not be clearly inconsistent with any of the factors in subsection (c) this section, and the adjustment includes all contiguous lots divided by the existing UGB. [3.01 .35(f)(1)]**

The petition is for 17.34 acres which is greater than the 2 acre or less threshold and, therefore, this criterion does not apply.

8. **For all other locations, the proposed UGB must be superior to the UGB as presently located based on a consideration of the factors in subsection (c) if this section. [3.01 .35(f)(2)]**

The petitioner states that the proposed amendment is an improvement to the current UGB due to four reasons:

- (1) Public facilities and services, including schools, will be more efficiently provided to land within the UGB if the school is brought into the UGB and annexed to West Linn.

- (2) Developing a middle school at the site is consistent with acknowledged local plans.
- (3) The environmental, energy, economic and social consequences of the proposal will be positive.
- (4) Agricultural or forest land will not be affected by the proposal.

The school district conducted a site selection process to determine the location for new schools. The first two parts of the process identified attendance areas and ideal locations for schools within those areas. The third step involved a site specific search and included consideration of five locations for middle schools within the northern attendance area. Based on the district's adopted site selection process, only Site 5 met the criteria. Site 5 includes the 4.5 acres along Day Road plus the 17.34 acres of land, which is the subject of this Petition.

Based on the petitioner's submittal, information obtained from county staff and service providers, and site visits, Metro staff agreed with statements (1) through (4) above. The district's site selection process, which resulted in identifying Site 5 as the only feasible one, is outlined in the district's application to the city and county for a conditional use permit for the middle school (appendix A - Exhibit #9). Metro staff conducted site visits to all five sites and confirmed the district's observations. Any other site outside the UGB would not have the advantage of using the 4.5 acres inside the UGB along Day Road for nearly all of the public facilities.

Metro staff also conducted an independent vacant land analysis of property within the city. Follow-up visits were conducted to observe site characteristics. The Metro staff analysis shows six locations that are build able and greater than 10 acres within the entire city (Staff Report - Attachment E). Sites A and B are the only ones inside the district's identified northern attendance area for middle schools. Site A, identified as Site 4 in the district study, is a 10-acre park. Surrounded by residential development, it does not meet the district size criteria. Site B, identified as Site 2 in the district study, consists of four tax lots in different ownership and has about 11 acres of developable land. This site does not meet district size criteria. Sites C, D, E and F are located outside the district's identified attendance area. Site C, approximately 16 acres, is proposed for a residential subdivision.

Site D, with about 8.5 develop able acres, is located at the top of a hill and has poor accessibility for a school use. Site E and F, containing about 12 and 18 developable acres respectively, are located at the southwest end of West Linn and not feasible to serve the district's northern middle school attendance area.

Based on the information contained in Criteria 2, 3, 4 and 6, the Hearing Officer concludes that this site for a needed middle school is better than any other site within the district attendance area, inside or outside the UGB. This criterion is satisfied.

9. **The proposed UGB amendment must include all similarly situated contiguous land which could also be appropriately included within the UGB as an addition based on the factors above. [3.01 .35(f)(3)]**

The petitioner states that the remainder of the 55.18-acre parcel is not included in this proposal because the school district only needs approximately 20 acres for the new school site, provision of services to the other 37.84 acres is limited by site conditions, the adjacent sites are not in the same ownership, and the site corresponds to the Tanner Basin Plan designation for a school site.

Staff agreed with the petitioner that contiguous land to the proposed site is not appropriate for inclusion with this proposal. The district's size criterion for middle schools, included under Policy '6 of the Long Range School Facilities Plan, is 17-22 acres. This is consistent with the petitioner's request for limiting the proposed UGB adjustment to the 17.34 acres, which when added to the 4.5 acres within the UGB equals 21.84 acres for the entire school site.

In addition to the facts cited by the petitioner, staff noted another reason for not including contiguous land. The site is part of Urban Reserve Site 30 which will eventually be included within the UGB. Any proposal to add more than 20 acres to the UGB, however, must include an Urban Reserve Plan. This plan must address several issues including but not limited to: Provision of minimum residential densities and diversity of housing; provision for commercial and industrial development needs; a transportation plan; public

facilities and services plan; school plan; and general locations of roads, housing, commercial and industrial land, open space and public facilities. The current petition does not address these issues, except the school plan, because 17.34 acres is all the land that is being proposed for addition to the UGB. This petition could not appropriately include additional land (greater than 20 acres) based on the above locational adjustment criteria.

VII. Summary and Recommendation

This petition seeks to bring 17.34 acres of land into the UGB for the purpose of siting a new middle school. The service provision, land use efficiency and site impact issues of this petition meet the criteria. Moreover, the petitioner has made a good case that the proposed UGB is superior to the existing one for two reasons: There would be a net improvement in efficiency for public facilities and services, especially for public education, recreation facilities and sewer service; and the subject site is the best one for locating a new middle school based on district criteria and the alternative site selection study.

A school is allowed as a conditional use in the zone district, given that it meets county siting criteria. The county must make a finding that the proposed use would not substantially alter the character of the surrounding area. The Hearing Officer concludes that the proposed UGB adjustment is superior to the UGB as presently located based on consideration of the above criteria. The construction of two new middle schools is needed according to the district, to accommodate the projected increase in students by 2010. Locations for new schools in the area is severely limited, based on alternative site selection studies. Expansion of the UGB at the subject location would accommodate the district's needs while contributing to the provision of public facilities and services in an efficient manner.

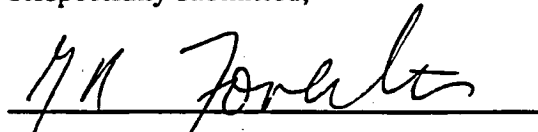
Metro staff recommended and the Hearing Officer concurs that placing the following condition should be attached to the decision: The subject site must be developed with a school use. The petitioner's case was made based on the siting of a middle school. The justification for adjusting the UGB is contingent upon the demonstrated need for land to locate a new school. The petitioner must still meet conditional use criteria of both Clackamas County and the City of West Linn in order to utilize this locational adjustment. The Hearing Officer agrees with the staff

proposed condition and favorable recommendation.

The petition meets the requirements of the Metro Code for locational adjustments. For that reason, the petition should be granted with the proposed condition.

Dated: July 11, 1997

Respectfully submitted,



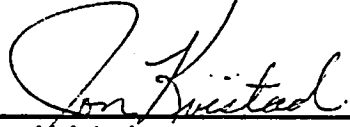
J. Richard Forester

Hearings Officer

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

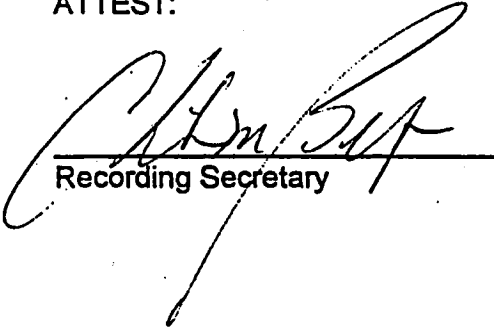
1. To accept the Hearings Officer Report and Recommendation, as attached herein as Exhibit B; and
2. The Hearings Officer Findings and Recommendation, included as Sections VI and VII of Exhibit B, be adopted approving the petition in Case 97-1: West Linn.

ADOPTED by the Metro Council this 2nd day of October, 1997.



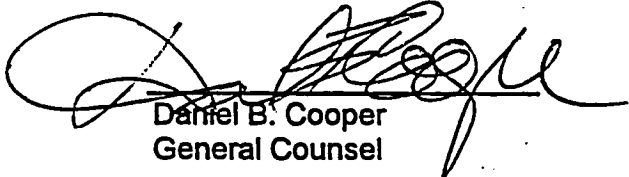
Jon Kvistad
Presiding Officer

ATTEST:



Recording Secretary

Approved as to Form:



Daniel B. Cooper
General Counsel

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ESTABLISHING)
TIMELINES FOR MEETING METRO'S)
OBLIGATION TO EXPAND THE URBAN)
GROWTH BOUNDARY)

RESOLUTION NO. 98-2640B
Introduced by Councilors
Morissette and McLain

WHEREAS, Periodic Review of Metro's acknowledged regional Urban Growth Boundary (UGB) was completed in Dccember 1992 and the date for the next Periodic Review of the boundary has not been established; and

WHEREAS, Metro Code 3.01 "Urban Growth Boundary Amendment Procedures" were acknowledged for compliance with statewide planning goals in that 1992 Periodic Review; and

WHEREAS, ORS 197.296(3) and (1997) HB 2493 require Metro to complete: (a) an inventory of the supply of buildable lands within the urban growth boundary, (b) a calculation of actual density and average housing mix during the past five years, and (c) an analysis of 20-year housing need by type and range by January 1, 1998; and

WHEREAS, prcliminary 1997 Urban Growth Report tables, policy variables estimating trends, and the estimated number of needed housing units were adopted in Resolution No. 97-2550A; and

WHEREAS, the Metro Council has held public hearings providing the opportunity to comment on the comparison of the buildable lands inventory and the population and employment forecast, the analysis of whether there is any significant surplus in any land use categories to address the unmet forecasted need, and the Housing Needs Analysis; and

