



**CITY OF NEWBERG COUNCIL AGENDA  
FEBRUARY 6, 2012  
7:00 P.M. MEETING  
PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)**

**Mission Statement**

*The City of Newberg serves its citizens, promotes safety, and maintains a healthy community.*

**Vision Statement**

*Newberg will cultivate a healthy, safe environment where citizens can work, play and grow in a friendly, dynamic and diverse community valuing partnerships and opportunity.*

**I. CALL MEETING TO ORDER**

**II. ROLL CALL**

**III. PLEDGE OF ALLEGIANCE**

**IV. CITY MANAGER'S REPORT**

**V. PUBLIC COMMENTS**

(30 minutes maximum, which may be extended at the Mayor's discretion, with an opportunity to speak for no more than 5 minutes per speaker allowed)

**VI. CONSENT CALENDAR**

Consider a motion approving the January 3, 2012, City Council meetings. (Pgs. 3-7)

**VII. PUBLIC HEARINGS**

Consider a motion approving **Ordinance No. 2012-2748** repealing an Annexation and Development Agreement for the McClure Property at 30295 Highway 99W. (Pgs. 9-138)

**VIII. NEW BUSINESS**

Consider a motion approving **Resolution No. 2012-2985** authorizing the city manager to negotiate a contract change order for the Fire Station 20 Remodel Project. (Pgs. 139-143)

The Mayor reserves the right to change the order of items to be considered by the Council at their meeting. No new items will be heard after 11:00 p.m., unless approved by the Council.

## **IX. COUNCIL BUSINESS**

## **X. ADJOURNMENT**

*ACCOMMODATION OF PHYSICAL IMPAIRMENTS: In order to accommodate persons with physical impairments, please notify the City Recorder's office of any special physical or language accommodations you may need as far in advance of the meeting as possible and no later than 48 hours prior to the meeting. To request these arrangements, please contact the City Recorder at (503) 537-1283. For TTY services please dial 711.*

**Council accepts comments on agenda items during the meeting. Fill out a form identifying the item you wish to speak on prior to the agenda item beginning and turn it into the City Recorder. The exception is land use hearings, which requires a specific public hearing process. The City Council asks written testimony be submitted to the City Recorder before 5:00 p.m. on the preceding Thursday. Written testimony submitted after that will be brought before the Council on the night of the meeting for consideration and a vote to accept or not accept it into the record.**

The Mayor reserves the right to change the order of items to be considered by the Council at their meeting. No new items will be heard after 11:00 p.m., unless approved by the Council.

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: February 6, 2012

Order \_\_\_ Ordinance \_\_\_ Resolution \_\_\_ Motion XX Information \_\_\_  
No. No. No.

SUBJECT: Approve the January 3, 2012, City Council Meeting minutes.

Contact Person (Preparer) for this Motion: Norma Alley, City Recorder  
Dept.: Administration

## RECOMMENDATION:

Approve City Council minutes for preservation and permanent retention in the City's historical records.

## EXECUTIVE SUMMARY:

The City of Newberg City Council held a public meeting and minutes were recorded in text. In accordance to Oregon State Records Management law, the City of Newberg must preserve these minutes in hard copy form for permanent retention.

## FISCAL IMPACT:

None.

## STRATEGIC ASSESSMENT:

None.

**CITY OF NEWBERG CITY COUNCIL MINUTES**  
**JANUARY 3, 2012**  
**7:00 P.M. MEETING**  
**PUBLIC SAFETY BUILDING TRAINING ROOM (401 EAST THIRD STREET)**

A work session was held prior to the meeting. A presentation from the Planning Division regarding Economic Development was given. All Councilors and the Mayor were present; no action was taken and no decisions were made.

**I. CALL MEETING TO ORDER**

Mayor Bob Andrews called the meeting to order at 7:00 PM.

**II. ROLL CALL**

Members

Present:	Mayor Bob Andrews	Denise Bacon	Ryan Howard	Stephen McKinney
	Bart Rierson	Marc Shelton	Wade Witherspoon	

Staff

Present:	Daniel Danicic, City Manager	Terrence Mahr, City Attorney
	Steve Olson, Associate Planner	Norma I. Alley, City Recorder
		Jennifer Nelson, Minutes Recorder

Others

Present: Darcy Reynolds, Craig Ludwig, Michael Summey, and Karen Summey

**III. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was performed.

**IV. COUNCIL PRESIDENT ELECTION**

Consider a motion to elect a Council President from among the City Council.

<b>MOTION:</b> <b>Rierson/Howard</b> to elect Denise Bacon as the Council President from among the City Council. Motion carried (7 Yes/0 No).
--

**V. CITY MANAGER'S REPORT**

Mr. Daniel Danicic, City Manager, reported there would be a Citizens' Rate Review Committee (CRRC) meeting this week to discuss wastewater methodology. The current executive director of Friendsview Manor is retiring and a party will be held this Friday from 2:30 PM to 4:00 PM. A reader board has been put up to announce the closing of College Street between Howard and 1<sup>st</sup> Streets allowing public works to remove trees from in front of Chapters bookstore. The trees are not doing well and have been hit by vehicles so they are working with the owners to put something more appropriate in place. Next fiscal year budget preparations has begun and staff will be putting together a calendar for the process; the first step will be to discuss prioritization at the January 17, 2012, Council meeting to provide guidance to staff.

**VI. PUBLIC COMMENTS**

None.

## VII. CONSENT CALENDAR

Consider a motion approving 2011 minutes for November 21 and December 5 City Council meetings.

**MOTION:** **Rierson/Howard** approving the City Council minutes from November 7, 2011, and December 5, 2011, as amended. Motion carried (7 Yes/0 No).

## VIII. PUBLIC HEARINGS

Consider a motion approving **Resolution No. 2012-2986** supporting the submission of a grant application to Oregon Business Development Department by the Housing authority of Yamhill County.

TIME – 7:06 PM

Mayor Andrews called for any conflicts of interest or abstentions; none appeared.

Mr. Steve Olson, Associate Planner, presented the staff report assisted by a PowerPoint slideshow (see official meeting packet for full report).

Councilor Marc Shelton asked what the methodology was to establish the \$400,000.00. Staff replied that was the maximum amount they can apply for.

Mr. Olson noted there were two corrections that must be made for the final copy; changing the date in recital #2 from December, 2012, to December 5, 2011, and recital #6 should be renumbered as recital #5.

Councilor Wade Witherspoon referred to the staff's presentation slide regarding grant administration and management and asked what percentage accounts for this. Staff replied 20% is given to the Yamhill County Housing Authority to oversee the housing rehabilitation program; he said this is a reasonable percentage as there is a lot of time spent on each one of the loans to do all the services for operating and tracking over the life of the loans. Right now they barely break even but the process will become more efficient as it continues, they receive more money into the revolving loan fund, and expenses lower per month over time.

Mayor Andrews asked about the payback costs of the loans. Ms. Darcy Reynolds, Yamhill County Housing Authority (YCHA), stated these are no interest or low interest loans offered with costs deferred for low income applicants. If the recipients go over the income limit, no longer live in the home, or have legal possession of it then the loans must be repaid with low or moderate payments deferred one year. She spoke of many projects including weatherization improvements then the utility costs are lowered and since they are paid over a twenty year term the payments are affordable.

Mayor Andrews opened the public testimony.

Ms. Reynolds gave an update stating there were twenty-five people on the waiting list and expects the number will go up when marketing efforts are completed. If the grant is awarded, at least twenty families will receive an average of \$15,000.00 in loans.

Mr. Craig Ludwig, Yamhill Community Action Partnership (YCAP) Services Director, stated he supports this grant application and is vital to stabilize affordable housing for those on limited or fixed incomes. This is coupled with energy savings and YCAP has partnered on many projects with YCHA on foundations, roofs, rewiring, and lead abatement. This project assists various cities in Yamhill County and he believes rehab efforts boost the economy by employing contractors.

Mr. Michael Summey testified he supports this grant application and stated he has worked long and hard through the years just making ends meet and they have no money to repair their seventy-three-year-old house. The Housing Authority asked if they would like a 2% interest loan a couple of years ago and they did not have the money to pay it back then, so they are back on the list. In the meantime, he has developed Parkinson's disease and has gone on disability so they now qualify and there are others in the community with the same problems.

Mrs. Karen Summey testified she supports this grant application and spoke of her husband having Parkinson's and her adult daughter living with them who is also disabled. She explained she is so busy taking care of both of them there are not enough hours in the day to do it all and there is no income to pay for all of their needs. There are a lot of things outside and inside that need to be done and this is a wonderful opportunity to get these things done allowing for a healthy and safe home for their new grandchild to crawl around in. She spoke of this being not just for them but for others in worse off conditions than them and mentioned a few things this loan would help with like repairs to the heating system, flooring, roof leaks, and door and window repairs for energy efficiency. They are so grateful to get these things taken care of.

Councilor Shelton asked if she has had a chance to get estimates for the things they need to make their home healthy and safe. Ms. Summey replied they are not at that step yet but she believes the \$15,000.00 would cover it. Councilor Shelton asked if the amount of the repairs is over the \$15,000.00 is it capped or does it depend on repairs needed. Ms. Reynolds said this is an average figure; but, loans are provided in \$5,000.00 increments from \$5,000.00 to \$25,000.00 and special needs may warrant a larger loan amount.

Staff recommended to adopt with the two corrections.

Mayor Andrews closed the public testimony.

Councilor Shelton suggested amending the wording that the Council supports the submission tonight or if this was already done on December 5, 2012, because this was discussed during a work session. He did not think it should sound like a decision was made prior to the hearing.

Ms. Norma Alley, City Recorder, stated during the business meeting a motion was made to approve going to a public hearing process, which is what was trying to be reflected in the resolution. Councilor Shelton felt language should then reflect that the motion made was to move to public hearing instead of supporting the submission of the grant application. Ms. Alley stated this correction will be made in the resolution for permanent retention.

**MOTION:** Shelton/McKinney approving **Resolution No. 2012-2986** supporting the submission of a grant application to the Oregon Business Development Department by the Housing Authority of Yamhill County and the Yamhill County Affordable Housing Corporation in 2012 on behalf of the City of Newberg, and appointing the city manager the certifying officer for the grant application, as amended. Motion carried (7 Yes/0 No).

## **IX. COUNCIL BUSINESS**

TIME – 7:36 PM

Mr. Terry Mahr, City Attorney, gave an update on the municipal court regarding presumptive fines, new cell phone regulations regarding all drivers to be hands-free when using cell phones even for business purposes, and issues with the local Class A establishments serving hard liquor. The City Attorney's Office will need to see what avenues will be taken to resolve a nuisance situation.

Mayor Andrews spoke about the formation of a Council subcommittee for the City's retirement plan and his plans to appoint Councilors Denise Bacon, Ryan Howard, and Wade Witherspoon to serve on this; he stated their specific charge will be forthcoming and Council President Denise Bacon will serve as the Chair.

Councilor Shelton made comments on the earlier presentation from staff regarding economic development, stating there was not too much new reported. He wished to hear more about what can be done to help with economic development. He also mentioned the Suntron property and suggested exploring connecting Brutscher and Providence Roads with a road to provide connections and frontage changes to give that property a kick-start.

Mayor Andrews asked if Council could be given a briefing on the future plans affecting the Suntron property and a template for Springbrook area specific plans.

Councilor McKinney suggested having a well-developed plan on how to make this work and incorporating efforts in support of something well thought out. He expressed concern of building a road that may be unutilized and then be accused of building more "roads that lead nowhere".

Councilor Witherspoon asked about a meeting held a couple of years ago with several entities, including the Chehalem Park and Recreation District (CPRD), Portland Community College (PCC), the school district and the City to discuss the future of Newberg called Chehalem Valley Visioning. He wondered if anything else like this was planned again. Mr. Danicic stated some of those administrative heads have met a few times and discussed a desire to complete a survey that has not occurred yet.

## **X. ADJOURNMENT**

The meeting adjourned at 7:52PM.

**ADOPTED** by the Newberg City Council this 6<sup>th</sup> day of February, 2012.

---

Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 9<sup>th</sup> day of February, 2012.

---

Bob Andrews, Mayor

**THIS PAGE INTENTIONALLY LEFT BLANK**

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: February 6, 2012

Order \_\_\_ Ordinance XX Resolution \_\_\_ Motion \_\_\_ Information \_\_\_  
No. No. 2012-2748 No.

**SUBJECT: Repeal of Annexation and Development Agreement for the McClure Property at 30295 Highway 99W**

Contact Person (Preparer) for this Motion: Barton Brierley  
Dept.: Planning and Building  
File No.: ANX-08-006

HEARING TYPE:  LEGISLATIVE  QUASI-JUDICIAL  NOT APPLICABLE

## RECOMMENDATION:

Adopt **Ordinance No. 2012-2748**, which repeals the annexation and development agreement for the McClure property at 30295 Highway 99W.

## EXECUTIVE SUMMARY:

The McClures own property at 30295 Highway 99W, just east of Newberg's city limits. They applied for and received Measure 37 approval to subdivide the property into acreage lots. Following approval of Measure 49, the McClures applied for vesting of this approval. The vesting was approved and upheld initially, but later was reversed and remanded by the Court of Appeals.

In order to insure development of this property met City goals, the City Council entered into a development agreement with the McClures in 2007. In 2009, the City Council approved annexation of property at 30295 Highway 99W, subject to a public vote. This annexation approval was appealed to the State Land Use Board of Appeals (LUBA). Both parties of the appeal agreed to place the LUBA appeal on hold pending resolution of the Measure 37 vesting. Thus, the annexation never was submitted to the voters or finalized.

Due to the legal challenges, the McClures since have chosen to withdraw their annexation application and development agreement. This ordinance would repeal the annexation approval, and authorize the City manager to take the necessary actions to rescind the development agreement.

**FISCAL IMPACT:** None.

**STRATEGIC ASSESSMENT:** With the McClure's withdrawal, the annexation and development agreement become moot. The City should continue to work with the McClures regarding the future of this important gateway to Newberg as opportunities arise.

## ATTACHMENTS

Ordinance 2012-2748

Attachment 1: McClure Withdrawal Request

Attachment 2: Ordinance 2009-2712

Attachment 3: Order 2009-0020

Attachment 4: Ordinance 2009-2718

Attachment 5: Ordinance 2007-2671

Attachment 6: McClure Development Agreement



## ***ORDINANCE No. 2012-2748***

---

---

**AN ORDINANCE REPEALING AN ANNEXATION AND DEVELOPMENT AGREEMENT FOR THE MCCLURE PROPERTY AT 30295 HIGHWAY 99W, YAMHILL COUNTY TAX LOTS 3215-500, 502, AND 504, AND TAX LOTS 3215B-100 THROUGH 4000**

---

---

### **RECITALS:**

1. The Newberg City Council adopted Ordinance 2007-2671, which authorized the City Manager to enter into a development agreement with Charles and Ellen McClure regarding development of property at 30295 Highway 99W.
2. The Newberg City Council adopted Ordinance 2009-2712, Ordinance 2009-2718, and Order 2009-0020, authorizing annexation of the property, subject to a public vote.
3. The annexation was appealed to the Land Use Board of Appeals. The parties agreed to put the appeal on hold, pending resolution of the subject property's Measure 37 claim.
4. Due to the legal challenges, the McClures have since asked to withdraw their development agreement and annexation application.

### **THE CITY OF NEWBERG ORDAINS AS FOLLOWS:**

1. Ordinance 2009-2712, as amended by Ordinance 2009-2718, which would have annexed property at 30295 Highway 99W, Yamhill County Tax Lots 3215-500, 502, and 504, and Tax Lots 3215B-100 through 4000 with a successful public vote, is hereby repealed.
2. Order 2009-0020, which affirmed that the annexation as conditioned met the applicable Newberg Development Code criteria, is hereby repealed.
3. Ordinance 2007-2671, which authorized a development agreement with Charles and Ellen McClure, is hereby repealed.



**From:** [charles mcclure](#)  
**To:** [Barton Brierley](#)  
**Cc:** [Dawn Wilson](#)  
**Subject:** McClure Project  
**Date:** Tuesday, December 20, 2011 1:32:03 PM

---

Hello Barton,

We have decided not to go ahead with our project. Because of a recent court decision, we are required to start over in the vesting process. This would probably take another three years. Because of the continuing expenses and the bad economy, we just can't justify going any further. This is disheartening because we do have a strong case and a very good project.

One other factor is that our case could be heard again by Judge Sercombe when it gets back to the Court of Appeals. He was on the Board of 1000 Friends (our opponents) for 12 years and its President for two years, and we are afraid that we would not get a fair shake from him. (see copy of letter to Judge Brewer attached)

We very much appreciate working with you and the City and all of the time you took with us to put together a plan for a special and unique development for Newberg. Thank you.

We are vacating the subdivision with the County, so our Development Agreement with the City is no longer of any use. We therefore request that the Agreement be terminated and our annexation petition be withdrawn.

Chuck McClure

Dear Judge Brewer:

I am a property owner in a measure 37/49 vesting case that has been remanded, and a member of the bar. My wife and I are not going to proceed further in the case, partly because of some probability that it will again be decided by Judge Sercombe on appeal.

Judge Sercombe should never have sat on any Measure 37/49 cases. 1000 Friends of Oregon strongly opposed Measure 37 and supported Measure 49, and that organization through its associates and affiliates such as Friends of Yamhill County, spearheaded the efforts to prevent landowners from vesting their projects in Court of Appeals measure 37/49 cases.

Judge Sercombe was on the board of directors of 1000 Friends for 12 years and president for 2 years. Shortly before he went on the bench he wrote an extensive opinion for 1000 Friends on a Measure 37 issue (See page 598 in the link and reference to the opinion below). Because of these strong affiliations he could well have had ongoing relationships with 1000 Friends at the time he was deciding Measure 37/49 vesting cases. In any event he had strong sympathies for the causes of 1000 Friends.

As you know, the Oregon Code of Judicial Conduct, Section JR 2-106(A), says

"A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality reasonably may be questioned, including but not limited to instances when (1) the judge has a bias or prejudice concerning a party---"

Here there was at least an appearance of such closeness with 1000 Friends that Judge Sercombe's impartiality could have reasonably been questioned.

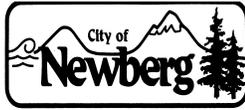
Nonetheless Judge Sercombe, with some zest, wrote the lead opinion and many other opinions on Measure 37/49 vesting. His opinions established a large share of the Measure 37/49 common law vesting jurisprudence in the Court of Appeals.

In the interest of justice and the integrity of the Court, Judge Sercombe should not be assigned any more cases in which 1000 Friends of Oregon or its affiliates are parties.

Judge Sercombe no doubt thinks that he can be fair in these cases, but there is no question of the appearance that he cannot. To those of us that have been affected by his decisions he seems to occupy " the 1000 Friends seat" on the Court.

It is interesting that Justice Walters has not participated in any of the Measure 37/49 cases before the Supreme Court - perhaps because she saw fit to recuse herself because of current or prior affiliations?

Charles McClure  
65075(PB)



## ORDINANCE No. 2009-2712

---

**AN ORDINANCE DECLARING PROPERTY LOCATED AT 30295 HIGHWAY 99W, YAMHILL COUNTY TAX LOTS 3215-500, 502 AND 504, AND LOTS 3215B-100 THROUGH 4000, BE ANNEXED INTO THE CITY OF NEWBERG AND WITHDRAWN FROM THE NEWBERG RURAL FIRE PROTECTION DISTRICT SUBJECT TO A PUBLIC VOTE, AND AUTHORIZING AND DIRECTING THE CITY ELECTIONS OFFICER TO CERTIFY TO THE YAMHILL COUNTY CLERK A BALLOT TITLE FOR THE MEASURE TO BE SUBMITTED TO THE ELECTORATE OF THE CITY OF NEWBERG FOR THEIR CONSIDERATION OF AN ANNEXATION FOR THIS SAME PROPERTY**

---

### RECITALS:

1. Charles J. and Ellen R. McClure, Trustees U/I/D October 25, 1999, submitted an application for annexation and consent to annex on January 22, 2009 for property located at 30295 Highway 99W, Yamhill County tax lots 3215-500, 502 and 504, and Lots 3215B-100 through 4000.
2. After proper notice, on April 6, 2009, the City Council held a public hearing on the item: accurately stated objections to jurisdiction, bias, and ex-parte contact; considered public testimony; examined the record; heard the presentation from staff and the applicant; examined and discussed the appropriate criteria to judge the project (as listed in the staff report); considered all relevant information regarding the item; and deliberated. The Council tentatively approved the request and directed that the findings be revised to address public comments.
3. On April 20, 2009, the City Council adopted Order 2009-0020 which affirmed that the annexation as conditioned met the applicable Newberg Development Code criteria.
4. The City of Newberg Charter requires that territory may be annexed into the City of Newberg only upon approval by a majority vote among the electorate of the City.
5. The next general election will be on May 18, 2010. The applicant has requested that the annexation request be sent to the September 15, 2009 special election, and understands that they will be required to pay the additional costs for the special election.

### THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

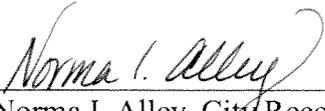
1. The question of annexing the property shown in Exhibit "A" and described in Exhibit "B" shall be submitted to the electorate of the city at the September 15, 2009 special election. Exhibits "A" and "B" are hereby adopted and by this reference incorporated.

2. The City Council directs that all costs associated with placing the item on the ballot be paid for by the applicant/owners. This includes but is not limited to noticing, signage, advertising, and costs assessed by the Yamhill County Clerk to place the item on the ballot.
3. The City Elections Officer is hereby authorized and directed to certify to the Yamhill County Clerk the ballot title for the annexation measure to be placed before the voters. Further, the City Elections Officer is directed to give all necessary notices of the ballot title and do all other necessary acts and deeds which may be required to place the matter before the voters of the City of Newberg at said election.
4. The City Attorney is directed to have prepared and review the explanatory statement which shall be submitted to the Yamhill County Clerk with the ballot title. Such explanatory statement shall be filed with the City Elections Officer and the City Elections Officer is further directed to certify this explanatory statement to the Yamhill County Clerk.
5. The City Elections Officer is authorized to do all other necessary acts and deeds which may be required to conduct the election concerning this measure.
6. Should this annexation request be approved by a majority of the electorate of the City of Newberg at the identified election date, the property shown in Exhibit “A” and described in Exhibit “B”, shall be annexed and withdrawn from the Newberg Rural Fire Protection District, and the following events will occur:
  - A. The City of Newberg land use inventory data and GIS data, including the comprehensive plan map and zoning map, will be updated to reflect the new addition.
    1. If the annexation is approved and the property has not been included within the Newberg Urban Reserve Area then the comprehensive plan and zoning designations will be identical to the current Yamhill County AFLH (EF-20 zoning) and VLDR (VLDR-2.5 zoning).
    2. Upon inclusion of the property in the Urban Reserve Area, the comprehensive plan designations will change to: LDR-1/A with Stream Corridor overlay (47.58 acre subdivision); LDR-0.11/A with Historic Landmark, Stream Corridor, and winery Limited Use overlays (9.56 acre historic farmstead); Public/Quasi-Public (9.09 acre institutional parcel); and Commercial with a winery Limited Use overlay (1.05 acre winery parcel). The zoning designations will change, respectively, to R-1-1/A with Stream Corridor overlay; R-1-0.11/A with Historic Landmark, Stream Corridor and winery Limited Use overlays; Institutional; and R-P with a winery Limited Use overlay.

B. The City Recorder of the City of Newberg is hereby authorized and directed to make and submit to the Secretary of State, the Department of Revenue, the Yamhill County Elections Officer, and the Assessor of Yamhill County, a certified copy of this ordinance.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: May 20, 2009.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 20th day of April, 2009, by the following votes: **AYE: 7    NAY: 0    ABSENT: 0    ABSTAIN: 0**

  
\_\_\_\_\_  
Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 23rd day of April, 2009.