WHEREAS, the acknowledged Metro Code Chapter 3.01 process for 5-year review of the regional urban growth boundary (UGB) shall continue as locations are reviewed for the scheduled consideration of a first legislative UGB amendment in 1998;

WHEREAS, on December 18, 1997, the Metro Council adopted Resolution 97-2559B for the purpose of adopting the 1997 Buildable Lands and Capacity Analysis and the Regional Forecast of Population, Households and Employment, Actual Density Analysis and 1997 Housing Needs Analysis, in which the Council determined that there was a Urban Growth Boundary capacity deficit of 32,370 dwelling units; and

WHEREAS, ORS 197.299 requires that Metro accommodate one-half of the deficit building land supply within one year of completing the analysis; and

WHEREAS, the Metro Council desires to establish timelines for meeting Metro's obligation to expand the Urban Growth Boundary;

WHEREAS, expanding the Urban Growth Boundary inside Metro's jurisdictional boundary will be accomplished by adoption of an appropriate ordinance. For areas outside Metro's jurisdictional boundary, the Council will adopt a resolution of intent subject to annexation of the territory to Metro; now therefore,

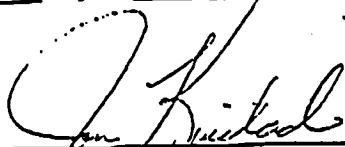
BE IT RESOLVED:

1. That prior to August 13, 1998, the Metro Council, in order to satisfy one-half of the need to expand the buildable land supply as required by ORS 197.299, will review existing procedures and determine whether amendments to the Metro Code are appropriate, and will establish a schedule for considering Urban Growth Boundary Amendments; and

BE IT FURTHER RESOLVED:

- 2. That prior to September 22, 1998, the productivity analysis of existing Urban Reserves will be presented to and reviewed by the Council Growth Management Committee;
- 3. That by September 29, 1998, proposals shall be introduced providing for a legislative expansion of the Urban Growth Boundary to meet one-half of the need for the buildable land supply as required by ORS 197.299; and
- 4. The Council shall tentatively schedule public hearings and vote on the proposals, as they may be amended, no later than November 5, 1998.

ADOPTED by the Metro Council this 11th day of JUNE 1998.



 Jon Kvistad, Presiding Officer

Approved as to Form:



 Daniel B. Cooper, General Counsel

COMMITTEE REPORT

CONSIDERATION OF RESOLUTION 98-2640B, FOR THE PURPOSE OF ESTABLISHING TIMELINES FOR MEETING METRO'S OBLIGATION TO EXPAND THE URBAN GROWTH BOUNDARY

Date: June 3, 1998

Presented by: Councilor Morissette

Committee Action:

At its June 2, 1998 meeting, the Growth Management Committee voted 2-1 to move Resolution No. 98-2640B to the full Council for adoption. Councilors Morissette and Naito voted aye; Councilor McCaig voted no.

Committee Issues/Discussion:

Prior to the Committee, Resolution 98-2640 was amended. The amendments substitute the earlier language for the following:

1. Add Councilor McLain as a sponsor;
2. Provide that by August 13, 1998, the Council will review existing procedures and determine whether amendments to the Metro Code are necessary to accomplish the state requirement that one-half of the buildable land supply need is accommodated within the Urban Growth Boundary (UGB) by Jan. 1, 1999;
3. Provide that by August 13, 1998 the Council will establish a schedule for moving the UGB to meet half of the need by Jan. 1, 1999;
4. Provide that prior to September 22, 1998, the productivity analysis of the Urban Reserves will be reviewed by the Growth management Committee;
5. Provide that by September 29, 1998, proposals shall be introduced providing for a legislative expansion of the UGB to meet one-half of the need; and
6. Provide that the Council shall tentatively schedule public hearings and vote on the proposals by November 5, 1998.

Councilor Naito stated that she was more comfortable with adding "tentatively" to the final requirement so that the Council could remain flexible as to the date of the actual vote.

Councilor Morissette stated that his intent in bringing this resolution forward was to ensure that our obligation to move the UGB by the end of the year as required by the state was met. Councilor Morissette thought that it was important to review the requirements for bringing the necessary land into the UGB as soon as possible, so that if adjustments were needed, such as adjusting the requirement for concept planning, those adjustments could be made and Metro could meet its obligations under state law.

STAFF REPORT

CONSIDERATION OF RESOLUTION 98-2640, FOR THE PURPOSE OF ESTABLISHING TIMELINES FOR MEETING METRO'S OBLIGATION TO EXPAND THE URBAN GROWTH BOUNDARY

Date: May 20, 1998

Introduced by: Councilor Morissette

Proposed Action:

Councilor Morissette requests that the Committee adopt this resolution, which designates certain deadlines associated with the required expansion of the urban growth boundary. Specifically, all preliminary steps necessary to determine where to expand the urban growth boundary to accommodate half of the 20-year housing need, including concept planning, would have to be completed by August 1, 1998; the ordinance to expand the boundary to accommodate half the need would have to be introduced by September 15, 1998; and public hearings and a vote on the ordinance would have to be done by October 15, 1998.

Background and Analysis:

State law requires that sufficient land to accommodate one-half of the 20-year housing need be brought within the urban growth boundary by January 1, 1999. To meet this requirement, Metro must bring in enough land to accommodate 16,185 units. The urban growth management functional plan requires that any urban reserves brought into the urban growth boundary have a concept plan which, among other things, states generally the housing, commercial, transportation and public facilities systems that will be used in the area. These concept plans are required by the functional plan in an effort to ensure that new lands brought into the urban growth boundary are consistent with the 2040 design types and have adequate transportation and public facilities.

The Executive Officer has let a contract for a productivity analysis of the first tier urban reserves. This analysis will determine the actual capacity of each first tier urban reserve for housing, commercial and industrial sites, infrastructure and facilities. This report will inform the decision of the Council regarding exactly which urban reserves should be brought in to meet the 16,000-unit need. This report will be completed in August.

Current urban reserve concept planning is progressing slower than expected. At this time, there are no completed urban reserve concept plans. The time and cost to complete an urban reserve concept plan depends on the size and characteristics of the urban reserve, the degree to which public hearings are held and the level of staff time devoted to the planning.

This resolution requires all concept planning and other preliminary steps required for inclusion in the urban growth boundary to be completed by August 1, 1998.

Budget Impact:

The FY 97-98 growth management budget has no money for concept planning grants, though growth management staff is available for technical assistance. The proposed FY 98-99 budget, which takes effect July 1, has \$200,000 that could be used for concept planning grants.

**METRO**

DATE: May 12, 1998

TO: Mike Burton, Executive Director

FROM: Elaine Wilkerson, Director
Growth Management Services *(initials)*

RE: *UGB Amendment Recommendation*

We received several petitions for locational adjustments to the UGB this year. Locational Adjustments may be sought to add areas of 20 acres or less to improve the efficiency of the existing UGB. Among the ten petitions being processed by staff, five applications are for land within first tier urban reserves. After preliminary review of four of these petitions, we believe it would be more appropriate to process them through the Metro Council as legislative amendments for lands in urban reserve areas 33, 34 and 43. The following analysis supports this recommendation.

BACKGROUND

All four petitions were submitted by the filing deadline of March 15 and are included within the yearly 100-acre limit for locational adjustments. Three petitions are for land immediately south of Lake Oswego. *Case 98-1: Buford* consists of the entire portion of first tier land (7.37 acres) within Urban Reserve #34 (Map 1). *Case 98-2: Derby* and *Case 98-3: Lake Oswego* consist of 24.64 acres of the 44.2 acres of first tier land within Urban Reserve #33 (Map 2). The fourth petition, *Case 98-6: Matrix*, is for the entire first tier site of Urban Reserve #43 (9.89 acres), located along Grahams Ferry Road immediately south of Tualatin (Map 3).

ANALYSIS

Whether to process the four petitions as locational adjustments or legislative amendments is the issue. A comparison of the advantages and disadvantages for both the petitioners and Metro is informative in this regard.

Locational Adjustment

The criteria that have to be met for approval of a locational adjustment relate to how a site results in a superior version of the existing UGB. In particular, the adjustment must result in a net improvement in the efficiency of public facilities and services, and facilitate needed development within the existing UGB.

The advantage for a petitioner pursuing a locational adjustment is that an urban reserve concept plan is not required. [The urban reserve plan includes a requirement for 10 residential units per acre.] For a locational adjustment, the petitioner addresses the criteria in Metro Code 3.01.035, which reflect relevant portions of statewide goals 2 and 14. These criteria are intended to be certain and objective.

The disadvantage to the petitioner for a locational adjustment is it must be shown how inclusion of the property would result in a superior version of the existing UGB. This burden of proof is in no way dependent on the site being an urban reserve. In other words, the locational adjustment criteria do not recognize the Metro Council's designation of urban reserves outside the existing UGB because a locational adjustment is to increase the efficiency of land inside the existing UGB. For this reason, a site may be designated as first tier and identified for UGB expansion, but not qualify for inclusion under the locational adjustment process.

There is no apparent advantage for Metro to process these four petitions under the locational adjustment process, if those petitions must be denied.