  
\_\_\_\_\_  
Bob Andrews, Mayor

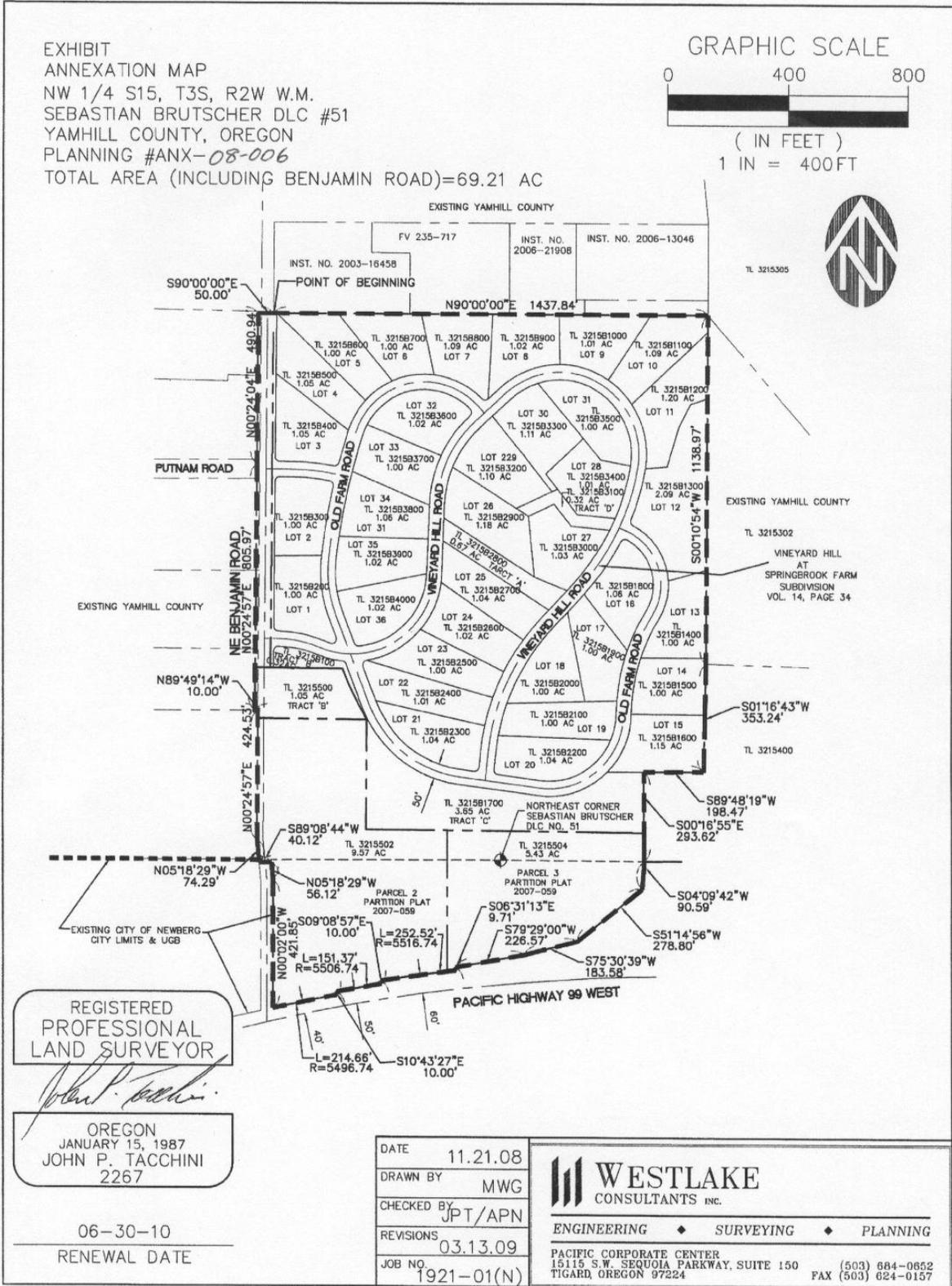
**LEGISLATIVE HISTORY**

By and through the Planning Commission at 3/12/2009 meeting.  
(committee name) (date)

Exhibits:

- Exhibit "A": Annexation Map
- Exhibit "B": Legal Description

EXHIBIT A: ANNEXATION MAP  
ANX-08-006



**EXHIBIT B: LEGAL DESCRIPTION  
ANX-08-006**

**PROPERTY DESCRIPTION**

A TRACT OF LAND SITUATED IN THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 2 WEST, W.M., YAMHILL COUNTY, OREGON AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON PIPE LOCATED ON THE EASTERLY RIGHT-OF-WAY OF NE BENJAMIN ROAD, SAID PIPE MARKING THE NORTHWEST CORNER OF VINEYARD HILL AT SPRINGBROOK FARM, A DULY RECORDED SUBDIVISION PLAT IN YAMHILL COUNTY PLAT RECORDS;

THENCE WEST, 50.00 FEET TO A POINT ON THE WEST LINE OF SAID NE BENJAMIN ROAD;

THENCE ALONG SAID WEST LINE, SOUTH 00° 24' 04" WEST, 490.94 FEET;

THENCE CONTINUING ALONG SAID WEST LINE OF NE BENJAMIN ROAD, SOUTH 00°24'57" WEST, 805.97 FEET;

THENCE SOUTH 89°49'14" EAST, 10.00 FEET;

THENCE SOUTH 00°24'57" WEST, 424.53 FEET;

THENCE SOUTH 05°18'29"EAST, 74.29 FEET TO A POINT ON THE EXISTING CITY LIMITS LINE;

THENCE ALONG SAID CITY LIMITS LINE, NORTH 89°08'44" EAST, 40.12 FEET TO A POINT ON THE EAST LINE OF SAID NE BENJAMIN ROAD;

THENCE ALONG SAID EAST LINE OF BENJAMIN ROAD AND THE EXISTING CITY LIMITS LINE, SOUTH 05°18'29" EAST, 56.12 FEET;

THENCE CONTINUING ALONG SAID EAST LINE OF BENJAMIN ROAD AND THE EXISTING CITY LIMITS LINE, SOUTH 00°02'00" EAST, 421.85 FEET TO A POINT ON THE NORTHERLY LINE OF U.S.HIGHWAY 99W AND THE SOUTHWEST CORNER OF PARCEL 2 OF PARTITION PLAT 2007-59, RECORDED AS DOCUMENT NUMBER 200721146, YAMHILL COUNTY RECORDS;

THENCE, ALONG SAID NORTHERLY RIGHT-OF-WAY ALONG A 5,496.74 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 02° 14' 15", CHORD BEARS NORTH 78° 09' 26" EAST, 214.65 FEET A DISTANCE OF 214.66 FEET TO A POINT;

THENCE, NORTH 10° 43' 27" WEST, 10.00 FEET TO A POINT;

THENCE, ALONG A 5,506.74 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 01° 34' 30", CHORD BEARS NORTH 80° 03' 48" EAST, 151.37 FEET A DISTANCE OF 151.37 FEET TO A POINT;

THENCE, NORTH 09° 08' 57" WEST, 10.00 FEET TO A POINT;

THENCE, ALONG A 5,516.74 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 02° 37' 21", CHORD BEARS NORTH 82° 09' 44" EAST, 252.50 FEET A DISTANCE OF 252.52 FEET TO A POINT;

THENCE, NORTH 06° 31' 13" WEST, 9.71 FEET;

THENCE, NORTH 79° 29' 00" EAST, 226.57 FEET;

THENCE, NORTH 75° 30' 39" EAST, 183.58 FEET;

THENCE, NORTH 51° 14' 56" EAST, 278.80 FEET TO A POINT ON THE EAST LINE OF PARCEL 3 OF SAID PARTITION PLAT 2007-059;

THENCE LEAVING SAID NORTHERLY RIGHT OF WAY LINE OF SAID U.S. HIGHWAY 99W, NORTH 04° 09' 42" EAST ALONG SAID EAST LINE OF SAID PARCEL 3 OF SAID PARTITION PLAT 2007-059, 90.59 FEET TO A POINT ON THE SOUTH LINE OF THE BENJAMIN HEATER DONATION LAND CLIAM;

THENCE, CONTINUING ALONG SAID EAST LINE OF SAID PARCEL 3 AND THE NORTHERLY EXTENSION THEREOF, NORTH 00° 16' 55" WEST, 293.62 FEET TO THE NORTHEAST CORNER OF TRACT 'C' OF VINEYARD HILL AT SPRINGBROOK FARM, A DULY RECORDED SUBDIVISION IN YAMHILL COUNTY, VOLUME 14, PAGE 34 AND RECORDED AS INSTRUMENT NUMBER 200724087, YAMHILL COUNTY RECORDS;

THENCE, NORTH 89° 48' 19" EAST, 198.47 FEET TO THE MOST EASTERLY, SOUTHEAST CORNER OF SAID VINEYARD HILL AT SPRINGBROOK FARM SUBDIVISION;

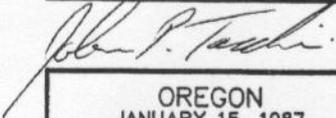
THENCE ALONG THE EAST LINE OF SAID SUBDIVISION, NORTH 01° 16' 43" EAST, 353.24 FEET;

THENCE, CONTINUING ALONG SAID EAST LINE OF SAID SUBDIVISION, NORTH 00° 10' 54" EAST, 1138.97 FEET TO THE NORTHEAST CORNER OF SAID VINEYARD HILL AT SPRINGBROOK FARM SUBDIVISION;

THENCE, NORTH 90° 00' 00" WEST ALONG THE NORTHERLY LINE OF PARTITION PLAT 2007-59 WHICH IS ALSO THE NORTHERLY LINE OF SAID VINEYARD HILL AT SPRINGBROOK FARM SUBDIVISION, A DISTANCE OF 1437.84 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.;

CONTAINING 69.21 ACRES OF LAND, MORE OR LESS.

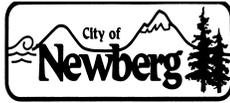
REGISTERED  
PROFESSIONAL  
LAND SURVEYOR



OREGON  
JANUARY 15, 1987  
JOHN P. TACCHINI  
2267

06-30-10

RENEWAL DATE

**ORDER No. 2009-0020**

---

**AN ORDER FINDING THAT PROPERTY LOCATED AT 30295 HIGHWAY 99W, YAMHILL COUNTY TAX LOTS 3215-500, 502 AND 504, AND LOTS 3215B-100 THROUGH 4000 3216-900, MEETS THE APPLICABLE NEWBERG DEVELOPMENT CODE CRITERIA TO BE ANNEXED INTO THE CITY, AND MEETS THE APPLICABLE CODE CRITERIA TO CHANGE THE COMPREHENSIVE PLAN & ZONING DESIGNATIONS UPON INCLUSION IN THE URBAN RESERVE AREA FROM COUNTY AFLH & VLDR (EF-20 & VLDR-2.5 ZONING) TO: LDR-1/A WITH STREAM CORRIDOR OVERLAY (47.58 ACRE SUBDIVISION, R-1-1/A WITH STREAM CORRIDOR OVERLAY ZONING); LDR-0.11/A WITH HISTORIC LANDMARK, STREAM CORRIDOR, AND WINERY LIMITED USE OVERLAYS (9.56 ACRE HISTORIC FARMSTEAD, R-1-0.11/A WITH HISTORIC LANDMARK, STREAM CORRIDOR AND WINERY LIMITED USE OVERLAYS ZONING); PUBLIC/QUASI-PUBLIC (9.09 ACRE SOUTHEAST PARCEL, INSTITUTIONAL ZONING); AND COMMERCIAL WITH A WINERY LIMITED USE OVERLAY (1.05 ACRE WINERY PARCEL, R-P WITH A WINERY LIMITED USE OVERLAY ZONING)**

---

**RECITALS:**

1. On January 22, 2009, Charles J. and Ellen R. McClure, Trustees U/I/D October 25, 1999, submitted an application to annex approximately 69.21 acres (43 parcels) located at 30295 Highway 99W, Yamhill County tax lots 3215-500, 502 and 504, and Lots 3215B-100 through 4000, into the City of Newberg with a future change in land use designations upon inclusion in the Newberg Urban Reserve Area. Upon inclusion of the property in the Urban Reserve Area, the comprehensive plan designations will change to: LDR-1/A with Stream Corridor overlay (47.58 acre subdivision); LDR-0.11/A with Historic Landmark, Stream Corridor, and winery Limited Use overlays (9.56 acre historic farmstead); Public/Quasi-Public (9.09 acre institutional parcel); and Commercial with a winery Limited Use overlay (1.05 acre winery parcel) as shown in Exhibit D. The zoning designations will change, respectively, to R-1-1/A with Stream Corridor overlay; R-1-0.11/A with Historic Landmark, Stream Corridor and winery Limited Use overlays; Institutional; and R-P with a winery Limited Use overlay as shown in Exhibit E.
2. The Newberg Planning Commission heard the annexation request on March 12, 2009, took public testimony, and found that the request as conditioned met the applicable Newberg Development Code criteria and the terms of the Development Agreement adopted under Ordinance 2007-2671. The Planning Commission recommended approval of the annexation as conditioned per Resolution 2009-263.

3. After proper notice, on April 6, 2009, the Newberg City Council held a hearing to consider the annexation request. The Council tentatively approved the request and directed that the findings be revised to address public comments.
4. The City Council finds that the applicable criteria and the terms of the Development Agreement adopted under Ordinance 2007-2671 have been met as conditioned, and that approval of the application is in the best interests of the community

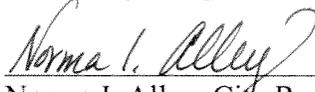
**THE CITY OF NEWBERG ORDERS AS FOLLOWS:**

1. The City Council finds that the annexation and future comprehensive plan designation/zoning designation changes upon inclusion in the Newberg Urban Reserve Area meet the Newberg Development Code criteria and the terms of the Development Agreement adopted under Ordinance 2007-2671 as conditioned and adopts the findings, which are attached hereto as Exhibit “A”. Exhibit “A” is hereby adopted and by this reference incorporated.
2. Annexation requires the City Council to adopt an ordinance annexing the property, and requires approval at a public vote. If the annexation is approved through these procedures, then the City orders the following:
  - A. If the annexation is approved and the property has not been included within the Newberg Urban Reserve Area then the comprehensive plan and zoning designations will be identical to the current Yamhill County AFLH (EF-20 zoning) and VLDR (VLDR-2.5 zoning). The existing Yamhill County land use regulations that apply to the site are adopted by the City of Newberg for this site. Specifically, this means that the residential subdivision could be completed under Yamhill County subdivision approval S-04-07 and the approved Measure 37 claim, and the winery lot and retirement lot could be developed under current EF-20 standards and any Measure 37 rights. Any development applications, other than those arising through S-04-07, submitted after annexation would follow standard Newberg Development Code procedures.
  - B. Upon inclusion of the property in the Urban Reserve Area, the comprehensive plan designations will change to: LDR-1/A with Stream Corridor overlay (47.58 acre subdivision); LDR-0.11/A with Historic Landmark, Stream Corridor, and winery Limited Use overlays (9.56 acre historic farmstead); Public/Quasi-Public (9.09 acre institutional parcel); and Commercial with a winery Limited Use overlay (1.05 acre winery parcel) as shown in Exhibit D. The zoning designations will change, respectively, to R-1-1/A with Stream Corridor overlay; R-1-0.11/A with Historic Landmark, Stream Corridor and winery Limited Use overlays; Institutional; and R-P with a winery Limited Use overlay as shown in Exhibit E. Exhibits “D” and “E” are hereby adopted and by this reference incorporated.

- 3. This order is subject to the following:
  - A. The winery Limited Use overlay shown in Exhibit D allows the processing of fruit to make wine, wine storage, a retail tasting room, and accessory uses.
  - B. The Institutional property will be limited to a maximum of 65 PM peak hour trips upon development.
  - C. If the Gueldner Drive extension between Crestview Drive and Benjamin Road is not completed prior to development of the Institutional parcel, the applicant shall apply for and obtain, on behalf of Yamhill County, an approach road permit for Benjamin Road at its intersection with OR 99W. Prior to the issuance of the first certificate of use and occupancy (or the City’s equivalent) on the Institutional parcel, the applicant shall provide evidence to the City that all requirements and conditions of the approach road permit for Benjamin Road have been satisfied. ODOT’s approval shall be subject to City’s concurrence.
  - D. Upon development of the subdivision, Benjamin Road abutting the subdivision shall be improved by widening Benjamin Road to sufficient width to accommodate bike lanes and provide a standard 5-foot-wide sidewalk on the east side of the road, or by providing alternate parallel pedestrian and bicycle paths through the subdivision that connect to Benjamin Road. (Development Agreement §5(g).)
  - E. Sight distance deficiency at the intersection of Springbrook Road and Benjamin Road: the Institutional property development will contribute its proportionate share of the costs for reconstruction of the adjacent vertical crest curves (if still needed) upon submittal of any development application.
  - F. ODOT requires the applicant to either provide evidence that an approach road permit is not necessary, or has already been issued, or apply for and obtain an approach road permit for the existing access on Hwy 99W from the Historic homesite. All future development must take access from Benjamin Road.
  - G. The existing development on the site will be required to connect to sanitary sewer when the sewer is extended to the subdivision.
  - H. Upon future development of the property, other than that arising through S-04-07, the development shall contribute its share, based on traffic volume, of the future cost of capacity improvements to the Springbrook Rd/Hwy 99W intersection.

➤ **EFFECTIVE DATE** of this order is the day after the adoption date, which is: April 21, 2009.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 20th day of April, 2009.

  
 \_\_\_\_\_  
 Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 23rd day of April, 2009.

  
 \_\_\_\_\_  
 Bob Andrews, Mayor

**QUASI-JUDICIAL HISTORY**

By and through the Planning Commission at 3/12/2009 meeting.  
*(committee name)* *(date)*

Exhibits:

- Exhibit "A": Findings
- Exhibit "B": Annexation Map
- Exhibit "C": Legal Description
- Exhibit "D": Proposed Comprehensive Plan Map
- Exhibit "E": Proposed Zoning Map

**EXHIBIT A: FINDINGS****ANX-08-006**

Annexation of 69.21 acres for property located at 30295 Highway 99W

**I. APPLICABLE ANNEXATION REGULATIONS – NEWBERG DEVELOPMENT CODE § 151.261  
CONDITIONS FOR ANNEXATION**

*(A) The subject site must be located within the Newberg Urban Growth Boundary or Newberg Urban Reserve Areas.*

**FINDING:** The site is not currently within the Newberg Urban Growth Boundary or Urban Reserve Area. A specific exception was granted to this development code requirement for this property by Ordinance 2007-2671 because of the unique and unusual circumstances of this particular property. ORS 94.518 provides that the comprehensive plan and ordinance in effect at the time of the approval of the development agreement apply unless otherwise provided in the development agreement. In this instance, the City provided otherwise in the Development Agreement, Ordinance 2007-2671, by granting an exception. In other words, because the Development Agreement allows an exception to the requirement that prohibits annexation of the property prior to inclusion of the property in the Urban Growth Boundary, the proposed annexation does not violate the Comprehensive Plan.

Indeed, the intent of Oregon’s statutory development agreements is to “allow an agreement on the standards that will be in place during the development so the developers can proceed without wondering whether the rules are going to change part way through.” *Povey v. Mosier*, 220 Or App 552, 557, 188 P3d 321 (2008). Stated differently, statutory development agreements:

“Allow the city or the county and the developer to sit down on the front end of a multi-phase project and decide how it’s going to run \* \* \* [w]here the parks are going to go, for example, what kind of sidewalk standards are going to be in place, what sort of pedestrian linkages are going to occur \* \* \* [a]nd to give the legal authority to the city, making it very clear that they can in fact enter into these sort of agreements.” *Id.* at 557.

Moreover, to the extent public comments assert that the Development Agreement is not consistent with the Comprehensive Plan, the challenge is an impermissible collateral attack. In Oregon, issues that were “conclusively resolved in a final discretionary land use decision, or that could have been but were not raised and resolved in that earlier proceeding” cannot be raised in a subsequent matter. *Safeway, Inc. v. City of North Bend*, 47 Or LUBA 489, 505 (2004); *see also Doney v. Clatsop County*, 142 Or App 497, 502, 921 P2d 1346 (1996). Because the Development Agreement has the same finality and preclusive effect as a court judgment, it cannot be made the subject of a collateral attack. Had individuals disapproved of and wanted to appeal the Development Agreement, they had a right to do so. However, because the time for appeal is long past, the Development Agreement is final and, by operation of law, vested.

Finally, this site has an approved Measure 37 claim that allows residential and commercial development, and has been subdivided for development. The residential subdivision is vested and is under development. The vesting has been approved, confirmed upon review, and is currently under appeal. Ordinance 2007-2671 adopted a development agreement with the applicant to guide the development of this property. The site is within the expanded Urban Reserve Area that has been approved by the City and Yamhill County and is under review by the

State Department of Land Conservation and Development.

*(B) The subject site must be contiguous to the existing city limits.*

**FINDING:** The subject site is contiguous to the existing city limits along its southwest property line.

## **II. APPLICABLE ANNEXATION REGULATIONS – NEWBERG DEVELOPMENT CODE § 151.262 QUASI-JUDICIAL ANNEXATION CRITERIA**

*(A) The proposed use for the site complies with the Newberg comprehensive plan and with the designation on the Newberg comprehensive plan map. If a redesignation of the plan map is requested concurrent with annexation, the uses allowed under the proposed designation must comply with the Newberg comprehensive plan.*

**FINDING:** The current plan designations are Yamhill County AFLH (Agriculture/Forestry Large Holding) for most of the site, with VLDR (Very Low Density Residential) on the northwest corner. A Measure 37 claim has been approved for the entire site, and the residential subdivision is vested. The site is not within the Newberg urban growth boundary and therefore does not have land use designations shown on the comprehensive plan map. The future land use designations for this site were set by the development agreement adopted under Ordinance 2007-2671 (excerpt below)

(b) Comprehensive Plan Designations. Upon the Property's inclusion in the URA, the following City Comprehensive Plan designations shall apply to the Property. The north subdivision parcel as depicted on Exhibit C ("Subdivision Parcel") shall be designated Low Density Residential - 1/A allowing one dwelling unit per acres. The 9.91-acre parcel labeled Historic Property on Exhibit C ("Historic Parcel") shall be designated Lower Density Residential – 0.11/A allowing one dwelling unit per nine acres and shall be subject to the Historic Landmark and Stream Corridor Overlay Subdistricts, except the existing bed and breakfast establishment and accessory carriage house and cottage structures located on the Historic Property are allowed notwithstanding these designations. The 9.56 acre parcel labeled Retirement on Exhibit C ("Retirement Parcel") shall be designated Public/Quasi-Public. The 1.13 acres labeled Winery on Exhibit C ("Winery Parcel") shall receive a designation that allows the Winery as an outright permitted use.

The City Comprehensive Plan designations will not apply to the site upon annexation, but rather upon inclusion of the site in the City's urban reserve area. Due to the unique and special circumstances of the McClures' property, the Development Agreement (Ordinance 2007-2671) provided for Yamhill County comprehensive plan and zoning designations prior to the property's inclusion in the Urban Reserve Area. As noted above, ORS 94.518 provides that the comprehensive plan and ordinance in effect at the time of the approval of the development agreement apply unless otherwise provided in the development agreement. Because the

Development Agreement provides for Yamhill County comprehensive plan and zoning designations prior to inclusion in the Urban Reserve Area, the designations do not violate the Comprehensive Plan. Moreover, as discussed above, any argument that the Development Agreement is not consistent with the Comprehensive Plan is an impermissible collateral attack on a final land use decision.

The plan designations will change upon inclusion in the URA to:

- Low Density Residential -1/A (47.58 acre subdivision containing 36 lots, allows one dwelling unit per acre)
- Low Density Residential -0.11/A with Historic Landmark and Stream Corridor overlays, with a winery Limited Use overlay on the barn (allows one dwelling unit on the 9.56 acre historic farmstead). The Historic Landmark overlay will cover the entire 9.56 acre farmstead, as the entire farmstead is on the National Register of Historic Places. The Stream Corridor overlay will cover the stream and pond in the southwest corner of the farmstead. There is an existing winery operating in the barn along Benjamin Road, which is also part of the historic farmstead. The applicant intends that the barn will continue to operate as a winery in conjunction with the 1.05 acre winery lot to the north, so the barn area will need a winery Limited Use overlay in order for the winery to be an allowed use.
- Public/Quasi-Public (9.09 acre institutional property, for future retirement community)
- Commercial with a winery Limited Use overlay (1.05 acre winery parcel).

The development agreement also lists the future zoning designations upon inclusion in the URA (excerpted below):

(c) Zoning Districts. Upon the Property's inclusion in the URA, the

following City Zoning Districts shall apply to the Property. The Subdivision Parcel shall be zoned Low Density Residential-1/A District. The Historic Property shall be zoned Low Density Residential-0.11/A District with Historic Landmark and Stream Corridor Overlay Subdistricts.

The Trust has a vested right in the existing bed and breakfast establishment and accessory carriage house and cottage structures located on the Historic Property, and upon the Property's inclusion in the URA, the bed and breakfast establishment and accessory structures shall be allowed to continue outright as a conditional use in the Low Density Residential Zoning District.

The Retirement Parcel shall be zoned Institutional District. The Winery Parcel shall be zoned with a zone that allows the Winery as an outright permitted use.

The zoning designations upon inclusion of the property within the URA will be:

- R-1-1/A (47.58 acre subdivision containing 36 lots)
- R-1-0.11A (9.56 acre historic farmstead, with a Historic Landmark overlay over the entire 9.56 acre lot, with a Stream Corridor overlay on the stream and pond in the southwest corner, and a winery Limited Use overlay on the barn along Benjamin Road). The existing bed & breakfast use would be allowed as an approved conditional use.
- Institutional (9.09 acre parcel for future retirement community)
- Residential-Professional (R-P) with a winery Limited Use overlay (1.05 acre winery parcel). The Newberg Development Code only explicitly allows wineries in the M-3

Heavy Industrial zone. The Residential-Professional zone with a winery Limited Use overlay is an appropriate choice for this site because the base R-P zone is consistent with the Commercial comprehensive plan designation and is intended to allow professional office type uses that are compatible with residential districts. The winery Limited Use overlay is defined as allowing the processing of fruit to make wine, storage of wine, retail tasting room, and accessory uses. If the winery use was ever discontinued then the base R-P zone would allow a range of other uses, such as professional offices, which would still be compatible with residential districts.

Newberg's current buildable lands inventory shows that we have a 4 year supply of institutional land within city limits, and a 13 year supply of low density residential land within city limits.

We expect that the property will be included within the expanded URA when the URA is finally approved. In the interim, if the annexation is approved and the property has not been included within the URA then the existing Yamhill County land use regulations that apply to the site will be adopted by the City of Newberg for this site. Specifically, this means that the residential subdivision could be completed under Yamhill County subdivision approval S-04-07 and the approved Measure 37 claim, and the winery lot and retirement lot could be developed under current EF-20 standards and any Measure 37 rights. Any development applications, other than those arising from S-04-07, submitted after annexation would follow standard Newberg Development Code procedures.

One public comment stated that they supported the development plan but were concerned that it could change in the future. If the applicant wanted to change the zoning designations on the site in the future they would have to apply to do so, meet the criteria for a zone change, and follow the public process for zone changes. This process includes mailed notice to property owners within 500 feet of the site, signs posted along the street frontages, notices placed in the *Newberg Graphic*, and both Planning Commission and City Council public hearings. The applicant does not plan to change the zoning designations, but if they did wish to do so in the future then there would be an opportunity for anyone with a concern to comment on the proposal.

Another public comment raised concerns that the county comprehensive plan and zoning designations, as well as the levels of development contemplated in the proposal, are inconsistent with the statewide planning goals. However, OAR 660-014-0060 provides that "a city annexation made in compliance with a comprehensive plan acknowledged pursuant to ORS 197.251(1) shall be considered by the commission to have been made in accordance with the goals unless the acknowledged comprehensive plan and implementing ordinance do not control the annexation." See *Costco Wholesale Corp. v. City of Beaverton*, 50 Or LUBA 476 (2004) (holding that local governments apply acknowledged comprehensive plan and ordinances to annexation decision in lieu of the statewide planning goals, unless the plan and ordinance do not control the annexation); *Patterson v. City of Independence*, 49 Or LUBA 589 (2005) (same). Accordingly, the statewide planning goals are not applicable to the City's annexation decision. A final public comment stated that the proposed annexation violated the Urban Reserve Rule. The McClures secured Measure 37 waivers from Yamhill County and the State of Oregon to subdivide and develop the property under the regulations in effect in 1967. Pursuant to those waivers, the McClures received preliminary plat approval for a 36-lot subdivision. The County's preliminary plat approval was not appealed, and the final subdivision plat was recorded on November 6, 2007. Under the annexation proposal, the property will continue to be zoned for the rural uses authorized in the McClures' Measure 37 waivers and the County's subdivision

approval. Thus, the proposal meets the Urban Reserve Rule's requirement that the lands in urban reserves continue to be planned and zoned for rural uses.

In addition, upon inclusion of property in the Urban Reserve Area, the zoning designations will be: R-1-1/A with Stream Corridor overlay; R-1-0.11/A with Historic Landmark, Stream Corridor and winery Limited Use overlays; Institution; and R-P with a winery Limited Use overlay. These regulations will remain in effect until such time as the land is included in the urban growth boundary. Stated differently, the proposed zoning will go into effect when the property is included in the Urban Reserve Area. Thus, in accordance with the Urban Reserve Rule, there will be no changes after the property is added to the Urban Reserve Area.

Finally, as noted above, OAR 660-014-0060 provides that a city annexation made in compliance with an acknowledged comprehensive plan shall be considered to have been made in compliance with the statewide planning goals. Because the annexation proposal complies with the Comprehensive Plan, the proposal is consistent with the applicable Statewide Planning Goals, as well as the Urban Reserve Rule's requirement that urban reserve lands continue to be planned and zoned under the applicable Statewide Planning Goals.

Wetlands/stream corridors: Annexation applications need to address State Goal 5 natural resources on the site, including wetlands and riparian corridors.

Environmental aspects: The wetlands delineation report for the site found four likely jurisdictional drainages (A, B, C, and D), an emergent wetland (wetland A), and a man-made pond. The report also noted that the on-site drainages were not listed as "fish habitat" according to Yamhill County's Natural Resource Comprehensive Plan inventory; therefore, the drainages were not subject to a riparian area buffer. On-site wetlands were also not subject to a protective buffer under the Yamhill County Comprehensive Land Use Plan. Drainage A and the man-made pond/Springbrook Creek branch are listed on the National Wetlands Inventory map for Newberg. The report noted that most of the site has been used as a hazelnut orchard since the 1920s and that extensive drainage tiling was installed on the site. Drainage A was described as a generally linear unvegetated channel, with a perennial flow from an off-site culvert. The site photos included with report confirm this, and show Drainage A to be generally a simple channel cut into the bare dirt beneath the hazelnut trees. Drainage B is a similar but shallower channel originating from a metal drum connected to the tiling system, and appeared to have an intermittent flow. Drainage C was a shallow channel similar to B, and appeared to be a result of a failed drainage tile and have an intermittent flow. Drainage D is a small channel that runs through a grassy meadow that drains to the man-made pond in the southwest corner. There is also a roadside ditch along Benjamin Road.

The Department of State Lands (DSL) commented that they approved the wetlands delineation report in 2007. DSL approved a fill permit for wetland A and required: 1) the purchase of mitigation credits at a wetlands mitigation bank (which has been done), and 2) the creation on-site of 5.6 acres of riparian enhancement consisting of a 45 foot wide buffer area immediately adjacent to drainages A and B, to be planted with extensive native vegetation (location shown in Attachment 8). Wetland A has therefore been removed from further consideration and Drainages A and B will be required to be planted with a riparian buffer and protected from further development.

The site has been heavily modified by the hazelnut orchard, which suppresses other vegetation,

and the agricultural drainage tiles, which have concentrated the flow of stormwater on site into the drainage channels. Drainages A, B and C have little vegetation along their channels and therefore do not provide significant wildlife habitat. When drainages A and B are planted to be riparian buffers, as required by the fill permit, then they will have an increased environmental value and will provide some wildlife habitat. Drainage D flows through a grassy meadow and does support some wildlife habitat. The delineation report noted that the drainages were not fish habitat. In their existing condition, drainages A, B and C have minor environmental value and largely function as surface drainage pipes. They provide a stormwater collection function, but do not improve stormwater quality because of their lack of filtering vegetation. When drainage A and B are planted as riparian corridors they will provide some stormwater filtering and improve water quality. Drainage D's banks are vegetated and therefore does provide some stormwater quality benefits. The existing pond and branch of Springbrook Creek in the southwest corner of the site is the highest quality wetland on the site and provides both wildlife habitat and water quality functions.

The Development Agreement for this property states that the existing pond on the historic farmstead is depicted on the National Wetlands Inventory and shall be subject to the Newberg Development Code Stream Corridor (SC) Overlay subdistrict. Newberg adopted Stream Corridor overlays as part of its Development Code in 1996 to protect Goal 5 riparian corridors in the city from development. A Stream Corridor overlay will be established at the logical top of bank around the pond and along the section of Springbrook Creek feeding into the pond. This Stream Corridor overlay should be extended to include drainage D, which is also on the historic farmstead parcel. Separate Stream Corridor overlays should be applied along drainages A and B to protect the new riparian buffer areas, as shown in Attachment 8. The R-1-1/A zone for the subdivision will therefore also have a Stream Corridor overlay along the drainage A and B riparian buffer areas.

The southwest pond, section of Springbrook Creek and drainage D all have social value as they are an important part of the historic farmstead landscape and are fairly visible. The other drainages on the site are not very visible from adjoining roads or properties and have little social value as part of the landscape. The new riparian corridors along drainages A and B will have social value because they will significantly improve the landscape within the residential subdivision. The surface drainages and ponds do have some economic and energy benefits for the site. The open drainage channels provide some economic benefit; if the applicant was required to place the drainages in underground pipes it would increase the cost of developing the site. Installing underground drainage pipes would also consume unnecessary energy.

The recommended stream corridor overlays will therefore protect the environmental, social, economic and energy aspects of the wetlands and drainages on the site.

*(B) An adequate level of urban services must be available, or made available, within three years time of annexation, except as noted in division (E) below. An adequate level of urban services shall be defined as:*

- (1) Municipal sanitary sewer and water service meeting the requirements enumerated in the Newberg comprehensive plan for provision of these services.*
- (2) Roads with an adequate design capacity for the proposed use and projected future uses. Where construction of the road is not deemed necessary within the three-year time period, the city shall note requirements such as dedication of right-of-way, waiver of remonstrance against assessment for road improvement*

*costs, or participation in other traffic improvement costs, for application at the appropriate level of the planning process. The city shall also consider public costs for improvement and the ability of the city to provide for those costs.*

**FINDING:** As explained below, public facilities will have adequate capacity to accommodate the demands of the site.

Water: The property can connect to an existing 10-inch mainline that runs along Hwy 99W at the property's southern border, and will extend the line within the site.

Stormwater: Stormwater drains to the southwest and to the southeast via several drainage channels on the site. The Springbrook Creek branch continues under Highway 99W in a culvert. Stormwater from the subdivision roads will drain to two new detention ponds on the site before continuing to the existing southwest and southeast drainages. The new riparian buffers along drainages A and B will improve the stormwater quality downstream of the site. Additional stormwater improvements may be required upon development of the retirement community parcel.

Sanitary Sewer: The applicant plans to construct sewer lines on the site that will gravity flow to a pump station at the southern edge of the site. The pump station will be connected to the nearest trunk line along Highway 99W (probably north of Klimek Lane).

Roads: The subject property is adjacent to Hwy 99W on its southern side and Benjamin Road on its western side. The applicant plans to continue to take access from Highway 99W for the historic farmstead/bed & breakfast in the southwest corner of the site. All other development will take access from Benjamin Road. Yamhill County required Benjamin Road to be widened adjacent to the subdivision, and this improvement has been partially completed. The development agreement also required bike lane and sidewalk along Benjamin Road, or alternate parallel pedestrian and bicycle paths through the property that connect to Benjamin Road. These improvements will need to be completed upon completion of the subdivision. The internal public streets will also need to meet the standards listed in the development agreement upon completion of the subdivision.

The applicant submitted a Traffic Impact Study as part of the annexation application. The study focused on the impact of the future retirement facility, as the residential subdivision has already been approved and will develop whether or not the annexation is approved. The retirement facility would be developed on the southeast 9.09 acre parcel with Institutional zoning and would take access from Benjamin Road via internal streets. The study reviewed existing traffic in the area and intersection performance levels, and modeled year 2028 traffic conditions both with and without the Newberg-Dundee bypass. The study found that the intersections of Springbrook Road at Benjamin Road, Crestview Drive at the future frontage road (Gueldner Drive on the properties west of the site along Highway 99W), and Benjamin Road at the site access were projected to operate acceptably under year 2028 traffic conditions either with or without the bypass. The intersections of Highway 99W at Springbrook Road and Highway 99W at Crestview Road were projected to operate at or above capacity under year 2028 traffic condition either with or without the bypass. The study found that if a trip cap of 65 PM peak hour trips was imposed on the retirement facility then the proposed annexation would not have a significant effect on the transportation system. The development would be small enough that intersection operations would not be appreciably different with or without development. This trip

cap equates to the number of trips that could be generated by a continuing care retirement community with up to 225 dwelling units.

The study noted a sight distance deficiency at the intersection of Springbrook Road and Benjamin Road. The study recommended that a determination of proportionate share costs for reconstruction of the adjacent vertical crest curves be made (if still needed) upon submittal of any development applications for the Institutionally zoned property.

The study also noted that the Newberg Transportation System Plan expects that the intersection of Highway 99W at Benjamin Road will be closed upon construction of either the Newberg-Dundee Bypass or the future frontage road (Gueldner Drive) between the Crestview Drive extension and Benjamin Road. If these roads are not constructed prior to development of the Institutional property then the study recommends that the intersection capacity be analyzed to determine when turning movement restrictions should be imposed. The study projected that the intersection would operate acceptably through year 2028 if it was restricted to right-in, right-out only.

ODOT has commented that they have reviewed this TIS and concur with the conclusion that the proposed annexation and zone change will not result in a significant impact on area transportation facilities if the trip cap is applied to the site. ODOT noted that they thought the TIS should have considered the impact of the entire site in order to provide a clearer picture of the total development. They also noted that the bypass cannot be relied on as a future facility as it is not a funded planned improvement. The City requested that the TIS look at impacts both with and without the bypass, as it is included within the City's Transportation System Plan. The TIS analyses the annexation both with and without the bypass in place and does not rely on the bypass, so the TIS satisfies both City and ODOT requirements.

ODOT noted that the historic farmstead currently takes access from Highway 99W, although ODOT has no active access permit for the driveway. The applicant will be required to either provide evidence that a permit is not necessary, or has already been issued, or apply for and obtain an approach road permit for the existing access from the historic homestead. All future development must take access from Benjamin Road.

ODOT also noted that Benjamin Road will be closed when the new local street (Gueldner Drive) is constructed between Crestview Drive and Benjamin Road. If development occurs prior to the completion of this local street then it will be necessary to evaluate impacts at the 99W/Benjamin Road intersection and make improvements as necessary to ensure it operates safely and efficiently. ODOT therefore recommended that the following conditions apply to the project:

- 1. Prior to issuance of a building permit for development on the site, the applicant shall apply for, on behalf of Yamhill County, and obtain an approach road permit for Benjamin Road at its intersection with OR 99W.*
- 2. Prior to the issuance of the first certificate of use and occupancy (or the City's equivalent) on the property, the applicant shall provide evidence to the City that all requirements and conditions of the approach road permit for Benjamin Road have been satisfied.*

The TIS and ODOT both anticipate that the development of the Institutional parcel on the McClure property prior to the completion of Gueldner Drive (the street between the Crestview

Drive extension and Benjamin Road on the properties to the west) would negatively impact the Benjamin Road/Hwy 99W intersection. Changing the Benjamin Road/Hwy 99W intersection design (to right-in- right-out operation, for example) could improve some aspects of the intersection but could potentially create access and safety issues. ODOT's approval shall therefore be subject to the City's concurrence.

The Springbrook/99W intersection does not currently meet ODOT's v/c ratio standards. Development of the Institutional parcel will add some trips to this intersection and would worsen the performance of the intersection if no mitigation was done. The City of Newberg has already identified this intersection as one that needs improvement, however, and has charged recent developments in the area with impact fees based on the number of trips they added to the intersection. The fees could be used for street improvements that would improve the performance of the intersection, whether those improvements were directly at the intersection or were for a nearby street (such as the future completion of Hayes Street) that would reduce the number of trips at the Springbrook/99W intersection. Recent annexations west of this site were required to pay towards this performance improvement based on their trip generation estimates. The City will therefore require that, upon development of the McClure Institutional parcel, the developer pay an impact fee based on trip generation towards the performance improvement of the Springbrook/99W intersection.

State Transportation Planning Rule:

**660-012-0060**

***Plan and Land Use Regulation Amendments***

*(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:*

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
- (b) Change standards implementing a functional classification system; or*
- (c) As measured at the end of the planning period identified in the adopted transportation system plan:*
  - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
  - (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan;*
  - or*
  - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.*

**Finding:** As noted above, a trip cap of 65 PM peak hour trips will be placed on the Institutional parcel to ensure that it will not have a significant impact on transportation facilities. ODOT concurs with this approach and conclusion, with the addition of conditions regarding an access permit for the historic farmstead on 99W and potential improvements to the Benjamin Road intersection if the Institutional property develops prior to the closure of Benjamin Road. Annexation of the McClure property will therefore not have a significant impact on transportation facilities, thus complying with the Transportation Planning Rule.

- (2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:
- (a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.
  - (b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.
  - (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.
  - (d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.
  - (e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.
- (3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:
- (a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;
  - (b) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;
  - (c) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;
  - (d) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and
  - (e) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (d) of this section.
- (4) Determinations under sections (1)-(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.
- (a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.
  - (b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:
    - (A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.

*(B) Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which: transportation systems development charge revenues are being collected; a local improvement district or reimbursement district has been established or will be established prior to development; a development agreement has been adopted; or conditions of approval to fund the improvement have been adopted.*

*(C) Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally-approved, financially constrained regional transportation system plan.*

*(D) Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.*

*(E) Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or service is reasonably likely to be provided by the end of the planning period.*

*(c) Within interstate interchange areas, the improvements included in (b)(A)-(C) are considered planned facilities, improvements and services, except where:*

*(A) ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system, then local governments may also rely on the improvements identified in paragraphs (b)(D) and (E) of this section; or*

*(B) There is an adopted interchange area management plan, then local governments may also rely on the improvements identified in that plan and which are also identified in paragraphs (b)(D) and (E) of this section.*

*(d) As used in this section and section (3):*

*(A) Planned interchange means new interchanges and relocation of existing interchanges that are authorized in an adopted transportation system plan or comprehensive plan;*

*(B) Interstate highway means Interstates 5, 82, 84, 105, 205 and 405; and*

*(C) Interstate interchange area means:*

*(i) Property within one-half mile of an existing or planned interchange on an Interstate Highway as measured from the center point of the interchange; or*

*(ii) The interchange area as defined in the Interchange Area Management Plan adopted as an amendment to the Oregon Highway Plan.*

*(e) For purposes of this section, a written statement provided pursuant to paragraphs (b)(D), (b)(E) or (c)(A) provided by ODOT, a local government or transportation facility provider, as appropriate, shall be conclusive in determining whether a transportation facility, improvement or service is a planned transportation facility, improvement or service. In the absence of a written statement, a local government can only rely upon planned transportation facilities, improvements and services identified in paragraphs (b)(A)-(C) to determine whether there is a significant effect that requires application of the remedies in section (2).*

**Finding:** Sections 2-4 are not applicable because, as determined above, the annexation with a trip cap will not have a significant effect on an existing or planned transportation facility.

In conclusion, adequate transportation facilities will be available to serve the proposed use as conditioned.

*(C) Findings documenting the availability of police, fire, parks, and school facilities and services shall be made to allow for conclusionary findings either for or against the*

*proposed annexation. The adequacy of these services shall be considered in relation to annexation proposals.*

**Finding:** Police services are currently provided to the area by Yamhill County Sheriff's Office. Fire service is provided by Newberg Rural Fire District. The proposed annexation will shift police and fire services to the city. The annexation and development of the property will generate additional needs for police and fire services. The annexation and development will also generate additional revenues to pay for those services, including property tax revenues, franchise fee revenues, and cigarette and liquor tax revenues. Recent growth in these revenues has increased to the point that four additional police officers were added in the General Fund budget for 2008-09. The City is considering establishing a public safety fee to fund an additional three officers. If this fee is established, then this annexed property also would pay. The residential development of the property may also increase the demand for parks and school facilities, which will be partially offset by the system development charges for parks and the school construction excise tax. The residential subdivision will develop whether or not the annexation is approved, however. The retirement facility would not be expected to generate much additional demand for parks, and no additional demand for schools. The bed & breakfast will also pay city room taxes. Overall, adequate public facilities and services exist to support the proposed annexation.

*(D) The burden for providing the findings for divisions (A), (B) and (C) of this section is placed upon the applicant.*

**FINDING:** The applicant has provided written findings for this section.

*(E) The City Council may annex properties where urban services are not and cannot practically be made available within the three year time frame noted in division (B) above, but where annexation is needed to address a health hazard, to annex an island, to address sewer or water connection issues for existing development, to address specific legal or contract issues, to annex property where the timing and provision of adequate services in relation to development is or will be addressed through legislatively adopted specific area plans or similar plans, or to address similar situations. In these cases, absent a specific legal or contractual constraint, the Council shall apply an interim zone, such as a limited-use overlay, that would limit development of the property until such time as the services become available.*

**FINDING:** This criterion is not applicable to this property.

**Timing Consideration:*****NDC § 151.263 Annexation Procedures***

*All annexation requests approved by the City Council shall be referred to the voters in accordance with the requirements of this code and O.R.S. 222.*

*(A) Annexation elections are normally scheduled for the biennial primary or general elections which are held in May and November of even numbered years. Applications for annexation shall be filed with the Planning Division before 5:00 p.m. on October 1 for a primary ballot election in May and before 5:00 p.m. on April 1 for a general ballot election in November. An applicant may request that the Council schedule an annexation ballot measure for a special election date. Applications proposed for review at a special election must be filed with the city eight months prior to the proposed special election date. Filing of an annexation application and having the application deemed complete does not obligate the city to place the annexation question before the voters at any particular election. This division does not obligate the city to process an annexation application within any time frame not required by ordinance or state statute.*

*(B) The application shall be processed in accordance with the Type III processing procedures outlined in this code. Once the Director receives a completed application for annexation, he/she shall schedule a recommendation hearing before the Planning Commission. The Planning Commission shall make a recommendation to the City Council as to whether or not the application meets the criteria contained in § 151.262. This decision shall be a quasi-judicial determination and not a legislative determination. The Planning Commission may also recommend denial of an application based upon a legislative perception of the request even though the findings support and would allow annexation. A decision to recommend denial of an annexation, even though the findings support the request, shall be specifically stated in the record and noted as a legislative recommendation separate and apart from the quasi-judicial recommendation.*

*(C) Following the Planning Commission hearing, the Director shall schedule a City Council hearing to consider the request. The City Council shall conduct a quasi-judicial hearing and determine whether or not the application meets the criteria contained in § 151.262. The hearing at the City Council shall be considered a new hearing. If additional testimony is submitted, the Council may, at its own discretion, return the application to the Planning Commission for further review and recommendation. The City Council may also deny an application based upon a legislative perception of the request even though the findings support and would allow annexation. A decision to deny an annexation, even though the findings support the request, shall be specifically stated in the record and noted as a legislative recommendation separate and apart from the quasi-judicial recommendation.*

*(D) If the City Council approves the annexation request, the proposal may, at the City Council's sole discretion, be placed before the voters of the city as follows:*

- (1) The biennial primary or general elections which are held in May and November of even numbered years, or*
- (2) An available special election.*

**Finding:** The next general election will be on May 18, 2010. The annexation could be placed on an earlier special election at the City Council's discretion if the applicant was willing to pay for the cost of the election.

**Development Agreement for the McClure Property (Adopted under Ordinance 2007-2671):**  
*below*

OFFICIAL YAMHILL COUNTY RECORDS  
JAN COLEMAN, COUNTY CLERK

200721250



\$111.00

00282561200700212500180189

09/26/2007 03:17:08 PM

DMR-AGRDMR Cnt=1 Stn=2 ANITA  
\$90.00 \$10.00 \$11.00

**DEVELOPMENT AGREEMENT**

between Charles and Ellen McClure  
and the City of Newberg, Oregon

This Development Agreement ("Agreement") is made and entered into by and between  
The Charles J. McClure and Ellen R. McClure Trust, U/I/D October 25, 1999 (the "Trust") and  
the City of Newberg, Oregon ("City") (together, "Parties") pursuant to ORS 94.504 to 94.528  
and Newberg Development Code ("NDC") §§ 151.255 to 151.259.

**RECITALS**

FIRST AMERICAN TITLE

- A. This Agreement relates to certain real property owned by the Trust legally described in Exhibit A and diagrammatically shown in Exhibit B, hereinafter known as the "Property."
- B. The Property is currently located outside the City's limits, outside the Newberg Urban Growth Boundary ("UGB") and Urban Reserve Area ("URA"), and is zoned Yamhill County EF-20.
- C. On March 1, 2006, Yamhill County issued Board Order 06-130, approving the Trust's local Measure 37 claim on the Property, and on July 20, 2006, the State of Oregon through the Department of Administrative Services and the Department of Land Conservation and Development ("State"), issued Final Order Claim No. M122204, approving the Trust's State Measure 37 claim. Under Final Order Claim No. M122204, the Trust is authorized to divide and develop the Property into approximately forty (40) one-acre lots, with a dwelling on each newly-created lot and develop the remaining Property for commercial uses, subject to the standards in effect on May 15, 1967.
- D. The Trust seeks to develop the Property pursuant to the approved Measure 37 claims and the Trust filed subdivision application with Yamhill County for the Property

("Proposed Development"). The preliminary subdivision plat for the Proposed Development is attached as Exhibit C (the "Preliminary Subdivision Plat"). The Preliminary Subdivision Plat accommodates thirty-six (36) one (1) acre residential lots, substantial open space, public trails, roads with a five (5) foot sidewalk on one side, a winery, and future development for retirement or assisted residential living.

E. The Property is located at the eastern gateway into the City of Newberg. Proper development of the Property could serve to enhance the Newberg area and provide an attractive and suitable entrance to the City and provide opportunities for housing and other uses not currently available in Newberg. The Trust seeks to develop the Property in a manner that offers exceptional quality and design while taking advantage of the natural topography, enhancing the natural environment, protecting the historic homestead area, and providing a superior quality of residential environment unequalled in the area. In order to achieve these goals, the Trust is interested in receiving City municipal water service and other services that the City may provide. If the Property is to receive City services, City wants to ensure that it is developed in a manner that will promote an attractive and functional entrance into Newberg, enhance the community, and take advantage of the unique opportunities the Property provides.

**Finding:** The proposed annexation conforms to the above section of the development agreement.

F. City is considering whether to add the Property into the URA and the UGB.

G. Newberg Comprehensive Plan Policy N.2.(c), and the NDC § 151.261 prohibit annexing property outside the URA and UGB, and Newberg City Ordinance § 52.11 and § 51.63 limit extending City utilities outside the City's limits. Pursuant to NDC § 151.255 and City Ordinance 2007-2671, the City has authority to initiate annexation of the Property to the City and extend municipal water service to the Property upon execution of this Agreement.

**Finding:** The proposed annexation conforms to the above section of the development agreement. The City has included the property within the proposed URA expansion, which has been approved by the City and Yamhill County and is being reviewed by the Department of Land Conservation and Development.

H. Extending municipal water service to the Property is consistent with Statewide Planning Goal 11 because the Proposed Development is not dependent on the extension of City municipal water service. The development density is dependent on the Yamhill County and State Measure 37 approvals whereby the Trust is authorized to divide and develop the Property into approximately one-acre residential lots. The extension of municipal water service therefore does not increase the base density in a residential zone due to the availability of water, allow a higher density for residential development than would otherwise be authorized without such service, or allow an increase the allowable density of residential development due to the extension of the municipal water service. The Property could be developed regardless of the availability of the City's municipal water service.

I. Given the Yamhill County and State Measure 37 approvals for the Property, the length of time needed to consider URA and UGB amendments, the length of time needed to consider and annex the Property, and City's and the Trust's goals for the Property's development, City and the Trust enter into this Agreement to allow the extension of municipal water service to the Property prior to annexation, to establish certain standards for the Property's development prior to and upon annexation, and to establish processes for considering and including the Property in the URA, UGB, and the City limits.

J. The Newberg City Council authorizes the City Manager to enter into this Agreement through Ordinance 2007-2671, adopted on June 4, 2007.

**Finding:** The proposed annexation conforms to this section of the development agreement.

#### AGREEMENT

1. Urban Reserve Area and Urban Growth Boundary Amendments. City agrees to continue its process for including the Property in the URA and the UGB. City anticipates considering the URA proposal in 2007 and the UGB proposal in 2008. City will diligently

pursue, and the Trust will support, the process for including the Property in the URA and UGB.

The Trust and City understand that these proposals are subject to legislative approval through City, Yamhill County, and State processes, including appeals processes, and that the inclusion of the Property in the URA and UGB ultimately may not be approved and may exceed the timeframes noted above.

2. Annexation. Upon request of the City, but no sooner than such date that the Property becomes contiguous to the City, the Trust shall submit an application for annexation using the City's standard forms. City shall consider the application, and if the City Council so elects, the City shall submit the question of annexation to the City electorate at a special, primary, or general election. In accordance with this Agreement and the special authorization under Ordinance 2007-2671, annexation may, but is not required to occur before the Property is included in the URA or UGB or before City municipal water service is extended to the Property. If an annexation vote is not approved, City may in accordance with City policy applicable at that time resubmit the annexation question at a subsequent election. The Trust agrees to annexation when the Property becomes contiguous to the City.

**Finding:** The City has included the property within the proposed URA expansion, which has been approved by the City and Yamhill County, and is being reviewed by the Department of Land Conservation and Development. The Trust (owner) has applied for annexation, which can be approved prior to the inclusion of the property within the URA because of the exception authorized in Ordinance 2007-2671. The proposed annexation conforms to this section of the development agreement.

3. City Utility Services. Upon the effective date of this Agreement, development on the Property shall be allowed to use City municipal water service in the same manner as other properties within the City. Upon inclusion of the Property into the UGB, the development on the Property shall be allowed to use City sewer service in the same manner as other properties within the City. If, prior to annexation into the City, some or all of the Property has been approved for, developed, or served by septic tanks or other private septic systems, such systems shall be allowed to remain on such private septic systems for a period of fifteen (15) years following installation of the septic tank or construction of the private septic system. Each separate property

may have a separate beginning date for the period depending upon installation or construction. City and the Trust agree that upon approval of the Proposed Development by Yamhill County, such private septic tanks or other private septic systems shall be approved for purposes of this paragraph and Agreement. City and the Trust also agree that the fifteen (15) year period referenced in this paragraph shall survive the term of this Agreement. Thereafter, if City requires connection to the public sanitary sewer system, the Trust or its assigns shall pay for and install all required infrastructure and pay all associated fees, except as may be installed by City capital improvement programs or other entities, subject to System Development Charge (“SDC”) credits where applicable. The Trust shall prebuild sanitary sewer infrastructure on the Property at the time of construction of the subdivision infrastructure to be made operable upon the later of (1) such time as City sewer service is extended to the Property, and the City requests connection, or (2) the fifteen year period set forth above. City agrees to allow construction of such utilities to the City standards at the time of construction, subject to City’s review and approval under existing standards. If City standards are amended subsequent to City’s approval and prior to the Property’s annexation, City will not require alteration of the system to the new City standards. The Trust will assure to City that the system functions as designed and is not in need of repair at the time the City annexes the Property.