The disadvantages for Metro under this process are the following:

- The very real possibility of finding ourselves in a dilemma caused by having to choose between denying a petition that does not meet the locational adjustment criteria, though its located in a first tier reserve, or approving the petition not recommended by the hearings officer because it may not meet the criteria. The findings that must be made to support a quasi-judicial action are based upon the facts of the case. Approving the petition may leave us more susceptible to legal challenge.
- The loss of opportunities to implement the 2040 Growth Concept on the land brought into the UGB. We have very little control over development of the site.

Legislative Amendment

The criteria that have to be met for approval of a legislative amendment initiated by the Metro Council relate to how a site complies with statewide goals 2 and 14 and the RUGGO. In particular, the amendment must demonstrate a need to accommodate long-range urban population growth, and the need for housing, employment opportunities and/or livability. The demonstration of compliance with RUGGO, thus the 2040 Growth Concept, is via an urban reserve plan as outlined in Metro Code 3.01.012(e).

The advantages for the petitioner to pursue a legislative amendment are the following:

- No filing fee is required.
- No hearings officer is used.
- Metro initiates the action and carries the proposal through the hearing process.

- The decision is based in large part on the findings already made by Metro for the particular urban reserve involved.
- Similarly situated first tier land adjacent to the petitioner's land could be brought in with an urban reserve plan

The disadvantage to the petitioner is that an urban reserve plan must be completed, which is more time consuming and expensive, if the petitioner does it, than addressing locational adjustment criteria.

The advantages to Metro under this process are the following:

- Close participation in the application process and thus more assurance that the case is a solid one.
- An opportunity to help develop an urban reserve plan that can serve as a model for others.
- Bringing adjacent first tier land into the UGB.
- The findings for the case are based on an urban reserve plan that is coordinated with our staff, as well as on the findings previously made for the urban reserves.
- Compliance with RUGGO and the 2040 Growth Concept through an urban reserve plan. This helps ensure that regional goals are met for the land brought into the UGB.
- The action demonstrates our resolve to comply with HB 2709 by being proactive in expanding the UGB.

The disadvantage for Metro is the probable use of significantly more staff resources to process these petitions as legislative and to participate in the development of the urban reserve plan.

Preliminary Review of Petitions

Based on a preliminary review of the four petitions, we have found that three of them do not seem to meet the criteria for approving a locational adjustment. If the final analysis supports this position, we cannot support approval of them as locational adjustments. Depending on what the hearings officer recommends to the Metro Council, we could find ourselves in the dilemma referred to above. As previously mentioned, this dilemma is due to the locational adjustment process having a different purpose and burden of proof than a major or legislative amendment. When we amended the Metro Code to reflect the newly designated urban reserves last year, the locational adjustment criteria were not included because urban reserves are an expansion of the existing UGB.

Processing the three cases south of Lake Oswego legislatively would result in bringing the entire first tier land within the Stafford triangle into the UGB. This action would be consistent with the Metro Council and City of Lake Oswego policies regarding urban reserves in this area.

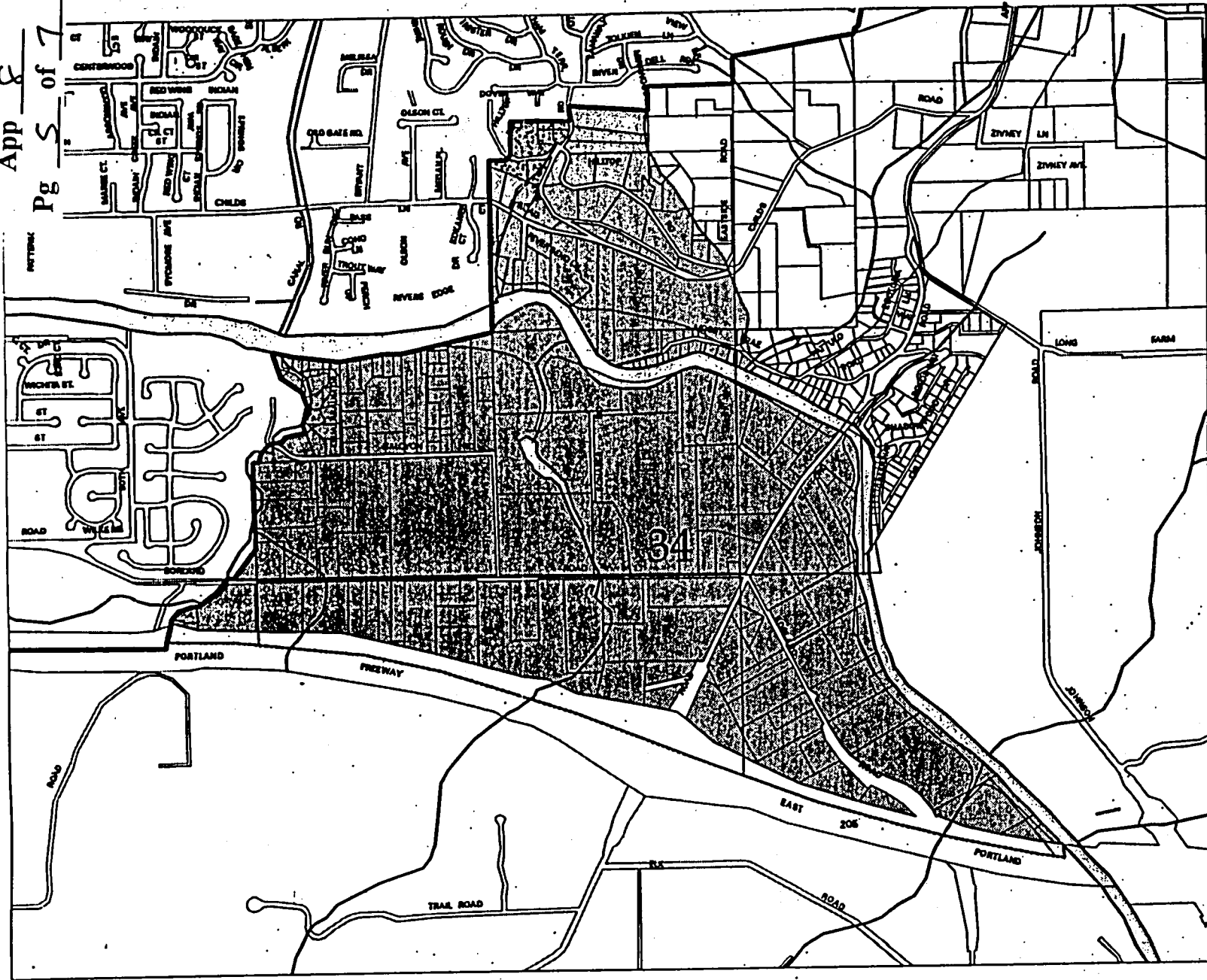
Case 98-6: Matrix is an anomaly. It involves a first tier site that is under 20 acres. For this reason, it is not eligible to be processed as a major amendment (over 20

acres) and thus not subject to an urban reserve plan under a quasi-judicial process. The petitioner was willing to develop and submit an urban reserve plan but the definitions precluded doing so. We have to process an amendment request as a locational adjustment.

RECOMMENDATION






Based on the above analysis, I recommend that Metro process the four petitions for land within first tier urban reserves as legislative amendments by requesting that the Metro Council initiate such amendments. If you agree, I would consult with Metro Council staff. I would then meet with the petitioners and explain the situation and our approach.

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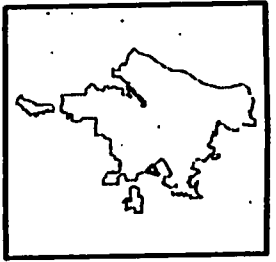