**Finding:** The development agreement was approved and the applicant can connect to the City water system at any time. The applicant has noted that one reason they are applying for annexation at this time is to gain access to a sanitary sewer connection and avoid the unnecessary expense of installing septic tanks on the residential lots. The existing development on the site will be required to connect to sanitary sewer upon installation of sewer to the subdivision.

4. City and County Development Review. The Parties understand that prior to annexing the Property to the City, Yamhill County has land use jurisdiction over the development and any development prior to annexation must be approved by Yamhill County. Upon receiving approval from Yamhill County, the Trust may proceed with the Proposed Development, except that any development of public water and public sanitary sewer systems on the Property that occurs prior to annexation to the City shall be submitted to the City for

engineering review and approval in accordance with City standards prior to construction of such systems. After annexation and subject to the provision of Section 3 above, any subsequent development not previously approved by Yamhill County shall be subject to approval from the City in accordance with the NDC and any other applicable City ordinance.

5. City Development Standards and Requirements.

(a) Preliminary Subdivision Plat. The development on the Property shall be in substantial conformance with the Preliminary Subdivision Plat set forth in Exhibit C.

**Finding:** The applicant has not yet submitted plans for the public water and sanitary sewer lines, as they are not ready to proceed with the utilities at this point. The development concept plan conforms to the preliminary subdivision plat in the Development Agreement. The proposed annexation conforms to this section of the agreement.

(b) Comprehensive Plan Designations. Upon the Property's inclusion in the URA, the following City Comprehensive Plan designations shall apply to the Property. The north subdivision parcel as depicted on Exhibit C ("Subdivision Parcel") shall be designated Low Density Residential - 1/A allowing one dwelling unit per acres. The 9.91-acre parcel labeled Historic Property on Exhibit C ("Historic Parcel") shall be designated Lower Density Residential – 0.11/A allowing one dwelling unit per nine acres and shall be subject to the Historic Landmark and Stream Corridor Overlay Subdistricts, except the existing bed and breakfast establishment and accessory carriage house and cottage structures located on the Historic Property are allowed notwithstanding these designations. The 9.56 acre parcel labeled Retirement on Exhibit C ("Retirement Parcel") shall be designated Public/Quasi-Public. The 1.13 acres labeled Winery on Exhibit C ("Winery Parcel") shall receive a designation that allows the Winery as an outright permitted use.

(c) Zoning Districts. Upon the Property's inclusion in the URA, the following City Zoning Districts shall apply to the Property. The Subdivision Parcel shall be zoned Low Density Residential-1/A District. The Historic Property shall be zoned Low Density Residential-0.11/A District with Historic Landmark and Stream Corridor Overlay Subdistricts.

The Trust has a vested right in the existing bed and breakfast establishment and accessory carriage house and cottage structures located on the Historic Property, and upon the Property's inclusion in the URA, the bed and breakfast establishment and accessory structures shall be allowed to continue outright as a conditional use in the Low Density Residential Zoning District.

The Retirement Parcel shall be zoned Institutional District. The Winery Parcel shall be zoned with a zone that allows the Winery as an outright permitted use.

**Finding:** The proposed base zones conform to those listed in the development agreement. The winery parcel will have a Commercial comprehensive plan designation and a Residential-Professional zoning designation with a winery Limited Use overlay. In addition, there will need to be a winery Limited Use overlay on the barn with the existing winery on the historic farmstead parcel, and there will need to be a Stream Corridor overlay on parts of the subdivision site to protect the riparian buffers along drainages A and B.

(d) Development Density, Uses, and Height. Prior to the Property's annexation, the Property shall be subject to the densities and uses allowed by the Yamhill County and State Measure 37 claim approvals. Development shall be subject to the height limits of the Yamhill County EF-20 zone. Development of the Retirement Parcel may occur the sooner of (i) the effective date of the Property's annexation or (ii) five (5) years from the effective date of this Agreement.

(e) Historic Landmark Designation. Upon including the Property in the URA unless otherwise approved through the Review Process, the Joseph and Virginia Chambers Farmstead, currently listed on the National Register of Historic Places and located on the Historic Parcel shall be included as a Historic Landmark in the Newberg Comprehensive Plan and shall be subject to the provisions of the NDC Historic Landmark Overlay Subdistrict as specified in Section 5(a).

(f) Stream Corridor Designation. The existing pond on the Historic Parcel is currently depicted on the National Wetlands Inventory and shall be subject to the provisions of the NDC Stream Corridor Overlay Subdistrict as specified in Section 5(a).

**Finding:** The applicant has no immediate plans to develop the retirement parcel. The Historic Landmark designation will be applied to the 9.56 acre farmstead upon annexation. The Stream Corridor overlay will be applied to the existing pond and drainage D on the historic parcel, and

to the riparian buffer areas along drainages A and B in the subdivision, as noted previously.

(g) Road Improvements. Upon development of the Subdivision Parcel, the Trust shall improve Benjamin Road abutting the Proposed Development to provide for safe vehicle, pedestrian, and bicycle access. This may be accomplished by widening Benjamin Road to sufficient width to accommodate bike lanes and provide a standard 5-foot-wide sidewalk on the east side of the road, or by providing alternate parallel pedestrian and bicycle paths through the Property that connect to Benjamin Road.

(h) Public Roads. Roads within the Property shall be dedicated as public roads. The roads, exclusive of sidewalk, shall be at least 22 feet in width with no parking within the 22-foot width, and include a five-foot (5') sidewalk on one side of the street, and be sufficient to meet City fire standards in effect when the roads are constructed.

(i) Water Lines. When developing the Property, water lines shall be situated so as to allow extension to other properties included in the UGB or URA. Water lines on the Property shall include fire hydrants to satisfy City fire standards in effect when the water lines are constructed.

**Finding:** The applicant has partially completed the Benjamin Road improvements adjacent to the subdivision site, and will complete the sidewalk/bicycle paths upon completion of the subdivision. The public roads and water lines will conform to the development agreement upon completion of the subdivision.

6. Dedication of Land. Consistent with Section 5(h), roads within the Subdivision Parcel shall be dedicated as public roads and all rights-of-way dedicated as public roads shall become City streets upon annexation.

7. Fees and Charges. The Trust shall pay all costs associated with an initial annexation election for the Property. If the election is other than a primary or general election, where Yamhill County election fees are generally waived, City and the Trust shall agree to the election date. The Trust shall pay all sewer and water connection and SDCs in accordance with the City's established fee schedules at the time of connection. The Trust shall pay all City inspection fees for plan review and inspection of any public facilities to be maintained by City. If any City water connection and/or sewer connection occurs prior to annexation, the Trust or users shall pay water and/or sewer utility rates established for out-of-City customers. After annexation, the Trust or users shall pay sewer and water utility rates as well as any other fee or charge per established rates for in-City customers. At the time of annexation, the Trust shall pay all SDCs then in effect, except sewer and water connection fees and sewer and water SDC charges, which are paid at the time of connection.

**Finding:** Public right of way within the subdivision will become city streets upon annexation. The applicant paid the full application fee for the annexation application. Future fees and charges will also conform to the development agreement.

8. Continuing Effect of Agreement. In the case of any change in City regulation, regional policy, State law, federal law, or other change in circumstance which renders compliance with the Agreement impossible or unlawful, Parties will attempt to give effect to the remainder of the Agreement, but only if such effect does not prejudice the substantial rights of either party under this Agreement. If the substantial rights of either party are prejudiced by giving effect to the remainder of the Agreement, then Parties shall negotiate in good faith to revise the Agreement to give effect to its original intent. If Parties fail to agree to an amended Agreement within ninety (90) days of the commencement of negotiations, then either party may request that an arbitrator give an equitable effect to the remainder of the Agreement, and the Agreement shall thereafter be amended pursuant to the order of the arbitrator. If, because of change in policy, law or circumstance, the Agreement fails essential purpose, then the Parties shall be placed into their original positions to the extent practical.

9. Binding Effect and Assignability of Agreement. This Agreement is binding upon the heirs, successors, and assigns of the Property.

**Finding:** The annexation proposal conforms to the agreement.

10. Future Discretionary Approvals. Future discretionary approvals under this Agreement include, but are not limited to: annexation review, UGB amendment, and URA amendment. Other discretionary approvals may be required for further development of the Property not previously approved by Yamhill County, and may include subdivision review, site

design review, variance or adjustment review, and conditional use permit review. All reviews following annexation shall be governed by the NDC and any other applicable City ordinance.

11. Default and Remedies.

(a) Default. The following shall constitute default on the part of a party: A breach of a material provision of this Agreement, whether by action or inaction of a party which continues and is not remedied within sixty (60) days after the other party has given notice specifying the breach; provided that if the non-breaching party determines that such breach cannot with due diligence be cured within a period of sixty (60) days, the non-breaching party may allow the breaching party a longer period of time to cure the breach, and in such event the breach shall not constitute a default so long as the breaching party diligently proceeds to affect a cure and the cure is accomplished within the longer period of time granted by the non-breaching party; or any assignment by a party for the benefit of creditors, or adjudication as a bankrupt, or appointment of a receiver, trustee or creditor's committee over a party.

(b) Remedies. Each party shall have all available remedies at law or in equity to recover damages and compel the performance of the other party pursuant to this Agreement. The rights and remedies afforded under this Agreement are not exclusive and shall be in addition to the cumulative with any and all rights otherwise available at law or in equity. The exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other parties, including, without limitation, the right to compel specific performance.

12. Amendment or Termination of Agreement. This Agreement may be amended or terminated by the mutual written consent of the Parties. Any amendment of this Agreement which relates to the term, permitted uses, density or intensity of use, height or size of buildings, or provisions for the reservation or dedication of land shall require a public hearing before the City Council.

**Finding:** The annexation conforms to the development agreement, with the addition of a winery Limited Use overlay on the existing winery in the barn, and Stream Corridor overlay on the riparian buffer areas along drainages A and B in the subdivision.

13. Budgetary Obligations. All City obligations to expend monies under this Agreement are contingent upon future appropriation as part of the local budget process. Nothing in this Agreement requires City to appropriate any such monies.

14. Notice. A notice or communication under this Agreement by either party shall be in writing and shall be dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by either personal delivery or nationally-recognized overnight courier (such as UPS or Federal Express) or be facsimile transmission, and

For the Trust, notice or communication shall be sent to the following address:

Charles and Ellen McClure  
30295 North Highway 99W  
Newberg, OR 97132

With copy to: Steven W. Abel  
Stoel Rives LLP  
900 SW 5<sup>th</sup> Avenue, Suite 2600  
Portland, OR 97204

**Finding:** Notice will be provided as stated above. A copy of the staff report will be sent to the McClures with a copy to Mr. Abel.

For City, notice or communication shall be sent to the following address:

City of Newberg City Manager  
414 E. First Street  
Newberg, OR 97132

With copy to: City of Newberg Planning Director  
P.O. Box 970  
Newberg, OR 97132

or addressed in such other way that City or the Trust may request, provided that such request be in writing and given in accordance with this section.

15. Effective Date. This Agreement shall be effective upon signing by both the Trust and City ("Effective Date").

16. Duration. This Agreement shall expire upon completion of the terms herein, or 15 years after the Effective Date, whichever comes first.

**Finding:** The proposed annexation conforms to this section of the development agreement.



**EXHIBIT C: LEGAL DESCRIPTION  
ANX-08-006**

**PROPERTY DESCRIPTION**

A TRACT OF LAND SITUATED IN THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 2 WEST, W.M., YAMHILL COUNTY, OREGON AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON PIPE LOCATED ON THE EASTERLY RIGHT-OF-WAY OF NE BENJAMIN ROAD, SAID PIPE MARKING THE NORTHWEST CORNER OF VINEYARD HILL AT SPRINGBROOK FARM, A DULY RECORDED SUBDIVISION PLAT IN YAMHILL COUNTY PLAT RECORDS;

THENCE WEST, 50.00 FEET TO A POINT ON THE WEST LINE OF SAID NE BENJAMIN ROAD;

THENCE ALONG SAID WEST LINE, SOUTH 00° 24' 04" WEST, 490.94 FEET;

THENCE CONTINUING ALONG SAID WEST LINE OF NE BENJAMIN ROAD, SOUTH 00°24'57" WEST, 805.97 FEET;

THENCE SOUTH 89°49'14" EAST, 10.00 FEET;

THENCE SOUTH 00°24'57" WEST, 424.53 FEET;

THENCE SOUTH 05°18'29"EAST, 74.29 FEET TO A POINT ON THE EXISTING CITY LIMITS LINE;

THENCE ALONG SAID CITY LIMITS LINE, NORTH 89°08'44" EAST, 40.12 FEET TO A POINT ON THE EAST LINE OF SAID NE BENJAMIN ROAD;

THENCE ALONG SAID EAST LINE OF BENJAMIN ROAD AND THE EXISTING CITY LIMITS LINE, SOUTH 05°18'29" EAST, 56.12 FEET;

THENCE CONTINUING ALONG SAID EAST LINE OF BENJAMIN ROAD AND THE EXISTING CITY LIMITS LINE, SOUTH 00°02'00" EAST, 421.85 FEET TO A POINT ON THE NORTHERLY LINE OF U.S.HIGHWAY 99W AND THE SOUTHWEST CORNER OF PARCEL 2 OF PARTITION PLAT 2007-59, RECORDED AS DOCUMENT NUMBER 200721146, YAMHILL COUNTY RECORDS;

THENCE, ALONG SAID NORTHERLY RIGHT-OF-WAY ALONG A 5,496.74 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 02° 14' 15", CHORD BEARS NORTH 78° 09' 26" EAST, 214.65 FEET A DISTANCE OF 214.66 FEET TO A POINT;

THENCE, NORTH 10° 43' 27" WEST, 10.00 FEET TO A POINT;

THENCE, ALONG A 5,506.74 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 01° 34' 30", CHORD BEARS NORTH 80° 03' 48" EAST, 151.37 FEET A DISTANCE OF 151.37 FEET TO A POINT;

THENCE, NORTH 09° 08' 57" WEST, 10.00 FEET TO A POINT;

THENCE, ALONG A 5,516.74 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 02° 37' 21", CHORD BEARS NORTH 82° 09' 44" EAST, 252.50 FEET A DISTANCE OF 252.52 FEET TO A POINT;

THENCE, NORTH 06° 31' 13" WEST, 9.71 FEET;

THENCE, NORTH 79° 29' 00" EAST, 226.57 FEET;

THENCE, NORTH 75° 30' 39" EAST, 183.58 FEET;

THENCE, NORTH 51° 14' 56" EAST, 278.80 FEET TO A POINT ON THE EAST LINE OF PARCEL 3 OF SAID PARTITION PLAT 2007-059;

THENCE LEAVING SAID NORTHERLY RIGHT OF WAY LINE OF SAID U.S. HIGHWAY 99W, NORTH 04° 09' 42" EAST ALONG SAID EAST LINE OF SAID PARCEL 3 OF SAID PARTITION PLAT 2007-059, 90.59 FEET TO A POINT ON THE SOUTH LINE OF THE BENJAMIN HEATER DONATION LAND CLIAM;

THENCE, CONTINUING ALONG SAID EAST LINE OF SAID PARCEL 3 AND THE NORTHERLY EXTENSION THEREOF, NORTH 00° 16' 55" WEST, 293.62 FEET TO THE NORTHEAST CORNER OF TRACT 'C' OF VINEYARD HILL AT SPRINGBROOK FARM, A DULY RECORDED SUBDIVISION IN YAMHILL COUNTY, VOLUME 14, PAGE 34 AND RECORDED AS INSTRUMENT NUMBER 200724087, YAMHILL COUNTY RECORDS;

THENCE, NORTH 89° 48' 19" EAST, 198.47 FEET TO THE MOST EASTERLY, SOUTHEAST CORNER OF SAID VINEYARD HILL AT SPRINGBROOK FARM SUBDIVISION;

THENCE ALONG THE EAST LINE OF SAID SUBDIVISION, NORTH 01° 16' 43" EAST, 353.24 FEET;

THENCE, CONTINUING ALONG SAID EAST LINE OF SAID SUBDIVISION, NORTH 00° 10' 54" EAST, 1138.97 FEET TO THE NORTHEAST CORNER OF SAID VINEYARD HILL AT SPRINGBROOK FARM SUBDIVISION;

THENCE, NORTH 90° 00' 00" WEST ALONG THE NORTHERLY LINE OF PARTITION PLAT 2007-59 WHICH IS ALSO THE NORTHERLY LINE OF SAID VINEYARD HILL AT SPRINGBROOK FARM SUBDIVISION, A DISTANCE OF 1437.84 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.;

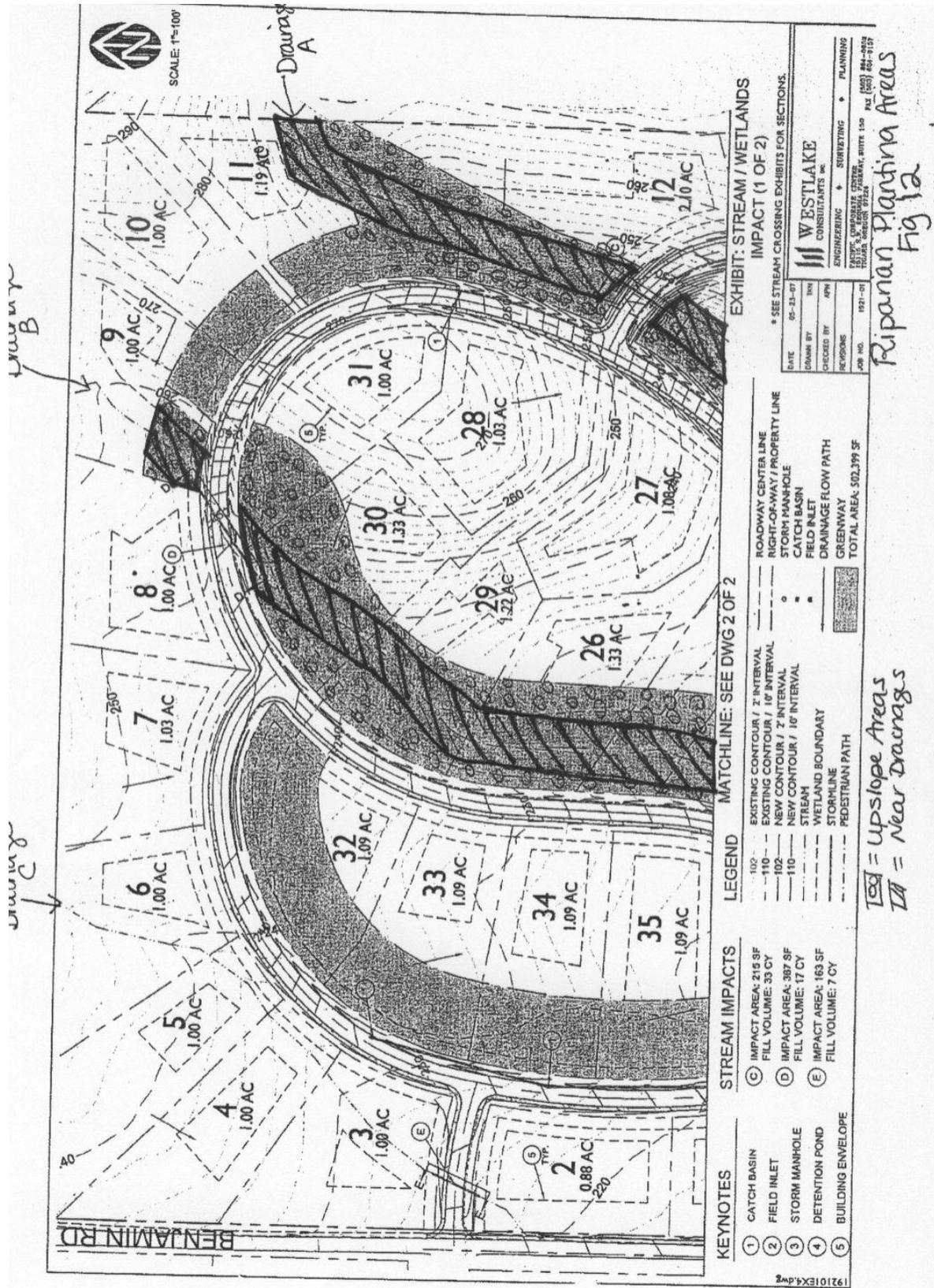
CONTAINING 69.21 ACRES OF LAND, MORE OR LESS.



06-30-10  
RENEWAL DATE



Detail - SC overlay on subdivision



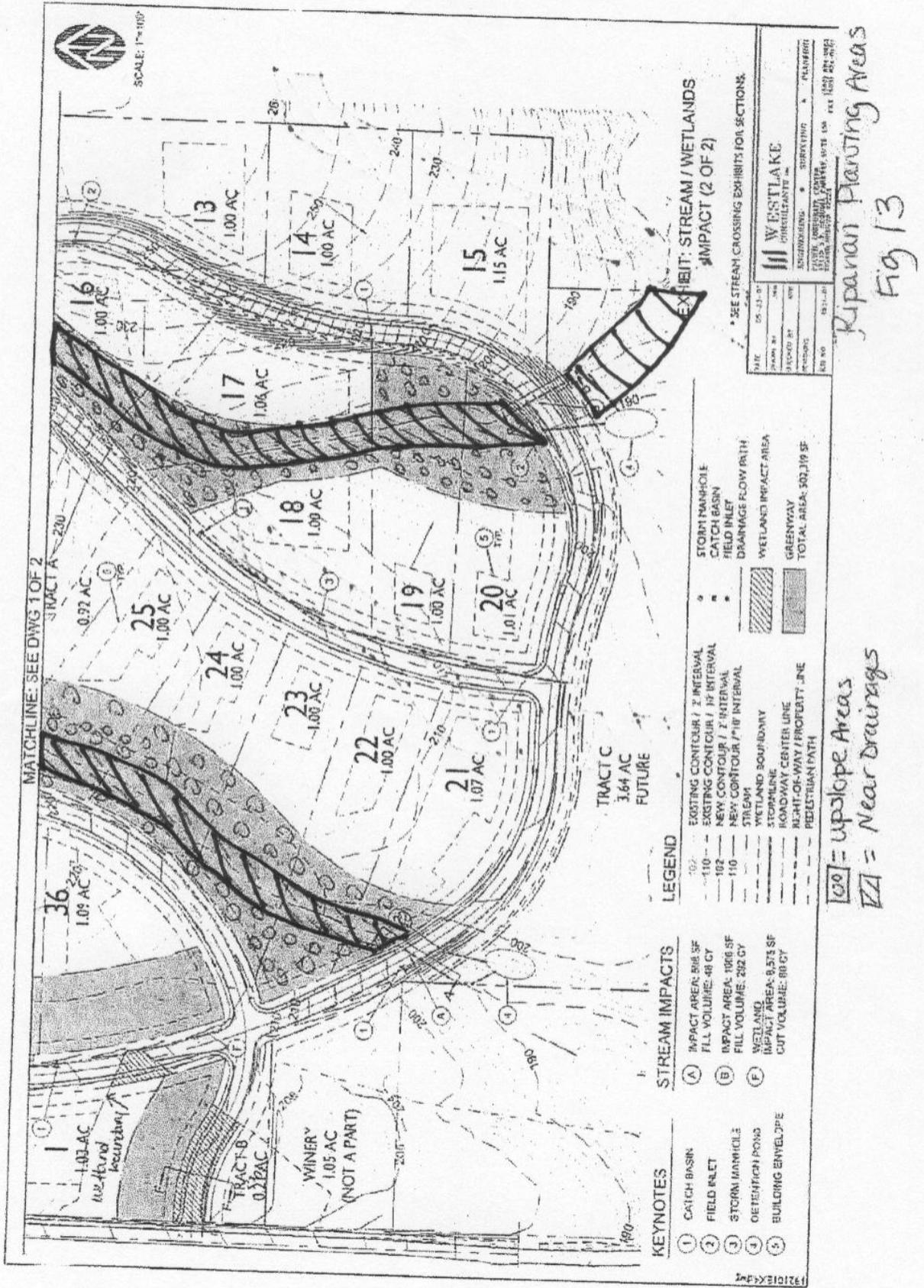
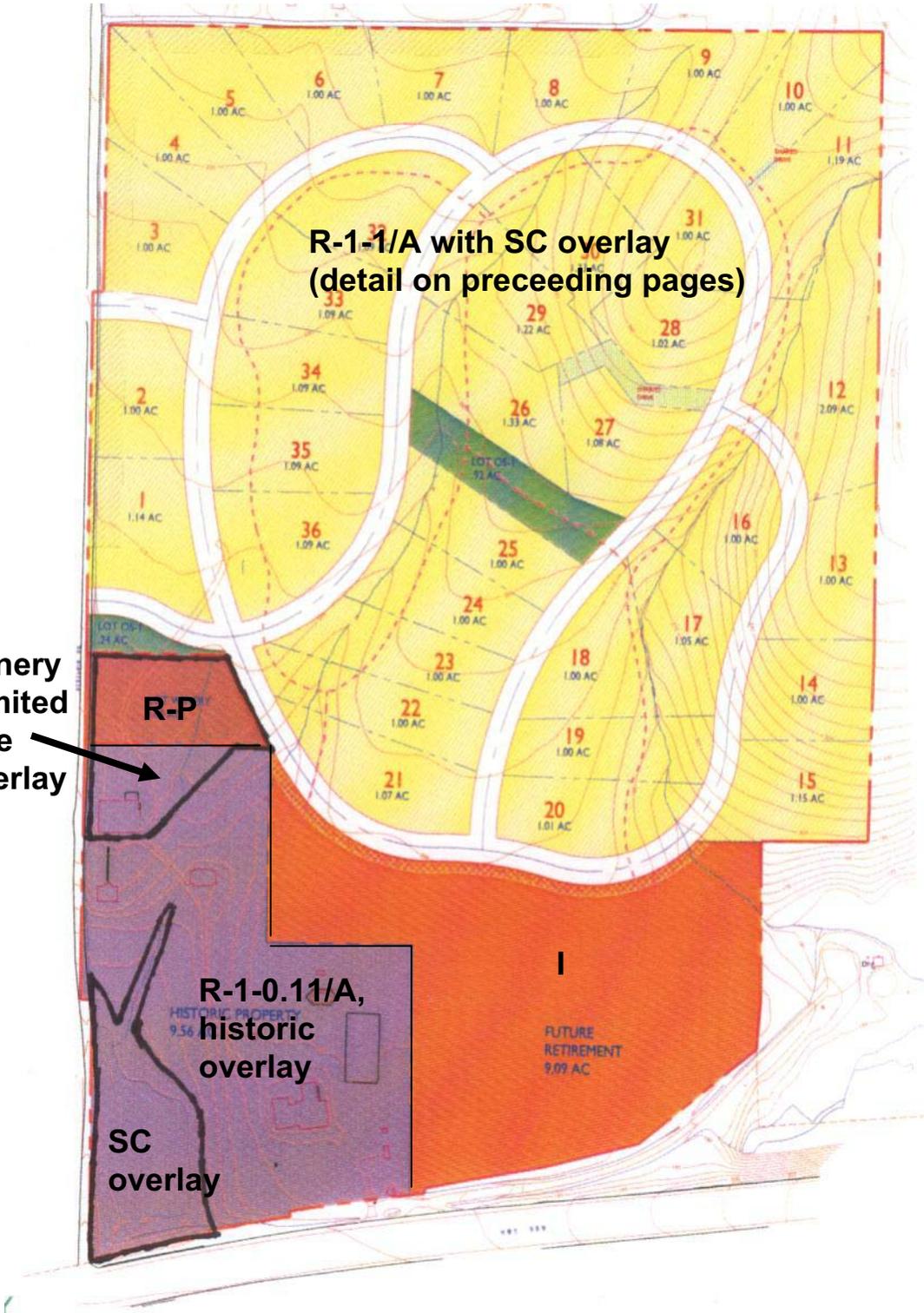


EXHIBIT E: PROPOSED ZONING MAP  
ANX-08-006



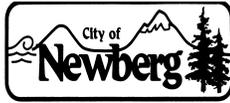
Winery  
Limited  
Use  
overlay

R-P

R-1-0.11/A,  
historic  
overlay

SC  
overlay

FUTURE  
RETIREMENT  
9.09 AC

**ORDER No. 2009-0020**

---

**AN ORDER FINDING THAT PROPERTY LOCATED AT 30295 HIGHWAY 99W, YAMHILL COUNTY TAX LOTS 3215-500, 502 AND 504, AND LOTS 3215B-100 THROUGH 4000 3216-900, MEETS THE APPLICABLE NEWBERG DEVELOPMENT CODE CRITERIA TO BE ANNEXED INTO THE CITY, AND MEETS THE APPLICABLE CODE CRITERIA TO CHANGE THE COMPREHENSIVE PLAN & ZONING DESIGNATIONS UPON INCLUSION IN THE URBAN RESERVE AREA FROM COUNTY AFLH & VLDR (EF-20 & VLDR-2.5 ZONING) TO: LDR-1/A WITH STREAM CORRIDOR OVERLAY (47.58 ACRE SUBDIVISION, R-1-1/A WITH STREAM CORRIDOR OVERLAY ZONING); LDR-0.11/A WITH HISTORIC LANDMARK, STREAM CORRIDOR, AND WINERY LIMITED USE OVERLAYS (9.56 ACRE HISTORIC FARMSTEAD, R-1-0.11/A WITH HISTORIC LANDMARK, STREAM CORRIDOR AND WINERY LIMITED USE OVERLAYS ZONING); PUBLIC/QUASI-PUBLIC (9.09 ACRE SOUTHEAST PARCEL, INSTITUTIONAL ZONING); AND COMMERCIAL WITH A WINERY LIMITED USE OVERLAY (1.05 ACRE WINERY PARCEL, R-P WITH A WINERY LIMITED USE OVERLAY ZONING)**

---

**RECITALS:**

1. On January 22, 2009, Charles J. and Ellen R. McClure, Trustees U/I/D October 25, 1999, submitted an application to annex approximately 69.21 acres (43 parcels) located at 30295 Highway 99W, Yamhill County tax lots 3215-500, 502 and 504, and Lots 3215B-100 through 4000, into the City of Newberg with a future change in land use designations upon inclusion in the Newberg Urban Reserve Area. Upon inclusion of the property in the Urban Reserve Area, the comprehensive plan designations will change to: LDR-1/A with Stream Corridor overlay (47.58 acre subdivision); LDR-0.11/A with Historic Landmark, Stream Corridor, and winery Limited Use overlays (9.56 acre historic farmstead); Public/Quasi-Public (9.09 acre institutional parcel); and Commercial with a winery Limited Use overlay (1.05 acre winery parcel) as shown in Exhibit D. The zoning designations will change, respectively, to R-1-1/A with Stream Corridor overlay; R-1-0.11/A with Historic Landmark, Stream Corridor and winery Limited Use overlays; Institutional; and R-P with a winery Limited Use overlay as shown in Exhibit E.
2. The Newberg Planning Commission heard the annexation request on March 12, 2009, took public testimony, and found that the request as conditioned met the applicable Newberg Development Code criteria and the terms of the Development Agreement adopted under Ordinance 2007-2671. The Planning Commission recommended approval of the annexation as conditioned per Resolution 2009-263.

3. After proper notice, on April 6, 2009, the Newberg City Council held a hearing to consider the annexation request. The Council tentatively approved the request and directed that the findings be revised to address public comments.
4. The City Council finds that the applicable criteria and the terms of the Development Agreement adopted under Ordinance 2007-2671 have been met as conditioned, and that approval of the application is in the best interests of the community

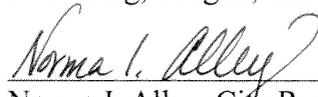
**THE CITY OF NEWBERG ORDERS AS FOLLOWS:**

1. The City Council finds that the annexation and future comprehensive plan designation/zoning designation changes upon inclusion in the Newberg Urban Reserve Area meet the Newberg Development Code criteria and the terms of the Development Agreement adopted under Ordinance 2007-2671 as conditioned and adopts the findings, which are attached hereto as Exhibit “A”. Exhibit “A” is hereby adopted and by this reference incorporated.
2. Annexation requires the City Council to adopt an ordinance annexing the property, and requires approval at a public vote. If the annexation is approved through these procedures, then the City orders the following:
  - A. If the annexation is approved and the property has not been included within the Newberg Urban Reserve Area then the comprehensive plan and zoning designations will be identical to the current Yamhill County AFLH (EF-20 zoning) and VLDR (VLDR-2.5 zoning). The existing Yamhill County land use regulations that apply to the site are adopted by the City of Newberg for this site. Specifically, this means that the residential subdivision could be completed under Yamhill County subdivision approval S-04-07 and the approved Measure 37 claim, and the winery lot and retirement lot could be developed under current EF-20 standards and any Measure 37 rights. Any development applications, other than those arising through S-04-07, submitted after annexation would follow standard Newberg Development Code procedures.
  - B. Upon inclusion of the property in the Urban Reserve Area, the comprehensive plan designations will change to: LDR-1/A with Stream Corridor overlay (47.58 acre subdivision); LDR-0.11/A with Historic Landmark, Stream Corridor, and winery Limited Use overlays (9.56 acre historic farmstead); Public/Quasi-Public (9.09 acre institutional parcel); and Commercial with a winery Limited Use overlay (1.05 acre winery parcel) as shown in Exhibit D. The zoning designations will change, respectively, to R-1-1/A with Stream Corridor overlay; R-1-0.11/A with Historic Landmark, Stream Corridor and winery Limited Use overlays; Institutional; and R-P with a winery Limited Use overlay as shown in Exhibit E. Exhibits “D” and “E” are hereby adopted and by this reference incorporated.

3. This order is subject to the following:
- A. The winery Limited Use overlay shown in Exhibit D allows the processing of fruit to make wine, wine storage, a retail tasting room, and accessory uses.
  - B. The Institutional property will be limited to a maximum of 65 PM peak hour trips upon development.
  - C. If the Gueldner Drive extension between Crestview Drive and Benjamin Road is not completed prior to development of the Institutional parcel, the applicant shall apply for and obtain, on behalf of Yamhill County, an approach road permit for Benjamin Road at its intersection with OR 99W. Prior to the issuance of the first certificate of use and occupancy (or the City's equivalent) on the Institutional parcel, the applicant shall provide evidence to the City that all requirements and conditions of the approach road permit for Benjamin Road have been satisfied. ODOT's approval shall be subject to City's concurrence.
  - D. Upon development of the subdivision, Benjamin Road abutting the subdivision shall be improved by widening Benjamin Road to sufficient width to accommodate bike lanes and provide a standard 5-foot-wide sidewalk on the east side of the road, or by providing alternate parallel pedestrian and bicycle paths through the subdivision that connect to Benjamin Road. (Development Agreement §5(g).)
  - E. Sight distance deficiency at the intersection of Springbrook Road and Benjamin Road: the Institutional property development will contribute its proportionate share of the costs for reconstruction of the adjacent vertical crest curves (if still needed) upon submittal of any development application.
  - F. ODOT requires the applicant to either provide evidence that an approach road permit is not necessary, or has already been issued, or apply for and obtain an approach road permit for the existing access on Hwy 99W from the Historic homesite. All future development must take access from Benjamin Road.
  - G. The existing development on the site will be required to connect to sanitary sewer when the sewer is extended to the subdivision.
  - H. Upon future development of the property, other than that arising through S-04-07, the development shall contribute its share, based on traffic volume, of the future cost of capacity improvements to the Springbrook Rd/Hwy 99W intersection.

➤ **EFFECTIVE DATE** of this order is the day after the adoption date, which is: April 21, 2009.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 20th day of April, 2009.

  
 \_\_\_\_\_  
 Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 23rd day of April, 2009.

  
 \_\_\_\_\_  
 Bob Andrews, Mayor

**QUASI-JUDICIAL HISTORY**

By and through the Planning Commission at 3/12/2009 meeting.  
*(committee name)* *(date)*

Exhibits:

- Exhibit "A": Findings
- Exhibit "B": Annexation Map
- Exhibit "C": Legal Description
- Exhibit "D": Proposed Comprehensive Plan Map
- Exhibit "E": Proposed Zoning Map

**EXHIBIT A: FINDINGS****ANX-08-006**

Annexation of 69.21 acres for property located at 30295 Highway 99W

**I. APPLICABLE ANNEXATION REGULATIONS – NEWBERG DEVELOPMENT CODE § 151.261  
CONDITIONS FOR ANNEXATION**

*(A) The subject site must be located within the Newberg Urban Growth Boundary or Newberg Urban Reserve Areas.*

**FINDING:** The site is not currently within the Newberg Urban Growth Boundary or Urban Reserve Area. A specific exception was granted to this development code requirement for this property by Ordinance 2007-2671 because of the unique and unusual circumstances of this particular property. ORS 94.518 provides that the comprehensive plan and ordinance in effect at the time of the approval of the development agreement apply unless otherwise provided in the development agreement. In this instance, the City provided otherwise in the Development Agreement, Ordinance 2007-2671, by granting an exception. In other words, because the Development Agreement allows an exception to the requirement that prohibits annexation of the property prior to inclusion of the property in the Urban Growth Boundary, the proposed annexation does not violate the Comprehensive Plan.

Indeed, the intent of Oregon’s statutory development agreements is to “allow an agreement on the standards that will be in place during the development so the developers can proceed without wondering whether the rules are going to change part way through.” *Povey v. Mosier*, 220 Or App 552, 557, 188 P3d 321 (2008). Stated differently, statutory development agreements:

“Allow the city or the county and the developer to sit down on the front end of a multi-phase project and decide how it’s going to run \* \* \* [w]here the parks are going to go, for example, what kind of sidewalk standards are going to be in place, what sort of pedestrian linkages are going to occur \* \* \* [a]nd to give the legal authority to the city, making it very clear that they can in fact enter into these sort of agreements.” *Id.* at 557.

Moreover, to the extent public comments assert that the Development Agreement is not consistent with the Comprehensive Plan, the challenge is an impermissible collateral attack. In Oregon, issues that were “conclusively resolved in a final discretionary land use decision, or that could have been but were not raised and resolved in that earlier proceeding” cannot be raised in a subsequent matter. *Safeway, Inc. v. City of North Bend*, 47 Or LUBA 489, 505 (2004); *see also Doney v. Clatsop County*, 142 Or App 497, 502, 921 P2d 1346 (1996). Because the Development Agreement has the same finality and preclusive effect as a court judgment, it cannot be made the subject of a collateral attack. Had individuals disapproved of and wanted to appeal the Development Agreement, they had a right to do so. However, because the time for appeal is long past, the Development Agreement is final and, by operation of law, vested.

Finally, this site has an approved Measure 37 claim that allows residential and commercial development, and has been subdivided for development. The residential subdivision is vested and is under development. The vesting has been approved, confirmed upon review, and is currently under appeal. Ordinance 2007-2671 adopted a development agreement with the applicant to guide the development of this property. The site is within the expanded Urban Reserve Area that has been approved by the City and Yamhill County and is under review by the

State Department of Land Conservation and Development.

*(B) The subject site must be contiguous to the existing city limits.*

**FINDING:** The subject site is contiguous to the existing city limits along its southwest property line.

## **II. APPLICABLE ANNEXATION REGULATIONS – NEWBERG DEVELOPMENT CODE § 151.262 QUASI-JUDICIAL ANNEXATION CRITERIA**

*(A) The proposed use for the site complies with the Newberg comprehensive plan and with the designation on the Newberg comprehensive plan map. If a redesignation of the plan map is requested concurrent with annexation, the uses allowed under the proposed designation must comply with the Newberg comprehensive plan.*

**FINDING:** The current plan designations are Yamhill County AFLH (Agriculture/Forestry Large Holding) for most of the site, with VLDR (Very Low Density Residential) on the northwest corner. A Measure 37 claim has been approved for the entire site, and the residential subdivision is vested. The site is not within the Newberg urban growth boundary and therefore does not have land use designations shown on the comprehensive plan map. The future land use designations for this site were set by the development agreement adopted under Ordinance 2007-2671 (excerpt below)

(b) Comprehensive Plan Designations. Upon the Property's inclusion in the URA, the following City Comprehensive Plan designations shall apply to the Property. The north subdivision parcel as depicted on Exhibit C ("Subdivision Parcel") shall be designated Low Density Residential - 1/A allowing one dwelling unit per acres. The 9.91-acre parcel labeled Historic Property on Exhibit C ("Historic Parcel") shall be designated Lower Density Residential – 0.11/A allowing one dwelling unit per nine acres and shall be subject to the Historic Landmark and Stream Corridor Overlay Subdistricts, except the existing bed and breakfast establishment and accessory carriage house and cottage structures located on the Historic Property are allowed notwithstanding these designations. The 9.56 acre parcel labeled Retirement on Exhibit C ("Retirement Parcel") shall be designated Public/Quasi-Public. The 1.13 acres labeled Winery on Exhibit C ("Winery Parcel") shall receive a designation that allows the Winery as an outright permitted use.

The City Comprehensive Plan designations will not apply to the site upon annexation, but rather upon inclusion of the site in the City's urban reserve area. Due to the unique and special circumstances of the McClures' property, the Development Agreement (Ordinance 2007-2671) provided for Yamhill County comprehensive plan and zoning designations prior to the property's inclusion in the Urban Reserve Area. As noted above, ORS 94.518 provides that the comprehensive plan and ordinance in effect at the time of the approval of the development agreement apply unless otherwise provided in the development agreement. Because the

Development Agreement provides for Yamhill County comprehensive plan and zoning designations prior to inclusion in the Urban Reserve Area, the designations do not violate the Comprehensive Plan. Moreover, as discussed above, any argument that the Development Agreement is not consistent with the Comprehensive Plan is an impermissible collateral attack on a final land use decision.

The plan designations will change upon inclusion in the URA to:

- Low Density Residential -1/A (47.58 acre subdivision containing 36 lots, allows one dwelling unit per acre)
- Low Density Residential -0.11/A with Historic Landmark and Stream Corridor overlays, with a winery Limited Use overlay on the barn (allows one dwelling unit on the 9.56 acre historic farmstead). The Historic Landmark overlay will cover the entire 9.56 acre farmstead, as the entire farmstead is on the National Register of Historic Places. The Stream Corridor overlay will cover the stream and pond in the southwest corner of the farmstead. There is an existing winery operating in the barn along Benjamin Road, which is also part of the historic farmstead. The applicant intends that the barn will continue to operate as a winery in conjunction with the 1.05 acre winery lot to the north, so the barn area will need a winery Limited Use overlay in order for the winery to be an allowed use.
- Public/Quasi-Public (9.09 acre institutional property, for future retirement community)
- Commercial with a winery Limited Use overlay (1.05 acre winery parcel).

The development agreement also lists the future zoning designations upon inclusion in the URA (excerpted below):

(c) Zoning Districts. Upon the Property's inclusion in the URA, the

following City Zoning Districts shall apply to the Property. The Subdivision Parcel shall be zoned Low Density Residential-1/A District. The Historic Property shall be zoned Low Density Residential-0.11/A District with Historic Landmark and Stream Corridor Overlay Subdistricts.

The Trust has a vested right in the existing bed and breakfast establishment and accessory carriage house and cottage structures located on the Historic Property, and upon the Property's inclusion in the URA, the bed and breakfast establishment and accessory structures shall be allowed to continue outright as a conditional use in the Low Density Residential Zoning District.

The Retirement Parcel shall be zoned Institutional District. The Winery Parcel shall be zoned with a zone that allows the Winery as an outright permitted use.

The zoning designations upon inclusion of the property within the URA will be:

- R-1-1/A (47.58 acre subdivision containing 36 lots)
- R-1-0.11A (9.56 acre historic farmstead, with a Historic Landmark overlay over the entire 9.56 acre lot, with a Stream Corridor overlay on the stream and pond in the southwest corner, and a winery Limited Use overlay on the barn along Benjamin Road). The existing bed & breakfast use would be allowed as an approved conditional use.
- Institutional (9.09 acre parcel for future retirement community)
- Residential-Professional (R-P) with a winery Limited Use overlay (1.05 acre winery parcel). The Newberg Development Code only explicitly allows wineries in the M-3

Heavy Industrial zone. The Residential-Professional zone with a winery Limited Use overlay is an appropriate choice for this site because the base R-P zone is consistent with the Commercial comprehensive plan designation and is intended to allow professional office type uses that are compatible with residential districts. The winery Limited Use overlay is defined as allowing the processing of fruit to make wine, storage of wine, retail tasting room, and accessory uses. If the winery use was ever discontinued then the base R-P zone would allow a range of other uses, such as professional offices, which would still be compatible with residential districts.

Newberg's current buildable lands inventory shows that we have a 4 year supply of institutional land within city limits, and a 13 year supply of low density residential land within city limits.

We expect that the property will be included within the expanded URA when the URA is finally approved. In the interim, if the annexation is approved and the property has not been included within the URA then the existing Yamhill County land use regulations that apply to the site will be adopted by the City of Newberg for this site. Specifically, this means that the residential subdivision could be completed under Yamhill County subdivision approval S-04-07 and the approved Measure 37 claim, and the winery lot and retirement lot could be developed under current EF-20 standards and any Measure 37 rights. Any development applications, other than those arising from S-04-07, submitted after annexation would follow standard Newberg Development Code procedures.

One public comment stated that they supported the development plan but were concerned that it could change in the future. If the applicant wanted to change the zoning designations on the site in the future they would have to apply to do so, meet the criteria for a zone change, and follow the public process for zone changes. This process includes mailed notice to property owners within 500 feet of the site, signs posted along the street frontages, notices placed in the *Newberg Graphic*, and both Planning Commission and City Council public hearings. The applicant does not plan to change the zoning designations, but if they did wish to do so in the future then there would be an opportunity for anyone with a concern to comment on the proposal.

Another public comment raised concerns that the county comprehensive plan and zoning designations, as well as the levels of development contemplated in the proposal, are inconsistent with the statewide planning goals. However, OAR 660-014-0060 provides that "a city annexation made in compliance with a comprehensive plan acknowledged pursuant to ORS 197.251(1) shall be considered by the commission to have been made in accordance with the goals unless the acknowledged comprehensive plan and implementing ordinance do not control the annexation." See *Costco Wholesale Corp. v. City of Beaverton*, 50 Or LUBA 476 (2004) (holding that local governments apply acknowledged comprehensive plan and ordinances to annexation decision in lieu of the statewide planning goals, unless the plan and ordinance do not control the annexation); *Patterson v. City of Independence*, 49 Or LUBA 589 (2005) (same). Accordingly, the statewide planning goals are not applicable to the City's annexation decision. A final public comment stated that the proposed annexation violated the Urban Reserve Rule. The McClures secured Measure 37 waivers from Yamhill County and the State of Oregon to subdivide and develop the property under the regulations in effect in 1967. Pursuant to those waivers, the McClures received preliminary plat approval for a 36-lot subdivision. The County's preliminary plat approval was not appealed, and the final subdivision plat was recorded on November 6, 2007. Under the annexation proposal, the property will continue to be zoned for the rural uses authorized in the McClures' Measure 37 waivers and the County's subdivision

approval. Thus, the proposal meets the Urban Reserve Rule's requirement that the lands in urban reserves continue to be planned and zoned for rural uses.

In addition, upon inclusion of property in the Urban Reserve Area, the zoning designations will be: R-1-1/A with Stream Corridor overlay; R-1-0.11/A with Historic Landmark, Stream Corridor and winery Limited Use overlays; Institution; and R-P with a winery Limited Use overlay. These regulations will remain in effect until such time as the land is included in the urban growth boundary. Stated differently, the proposed zoning will go into effect when the property is included in the Urban Reserve Area. Thus, in accordance with the Urban Reserve Rule, there will be no changes after the property is added to the Urban Reserve Area.

Finally, as noted above, OAR 660-014-0060 provides that a city annexation made in compliance with an acknowledged comprehensive plan shall be considered to have been made in compliance with the statewide planning goals. Because the annexation proposal complies with the Comprehensive Plan, the proposal is consistent with the applicable Statewide Planning Goals, as well as the Urban Reserve Rule's requirement that urban reserve lands continue to be planned and zoned under the applicable Statewide Planning Goals.

Wetlands/stream corridors: Annexation applications need to address State Goal 5 natural resources on the site, including wetlands and riparian corridors.

Environmental aspects: The wetlands delineation report for the site found four likely jurisdictional drainages (A, B, C, and D), an emergent wetland (wetland A), and a man-made pond. The report also noted that the on-site drainages were not listed as "fish habitat" according to Yamhill County's Natural Resource Comprehensive Plan inventory; therefore, the drainages were not subject to a riparian area buffer. On-site wetlands were also not subject to a protective buffer under the Yamhill County Comprehensive Land Use Plan. Drainage A and the man-made pond/Springbrook Creek branch are listed on the National Wetlands Inventory map for Newberg. The report noted that most of the site has been used as a hazelnut orchard since the 1920s and that extensive drainage tiling was installed on the site. Drainage A was described as a generally linear unvegetated channel, with a perennial flow from an off-site culvert. The site photos included with report confirm this, and show Drainage A to be generally a simple channel cut into the bare dirt beneath the hazelnut trees. Drainage B is a similar but shallower channel originating from a metal drum connected to the tiling system, and appeared to have an intermittent flow. Drainage C was a shallow channel similar to B, and appeared to be a result of a failed drainage tile and have an intermittent flow. Drainage D is a small channel that runs through a grassy meadow that drains to the man-made pond in the southwest corner. There is also a roadside ditch along Benjamin Road.

The Department of State Lands (DSL) commented that they approved the wetlands delineation report in 2007. DSL approved a fill permit for wetland A and required: 1) the purchase of mitigation credits at a wetlands mitigation bank (which has been done), and 2) the creation on-site of 5.6 acres of riparian enhancement consisting of a 45 foot wide buffer area immediately adjacent to drainages A and B, to be planted with extensive native vegetation (location shown in Attachment 8). Wetland A has therefore been removed from further consideration and Drainages A and B will be required to be planted with a riparian buffer and protected from further development.

The site has been heavily modified by the hazelnut orchard, which suppresses other vegetation,

and the agricultural drainage tiles, which have concentrated the flow of stormwater on site into the drainage channels. Drainages A, B and C have little vegetation along their channels and therefore do not provide significant wildlife habitat. When drainages A and B are planted to be riparian buffers, as required by the fill permit, then they will have an increased environmental value and will provide some wildlife habitat. Drainage D flows through a grassy meadow and does support some wildlife habitat. The delineation report noted that the drainages were not fish habitat. In their existing condition, drainages A, B and C have minor environmental value and largely function as surface drainage pipes. They provide a stormwater collection function, but do not improve stormwater quality because of their lack of filtering vegetation. When drainage A and B are planted as riparian corridors they will provide some stormwater filtering and improve water quality. Drainage D's banks are vegetated and therefore does provide some stormwater quality benefits. The existing pond and branch of Springbrook Creek in the southwest corner of the site is the highest quality wetland on the site and provides both wildlife habitat and water quality functions.

The Development Agreement for this property states that the existing pond on the historic farmstead is depicted on the National Wetlands Inventory and shall be subject to the Newberg Development Code Stream Corridor (SC) Overlay subdistrict. Newberg adopted Stream Corridor overlays as part of its Development Code in 1996 to protect Goal 5 riparian corridors in the city from development. A Stream Corridor overlay will be established at the logical top of bank around the pond and along the section of Springbrook Creek feeding into the pond. This Stream Corridor overlay should be extended to include drainage D, which is also on the historic farmstead parcel. Separate Stream Corridor overlays should be applied along drainages A and B to protect the new riparian buffer areas, as shown in Attachment 8. The R-1-1/A zone for the subdivision will therefore also have a Stream Corridor overlay along the drainage A and B riparian buffer areas.

The southwest pond, section of Springbrook Creek and drainage D all have social value as they are an important part of the historic farmstead landscape and are fairly visible. The other drainages on the site are not very visible from adjoining roads or properties and have little social value as part of the landscape. The new riparian corridors along drainages A and B will have social value because they will significantly improve the landscape within the residential subdivision. The surface drainages and ponds do have some economic and energy benefits for the site. The open drainage channels provide some economic benefit; if the applicant was required to place the drainages in underground pipes it would increase the cost of developing the site. Installing underground drainage pipes would also consume unnecessary energy.

The recommended stream corridor overlays will therefore protect the environmental, social, economic and energy aspects of the wetlands and drainages on the site.

*(B) An adequate level of urban services must be available, or made available, within three years time of annexation, except as noted in division (E) below. An adequate level of urban services shall be defined as:*

- (1) Municipal sanitary sewer and water service meeting the requirements enumerated in the Newberg comprehensive plan for provision of these services.*
- (2) Roads with an adequate design capacity for the proposed use and projected future uses. Where construction of the road is not deemed necessary within the three-year time period, the city shall note requirements such as dedication of right-of-way, waiver of remonstrance against assessment for road improvement*

*costs, or participation in other traffic improvement costs, for application at the appropriate level of the planning process. The city shall also consider public costs for improvement and the ability of the city to provide for those costs.*

**FINDING:** As explained below, public facilities will have adequate capacity to accommodate the demands of the site.

Water: The property can connect to an existing 10-inch mainline that runs along Hwy 99W at the property's southern border, and will extend the line within the site.