Urban Reserves Tax Lot Boundaries

Metro Council Approved
3-6-97

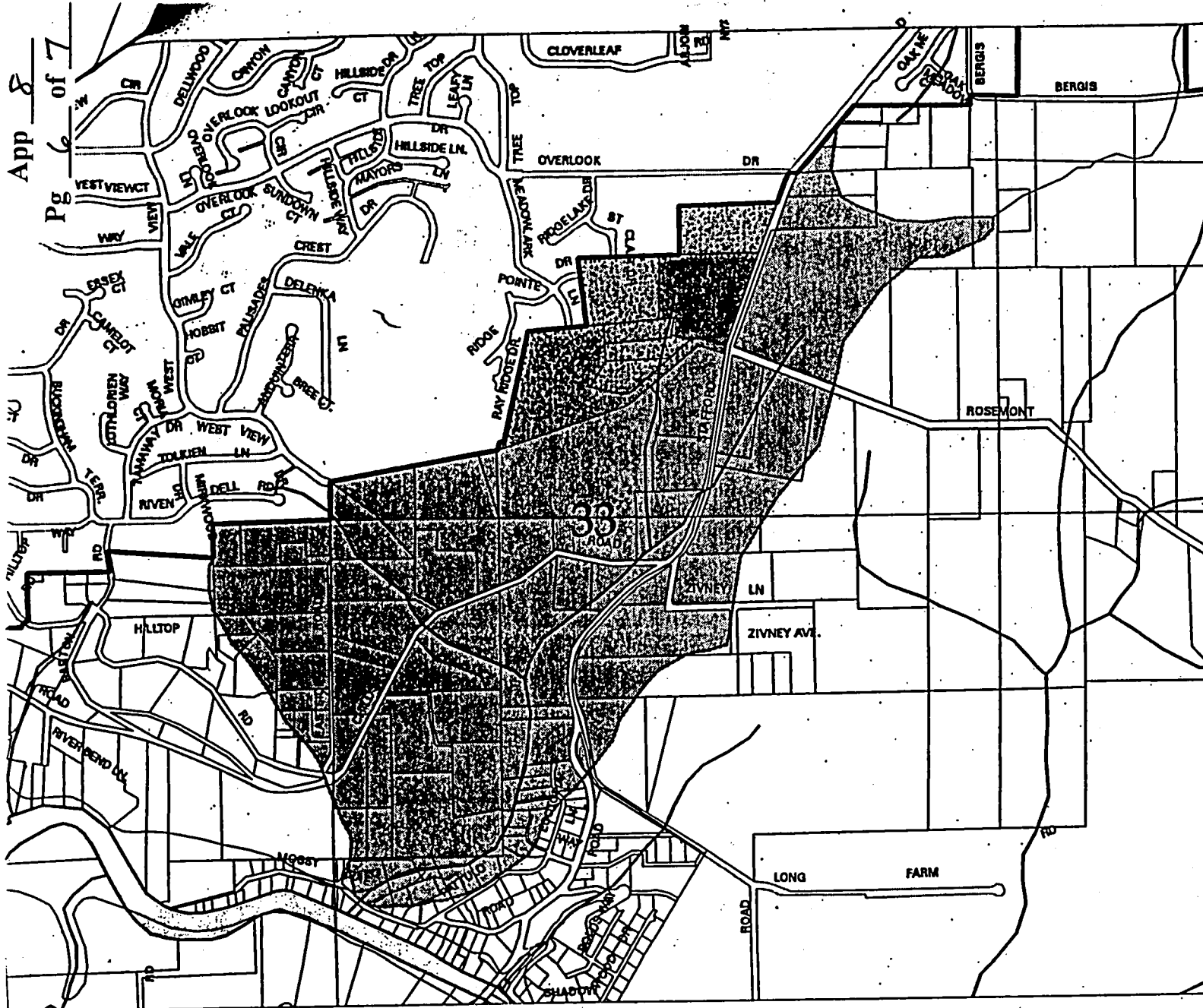
-  Designated Urban Reserves
-  First Tier Urban Reserves
-  Adopted Urban Reserve Boundaries
-  Urban Growth Boundary
-  CASE 98-1: BUFOAD

MAP #34



600 NE Court Ave
Portland, OR 97232-3794
(503) 798-3762











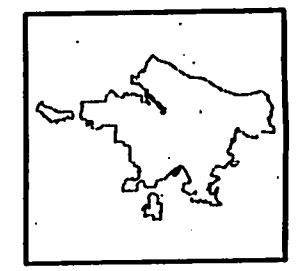
Regional Land Information System

Urban Reserves Tax Lot Boundaries

Metro Council Approved
3-6-97

-  Designated Urban Reserves
-  First Tier Urban Reserves
-  Adopted Urban Reserve Boundaries
-  Urban Growth Boundary
-  CASE 98-2: DEARB
-  CASE 98-3: LAKE OSWEGO

MAP #33



800 NE Grand Ave
Portland, OR 97232-2796
(503) 737-2702



16-1127-2-2000.mxd, plot date: October 27, 1997

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 98-2706 DENYING URBAN GROWTH BOUNDARY LOCATIONAL ADJUSTMENT CASE 98-2: DENNIS DERBY, DOUBLE D DEVELOPMENT, INC. AND ADOPTING HEARINGS OFFICER'S REPORT INCLUDING FINDINGS AND CONCLUSIONS

Date: October 1, 1998

Presented by: Larry Epstein, Hearings Officer
Prepared by: Carol Krigger, Growth Management

PROPOSED ACTION

Adoption of Resolution 98-2706, denying *Case 98-2: Dennis Derby, Double D Development, Inc.* a locational adjustment to the urban growth boundary (UGB).

BACKGROUND AND ANALYSIS

On March 10, 1998, Dennis Derby, Double D Development, Inc. filed a petition for a 14.84-acre locational adjustment to the UGB for the purpose of developing the site with single-family residential units.

Proposal Description:

The 14.84-acre site is located southwest of the intersection of Stafford and Rosemont roads in unincorporated Clackamas County (Attachment 1). It is adjacent to the UGB and the city of Lake Oswego and is located within the first tier portion of Urban Reserve #33. The site is exception land and is zoned Clackamas County RRFF-5 (Rural Residential/Farm Forest, 5-acre minimum lot).

Hearings Officer Recommendation and Proposed Findings

The Hearings Officer, Larry Epstein, conducted a public hearing at the Lake Oswego City Hall on June 24, 1998. He submitted a report and recommendation to Metro on July 24, 1998, recommending denial of the petition (Attachment 2).

The Hearings Officer finds that the criteria for a locational adjustment to the UGB as contained in Metro Code 3.01.035 are not met by the petitioner. These criteria include: 1) Locational adjustments shall not exceed 20 net acres; 2) The site can be served with public facilities and services in an orderly and economic manner, and the adjustment would result in a net improvement in their efficiency; 3) The amendment would facilitate needed development on adjacent existing urban land; 4) The environmental, energy, economic and social consequences of amending the UGB have been considered; 5) The proposed use would be compatible with nearby agricultural activities; 6) The proposed UGB location would be superior to the existing UGB location; and 7) The proposed adjustment must include all similarly situated contiguous land which could also be appropriately included within the UGB.

FINDINGS

The Hearings Officer recommends adoption of Resolution 98-2706 based upon the findings and conclusions in his report that:

- All application and noticing requirements are met.
- A public hearing was conducted according the requirements and rules of Metro Code 3.01.050 and 3.01.055.
- The criteria for a locational adjustment to the UGB contained in Metro Code 3.01.035 are not met by the petitioner.

The case record contains the petitioner submittals, Metro staff report, notification lists, relevant correspondence, exhibits, the Hearings Officer's report and the petitioner's exception to the Hearings Officer's report. The complete list is included as part of the Hearings Officer's report.

BUDGET IMPACT

There is no budget impact from adopting this ordinance.

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Proposed Adjustment

Case # 98-2
Derby

-  Subject Property
-  Urban Growth Boundary

ATTACHMENT 1

98-2 Derby



1" = 800 feet



METRO

800 NE Grand Ave.
Portland, OR 97232-2738
503 797-1742 FAX 503 797-1909
Email: drc@metro.dst.or.us

BEFORE THE METRO COUNCIL

1
2
3 In the matter of the petition of Dennis Derby for a) HEARINGS OFFICER'S
4 Locational Adjustment to the Urban Growth Boundary) REPORT AND
5 southwest of the intersection of Stafford and Rosemont) RECOMMENDATION
6 Roads in unincorporated Clackamas County) Contested Case No. 98-02
7

I. INTRODUCTION AND SUMMARY

8
9
10 This report contains a summary of the findings the hearings officer recommends to
11 the Metro Council to deny a petition for a locational adjustment to the Urban Growth
12 Boundary ("UGB"). The petition raises the following major issues:
13

- 14 • Whether the petition includes all contiguous similarly situated lands. The
15 hearings officer and Metro staff found that there are contiguous similarly
16 situated lands that should be included in the petition; the petitioner disagreed.
17
- 18 • Whether granting the petition results in a superior UGB and a net improvement
19 in the efficiency of public facilities and services relevant to the adjustment. The
20 hearings officer found that it does not result in sufficient net improvement;
21 therefore, the proposed UGB is not superior to the existing one.
22
- 23 • Whether granted the petition must result in the maximum land use efficiency as
24 argued by Metro staff. The hearings officer found the petition is not required to
25 result in maximum land use efficiency.
26

27 Related to the foregoing issues is the significance to be given the fact that the
28 subject property is one of several contiguous properties that Council has designated as
29 "Tier One" properties in Urban Reserve Area 33. When Council adopted the Urban
30 Reserve and Tier One designations, it did not amend the standards for locational
31 adjustments. Thus it is unclear what, if any, impact Council intended those designations to
32 have on the application of the locational adjustment standards. This is the first petition to
33 raise the issue clearly. The hearings officer and Metro staff concluded designation as a Tier
34 One property is a significant fact relevant to the standards for a locational adjustment. The
35 petitioner has the same belief, although he would reach different conclusions after
36 considering the Tier One designation.

1 **III. SUMMARY OF APPLICABLE STANDARDS AND RESPONSIVE FINDINGS**

2
3 1. A locational adjustment to add land to the UGB must comply with the relevant
4 provisions of Metro Code ("MC") sections 3.01.035(c) and (f). The following findings
5 highlight the principal policy issues disputed in the case.
6

7 2. MC § 3.01.035(c)(1) requires a petitioner to show (1) that granting the petition
8 would result "in a net improvement in the efficiency of public facilities and services" and
9 (2) that the area to be added can be served "in an orderly and economic fashion." There
10 was no dispute that the subject site can be served in an orderly and economic fashion.
11 There is a dispute whether granting the petition results in a net improvement in efficiency of
12 sanitary sewer, open space and police and fire service. The petitioner argues it would. The
13 hearings officer found it would not result in a sufficient net improvement to warrant
14 approval, particularly with regard to sanitary sewer service, relying in part on past Council
15 decisions that have addressed this issue. However the hearings officer's finding relies on a
16 balancing of the facts and the policy. A different balance could be struck.
17

18 3. MC § 3.01.035(c)(2) is entitled "maximum efficiency of land use" and requires
19 the amendment to facilitate permitted development of adjacent land already in the UGB.
20 Metro staff argued the title of the section is an approval standard. The petitioner and the
21 hearings officer disagreed with staff. There is no dispute that granting the petition would
22 facilitate needed development on a 1.6-acre parcel already in the UGB. But there was a
23 dispute about whether this results in maximum land use efficiency. The hearings officer
24 found the petition does comply with § 3.01.035(c)(2), and that the title of section is not an
25 approval standard, based on prior Council decisions in other cases.
26

27 4. MC § 3.01.035(c)(3) requires an analysis of environmental, energy, social and
28 economic impacts of granting the petition, particularly with regard to transit corridors and
29 hazard or resource land. There is no dispute that the petition complies with this standard.
30

31 5. MC § 3.01.035(c)(4) requires retention of agricultural land. There is no dispute
32 that, because the subject property is in an exception area, this standard does not apply.
33

34 6. MC § 3.01.035(c)(5) requires urban development of the subject property to be
35 compatible with nearby agricultural activities. There is no dispute that the petition complies

1 with this standard, because of the nature of nearby agricultural activities and the functional
2 and physical separation between the site and those activities.

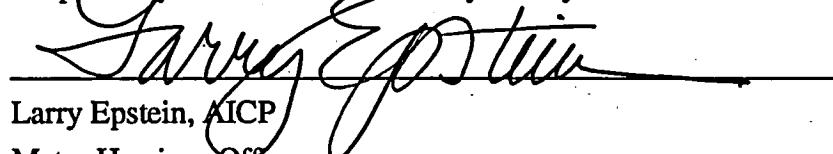
3
4 7. MC § 3.01.035(f)(2) requires the proposed UGB to be superior to the existing
5 UGB. The hearings officer found the proposed UGB is not superior, because it does not
6 comply with all of the above criteria, particularly § 3.01.035(c)(1).

7
8 8. MC § 3.01.035(f)(3) requires a proposed locational adjustment to include all
9 contiguous similarly situated lands. Petitioner argued that the site is not contiguous to other
10 land in Tier One; and that, if it is contiguous, the site is not similarly situated, because, in
11 large part, no other land can be used to serve TL 900. The hearings officer found that there
12 are contiguous similarly situated properties that are not included in the petition based on the
13 factors in section 3.01.035(c). Other Tier One lands in Reserve Area 33 are contiguous,
14 because they share a common property boundary with the subject site. They are physically
15 similar. They share public service needs that can be fulfilled most efficiently and
16 economically by including most if not all of those Tier One properties in the UGB. If the
17 similarly situated lands are included in the petition, it will substantially exceed 20 acres,
18 which is the maximum permitted area for a locational adjustment under MC section
19 3.01.035(b). Based on prior cases and the facts of this case, the hearings officer found the
20 petition does not comply with MC sections 3.01.035(b) and (f)(3).

21
22 **IV. ULTIMATE CONCLUSION AND RECOMMENDATION**

23
24 For the foregoing reasons, the hearings officer concludes the petitioner failed to bear the
25 burden of proof that granting the petition would comply with all of the relevant approval
26 standards in Metro Code section 3.01.035 for a locational adjustment. Therefore the
27 hearings officer recommends the Metro Council deny the petition, based on this Report and
28 Recommendation and the Findings, Conclusions and Final Order attached hereto.

29
30 Respectfully submitted this 24th day of July, 1998.

31
32 
33 Larry Epstein, AICP
34 Metro Hearings Officer

1 b. The subject property is a roughly rectangular shaped parcel 700 to 900
2 feet north-south by about 600 to 900 feet east-west with a roughly 60-foot wide access
3 strip extending east from the southeast corner of the site to the north side of Stafford Road
4 at its intersection with Rosemont Road. The site contains 14.84 acres. It is in an exception
5 area to Statewide Planning Goals 3 and 4. It is designated "Rural Residential/Farm Forest"
6 on the acknowledged Clackamas County Comprehensive Plan Map and is zoned RRF5
7 (Rural Residential/Farm Forest, 5-acre lot size). The subject property is part of Urban
8 Reserve No. 33. It is located in that part of Urban Reserve No. 33 which is designated as
9 a "first tier" site by the Metro Council.

10
11 c. The subject property slopes down to the southeast from a high of about
12 585 feet above mean sea level ("msl") at the northwest corner to a low of about 450 feet
13 msl along the south boundary. Moving eastward along the access strip, the topography
14 continues to drop towards the western fork of Pecan Creek. (See exhibit 19). The creek is
15 located at roughly 410 feet msl where it crosses the access strip portion of the site. East of
16 the creek the topography rises again to an elevation of roughly 440 feet msl where the
17 access strip abuts Stafford Road. Slopes on the site range from 12 to 25 percent.

18
19 d. The petition was accompanied by comments from affected jurisdictions
20 and service providers. See Exhibits 6, 8 and 9.

21
22 i. The City of Lake Oswego City Council adopted Resolution 98-10
23 in support of the petition. See exhibit 6.

24
25 ii. The City of Lake Oswego also commented as a service provider.
26 See exhibit 8. The City commented that urban services could be provided to the subject
27 property in an orderly and economic fashion. The comments are summarized below:

28
29 (1) The project would provide the opportunity for
30 transportation connectivity to adjacent local streets, parks and open spaces. "This would
31 have some impacts on transportation efficiencies in the local area." Connectivity "has the
32 opportunity to enhance fire and police protection in the local area." The exact nature of the
33 impacts is dependent on final development review approval by the City.

34

1 (2) Extension of gravity flow sewers to serve the subject
2 property "might" make it possible for other first tier urban reserve lands to connect to
3 gravity sewers.
4

5 (3) Approval of the petition would improve efficiency of
6 water service delivery to properties within the existing UGB and would create a looped
7 water line from the existing main in Stafford Road.
8

9 (4) Development of this project "would make it possible...to
10 develop a 9.8-acre [park] parcel ...at the corner of Stafford and [Rosemont]...pursuant to a
11 City adopted Master Plan."
12

13 iii. The Clackamas County Board of Commissioners adopted an
14 order in which it declared no objection to the petition. See exhibit 9.
15

16 2. Metro staff mailed notices of a hearing to consider the petition by certified mail
17 to the owners of property within 500 feet of the subject property, to the petitioner, to
18 Clackamas County, to the City of Lake Oswego and to the Department of Land
19 Conservation and Development ("DLCD"). See Exhibits 11 and 14. A notice of the
20 hearing also was published in *The Oregonian* and *The Lake Oswego Review* at least 10
21 days before the hearing.
22

23 3. On June 24, 1998, Metro hearings officer Larry Epstein (the "hearings officer")
24 held a public hearing at the Lake Oswego City Hall to consider the petition. All exhibits and
25 records of testimony have been filed with the Growth Management Division of Metro. The
26 hearings officer announced at the beginning of the hearing the rights of persons with an
27 interest in the matter, including the right to request that the hearings officer continue the
28 hearing or hold open the public record, the duty of those persons to testify and to raise all
29 issues to preserve appeal rights, the manner in which the hearing will be conducted, and the
30 applicable approval standards. The hearings officer disclaimed any *ex parte* contacts, bias
31 or conflicts of interest. Ten witnesses testified in person.
32

33 a. Metro planner Carol Krigger verified the contents of the record and
34 summarized the staff report (Exhibit 13), including basic facts about the subject property,
35 the UGB and urban services, and comments from the City of Portland. She testified that
36 the petitioner showed that the proposed locational adjustment complies with all but one of

1 the applicable approval criteria. She testified the petitioner failed to show that all similarly
2 situated land contiguous to the subject property is included in the petition, largely because
3 five physically similar and contiguous properties in Reserve Area 33 are designated “first
4 tier”, and those property’s are not included in the petition. If they were included, the
5 petition would exceed the acreage limit for a locational adjustment. She argued:

6
7 i. All of the first tier properties in this area should be brought into
8 the UGB, planned and developed as a single unit.

9
10 ii. In particular, TL 700 northeast of the subject property is similarly
11 situated and should be included in this petition. St. Clair Drive is stubbed at the north
12 boundary of TL 700. This street could be extended through TL 700 and the subject
13 property, enhancing multi-modal circulation and connectivity and access for emergency
14 vehicles. In addition, extension of existing sewer lines from St. Claire Drive would allow
15 more of the subject property to be served with gravity flow sewers.

16
17 iii. Approval of the petition would facilitate needed development on
18 land within the existing UGB, Criteria 4. However including only the subject property,
19 excluding the five other parcels within the first tier urban reserve, would not result in
20 maximum efficiency of development within the UGB.

21
22 b. Planner Richard Givens, engineer Greg Weston and attorney Wendie
23 Kellington appeared on behalf of the petitioner, Dennis Derby.