Stormwater: Stormwater drains to the southwest and to the southeast via several drainage channels on the site. The Springbrook Creek branch continues under Highway 99W in a culvert. Stormwater from the subdivision roads will drain to two new detention ponds on the site before continuing to the existing southwest and southeast drainages. The new riparian buffers along drainages A and B will improve the stormwater quality downstream of the site. Additional stormwater improvements may be required upon development of the retirement community parcel.

Sanitary Sewer: The applicant plans to construct sewer lines on the site that will gravity flow to a pump station at the southern edge of the site. The pump station will be connected to the nearest trunk line along Highway 99W (probably north of Klimek Lane).

Roads: The subject property is adjacent to Hwy 99W on its southern side and Benjamin Road on its western side. The applicant plans to continue to take access from Highway 99W for the historic farmstead/bed & breakfast in the southwest corner of the site. All other development will take access from Benjamin Road. Yamhill County required Benjamin Road to be widened adjacent to the subdivision, and this improvement has been partially completed. The development agreement also required bike lane and sidewalk along Benjamin Road, or alternate parallel pedestrian and bicycle paths through the property that connect to Benjamin Road. These improvements will need to be completed upon completion of the subdivision. The internal public streets will also need to meet the standards listed in the development agreement upon completion of the subdivision.

The applicant submitted a Traffic Impact Study as part of the annexation application. The study focused on the impact of the future retirement facility, as the residential subdivision has already been approved and will develop whether or not the annexation is approved. The retirement facility would be developed on the southeast 9.09 acre parcel with Institutional zoning and would take access from Benjamin Road via internal streets. The study reviewed existing traffic in the area and intersection performance levels, and modeled year 2028 traffic conditions both with and without the Newberg-Dundee bypass. The study found that the intersections of Springbrook Road at Benjamin Road, Crestview Drive at the future frontage road (Gueldner Drive on the properties west of the site along Highway 99W), and Benjamin Road at the site access were projected to operate acceptably under year 2028 traffic conditions either with or without the bypass. The intersections of Highway 99W at Springbrook Road and Highway 99W at Crestview Road were projected to operate at or above capacity under year 2028 traffic condition either with or without the bypass. The study found that if a trip cap of 65 PM peak hour trips was imposed on the retirement facility then the proposed annexation would not have a significant effect on the transportation system. The development would be small enough that intersection operations would not be appreciably different with or without development. This trip

cap equates to the number of trips that could be generated by a continuing care retirement community with up to 225 dwelling units.

The study noted a sight distance deficiency at the intersection of Springbrook Road and Benjamin Road. The study recommended that a determination of proportionate share costs for reconstruction of the adjacent vertical crest curves be made (if still needed) upon submittal of any development applications for the Institutionally zoned property.

The study also noted that the Newberg Transportation System Plan expects that the intersection of Highway 99W at Benjamin Road will be closed upon construction of either the Newberg-Dundee Bypass or the future frontage road (Gueldner Drive) between the Crestview Drive extension and Benjamin Road. If these roads are not constructed prior to development of the Institutional property then the study recommends that the intersection capacity be analyzed to determine when turning movement restrictions should be imposed. The study projected that the intersection would operate acceptably through year 2028 if it was restricted to right-in, right-out only.

ODOT has commented that they have reviewed this TIS and concur with the conclusion that the proposed annexation and zone change will not result in a significant impact on area transportation facilities if the trip cap is applied to the site. ODOT noted that they thought the TIS should have considered the impact of the entire site in order to provide a clearer picture of the total development. They also noted that the bypass cannot be relied on as a future facility as it is not a funded planned improvement. The City requested that the TIS look at impacts both with and without the bypass, as it is included within the City's Transportation System Plan. The TIS analyses the annexation both with and without the bypass in place and does not rely on the bypass, so the TIS satisfies both City and ODOT requirements.

ODOT noted that the historic farmstead currently takes access from Highway 99W, although ODOT has no active access permit for the driveway. The applicant will be required to either provide evidence that a permit is not necessary, or has already been issued, or apply for and obtain an approach road permit for the existing access from the historic homestead. All future development must take access from Benjamin Road.

ODOT also noted that Benjamin Road will be closed when the new local street (Gueldner Drive) is constructed between Crestview Drive and Benjamin Road. If development occurs prior to the completion of this local street then it will be necessary to evaluate impacts at the 99W/Benjamin Road intersection and make improvements as necessary to ensure it operates safely and efficiently. ODOT therefore recommended that the following conditions apply to the project:

- 1. Prior to issuance of a building permit for development on the site, the applicant shall apply for, on behalf of Yamhill County, and obtain an approach road permit for Benjamin Road at its intersection with OR 99W.*
- 2. Prior to the issuance of the first certificate of use and occupancy (or the City's equivalent) on the property, the applicant shall provide evidence to the City that all requirements and conditions of the approach road permit for Benjamin Road have been satisfied.*

The TIS and ODOT both anticipate that the development of the Institutional parcel on the McClure property prior to the completion of Gueldner Drive (the street between the Crestview

Drive extension and Benjamin Road on the properties to the west) would negatively impact the Benjamin Road/Hwy 99W intersection. Changing the Benjamin Road/Hwy 99W intersection design (to right-in- right-out operation, for example) could improve some aspects of the intersection but could potentially create access and safety issues. ODOT's approval shall therefore be subject to the City's concurrence.

The Springbrook/99W intersection does not currently meet ODOT's v/c ratio standards. Development of the Institutional parcel will add some trips to this intersection and would worsen the performance of the intersection if no mitigation was done. The City of Newberg has already identified this intersection as one that needs improvement, however, and has charged recent developments in the area with impact fees based on the number of trips they added to the intersection. The fees could be used for street improvements that would improve the performance of the intersection, whether those improvements were directly at the intersection or were for a nearby street (such as the future completion of Hayes Street) that would reduce the number of trips at the Springbrook/99W intersection. Recent annexations west of this site were required to pay towards this performance improvement based on their trip generation estimates. The City will therefore require that, upon development of the McClure Institutional parcel, the developer pay an impact fee based on trip generation towards the performance improvement of the Springbrook/99W intersection.

State Transportation Planning Rule:

**660-012-0060**

***Plan and Land Use Regulation Amendments***

*(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:*

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);*
- (b) Change standards implementing a functional classification system; or*
- (c) As measured at the end of the planning period identified in the adopted transportation system plan:
 
  - (A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;*
  - (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan;*
  - or*
  - (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.**

**Finding:** As noted above, a trip cap of 65 PM peak hour trips will be placed on the Institutional parcel to ensure that it will not have a significant impact on transportation facilities. ODOT concurs with this approach and conclusion, with the addition of conditions regarding an access permit for the historic farmstead on 99W and potential improvements to the Benjamin Road intersection if the Institutional property develops prior to the closure of Benjamin Road. Annexation of the McClure property will therefore not have a significant impact on transportation facilities, thus complying with the Transportation Planning Rule.

- (2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:
- (a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.
  - (b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.
  - (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.
  - (d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.
  - (e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.
- (3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:
- (a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;
  - (b) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;
  - (c) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;
  - (d) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and
  - (e) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (d) of this section.
- (4) Determinations under sections (1)-(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.
- (a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.
  - (b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:
    - (A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.

(B) Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which: transportation systems development charge revenues are being collected; a local improvement district or reimbursement district has been established or will be established prior to development; a development agreement has been adopted; or conditions of approval to fund the improvement have been adopted.

(C) Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally-approved, financially constrained regional transportation system plan.

(D) Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.

(E) Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or service is reasonably likely to be provided by the end of the planning period.

(c) Within interstate interchange areas, the improvements included in (b)(A)-(C) are considered planned facilities, improvements and services, except where:

(A) ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system, then local governments may also rely on the improvements identified in paragraphs (b)(D) and (E) of this section; or

(B) There is an adopted interchange area management plan, then local governments may also rely on the improvements identified in that plan and which are also identified in paragraphs (b)(D) and (E) of this section.

(d) As used in this section and section (3):

(A) Planned interchange means new interchanges and relocation of existing interchanges that are authorized in an adopted transportation system plan or comprehensive plan;

(B) Interstate highway means Interstates 5, 82, 84, 105, 205 and 405; and

(C) Interstate interchange area means:

(i) Property within one-half mile of an existing or planned interchange on an Interstate Highway as measured from the center point of the interchange; or

(ii) The interchange area as defined in the Interchange Area Management Plan adopted as an amendment to the Oregon Highway Plan.

(e) For purposes of this section, a written statement provided pursuant to paragraphs (b)(D), (b)(E) or (c)(A) provided by ODOT, a local government or transportation facility provider, as appropriate, shall be conclusive in determining whether a transportation facility, improvement or service is a planned transportation facility, improvement or service. In the absence of a written statement, a local government can only rely upon planned transportation facilities, improvements and services identified in paragraphs (b)(A)-(C) to determine whether there is a significant effect that requires application of the remedies in section (2).

**Finding:** Sections 2-4 are not applicable because, as determined above, the annexation with a trip cap will not have a significant effect on an existing or planned transportation facility.

In conclusion, adequate transportation facilities will be available to serve the proposed use as conditioned.

*(C) Findings documenting the availability of police, fire, parks, and school facilities and services shall be made to allow for conclusionary findings either for or against the*

*proposed annexation. The adequacy of these services shall be considered in relation to annexation proposals.*

**Finding:** Police services are currently provided to the area by Yamhill County Sheriff's Office. Fire service is provided by Newberg Rural Fire District. The proposed annexation will shift police and fire services to the city. The annexation and development of the property will generate additional needs for police and fire services. The annexation and development will also generate additional revenues to pay for those services, including property tax revenues, franchise fee revenues, and cigarette and liquor tax revenues. Recent growth in these revenues has increased to the point that four additional police officers were added in the General Fund budget for 2008-09. The City is considering establishing a public safety fee to fund an additional three officers. If this fee is established, then this annexed property also would pay. The residential development of the property may also increase the demand for parks and school facilities, which will be partially offset by the system development charges for parks and the school construction excise tax. The residential subdivision will develop whether or not the annexation is approved, however. The retirement facility would not be expected to generate much additional demand for parks, and no additional demand for schools. The bed & breakfast will also pay city room taxes. Overall, adequate public facilities and services exist to support the proposed annexation.

*(D) The burden for providing the findings for divisions (A), (B) and (C) of this section is placed upon the applicant.*

**FINDING:** The applicant has provided written findings for this section.

*(E) The City Council may annex properties where urban services are not and cannot practically be made available within the three year time frame noted in division (B) above, but where annexation is needed to address a health hazard, to annex an island, to address sewer or water connection issues for existing development, to address specific legal or contract issues, to annex property where the timing and provision of adequate services in relation to development is or will be addressed through legislatively adopted specific area plans or similar plans, or to address similar situations. In these cases, absent a specific legal or contractual constraint, the Council shall apply an interim zone, such as a limited-use overlay, that would limit development of the property until such time as the services become available.*

**FINDING:** This criterion is not applicable to this property.

**Timing Consideration:*****NDC § 151.263 Annexation Procedures***

*All annexation requests approved by the City Council shall be referred to the voters in accordance with the requirements of this code and O.R.S. 222.*

*(A) Annexation elections are normally scheduled for the biennial primary or general elections which are held in May and November of even numbered years. Applications for annexation shall be filed with the Planning Division before 5:00 p.m. on October 1 for a primary ballot election in May and before 5:00 p.m. on April 1 for a general ballot election in November. An applicant may request that the Council schedule an annexation ballot measure for a special election date. Applications proposed for review at a special election must be filed with the city eight months prior to the proposed special election date. Filing of an annexation application and having the application deemed complete does not obligate the city to place the annexation question before the voters at any particular election. This division does not obligate the city to process an annexation application within any time frame not required by ordinance or state statute.*

*(B) The application shall be processed in accordance with the Type III processing procedures outlined in this code. Once the Director receives a completed application for annexation, he/she shall schedule a recommendation hearing before the Planning Commission. The Planning Commission shall make a recommendation to the City Council as to whether or not the application meets the criteria contained in § 151.262. This decision shall be a quasi-judicial determination and not a legislative determination. The Planning Commission may also recommend denial of an application based upon a legislative perception of the request even though the findings support and would allow annexation. A decision to recommend denial of an annexation, even though the findings support the request, shall be specifically stated in the record and noted as a legislative recommendation separate and apart from the quasi-judicial recommendation.*

*(C) Following the Planning Commission hearing, the Director shall schedule a City Council hearing to consider the request. The City Council shall conduct a quasi-judicial hearing and determine whether or not the application meets the criteria contained in § 151.262. The hearing at the City Council shall be considered a new hearing. If additional testimony is submitted, the Council may, at its own discretion, return the application to the Planning Commission for further review and recommendation. The City Council may also deny an application based upon a legislative perception of the request even though the findings support and would allow annexation. A decision to deny an annexation, even though the findings support the request, shall be specifically stated in the record and noted as a legislative recommendation separate and apart from the quasi-judicial recommendation.*

*(D) If the City Council approves the annexation request, the proposal may, at the City Council's sole discretion, be placed before the voters of the city as follows:*

- (1) The biennial primary or general elections which are held in May and November of even numbered years, or*
- (2) An available special election.*

**Finding:** The next general election will be on May 18, 2010. The annexation could be placed on an earlier special election at the City Council's discretion if the applicant was willing to pay for the cost of the election.

**Development Agreement for the McClure Property (Adopted under Ordinance 2007-2671):**  
*below*

OFFICIAL YAMHILL COUNTY RECORDS  
 JAN COLEMAN, COUNTY CLERK  
 200721250  
 \$111.00  
 00282561200700212500180189  
 09/26/2007 03:17:08 PM  
 DMR-AGRDMR Cnt=1 Stn=2 ANITA  
 \$90.00 \$10.00 \$11.00

**DEVELOPMENT AGREEMENT**

between Charles and Ellen McClure  
and the City of Newberg, Oregon

This Development Agreement ("Agreement") is made and entered into by and between  
The Charles J. McClure and Ellen R. McClure Trust, U/I/D October 25, 1999 (the "Trust") and  
the City of Newberg, Oregon ("City") (together, "Parties") pursuant to ORS 94.504 to 94.528  
and Newberg Development Code ("NDC") §§ 151.255 to 151.259.

**RECITALS**

FIRST AMERICAN TITLE

- A. This Agreement relates to certain real property owned by the Trust legally described in Exhibit A and diagrammatically shown in Exhibit B, hereinafter known as the "Property."
- B. The Property is currently located outside the City's limits, outside the Newberg Urban Growth Boundary ("UGB") and Urban Reserve Area ("URA"), and is zoned Yamhill County EF-20.
- C. On March 1, 2006, Yamhill County issued Board Order 06-130, approving the Trust's local Measure 37 claim on the Property, and on July 20, 2006, the State of Oregon through the Department of Administrative Services and the Department of Land Conservation and Development ("State"), issued Final Order Claim No. M122204, approving the Trust's State Measure 37 claim. Under Final Order Claim No. M122204, the Trust is authorized to divide and develop the Property into approximately forty (40) one-acre lots, with a dwelling on each newly-created lot and develop the remaining Property for commercial uses, subject to the standards in effect on May 15, 1967.
- D. The Trust seeks to develop the Property pursuant to the approved Measure 37 claims and the Trust filed subdivision application with Yamhill County for the Property

("Proposed Development"). The preliminary subdivision plat for the Proposed Development is attached as Exhibit C (the "Preliminary Subdivision Plat"). The Preliminary Subdivision Plat accommodates thirty-six (36) one (1) acre residential lots, substantial open space, public trails, roads with a five (5) foot sidewalk on one side, a winery, and future development for retirement or assisted residential living.

E. The Property is located at the eastern gateway into the City of Newberg. Proper development of the Property could serve to enhance the Newberg area and provide an attractive and suitable entrance to the City and provide opportunities for housing and other uses not currently available in Newberg. The Trust seeks to develop the Property in a manner that offers exceptional quality and design while taking advantage of the natural topography, enhancing the natural environment, protecting the historic homestead area, and providing a superior quality of residential environment unequalled in the area. In order to achieve these goals, the Trust is interested in receiving City municipal water service and other services that the City may provide. If the Property is to receive City services, City wants to ensure that it is developed in a manner that will promote an attractive and functional entrance into Newberg, enhance the community, and take advantage of the unique opportunities the Property provides.

**Finding:** The proposed annexation conforms to the above section of the development agreement.

F. City is considering whether to add the Property into the URA and the UGB.

G. Newberg Comprehensive Plan Policy N.2.(c), and the NDC § 151.261 prohibit annexing property outside the URA and UGB, and Newberg City Ordinance § 52.11 and § 51.63 limit extending City utilities outside the City's limits. Pursuant to NDC § 151.255 and City Ordinance 2007-2671, the City has authority to initiate annexation of the Property to the City and extend municipal water service to the Property upon execution of this Agreement.

**Finding:** The proposed annexation conforms to the above section of the development agreement. The City has included the property within the proposed URA expansion, which has been approved by the City and Yamhill County and is being reviewed by the Department of Land Conservation and Development.

H. Extending municipal water service to the Property is consistent with Statewide Planning Goal 11 because the Proposed Development is not dependent on the extension of City municipal water service. The development density is dependent on the Yamhill County and State Measure 37 approvals whereby the Trust is authorized to divide and develop the Property into approximately one-acre residential lots. The extension of municipal water service therefore does not increase the base density in a residential zone due to the availability of water, allow a higher density for residential development than would otherwise be authorized without such service, or allow an increase the allowable density of residential development due to the extension of the municipal water service. The Property could be developed regardless of the availability of the City's municipal water service.

I. Given the Yamhill County and State Measure 37 approvals for the Property, the length of time needed to consider URA and UGB amendments, the length of time needed to consider and annex the Property, and City's and the Trust's goals for the Property's development, City and the Trust enter into this Agreement to allow the extension of municipal water service to the Property prior to annexation, to establish certain standards for the Property's development prior to and upon annexation, and to establish processes for considering and including the Property in the URA, UGB, and the City limits.

J. The Newberg City Council authorizes the City Manager to enter into this Agreement through Ordinance 2007-2671, adopted on June 4, 2007.

**Finding:** The proposed annexation conforms to this section of the development agreement.

#### AGREEMENT

1. Urban Reserve Area and Urban Growth Boundary Amendments. City agrees to continue its process for including the Property in the URA and the UGB. City anticipates considering the URA proposal in 2007 and the UGB proposal in 2008. City will diligently

pursue, and the Trust will support, the process for including the Property in the URA and UGB.

The Trust and City understand that these proposals are subject to legislative approval through City, Yamhill County, and State processes, including appeals processes, and that the inclusion of the Property in the URA and UGB ultimately may not be approved and may exceed the timeframes noted above.

2. Annexation. Upon request of the City, but no sooner than such date that the Property becomes contiguous to the City, the Trust shall submit an application for annexation using the City's standard forms. City shall consider the application, and if the City Council so elects, the City shall submit the question of annexation to the City electorate at a special, primary, or general election. In accordance with this Agreement and the special authorization under Ordinance 2007-2671, annexation may, but is not required to occur before the Property is included in the URA or UGB or before City municipal water service is extended to the Property. If an annexation vote is not approved, City may in accordance with City policy applicable at that time resubmit the annexation question at a subsequent election. The Trust agrees to annexation when the Property becomes contiguous to the City.

**Finding:** The City has included the property within the proposed URA expansion, which has been approved by the City and Yamhill County, and is being reviewed by the Department of Land Conservation and Development. The Trust (owner) has applied for annexation, which can be approved prior to the inclusion of the property within the URA because of the exception authorized in Ordinance 2007-2671. The proposed annexation conforms to this section of the development agreement.

3. City Utility Services. Upon the effective date of this Agreement, development on the Property shall be allowed to use City municipal water service in the same manner as other properties within the City. Upon inclusion of the Property into the UGB, the development on the Property shall be allowed to use City sewer service in the same manner as other properties within the City. If, prior to annexation into the City, some or all of the Property has been approved for, developed, or served by septic tanks or other private septic systems, such systems shall be allowed to remain on such private septic systems for a period of fifteen (15) years following installation of the septic tank or construction of the private septic system. Each separate property

may have a separate beginning date for the period depending upon installation or construction. City and the Trust agree that upon approval of the Proposed Development by Yamhill County, such private septic tanks or other private septic systems shall be approved for purposes of this paragraph and Agreement. City and the Trust also agree that the fifteen (15) year period referenced in this paragraph shall survive the term of this Agreement. Thereafter, if City requires connection to the public sanitary sewer system, the Trust or its assigns shall pay for and install all required infrastructure and pay all associated fees, except as may be installed by City capital improvement programs or other entities, subject to System Development Charge (“SDC”) credits where applicable. The Trust shall prebuild sanitary sewer infrastructure on the Property at the time of construction of the subdivision infrastructure to be made operable upon the later of (1) such time as City sewer service is extended to the Property, and the City requests connection, or (2) the fifteen year period set forth above. City agrees to allow construction of such utilities to the City standards at the time of construction, subject to City’s review and approval under existing standards. If City standards are amended subsequent to City’s approval and prior to the Property’s annexation, City will not require alteration of the system to the new City standards. The Trust will assure to City that the system functions as designed and is not in need of repair at the time the City annexes the Property.

**Finding:** The development agreement was approved and the applicant can connect to the City water system at any time. The applicant has noted that one reason they are applying for annexation at this time is to gain access to a sanitary sewer connection and avoid the unnecessary expense of installing septic tanks on the residential lots. The existing development on the site will be required to connect to sanitary sewer upon installation of sewer to the subdivision.

4. City and County Development Review. The Parties understand that prior to annexing the Property to the City, Yamhill County has land use jurisdiction over the development and any development prior to annexation must be approved by Yamhill County. Upon receiving approval from Yamhill County, the Trust may proceed with the Proposed Development, except that any development of public water and public sanitary sewer systems on the Property that occurs prior to annexation to the City shall be submitted to the City for

engineering review and approval in accordance with City standards prior to construction of such systems. After annexation and subject to the provision of Section 3 above, any subsequent development not previously approved by Yamhill County shall be subject to approval from the City in accordance with the NDC and any other applicable City ordinance.

5. City Development Standards and Requirements.

(a) Preliminary Subdivision Plat. The development on the Property shall be in substantial conformance with the Preliminary Subdivision Plat set forth in Exhibit C.

**Finding:** The applicant has not yet submitted plans for the public water and sanitary sewer lines, as they are not ready to proceed with the utilities at this point. The development concept plan conforms to the preliminary subdivision plat in the Development Agreement. The proposed annexation conforms to this section of the agreement.

(b) Comprehensive Plan Designations. Upon the Property's inclusion in the URA, the following City Comprehensive Plan designations shall apply to the Property. The north subdivision parcel as depicted on Exhibit C ("Subdivision Parcel") shall be designated Low Density Residential - 1/A allowing one dwelling unit per acres. The 9.91-acre parcel labeled Historic Property on Exhibit C ("Historic Parcel") shall be designated Lower Density Residential – 0.11/A allowing one dwelling unit per nine acres and shall be subject to the Historic Landmark and Stream Corridor Overlay Subdistricts, except the existing bed and breakfast establishment and accessory carriage house and cottage structures located on the Historic Property are allowed notwithstanding these designations. The 9.56 acre parcel labeled Retirement on Exhibit C ("Retirement Parcel") shall be designated Public/Quasi-Public. The 1.13 acres labeled Winery on Exhibit C ("Winery Parcel") shall receive a designation that allows the Winery as an outright permitted use.

(c) Zoning Districts. Upon the Property's inclusion in the URA, the following City Zoning Districts shall apply to the Property. The Subdivision Parcel shall be zoned Low Density Residential-1/A District. The Historic Property shall be zoned Low Density Residential-0.11/A District with Historic Landmark and Stream Corridor Overlay Subdistricts.

The Trust has a vested right in the existing bed and breakfast establishment and accessory carriage house and cottage structures located on the Historic Property, and upon the Property's inclusion in the URA, the bed and breakfast establishment and accessory structures shall be allowed to continue outright as a conditional use in the Low Density Residential Zoning District.

The Retirement Parcel shall be zoned Institutional District. The Winery Parcel shall be zoned with a zone that allows the Winery as an outright permitted use.

**Finding:** The proposed base zones conform to those listed in the development agreement. The winery parcel will have a Commercial comprehensive plan designation and a Residential-Professional zoning designation with a winery Limited Use overlay. In addition, there will need to be a winery Limited Use overlay on the barn with the existing winery on the historic farmstead parcel, and there will need to be a Stream Corridor overlay on parts of the subdivision site to protect the riparian buffers along drainages A and B.

(d) Development Density, Uses, and Height. Prior to the Property's annexation, the Property shall be subject to the densities and uses allowed by the Yamhill County and State Measure 37 claim approvals. Development shall be subject to the height limits of the Yamhill County EF-20 zone. Development of the Retirement Parcel may occur the sooner of (i) the effective date of the Property's annexation or (ii) five (5) years from the effective date of this Agreement.

(e) Historic Landmark Designation. Upon including the Property in the URA unless otherwise approved through the Review Process, the Joseph and Virginia Chambers Farmstead, currently listed on the National Register of Historic Places and located on the Historic Parcel shall be included as a Historic Landmark in the Newberg Comprehensive Plan and shall be subject to the provisions of the NDC Historic Landmark Overlay Subdistrict as specified in Section 5(a).

(f) Stream Corridor Designation. The existing pond on the Historic Parcel is currently depicted on the National Wetlands Inventory and shall be subject to the provisions of the NDC Stream Corridor Overlay Subdistrict as specified in Section 5(a).

**Finding:** The applicant has no immediate plans to develop the retirement parcel. The Historic Landmark designation will be applied to the 9.56 acre farmstead upon annexation. The Stream Corridor overlay will be applied to the existing pond and drainage D on the historic parcel, and

to the riparian buffer areas along drainages A and B in the subdivision, as noted previously.

(g) Road Improvements. Upon development of the Subdivision Parcel, the Trust shall improve Benjamin Road abutting the Proposed Development to provide for safe vehicle, pedestrian, and bicycle access. This may be accomplished by widening Benjamin Road to sufficient width to accommodate bike lanes and provide a standard 5-foot-wide sidewalk on the east side of the road, or by providing alternate parallel pedestrian and bicycle paths through the Property that connect to Benjamin Road.

(h) Public Roads. Roads within the Property shall be dedicated as public roads. The roads, exclusive of sidewalk, shall be at least 22 feet in width with no parking within the 22-foot width, and include a five-foot (5') sidewalk on one side of the street, and be sufficient to meet City fire standards in effect when the roads are constructed.

(i) Water Lines. When developing the Property, water lines shall be situated so as to allow extension to other properties included in the UGB or URA. Water lines on the Property shall include fire hydrants to satisfy City fire standards in effect when the water lines are constructed.