24
25 i. Mr. Givens described the location of existing public services
26 available to serve the subject property. He opined that the ideal situation would include all
27 of the first tier urban reserve properties. However the subject property is unique. Only the
28 subject property can provide access and public services to TL 900, a landlocked parcel
29 within the existing UGB, eliminate the long cul-de-sac street (Meadowlark Lane), and
30 allow construction of a looped water system. These improvements cannot be provided by
31 development of the other contiguous first tier properties. Therefore the adjacent first tier
32 properties are not “similarly situated.”

33
34 ii. Mr. Weston testified that only the subject property can provide a
35 connection between the Ridge Point development and Stafford Road. He testified that the
36 existing sewer main in St. Clair Road could be extended to provide gravity flow sewer

1 service to a larger percentage of the subject property. However this sewer line was never
2 intended to be extended. The system would have to be reconstructed to serve the subject
3 property. He opined that the subject property could be developed with roughly 22 lots.
4 Four of the lots would require a STEP system that does not rely on gravity flow.

5
6 iii. Ms. Kellington noted that that the Metro Code defines “first tier”
7 properties as those that “can be most cost-effectively provided with urban services...” She
8 argued that the first tier urban reserve designation creates legislative presumptions (1) that
9 public services can be provided in an orderly and economic manner to properties so
10 designated and (2) that including such properties will maximize the efficiency of develop-
11 ment. Therefore the petition complies with Metro Code sections 3.01.035(c)(1) and (2).

12
13 (1) She argued the subject property is unique and must be
14 considered on its own merits. Other adjacent first tier lands are not similarly situated and
15 cannot provide services to TL 900 west of the site and within the existing UGB. Only this
16 site can provide access to the dedicated but undeveloped right of way across TL 900 and to
17 undeveloped Cook Park west of TL 900. She noted that Lake Oswego’s vacant buildable
18 lands inventory identifies TL 900 as suitable for residential development. But, without the
19 access that can be provided across the subject site, TL 900 cannot develop.

20
21 (2) She argued that TL 700 east of the site is not contiguous
22 to the subject property, because the two properties only touch for a small distance. Even if
23 it is contiguous, including TL 700 in the UGB would not enhance services to land already
24 in the UGB (e.g., TL 900). That fact that including TL 700 in the UGB would increase the
25 efficiency of sewer service, by allowing gravity flow sewer to serve more of subject site,
26 that is not relevant, because the subject site is not already in the UGB.

27
28 (3) She argued that TL 1100 is not similarly situated,
29 because it is planned for development as a park. She cited the recent Metro staff report
30 regarding the Tsugawa petition as support for this argument.

31
32 (4) The subject property is separated from the adjoining TLs
33 607, 608 and 609 by a driveway. Therefore it is not contiguous, based on the staff report
34 for the Tsugawa petition.

1 (5) Citing the Council's decision in the West Linn-
2 Wilsonville School District petition, she argued that abutting properties should not be
3 considered similarly situated because they are needed for the locational adjustment to
4 comply with applicable standards or to fulfill the petitioner's goals.
5

6 (6) She noted that there is no guarantee that all first tier
7 lands will be included in the UGB. She argued that approval of the petition will not
8 foreclose adjacent lots from being included in the UGB through the master plan process.
9

10 c. Jeffrey Evershed, the owner of TL 900, testified in support of the
11 petition. He argued the petition needs to be approved to allow him to develop his property.
12

13 d. Delmore Smith argued that the purpose of the UGB is to benefit the
14 community. The petition will only benefit the applicant, a private developer. He argued
15 that there is inadequate infrastructure to serve additional development in the area. He urged
16 the hearings officer to recommend denial of the petition.
17

18 e. David Adams urged the hearings officer to recommend denial of the
19 petition. He argued that the UGB should not be expanded.
20

21 f. Al Patchet argued that the UGB is intended to avoid piecemeal growth.
22 It is not intended to accommodate individual developers.
23

24 g. Katie Sharp, the owner of TL 607 east of the site, expressed concern
25 that her property will be surrounded by but excluded from the UGB. She questioned
26 whether and how the remainder of the first tier properties would be brought into the UGB.
27

28 h. Metro planner Ray Valone opined that the remaining first tier properties
29 could be brought into the UGB through legislative action of the Metro Council or through a
30 petition for a major amendment brought by a local government or developer.
31

32 i. Rick Cook argued that the City's water line in Stafford Road serves more
33 than just the PGE substation. He and other properties in the area receive public water from
34 this water main. He questioned the density of development that could occur on the subject
35 property. He questioned how much of the site could be served by gravity flow sewers.
36

1 5. On July 24, 1998, the hearings officer filed with the Council a report,
2 recommendation, and draft final order denying the petition for the reasons provided therein.
3 Copies of the report and recommendation were timely mailed to parties of record together
4 with an explanation of rights to file exceptions thereto and notice of the Council hearing to
5 consider the matter.

6
7 6. The Council held a duly noticed public hearing to consider testimony and timely
8 exceptions to the report and recommendation. After considering the testimony and
9 discussion, the Council voted to deny the petition for Contested Case No. 98-2 (Derby),
10 based on the findings in this final order, the report and recommendation of the hearings
11 officer, and the public record in this matter.

12
13 **II. APPLICABLE APPROVAL STANDARDS AND RESPONSIVE FINDINGS**

14
15 1. Metro Code section 3.01.035(b) and (c) contains approval criteria for all
16 locational adjustments. Metro Code section 3.01.035(f) contains additional approval
17 criteria for locational adjustments to add land to the UGB. The relevant criteria from those
18 sections are reprinted below in italic font. Following each criterion are findings explaining
19 how the petition does or does not comply with that criterion.

20
21 *Area of locational adjustments. All locational adjustment additions*
22 *and administrative adjustments for any one year shall not exceed 100 net*
23 *acres and no individual locational adjustment shall exceed 20 net acres...*

24 Metro Code section 3.01.035(b)

25
26 2. No locational adjustments or administrative adjustments have been
27 approved in 1998. Therefore not more than 100 acres has been added to the UGB
28 this year. The petition in this case proposes to add 14.84 acres to the UGB, which
29 is less than 20 acres. Therefore, as proposed, the petition complies with Metro
30 Code section 3.01.035(b). However, if all similarly situated land is included in the
31 adjustment, the area of the adjustment would exceed 20 acres. See the findings
32 regarding Metro Section 3.01.035(f)(3) for more discussion of the "similarly
33 situated" criterion.

34
35 *Orderly and economic provisions of public facilities and*
36 *services. A locational adjustment shall result in a net improvement in the*

1 *efficiency of public facilities and services, including but not limited to,*
2 *water, sewerage, storm drainage, transportation, parks and open space in*
3 *the adjoining areas within the UGB; and any area to be added must be*
4 *capable of being served in an orderly and economical fashion.*

5 Metro Code section 3.01.035(c)(1)

6
7 3. The subject property can be served by public water, storm and sanitary sewers,
8 roads and parks based on the comments from the City of Lake Oswego.

9
10 a. Water service is available to the site via a 12-inch main in Stafford Road
11 (outside the UGB) and an 8-inch line in Meadowlark Lane that stubs at the site boundary.

12
13 b. Sanitary sewer service is available from an existing line in Meadowlark
14 Lane that stubs at the site boundary. Gravity service is available to about 6.2 acres of the
15 site. Homes on the 3.5 acres of the site built below 515 feet above mean sea level (msl)
16 would have to pump effluent to the sewer system using a STEP system.

17
18 c. Storm water can drain from the site to an existing drainageway near
19 Rosemont Road and, from there, to the Tualatin River. This drainageway already serves
20 development inside the UGB. If the site is annexed and developed, Lake Oswego would
21 regulate drainage impacts under its development regulations in a manner consistent with
22 DEQ rules for the Tualatin River basin and with the city's National Pollutant Discharge
23 Elimination System (NPDES) permit.

24
25 d. If the site is annexed and developed, Lake Oswego would require
26 dedication and improvement of roads on the site. These roads will lead to existing public
27 streets, including Meadowlark Lane and Stafford/Rosemont Roads, that can accommodate
28 the relatively small increment in additional traffic resulting from the development.

29
30 e. Lake Oswego has stated in writing that it can serve the site with park and
31 open space features if it is annexed. There is no substantial evidence to the contrary.

32
33 f. Lake Oswego has stated in writing that it can serve the site with fire and
34 police services if it is annexed. There is no substantial evidence to the contrary.

1 4. Based on the foregoing, the subject site is capable of being served with public
2 infrastructure. All of that service can be achieved in an orderly fashion. All of that service
3 can be achieved in what the Council finds is an efficient manner except sewer service.
4

5 a. Use of pumps and a STEP sewer system is not as efficient as use of a
6 gravity flow system, because pumps require regular maintenance and replacement, and
7 because they consume energy that would not be consumed if sewage is transported by
8 gravity. Therefore sewer service to the site is not the most efficient means practicable.
9

10 b. Metro Code section 3.01.035(c)(1) does not expressly require that
11 service to the site be the most efficient; it merely requires that it be efficient. It could be
12 argued that, if the site can be served, that is *per se* efficient. On the other hand, if all that is
13 required by section 3.01.035(c)(1) is any form of service, the word "efficient" would have
14 no meaning. To provide efficient sewer service, that service should rely on gravity flow to
15 the greatest practicable extent. This is consistent with the Council's actions in approving
16 prior locational adjustments.¹
17

18 c. In this case, more of the site could be served by a gravity flow sewer
19 system if TL 700 is included in the UGB, a sewer line is extended south from the existing
20 pump station at the end of St. Claire Drive, and the pump station there is enhanced to
21 accommodate the greater flow. This is more consistent with the goal of achieving efficient
22 urban service systems than is creation of another pumped system. Therefore, although the
23 site can be served with sewer, it cannot be served efficiently unless adjoining land (TL 700)
24 is included in the UGB, too, so more of the site can be served by a gravity flow sewer.
25

26 5. The Council has not adopted rules describing how to assess the relative
27 efficiency of urban services. In the absence of such rules, the Council must construe the
28 words in practice. It does so consistent with the manner in which it has construed those
29 words in past locational adjustments to the extent the facts in this case are similar to the
30 facts in prior cases.
31

¹ E.g., Contested Case 88-04 (Bean), Contested Case 94-01 (Starr/Richards) and Contested Case 95-02 (Knox Ridge). In Case 94-01, Council found that land already in the UGB could be served by a pumped sewer system without including the subject site in the UGB. But, because including the subject site in the UGB allowed gravity flow service to that land already in the UGB, the petition resulted in more efficient sewer service.

1 a. The Council concludes that the locational adjustment does result in a net
2 improvement in the efficiency of water services in the adjoining areas already in the UGB,
3 because the locational adjustment allows the creation of a looped water system, joining
4 lines in Stafford Road and in Meadowlark Lane through the site.

5
6 b. Including the subject property in the UGB will increase the net efficiency
7 of transportation services, because the locational adjustment allows the extension of
8 Meadowlark Lane through the site to the intersection of Rosemont and Stafford Roads,
9 creating a more interconnected road system and reducing congestion and out of direction
10 travel for residents of the nearby city subdivisions. Also it could facilitate improvement of
11 a public street from the site to undeveloped Cook Park across TL 900 to the west, which
12 would enhance access to the park for residents of the city.

13
14 c. It is not apparent from the record that including the subject property in
15 the UGB will increase the net efficiency of surface water management/storm drainage,
16 parks/open space, and fire/police protection for land already in the UGB, except by:

17
18 (i) Marginally increasing the population served by those facilities
19 and thereby spreading their cost over a slightly larger population base, making them
20 somewhat more economical to residents of land already in the UGB; however, this impact
21 is not enough by itself to conclude these services will be more efficient if the property is
22 included in the UGB based on prior locational adjustment cases (see, e.g., Contested Case
23 88-02 (Mt. Tahoma) and Contested Case 95-02 (Knox Ridge)); and

24
25 (ii) The road improvements reasonably likely to follow from
26 inclusion of the site in the UGB will enhance vehicular access to and through the area,
27 particularly for fire and police services and for residents of the city to reach the undevel-
28 oped part of Cook Park and to open spaces and parks outside the existing UGB. Perhaps
29 this access would lead to development of the park, but there is not evidence to this effect in
30 the record. Council also recognizes that improved access has its cost. That is, it can
31 increase the need for security and maintenance of facilities to which access is now possible.

32
33 d. Including the subject property in the UGB will not increase the net
34 efficiency of sanitary sewer service, because it does not result in needed sewer facilities
35 (except for TL 900, see below) or substantially greater sewer system efficiencies than
36 without the site.

1
2 e. TL 900 is a lot already in the UGB. It is not served by nor is it capable
3 of being served by water, roads, sewer, storm drainage, parks or police and fire services
4 (at least not unless the owner of lot 14 in Ridge Pointe grants an easement for those
5 purposes). If the Derby parcel is included in the UGB, TL 900 could be served by all of
6 these facilities. Although not precisely an improvement in efficiency *per se*, including the
7 Derby parcel in the UGB would make available service to a lot already in the UGB to
8 which such services are not now available. It is more efficient to have land in the UGB
9 served by urban facilities. To that extent, Council finds the locational adjustment would
10 result in a net improvement in the efficiency of urban services in a small area in the UGB.

11
12 (i) However Council also finds this net improvement in efficiency is
13 negligible. Only one steeply-sloped 1.6-acre lot in the UGB benefits from inclusion of the
14 Derby parcel in the UGB. To include 14.84 acres in the UGB to serve principally one lot
15 turns the approval criteria on their head. It uses an elephant to crush a mouse. Council
16 relied on this sort of *de minimis* improvement (in that case regarding transportation system
17 efficiency) to reject the petition in Contested Case 95-02 (Knox Ridge). This sort of
18 balancing test also is urged by comments from the Department of Land Conservation and
19 Development.²

20
21 f. Under these circumstances, Council finds that including the Derby parcel
22 in the UGB does not result in a sufficient net improvement in sewer, storm drainage, parks
23 or police and fire services to warrant approval. Council concludes the petitioner failed to
24 carry the burden of proof that the petition complies with Metro section 3.01.035(c)(1).

25
26 *Maximum efficiency of land uses. The amendment shall facilitate*
27 *needed development on adjacent existing urban land. Needed development,*
28 *for the purposes of this section, shall mean consistent with the local*
29 *comprehensive plan and/or applicable regional plans.*

30 Metro Code section 3.01.035(c)(2)

31
32 6. Council finds that including the subject property in the UGB does facilitate
33 needed development on adjacent existing urban land (i.e., TL 900). Urban services cannot
34 be provided to that lot under existing conditions without approving the petition.

² In his letter dated June 24, 1998, Jim Sitzman characterizes the issue as "whether or not the facts in this case improve utilization of land in the UGB in any important ways..." (emphasis added).

1
2 a. The petitioner argued that the proposed adjustment would facilitate future
3 development of adjoining Tier One lands. Council finds this is irrelevant to the petition,
4 because adjacent Tier One lands are not within the existing UGB and are therefore not
5 “existing urban land”.

6
7 b. Metro staff argued that “inclusion of the subject site alone does not
8 necessarily provide maximum efficiency of land uses with regard to regional plans. Staff
9 believes that maximum efficiency can be accomplished only by including similarly situated
10 land [outside] the UGB.” In effect Metro staff argued that section 3.01.035(c)(2) includes
11 two standards. One standard is found in the title of the section, and one is found in the text
12 of the section. The standard in the title requires the Council to find that including the
13 subject site in the UGB results in the maximum efficiency of land uses. It is that standard
14 that Metro staff believe the petition does not fulfill, because all of the Tier One lands in
15 Reserve Area 33 would be served more efficiently if they were planned for as a unit, as
16 envisioned by Council when it identified the Tier One lands and provided for their
17 imminent transition to urban development.

18
19 c. Council finds the foregoing argument by staff is incorrect, based on
20 prior locational adjustment cases. Having reviewed the manner in which all cases since
21 1988 have addressed Metro Code section 3.01.035(c)(2) or its predecessor, there is no
22 support for the conclusion that the title of the section is intended to be an approval
23 standard.³ It is the text that contains the standard, not the title. The title is a convenient (if
24 somewhat inaccurate) summary of the text, but it has no status independent of the text.

³ In Contested Case 88-03 (St. Francis), the finding in response to a substantially similar standard in what was then section 3.01.040(a)(2) starts by saying that granting the petition “would be consistent with promoting the maximum efficiency of land uses”, but that conclusion is supported by a finding that simply says approving the petition “facilitates development and stability of that community.”

In Contested Case 88-04 (Bean), the finding in response to section 3.01.040(a)(2) concludes the petition complies, because including that site “would facilitate needed development of adjacent existing urban land, thereby maximizing the use of adjacent land already with the UGB.” That is, there was no separate analysis of the efficiency issue. By serving land already in the UGB, the locational adjustment is presumed to result in maximum efficiency of land use. The same sort of finding was made in Contested Case 89-01 (Gravett).

In Contested Case 90-01 (Wagner), the findings in response to section 3.01.040(a)(2) focus on the text of the section. The title is treated as a matter addressed in the ultimate finding of fact and law, but the focus is on the relationship of the subject site in that case and development of land already in the UGB. There was no specific analysis of maximum efficiency.

In Contested Case 90-03 (Washington County), the findings in response to section 3.01.040(a)(2) included a statement that granting the petition “would be consistent with promoting the maximum efficiency of land

1
2 *Environmental, energy, social & economic consequences. Any*
3 *impact on regional transit corridor development must be positive and any*
4 *limitations imposed by the presence of hazard or resource lands must be*
5 *addressed. Metro Code section 3.01.035(c)(3)*
6

7 7. Council finds including the subject property in the UGB would not have any
8 impact on regional transit corridor development, because the nearest regional corridor is
9 distant from the site (at Boones Ferry Road and Highway 43). Council further finds that
10 the subject property is not subject to hazards and does not contain resource lands identified
11 by Clackamas County. The presence of a high water table can be addressed through
12 techniques commonly used in the region during final engineering of foundations.
13

14 *Retention of agricultural land. When a petitioner includes land with*
15 *Agricultural Class I-IV soils designated in the applicable comprehensive*
16 *plan for farm or forest use, the petition shall not be approved unless it is*
17 *factually demonstrated that:*
18

19 (A) *Retention of any agricultural land would preclude urbanization*
20 *of an adjacent area already inside the UGB, or*
21

22 (B) *Retention of the agricultural land would make the provision of*
23 *urban services to an adjacent area inside the UGB impracticable.*
24

25 Metro Code section 3.03.035(c)(4)
26

27 8. The subject property contains Class III and IV soils. However the Clackamas
County comprehensive plan designates the subject property and surrounding non-urban

uses by facilitating road improvements that increase the safety and maintain the speed of access to property already in the UGB..." There was no separate analysis of whether other property could achieve the same purpose at lesser cost, with greater improvements, etc.