**Finding:** The applicant has partially completed the Benjamin Road improvements adjacent to the subdivision site, and will complete the sidewalk/bicycle paths upon completion of the subdivision. The public roads and water lines will conform to the development agreement upon completion of the subdivision.

6. Dedication of Land. Consistent with Section 5(h), roads within the Subdivision Parcel shall be dedicated as public roads and all rights-of-way dedicated as public roads shall become City streets upon annexation.

7. Fees and Charges. The Trust shall pay all costs associated with an initial annexation election for the Property. If the election is other than a primary or general election, where Yamhill County election fees are generally waived, City and the Trust shall agree to the election date. The Trust shall pay all sewer and water connection and SDCs in accordance with the City's established fee schedules at the time of connection. The Trust shall pay all City inspection fees for plan review and inspection of any public facilities to be maintained by City. If any City water connection and/or sewer connection occurs prior to annexation, the Trust or users shall pay water and/or sewer utility rates established for out-of-City customers. After annexation, the Trust or users shall pay sewer and water utility rates as well as any other fee or charge per established rates for in-City customers. At the time of annexation, the Trust shall pay all SDCs then in effect, except sewer and water connection fees and sewer and water SDC charges, which are paid at the time of connection.

**Finding:** Public right of way within the subdivision will become city streets upon annexation. The applicant paid the full application fee for the annexation application. Future fees and charges will also conform to the development agreement.

8. Continuing Effect of Agreement. In the case of any change in City regulation, regional policy, State law, federal law, or other change in circumstance which renders compliance with the Agreement impossible or unlawful, Parties will attempt to give effect to the remainder of the Agreement, but only if such effect does not prejudice the substantial rights of either party under this Agreement. If the substantial rights of either party are prejudiced by giving effect to the remainder of the Agreement, then Parties shall negotiate in good faith to revise the Agreement to give effect to its original intent. If Parties fail to agree to an amended Agreement within ninety (90) days of the commencement of negotiations, then either party may request that an arbitrator give an equitable effect to the remainder of the Agreement, and the Agreement shall thereafter be amended pursuant to the order of the arbitrator. If, because of change in policy, law or circumstance, the Agreement fails essential purpose, then the Parties shall be placed into their original positions to the extent practical.

9. Binding Effect and Assignability of Agreement. This Agreement is binding upon the heirs, successors, and assigns of the Property.

**Finding:** The annexation proposal conforms to the agreement.

10. Future Discretionary Approvals. Future discretionary approvals under this Agreement include, but are not limited to: annexation review, UGB amendment, and URA amendment. Other discretionary approvals may be required for further development of the Property not previously approved by Yamhill County, and may include subdivision review, site

design review, variance or adjustment review, and conditional use permit review. All reviews following annexation shall be governed by the NDC and any other applicable City ordinance.

11. Default and Remedies.

(a) Default. The following shall constitute default on the part of a party: A breach of a material provision of this Agreement, whether by action or inaction of a party which continues and is not remedied within sixty (60) days after the other party has given notice specifying the breach; provided that if the non-breaching party determines that such breach cannot with due diligence be cured within a period of sixty (60) days, the non-breaching party may allow the breaching party a longer period of time to cure the breach, and in such event the breach shall not constitute a default so long as the breaching party diligently proceeds to affect a cure and the cure is accomplished within the longer period of time granted by the non-breaching party; or any assignment by a party for the benefit of creditors, or adjudication as a bankrupt, or appointment of a receiver, trustee or creditor's committee over a party.

(b) Remedies. Each party shall have all available remedies at law or in equity to recover damages and compel the performance of the other party pursuant to this Agreement. The rights and remedies afforded under this Agreement are not exclusive and shall be in addition to the cumulative with any and all rights otherwise available at law or in equity. The exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other parties, including, without limitation, the right to compel specific performance.

12. Amendment or Termination of Agreement. This Agreement may be amended or terminated by the mutual written consent of the Parties. Any amendment of this Agreement which relates to the term, permitted uses, density or intensity of use, height or size of buildings, or provisions for the reservation or dedication of land shall require a public hearing before the City Council.

**Finding:** The annexation conforms to the development agreement, with the addition of a winery Limited Use overlay on the existing winery in the barn, and Stream Corridor overlay on the riparian buffer areas along drainages A and B in the subdivision.

13. Budgetary Obligations. All City obligations to expend monies under this Agreement are contingent upon future appropriation as part of the local budget process. Nothing in this Agreement requires City to appropriate any such monies.

14. Notice. A notice or communication under this Agreement by either party shall be in writing and shall be dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by either personal delivery or nationally-recognized overnight courier (such as UPS or Federal Express) or be facsimile transmission, and

For the Trust, notice or communication shall be sent to the following address:

Charles and Ellen McClure  
30295 North Highway 99W  
Newberg, OR 97132

With copy to: Steven W. Abel  
Stoel Rives LLP  
900 SW 5<sup>th</sup> Avenue, Suite 2600  
Portland, OR 97204

**Finding:** Notice will be provided as stated above. A copy of the staff report will be sent to the McClures with a copy to Mr. Abel.

For City, notice or communication shall be sent to the following address:

City of Newberg City Manager  
414 E. First Street  
Newberg, OR 97132

With copy to: City of Newberg Planning Director  
P.O. Box 970  
Newberg, OR 97132

or addressed in such other way that City or the Trust may request, provided that such request be in writing and given in accordance with this section.

15. Effective Date. This Agreement shall be effective upon signing by both the Trust and City (“Effective Date”).

16. Duration. This Agreement shall expire upon completion of the terms herein, or 15 years after the Effective Date, whichever comes first.

**Finding:** The proposed annexation conforms to this section of the development agreement.



**EXHIBIT C: LEGAL DESCRIPTION  
ANX-08-006**

**PROPERTY DESCRIPTION**

A TRACT OF LAND SITUATED IN THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 2 WEST, W.M., YAMHILL COUNTY, OREGON AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON PIPE LOCATED ON THE EASTERLY RIGHT-OF-WAY OF NE BENJAMIN ROAD, SAID PIPE MARKING THE NORTHWEST CORNER OF VINEYARD HILL AT SPRINGBROOK FARM, A DULY RECORDED SUBDIVISION PLAT IN YAMHILL COUNTY PLAT RECORDS;

THENCE WEST, 50.00 FEET TO A POINT ON THE WEST LINE OF SAID NE BENJAMIN ROAD;

THENCE ALONG SAID WEST LINE, SOUTH 00° 24' 04" WEST, 490.94 FEET;

THENCE CONTINUING ALONG SAID WEST LINE OF NE BENJAMIN ROAD, SOUTH 00°24'57" WEST, 805.97 FEET;

THENCE SOUTH 89°49'14" EAST, 10.00 FEET;

THENCE SOUTH 00°24'57" WEST, 424.53 FEET;

THENCE SOUTH 05°18'29"EAST, 74.29 FEET TO A POINT ON THE EXISTING CITY LIMITS LINE;

THENCE ALONG SAID CITY LIMITS LINE, NORTH 89°08'44" EAST, 40.12 FEET TO A POINT ON THE EAST LINE OF SAID NE BENJAMIN ROAD;

THENCE ALONG SAID EAST LINE OF BENJAMIN ROAD AND THE EXISTING CITY LIMITS LINE, SOUTH 05°18'29" EAST, 56.12 FEET;

THENCE CONTINUING ALONG SAID EAST LINE OF BENJAMIN ROAD AND THE EXISTING CITY LIMITS LINE, SOUTH 00°02'00" EAST, 421.85 FEET TO A POINT ON THE NORTHERLY LINE OF U.S.HIGHWAY 99W AND THE SOUTHWEST CORNER OF PARCEL 2 OF PARTITION PLAT 2007-59, RECORDED AS DOCUMENT NUMBER 200721146, YAMHILL COUNTY RECORDS;

THENCE, ALONG SAID NORTHERLY RIGHT-OF-WAY ALONG A 5,496.74 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 02° 14' 15", CHORD BEARS NORTH 78° 09' 26" EAST, 214.65 FEET A DISTANCE OF 214.66 FEET TO A POINT;

THENCE, NORTH 10° 43' 27" WEST, 10.00 FEET TO A POINT;

THENCE, ALONG A 5,506.74 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 01° 34' 30", CHORD BEARS NORTH 80° 03' 48" EAST, 151.37 FEET A DISTANCE OF 151.37 FEET TO A POINT;

THENCE, NORTH 09° 08' 57" WEST, 10.00 FEET TO A POINT;

THENCE, ALONG A 5,516.74 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 02° 37' 21", CHORD BEARS NORTH 82° 09' 44" EAST, 252.50 FEET A DISTANCE OF 252.52 FEET TO A POINT;

THENCE, NORTH 06° 31' 13" WEST, 9.71 FEET;

THENCE, NORTH 79° 29' 00" EAST, 226.57 FEET;

THENCE, NORTH 75° 30' 39" EAST, 183.58 FEET;

THENCE, NORTH 51° 14' 56" EAST, 278.80 FEET TO A POINT ON THE EAST LINE OF PARCEL 3 OF SAID PARTITION PLAT 2007-059;

THENCE LEAVING SAID NORTHERLY RIGHT OF WAY LINE OF SAID U.S. HIGHWAY 99W, NORTH 04° 09' 42" EAST ALONG SAID EAST LINE OF SAID PARCEL 3 OF SAID PARTITION PLAT 2007-059, 90.59 FEET TO A POINT ON THE SOUTH LINE OF THE BENJAMIN HEATER DONATION LAND CLIAM;

THENCE, CONTINUING ALONG SAID EAST LINE OF SAID PARCEL 3 AND THE NORTHERLY EXTENSION THEREOF, NORTH 00° 16' 55" WEST, 293.62 FEET TO THE NORTHEAST CORNER OF TRACT 'C' OF VINEYARD HILL AT SPRINGBROOK FARM, A DULY RECORDED SUBDIVISION IN YAMHILL COUNTY, VOLUME 14, PAGE 34 AND RECORDED AS INSTRUMENT NUMBER 200724087, YAMHILL COUNTY RECORDS;

THENCE, NORTH 89° 48' 19" EAST, 198.47 FEET TO THE MOST EASTERLY, SOUTHEAST CORNER OF SAID VINEYARD HILL AT SPRINGBROOK FARM SUBDIVISION;

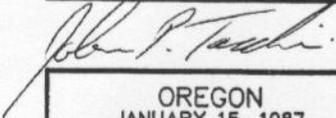
THENCE ALONG THE EAST LINE OF SAID SUBDIVISION, NORTH 01° 16' 43" EAST, 353.24 FEET;

THENCE, CONTINUING ALONG SAID EAST LINE OF SAID SUBDIVISION, NORTH 00° 10' 54" EAST, 1138.97 FEET TO THE NORTHEAST CORNER OF SAID VINEYARD HILL AT SPRINGBROOK FARM SUBDIVISION;

THENCE, NORTH 90° 00' 00" WEST ALONG THE NORTHERLY LINE OF PARTITION PLAT 2007-59 WHICH IS ALSO THE NORTHERLY LINE OF SAID VINEYARD HILL AT SPRINGBROOK FARM SUBDIVISION, A DISTANCE OF 1437.84 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.;

CONTAINING 69.21 ACRES OF LAND, MORE OR LESS.

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

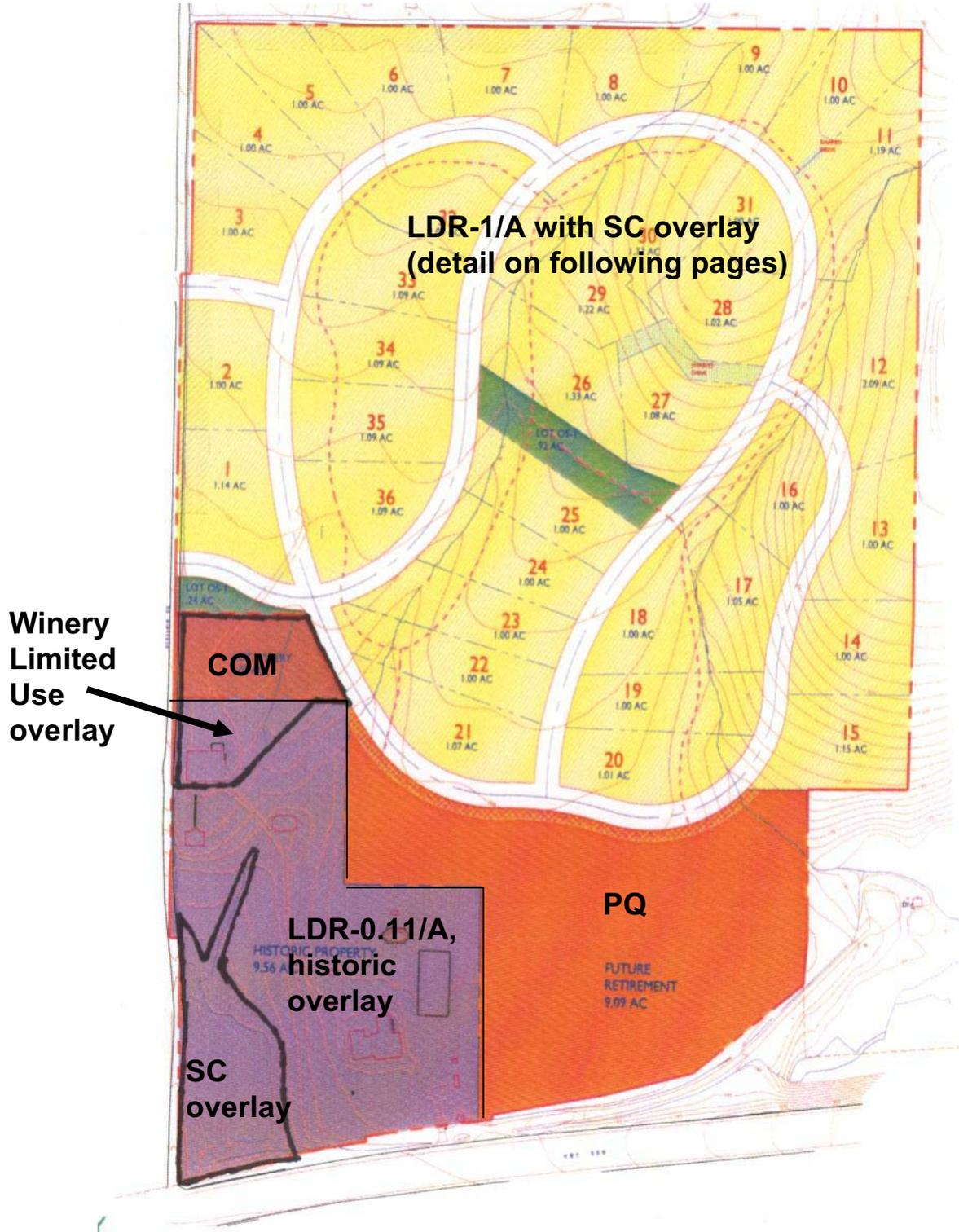


OREGON  
JANUARY 15, 1987  
JOHN P. TACCHINI  
2267

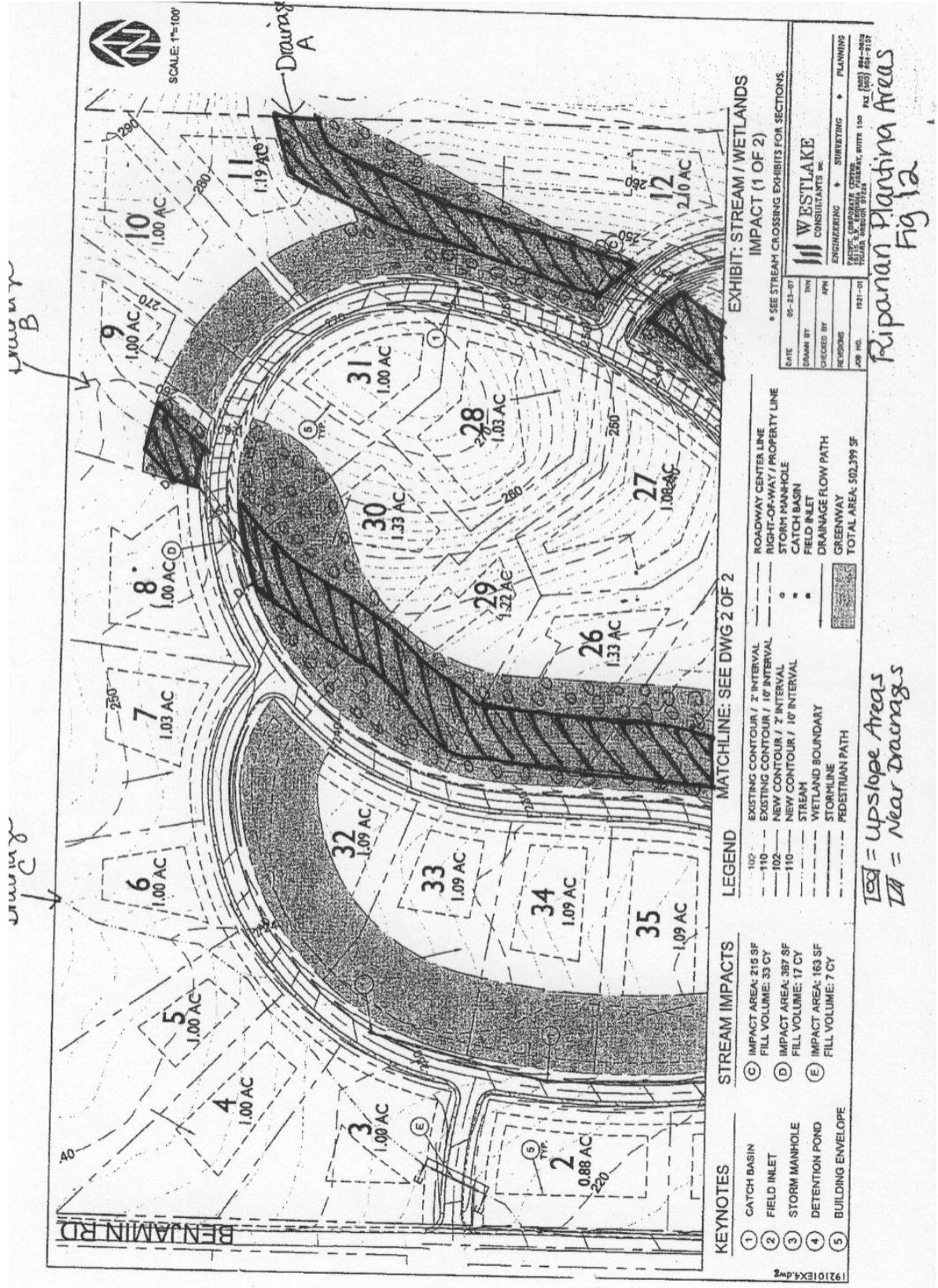
06-30-10

RENEWAL DATE

EXHIBIT D: PROPOSED COMPREHENSIVE PLAN MAP  
ANX-08-006



Detail – SC overlay on subdivision



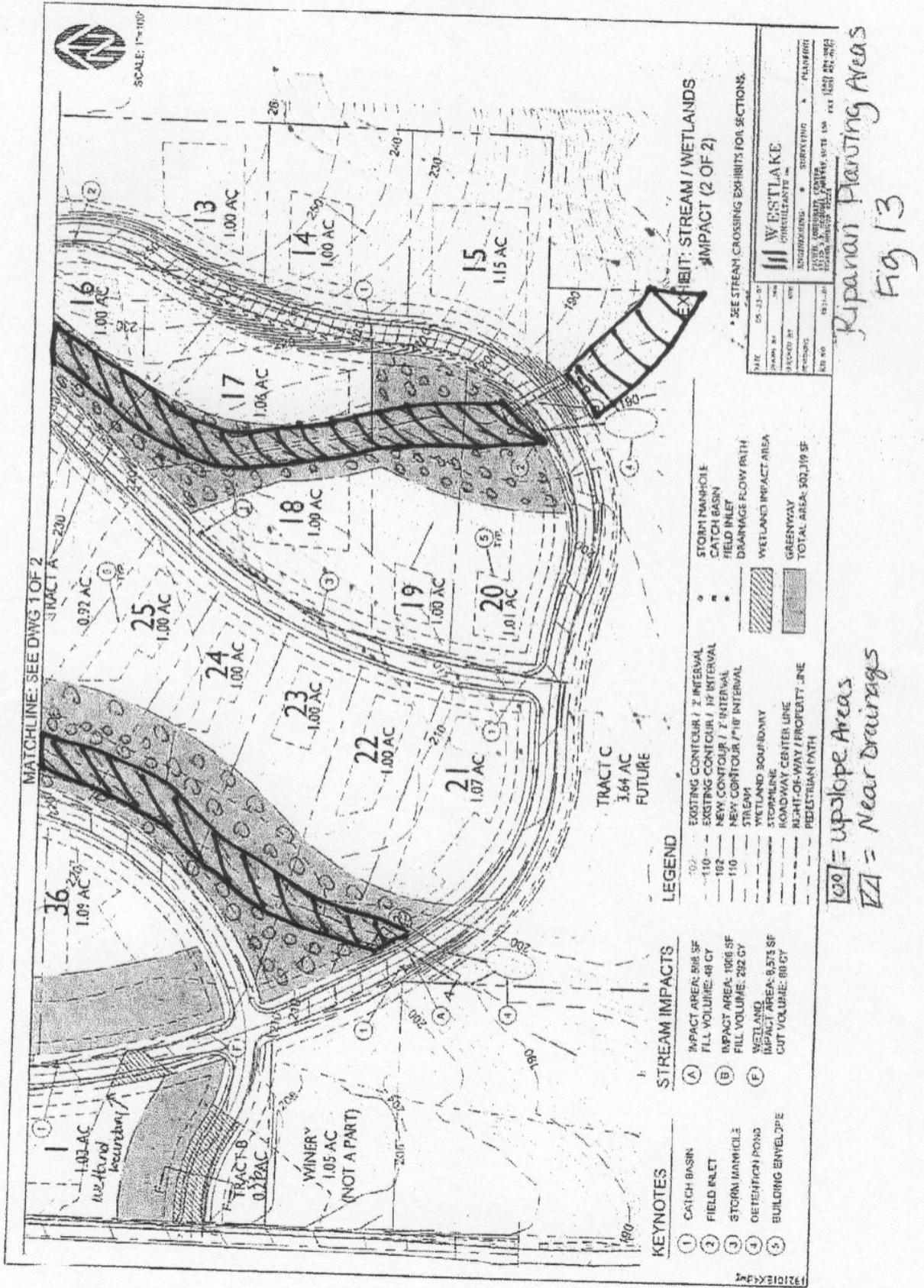
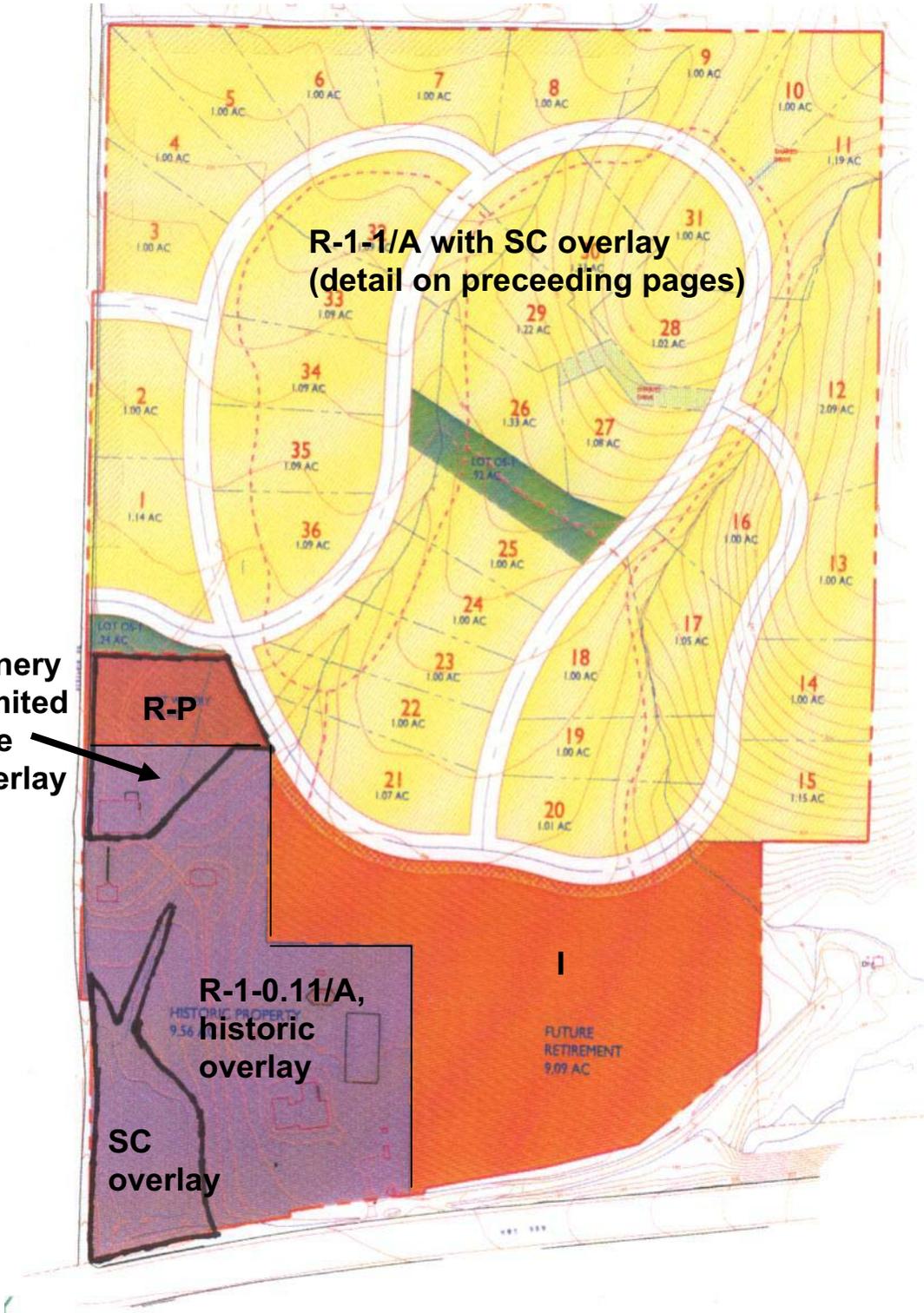
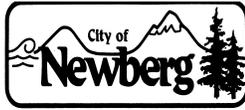


EXHIBIT E: PROPOSED ZONING MAP  
ANX-08-006





## *ORDINANCE No. 2009-2712*

---

**AN ORDINANCE DECLARING PROPERTY LOCATED AT 30295 HIGHWAY 99W, YAMHILL COUNTY TAX LOTS 3215-500, 502 AND 504, AND LOTS 3215B-100 THROUGH 4000, BE ANNEXED INTO THE CITY OF NEWBERG AND WITHDRAWN FROM THE NEWBERG RURAL FIRE PROTECTION DISTRICT SUBJECT TO A PUBLIC VOTE, AND AUTHORIZING AND DIRECTING THE CITY ELECTIONS OFFICER TO CERTIFY TO THE YAMHILL COUNTY CLERK A BALLOT TITLE FOR THE MEASURE TO BE SUBMITTED TO THE ELECTORATE OF THE CITY OF NEWBERG FOR THEIR CONSIDERATION OF AN ANNEXATION FOR THIS SAME PROPERTY**

---

### **RECITALS:**

1. Charles J. and Ellen R. McClure, Trustees U/I/D October 25, 1999, submitted an application for annexation and consent to annex on January 22, 2009 for property located at 30295 Highway 99W, Yamhill County tax lots 3215-500, 502 and 504, and Lots 3215B-100 through 4000.
2. After proper notice, on April 6, 2009, the City Council held a public hearing on the item: accurately stated objections to jurisdiction, bias, and ex-parte contact; considered public testimony; examined the record; heard the presentation from staff and the applicant; examined and discussed the appropriate criteria to judge the project (as listed in the staff report); considered all relevant information regarding the item; and deliberated. The Council tentatively approved the request and directed that the findings be revised to address public comments.
3. On April 20, 2009, the City Council adopted Order 2009-0020 which affirmed that the annexation as conditioned met the applicable Newberg Development Code criteria.
4. The City of Newberg Charter requires that territory may be annexed into the City of Newberg only upon approval by a majority vote among the electorate of the City.
5. The next general election will be on May 18, 2010. The applicant has requested that the annexation request be sent to the September 15, 2009 special election, and understands that they will be required to pay the additional costs for the special election.