In Contested Case 95-01 (Harvey), the finding in response to section 3.01.035(c)(2) recognizes that including the subject site in the UGB "facilitates development on adjacent existing urban land." There is not even a mention of maximizing efficiency.

In Contested Case 95-02 (Knox Ridge), the title of the criterion is not even mentioned. The analysis of compliance with section 3.01.035(c)(2) in that case focused on the ability of land in the UGB to be served by public facilities by means other than crossing the property that was the subject of that petition.

1 lands as Rural Residential Farm Forest-5. This is not considered an exclusive farm or
2 forest use designation. Therefore Council finds this criterion does not apply.

3
4 *Compatibility of proposed urban uses with nearby agricultural*
5 *activities. When a proposed adjustment would allow an urban use in*
6 *proximity to existing agricultural activities, the justification in terms of this*
7 *subsection must clearly outweigh the adverse impact of any incompatibility.*
8 Metro Code section 3.01.035(c)(5)

9
10 9. There are limited agricultural activities on nearby lands south of the subject
11 property on land zoned RRFF-5 and on land zoned EFU; but these activities are relatively
12 small or low in intensity and most of the land on which these activities are conducted are
13 separated from the subject property by distance, Stafford Road and a drainageway such that
14 development on the subject property will not have a significant adverse impact on existing
15 agricultural activities. Therefore Council finds the petition complies with this criterion.

16
17 *Superiority. [T]he proposed UGB must be superior to the UGB as*
18 *presently located based on a consideration of the factors in subsection (c) of*
19 *this section. Metro Code section 3.01.035(f)(2)*

20
21 10. Based on the evidence in the record, Council finds that the proposed UGB is
22 not superior to the existing UGB, because:

23
24 a. The proposed UGB would not align with any natural or man made
25 features of the landscape. The proposed boundary is an arbitrary line based on the artificial
26 boundaries of the tax lot.

27
28 b. The proposed UGB would not result in service and land use efficiencies
29 for the public commensurate with the size and nature of the locational adjustment.

30
31 c. The proposed UGB would reduce the area of Tier One properties in
32 Reserve Area 33. Therefore it would reduce the scale and nature of efficiencies that could
33 be realized by planning for the Tier One area as a unit. Moreover it would reduce some of
34 the incentive to undertake planning for the contiguous Tier One properties by removing
35 from the tier the one property whose owner is most anxious to develop.

1 d. It does not include all similarly situated land.

2
3 *Similarly situated land. The proposed UGB amendment must include*
4 *all similarly situated contiguous land which could also be appropriately*
5 *included within the UGB as an addition based on the factors above. Metro*
6 *Code section 3.01.035(f)(3)*

7
8 9. Council finds the evidence in the record shows insufficient difference between
9 adjacent Tier One properties in Reserve Area 33 and the subject site. That is, the subject
10 site and contiguous properties are similarly situated. Therefore the Council concludes the
11 petition does not include all similarly situated properties.

12
13 a. Contrary to the argument by petitioner, TL 607, 608, 609, 700 and 1100
14 are contiguous to the subject site, because they share a common legal boundary with the
15 subject site. They adjoin a portion of the site. The criterion should not be construed to
16 require contiguity at more than one point along the legal boundary of a site, because that
17 would gut the criterion.

18
19 b. The property proposed for addition in prior cases had some natural or
20 man-made physical feature that separated the subject property from adjoining non-urban
21 land. See, e.g., Contested Case 94-01 (*Starr/Richards*) (I-5 freeway provided a significant
22 physical separation between the subject property and adjoining non-urban land), Contested
23 Case 95-01 (*Harvey*) (existing railroad tracks) and Contested Case 87-4 (*Brennt*) (steep
24 slopes). In this case, the subject site is physically indistinguishable from adjoining non-
25 urban land in the Tier One portion of Reserve Area 33.

26
27 (i) Although there is a 10-foot wide driveway along the west edge
28 of lots TL 607, 608 and 609, this driveway is an insignificant obstacle. It is far less
29 substantial than the circumstances found to separate a local adjustment site from contiguous
30 properties in prior cases. This is unlike a highway, street or railroad track that results in a
31 significant physical barrier and an intervening ownership.

32
33 c. Council acknowledges that including the subject site in the UGB
34 provides a unique benefit to TL 900. That is, only if the subject property is included in the
35 UGB will TL 900 have access to urban services. To that extent, this fact distinguishes the
36 subject property from other properties in Tier One of Reserve Area 33. However this

1 distinction does not end the analysis. After all it is a common tenet of real estate law that
2 every property is unique. No doubt each property on the edge of the UGB has some
3 unique characteristic related to adjoining land in the UGB or urban service efficiencies. If
4 the Council construed the Code to allow any such unique circumstance to preclude a
5 finding that properties are similarly situated, it would gut the criterion. The subject site
6 may be similarly situated to other adjoining properties in the UGB notwithstanding it is
7 different from them as it relates to TL 900. In this case, Council finds the subject property
8 is so physically similar to contiguous properties in Tier One of Reserve Area 33, and it is
9 so similar in terms of sewer, water and road needs of contiguous properties in Tier One of
10 Reserve Area 33 that, on balance, TL 607, 608, 609, 700 and 1100 are similarly situated
11 contiguous properties that should be considered for inclusion in the UGB as one action.

12
13 d. Council rejects petitioner's argument that the contiguous properties in
14 Tier One of Reserve Area 33 should not be treated as similarly situated simply because
15 including other properties in the petition would cause it to exceed the 20-acre limit on
16 locational adjustments. That is precisely the reason for the "similarly situated" criterion,
17 i.e., to avoid repeated piecemeal expansions of individual properties.

18 19 III. CONCLUSIONS

20
21 Based on the foregoing findings, the Council adopts the following conclusions.

22
23 1. Public services and facilities, including water, sanitary sewer, storm drainage,
24 transportation, schools, and police and fire protection, can be provided to the subject
25 property in an orderly and economical fashion.

26
27 2. On balance, Council concludes the petition does not comply with MC section
28 3.01.035(c)(1), because the petitioner did not carry the burden of proof that including the
29 subject site in the UGB will result in a net improvement in the efficiency of public sanitary
30 sewers, storm drainage, open space or police and fire services.

31
32 3. The petitioner showed that the proposed addition will facilitate needed
33 development on adjacent existing urban land. Therefore Council concludes the petition
34 does comply with MC section 3.01.035(c)(2).

ATTACHMENT "A" TO THE FINAL ORDER
IN THE MATTER OF CONTESTED CASE 98-02 (Derby) :
EXHIBITS

Exhibit No. Subject matter

- 1.....Petition for locational adjustment dated March 10, 1998
- 2.....City of Lake Oswego Planning Memo dated February 4, 1998
- 3.....City of Lake Oswego Planning Commission Minutes dated February 9, 1998
- 4.....City of Lake Oswego City Council Minutes dated February 10, 1998
- 5.....City of Lake Oswego City Council Minutes dated February 17, 1998
- 6.....City of Lake Oswego Resolution 98-10
- 7.....Letter from Ron Bunch to Ray Valone dated February 19, 1998
- 8.....Service provider comments from Lake Oswego dated February 24, 1998
- 9.....Clackamas County Board of Commissioners Order No. 98-47
- 10.....Letter from Carol Krigger to Rick Givens dated March 25, 1998
- 11.....e-mail from John Lewis to Carol Krigger dated June 11, 1998
- 12.....Letter from Richard Givens to Carol Krigger dated June 11, 1998
- 13.....Metro Staff Report dated June 15, 1998 with attachments
- 14.....DLCD Notice of Proposed Amendment
- 15.....Letter from Jeffrey A. Evershed dated June 19, 1998
- 16.....Notice of Public Hearing
- 17.....Luscher Farm Master Plan dated July 15, 1997
- 18.....Letter from James Sitzman, DLCD, dated June 24, 1998
- 19.....Memo from Wendie Kellington dated June 24, 1998 with attachments
- 20.....Plat of Ridge Point subdivision
- 21.....Map of First Tier Urban Reserves dated March 6, 1997
- 22.....Map of UGB and Reserve Areas in vicinity of Lake Oswego
- 23.....Map of Urban Infill Opportunities in City of Lake Oswego
- 24.....Plat of Ridge Point subdivision dated June, 1985
- 25.....Photos of site and surrounding properties
- 26.....Map of "Derby Property" dated June 22, 1998
- 27.....Witness sign-up cards (9)

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August, 1998, I served the foregoing

EXCEPTION on the following party at the following address:

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by mailing to them a true and correct copy thereof, certified by me as such, via first-class mail.

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Please send full agenda
packet the ~~the~~ addresses
listed above. Thanks,
Carol