### **THE CITY OF NEWBERG ORDAINS AS FOLLOWS:**

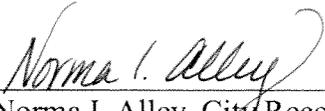
1. The question of annexing the property shown in Exhibit "A" and described in Exhibit "B" shall be submitted to the electorate of the city at the September 15, 2009 special election. Exhibits "A" and "B" are hereby adopted and by this reference incorporated.

2. The City Council directs that all costs associated with placing the item on the ballot be paid for by the applicant/owners. This includes but is not limited to noticing, signage, advertising, and costs assessed by the Yamhill County Clerk to place the item on the ballot.
3. The City Elections Officer is hereby authorized and directed to certify to the Yamhill County Clerk the ballot title for the annexation measure to be placed before the voters. Further, the City Elections Officer is directed to give all necessary notices of the ballot title and do all other necessary acts and deeds which may be required to place the matter before the voters of the City of Newberg at said election.
4. The City Attorney is directed to have prepared and review the explanatory statement which shall be submitted to the Yamhill County Clerk with the ballot title. Such explanatory statement shall be filed with the City Elections Officer and the City Elections Officer is further directed to certify this explanatory statement to the Yamhill County Clerk.
5. The City Elections Officer is authorized to do all other necessary acts and deeds which may be required to conduct the election concerning this measure.
6. Should this annexation request be approved by a majority of the electorate of the City of Newberg at the identified election date, the property shown in Exhibit “A” and described in Exhibit “B”, shall be annexed and withdrawn from the Newberg Rural Fire Protection District, and the following events will occur:
  - A. The City of Newberg land use inventory data and GIS data, including the comprehensive plan map and zoning map, will be updated to reflect the new addition.
    1. If the annexation is approved and the property has not been included within the Newberg Urban Reserve Area then the comprehensive plan and zoning designations will be identical to the current Yamhill County AFLH (EF-20 zoning) and VLDR (VLDR-2.5 zoning).
    2. Upon inclusion of the property in the Urban Reserve Area, the comprehensive plan designations will change to: LDR-1/A with Stream Corridor overlay (47.58 acre subdivision); LDR-0.11/A with Historic Landmark, Stream Corridor, and winery Limited Use overlays (9.56 acre historic farmstead); Public/Quasi-Public (9.09 acre institutional parcel); and Commercial with a winery Limited Use overlay (1.05 acre winery parcel). The zoning designations will change, respectively, to R-1-1/A with Stream Corridor overlay; R-1-0.11/A with Historic Landmark, Stream Corridor and winery Limited Use overlays; Institutional; and R-P with a winery Limited Use overlay.

B. The City Recorder of the City of Newberg is hereby authorized and directed to make and submit to the Secretary of State, the Department of Revenue, the Yamhill County Elections Officer, and the Assessor of Yamhill County, a certified copy of this ordinance.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: May 20, 2009.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 20th day of April, 2009, by the following votes: **AYE: 7 NAY: 0 ABSENT: 0 ABSTAIN: 0**

  
\_\_\_\_\_  
Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 23rd day of April, 2009.

  
\_\_\_\_\_  
Bob Andrews, Mayor

**LEGISLATIVE HISTORY**

By and through the Planning Commission at 3/12/2009 meeting.  
(committee name) (date)

- Exhibits:  
Exhibit "A": Annexation Map  
Exhibit "B": Legal Description



**EXHIBIT B: LEGAL DESCRIPTION  
ANX-08-006**

**PROPERTY DESCRIPTION**

A TRACT OF LAND SITUATED IN THE NORTHWEST 1/4 OF SECTION 15, TOWNSHIP 3 SOUTH, RANGE 2 WEST, W.M., YAMHILL COUNTY, OREGON AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON PIPE LOCATED ON THE EASTERLY RIGHT-OF-WAY OF NE BENJAMIN ROAD, SAID PIPE MARKING THE NORTHWEST CORNER OF VINEYARD HILL AT SPRINGBROOK FARM, A DULY RECORDED SUBDIVISION PLAT IN YAMHILL COUNTY PLAT RECORDS;

THENCE WEST, 50.00 FEET TO A POINT ON THE WEST LINE OF SAID NE BENJAMIN ROAD;

THENCE ALONG SAID WEST LINE, SOUTH 00° 24' 04" WEST, 490.94 FEET;

THENCE CONTINUING ALONG SAID WEST LINE OF NE BENJAMIN ROAD, SOUTH 00°24'57" WEST, 805.97 FEET;

THENCE SOUTH 89°49'14" EAST, 10.00 FEET;

THENCE SOUTH 00°24'57" WEST, 424.53 FEET;

THENCE SOUTH 05°18'29"EAST, 74.29 FEET TO A POINT ON THE EXISTING CITY LIMITS LINE;

THENCE ALONG SAID CITY LIMITS LINE, NORTH 89°08'44" EAST, 40.12 FEET TO A POINT ON THE EAST LINE OF SAID NE BENJAMIN ROAD;

THENCE ALONG SAID EAST LINE OF BENJAMIN ROAD AND THE EXISTING CITY LIMITS LINE, SOUTH 05°18'29" EAST, 56.12 FEET;

THENCE CONTINUING ALONG SAID EAST LINE OF BENJAMIN ROAD AND THE EXISTING CITY LIMITS LINE, SOUTH 00°02'00" EAST, 421.85 FEET TO A POINT ON THE NORTHERLY LINE OF U.S.HIGHWAY 99W AND THE SOUTHWEST CORNER OF PARCEL 2 OF PARTITION PLAT 2007-59, RECORDED AS DOCUMENT NUMBER 200721146, YAMHILL COUNTY RECORDS;

THENCE, ALONG SAID NORTHERLY RIGHT-OF-WAY ALONG A 5,496.74 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 02° 14' 15", CHORD BEARS NORTH 78° 09' 26" EAST, 214.65 FEET A DISTANCE OF 214.66 FEET TO A POINT;

THENCE, NORTH 10° 43' 27" WEST, 10.00 FEET TO A POINT;

THENCE, ALONG A 5,506.74 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 01° 34' 30", CHORD BEARS NORTH 80° 03' 48" EAST, 151.37 FEET A DISTANCE OF 151.37 FEET TO A POINT;

THENCE, NORTH 09° 08' 57" WEST, 10.00 FEET TO A POINT;

THENCE, ALONG A 5,516.74 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 02° 37' 21", CHORD BEARS NORTH 82° 09' 44" EAST, 252.50 FEET A DISTANCE OF 252.52 FEET TO A POINT;

THENCE, NORTH 06° 31' 13" WEST, 9.71 FEET;

THENCE, NORTH 79° 29' 00" EAST, 226.57 FEET;

THENCE, NORTH 75° 30' 39" EAST, 183.58 FEET;

THENCE, NORTH 51° 14' 56" EAST, 278.80 FEET TO A POINT ON THE EAST LINE OF PARCEL 3 OF SAID PARTITION PLAT 2007-059;

THENCE LEAVING SAID NORTHERLY RIGHT OF WAY LINE OF SAID U.S. HIGHWAY 99W, NORTH 04° 09' 42" EAST ALONG SAID EAST LINE OF SAID PARCEL 3 OF SAID PARTITION PLAT 2007-059, 90.59 FEET TO A POINT ON THE SOUTH LINE OF THE BENJAMIN HEATER DONATION LAND CLIAM;

THENCE, CONTINUING ALONG SAID EAST LINE OF SAID PARCEL 3 AND THE NORTHERLY EXTENSION THEREOF, NORTH 00° 16' 55" WEST, 293.62 FEET TO THE NORTHEAST CORNER OF TRACT 'C' OF VINEYARD HILL AT SPRINGBROOK FARM, A DULY RECORDED SUBDIVISION IN YAMHILL COUNTY, VOLUME 14, PAGE 34 AND RECORDED AS INSTRUMENT NUMBER 200724087, YAMHILL COUNTY RECORDS;

THENCE, NORTH 89° 48' 19" EAST, 198.47 FEET TO THE MOST EASTERLY, SOUTHEAST CORNER OF SAID VINEYARD HILL AT SPRINGBROOK FARM SUBDIVISION;

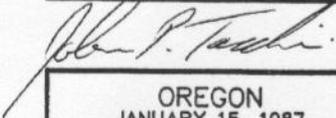
THENCE ALONG THE EAST LINE OF SAID SUBDIVISION, NORTH 01° 16' 43" EAST, 353.24 FEET;

THENCE, CONTINUING ALONG SAID EAST LINE OF SAID SUBDIVISION, NORTH 00° 10' 54" EAST, 1138.97 FEET TO THE NORTHEAST CORNER OF SAID VINEYARD HILL AT SPRINGBROOK FARM SUBDIVISION;

THENCE, NORTH 90° 00' 00" WEST ALONG THE NORTHERLY LINE OF PARTITION PLAT 2007-59 WHICH IS ALSO THE NORTHERLY LINE OF SAID VINEYARD HILL AT SPRINGBROOK FARM SUBDIVISION, A DISTANCE OF 1437.84 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.;

CONTAINING 69.21 ACRES OF LAND, MORE OR LESS.

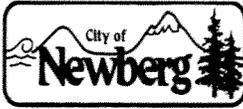
REGISTERED  
PROFESSIONAL  
LAND SURVEYOR



OREGON  
JANUARY 15, 1987  
JOHN P. TACCHINI  
2267

06-30-10

RENEWAL DATE



## ORDINANCE No. 2009-2718

---

AN ORDINANCE AMENDING ORDINANCE 2009-2712 BY DELETING THE DIRECTION TO SEND THE ANNEXATION BALLOT MEASURE FOR PROPERTY LOCATED AT 30295 HIGHWAY 99W, YAMHILL COUNTY TAX LOTS 3215-500, 502 AND 504, AND LOTS 3215B-100 THROUGH 4000, TO THE SEPTEMBER 15, 2009, BALLOT, AND ADDING THAT THE CITY COUNCIL WILL RESCHEDULE THE ANNEXATION BALLOT MEASURE AT THEIR DISCRETION BY FUTURE RESOLUTION, HAVING THE CITY STAFF REPORT TO THE CITY COUNCIL FOR ELECTION CYCLE FOR 2010 AND HAVING DISCUSSION WITH THE APPLICANT

---

### RECITALS:

1. The annexation approval of the property located at 30295 Highway 99W, Yamhill County tax lots 3215-500, 502 and 504, and lots 3215B-100 through 4000, has been appealed to the State Land Use Board of Appeals.
2. The applicants, Charles J. and Ellen R. McClure, request that the annexation election be delayed to a later date.
3. The Newberg City Council wishes to respect the applicant's request and to have the status of the approval settled before sending the annexation question to a public vote.

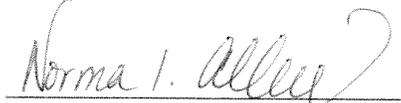
### THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. Recital 5 of Ordinance No. 2009-2712 shall be amended as follows:
  5. ~~The next general election will be on May 18, 2010. The applicant has requested that the annexation request be sent to the September 15, 2009 special election, and understands that they will be required to pay the additional costs for the special election. The City Council will send the annexation request to a future ballot at their discretion by resolution.~~
2. Ordains 1 of Ordinance No. 2009-2712 shall be amended as follows:
  1. The question of annexing the property shown in Exhibit "A" and described in Exhibit "B" shall be submitted to the electorate of the city at ~~the September 15, 2009 special election~~ a future election date to be determined by Council resolution. Exhibits "A" and "B" are hereby adopted and by this reference incorporated.
3. **Election Cycle:** The City staff shall report to the City Council in time to make a decision concerning placing the annexation question before the electorate of the city during the election cycle for 2010.

4. **Discussion:** The City staff shall discuss with the applicant the City's desire to have all development take place after annexation and the development be done within the city.

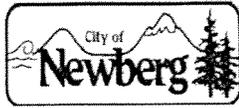
➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: August 6, 2009.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 6th day of July, 2009, by the following votes: **AYE: 7 NAY: 0 ABSENT: 0 ABSTAIN: 0**

  
Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 9th day of July, 2009.

  
Bob Andrews, Mayor



## *ORDINANCE No. 2007-2671*

---

**AN ORDINANCE ADOPTING A DEVELOPMENT AGREEMENT  
WITH CHARLES AND ELLEN MCCLURE CONCERNING  
PROPERTY AT 30295 HIGHWAY 99W, ALLOWING  
CONNECTION TO MUNICIPAL WATER SERVICE, AND SETTING  
FOR TERMS FOR ANNEXATION OF THE PROPERTY TO THE CITY**

---

### RECITALS:

1. Charles and Ellen McClure own property at 30295 Highway 99W, which is just east of the Newberg Urban Growth Boundary. The Property is currently located outside the City limits of Newberg, outside the Newberg Urban Growth Boundary, and is zoned Yamhill County EF-80.
2. Yamhill County and the State of Oregon have approved Measure 37 claims on the property. These approvals allow development of the property for residential and commercial uses.
3. The McClures are interested in developing the property pursuant to the approved claims. They have submitted a subdivision application to Yamhill County. The McClures are interested in receiving City water service and other services that the City may provide. They agree to annex the property to the City.
4. City is in process of considering whether to add the Property into the Newberg Urban Reserve Area (URA), and subsequently to the Newberg Urban Growth Boundary (UGB).
5. Rather than have the property develop adjacent to the City limits without proper coordination with the City and without needed utilities, the Council finds that it is in its best interest to provide City water to the property upon agreement to eventually annex the property and upon execution of a development agreement.
6. Newberg ordinances prohibit extension of City utility services outside City limits, and prohibit annexation prior to inclusion of the property into the Urban Growth Boundary. Given the unique and unusual circumstances of this particular property, the Council finds that exceptions to the City's general ordinances are needed for this particular property.

### THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. The City Manager is hereby authorized to enter into a development agreement with Charles and Ellen McClure as shown in Exhibit 1. The City Manager is delegated the authority to negotiate and amend the agreement prior to the initial execution of the

agreement in order to meet the intent of the agreement.

- 2. Notwithstanding Newberg Code § 52.11, development of the property described in Exhibit A and shown in Exhibit B of the attached development agreement (Exhibit 1), may connect to municipal water service prior to the property being annexed to the City, upon execution of a development agreement as described herein.
- 3. Notwithstanding Newberg Code § 151.261 and Newberg Comprehensive Plan Policy N.2.C., Newberg may consider annexation and annex the property described in Exhibit A and shown in Exhibit B of the attached development agreement (Exhibit 1), prior to inclusion of the property in the Newberg Urban Reserve Area or Urban Growth Boundary.
- 4. This ordinance is necessary due to the unique and special circumstance and location of the property shown herein. Nothing in this ordinance shall be construed as authorizing consideration of extension of utilities or annexation of any other property other than that specifically shown herein. Nothing in this ordinance shall be construed as requiring the City to include the property into the Urban Reserve or Urban Growth Boundary, or to annex the property to the City.

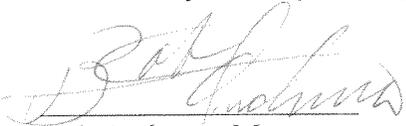
➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: August 1, 2007.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 2<sup>nd</sup> day of July 2007, by the following votes:

**AYE: 6      NAY: 1 (CURRIER) ABSENT: 0      ABSTAIN: 0**

  
 \_\_\_\_\_  
 James H. Bennett, City Recorder

**ATTEST** by the Mayor this 5th day of July, 2007.

  
 \_\_\_\_\_  
 Bob Andrews, Mayor

- Exhibits:
- Exhibit 1: Development Agreement with
    - Exhibit A: Legal Description
    - Exhibit B: Property Map
    - Exhibit C: Preliminary Subdivision Plat

**LEGISLATIVE HISTORY**

By and through \_\_\_\_\_ Committee at   /  /2007   meeting. Or,   X   None.  
(committee name) (date) (check if applicable)

**DEVELOPMENT AGREEMENT**

between Charles and Ellen McClure  
and the City of Newberg, Oregon

This Development Agreement (“Agreement”) is made and entered into by and between Charles and Ellen McClure (“Owners”) and the City of Newberg, Oregon (“City”) (together, “Parties”) pursuant to ORS 94.504 to 94.528 and Newberg Development Code (“NDC”) §§ 151.255 to 151.259.

**RECITALS**

A. This Agreement relates to certain real property owned by Owners legally described in Exhibit A and diagrammatically shown in Exhibit B, hereinafter known as the “Property.”

B. The Property is currently located outside the City’s limits, outside the Newberg Urban Growth Boundary (“UGB”) and Urban Reserve Area (“URA”), and is zoned Yamhill County EF-20.

C. On March 1, 2006, Yamhill County issued Board Order 06-130, approving Owners’ local Measure 37 claim on the Property, and on July 20, 2006, the State of Oregon through the Department of Administrative Services and the Department of Land Conservation and Development (“State”), issued Final Order Claim No. M122204, approving Owners’ State Measure 37 claim. Under Final Order Claim No. M122204, Owners are authorized to divide and develop the Property into approximately forty (40) one-acre lots, with a dwelling on each newly-created lot and develop the remaining Property for commercial uses, subject to the standards in effect on May 15, 1967.

D. Owners seek to develop the Property pursuant to the approved Measure 37 claims and Owners filed a subdivision application with Yamhill County for the Property (“Proposed

Development”). The preliminary subdivision plat for the Proposed Development is attached as Exhibit C (the “Preliminary Subdivision Plat”). The Preliminary Subdivision Plat accommodates thirty-six (36) one (1) acre residential lots, substantial open space, public trails, roads with a five (5) foot sidewalk on one side, a winery, and future development for retirement or assisted residential living.

E. The Property is located at the eastern gateway into the City of Newberg. Proper development of the Property could serve to enhance the Newberg area and provide an attractive and suitable entrance to the City and provide opportunities for housing and other uses not currently available in Newberg. Owners seek to develop the Property in a manner that offers exceptional quality and design while taking advantage of the natural topography, enhancing the natural environment, protecting the historic homestead area, and providing a superior quality of residential environment unequalled in the area. In order to achieve these goals, Owners are interested in receiving City municipal water service and other services that the City may provide. If the Property is to receive City services, City wants to ensure that it is developed in a manner that will promote an attractive and functional entrance into Newberg, enhance the community, and take advantage of the unique opportunities the Property provides.

F. City is considering whether to add the Property into the URA and the UGB.

G. Newberg Comprehensive Plan Policy N.2.(c), and the NDC § 151.261 prohibit annexing property outside the URA and UGB, and Newberg City Ordinance § 52.11 and § 51.63 limit extending City utilities outside the City’s limits. Pursuant to NDC § 151.255 and City Ordinance 2007-2671, the City has authority to initiate annexation of the Property to the City and extend municipal water service to the Property upon execution of this Agreement.

H. Extending municipal water service to the Property is consistent with Statewide Planning Goal 11 because the Proposed Development is not dependent on the extension of City municipal water service. The development density is dependent on the Yamhill County and State Measure 37 approvals whereby Owners are authorized to divide and develop the Property into approximately one-acre residential lots. The extension of municipal water service therefore does not increase the base density in a residential zone due to the availability of water, allow a higher density for residential development than would otherwise be authorized without such service, or allow an increase the allowable density of residential development due to the extension of the municipal water service. The Property could be developed regardless of the availability of the City's municipal water service.

I. Given the Yamhill County and State Measure 37 approvals for the Property, the length of time needed to consider URA and UGB amendments, the length of time needed to consider and annex the Property, and City's and Owners' goals for the Property's development, City and Owners enter into this Agreement to allow the extension of municipal water service to the Property prior to annexation, to establish certain standards for the Property's development prior to and upon annexation, and to establish processes for considering and including the Property in the URA, UGB, and the City limits.

J. The Newberg City Council authorizes the City Manager to enter into this Agreement through Ordinance 2007-2671, adopted on June 4, 2007.

#### AGREEMENT

1. Urban Reserve Area and Urban Growth Boundary Amendments. City agrees to continue its process for including the Property in the URA and the UGB. City anticipates considering the URA proposal in 2007 and the UGB proposal in 2008. City will diligently

pursue, and Owners will support, the process for including the Property in the URA and UGB. Owners and City understand that these proposals are subject to legislative approval through City, Yamhill County, and State processes, including appeals processes, and that the inclusion of the Property in the URA and UGB ultimately may not be approved and may exceed the timeframes noted above.

2. Annexation. Upon request of the City, but no sooner than such date that the Property becomes contiguous to the City, Owners shall submit an application for annexation using the City's standard forms. City shall consider the application, and if the City Council so elects, the City shall submit the question of annexation to the City electorate at a special, primary, or general election. In accordance with this Agreement and the special authorization under Ordinance 2007-2671, annexation may, but is not required to occur before the Property is included in the URA or UGB or before City municipal water service is extended to the Property. If an annexation vote is not approved, City may in accordance with City policy applicable at that time resubmit the annexation question at a subsequent election. Owners agree to annexation when the Property becomes contiguous to the City.

3. City Utility Services. Upon the effective date of this Agreement, development on the Property shall be allowed to use City municipal water service in the same manner as other properties within the City. Upon inclusion of the Property into the UGB, the development on the Property shall be allowed to use City sewer service in the same manner as other properties within the City. If, prior to annexation into the City, some or all of the Property has been approved for, developed, or served by septic tanks or other private septic systems, such systems shall be allowed to remain on such private septic systems for a period of fifteen (15) years following installation of the septic tank or construction of the private septic system. Each separate property

may have a separate beginning date for the period depending upon installation or construction. City and Owners agree that upon approval of the Proposed Development by Yamhill County, such private septic tanks or other private septic systems shall be approved for purposes of this paragraph and Agreement. City and Owners also agree that the fifteen (15) year period referenced in this paragraph shall survive the term of this Agreement. Thereafter, if City requires connection to the public sanitary sewer system, Owners or their assigns shall pay for and install all required infrastructure and pay all associated fees, except as may be installed by City capital improvement programs or other entities, subject to System Development Charge (“SDC”) credits where applicable. Owners shall prebuild sanitary sewer infrastructure on the Property at the time of construction of the subdivision infrastructure to be made operable upon the later of (1) such time as City sewer service is extended to the Property, and the City requests connection, or (2) the fifteen year period set forth above. City agrees to allow construction of such utilities to the City standards at the time of construction, subject to City’s review and approval under existing standards. If City standards are amended subsequent to City’s approval and prior to the Property’s annexation, City will not require alteration of the system to the new City standards. Owners will assure to City that the system functions as designed and is not in need of repair at the time the City annexes the Property.

4. City and County Development Review. The parties understand that prior to annexing the Property to the City, Yamhill County has land use jurisdiction over the development and any development prior to annexation must be approved by Yamhill County. Upon receiving approval from Yamhill County, Owners may proceed with the Proposed Development, except that any development of public water and public sanitary sewer systems on the Property that occurs prior to annexation to the City shall be submitted to the City for

engineering review and approval in accordance with City standards prior to construction of such systems. After annexation and subject to the provision of Section 3 above, any subsequent development not previously approved by Yamhill County shall be subject to approval from the City in accordance with the NDC and any other applicable City ordinance.

5. City Development Standards and Requirements.

(a) Preliminary Subdivision Plat. The development on the Property shall be in substantial conformance with the Preliminary Subdivision Plat set forth in Exhibit C.

(b) Comprehensive Plan Designations. Upon the Property's inclusion in the URA, the following City Comprehensive Plan designations shall apply to the Property. The north subdivision parcel as depicted on Exhibit C ("Subdivision Parcel") shall be designated Low Density Residential - 1/A allowing one dwelling unit per acres. The 9.91-acre parcel labeled Historic Property on Exhibit C ("Historic Parcel") shall be designated Lower Density Residential – 0.11/A allowing one dwelling unit per nine acres and shall be subject to the Historic Landmark and Stream Corridor Overlay Subdistricts, except the existing bed and breakfast establishment and accessory carriage house and cottage structures located on the Historic Property are allowed notwithstanding these designations. The 9.56 acre parcel labeled Retirement on Exhibit C ("Retirement Parcel") shall be designated Public/Quasi-Public. The 1.13 acres labeled Winery on Exhibit C ("Winery Parcel") shall receive a designation that allows the Winery as an outright permitted use.

(c) Zoning Districts. Upon the Property's inclusion in the URA, the following City Zoning Districts shall apply to the Property. The Subdivision Parcel shall be zoned Low Density Residential-1/A District. The Historic Property shall be zoned Low Density Residential-0.11/A District with Historic Landmark and Stream Corridor Overlay Subdistricts.

The Owners have a vested right in the existing bed and breakfast establishment and accessory carriage house and cottage structures located on the Historic Property, and upon the Property's inclusion in the URS, the bed and breakfast establishment and accessory structures shall be allowed to continue outright as a conditional use in the Low Density Residential Zoning District. The Retirement Parcel shall be zoned Institutional District. The Winery Parcel shall be zoned with a zone that allows the Winery as an outright permitted use.

(d) Development Density, Uses, and Height. Prior to the Property's annexation, the Property shall be subject to the densities and uses allowed by the Yamhill County and State Measure 37 claim approvals. Development shall be subject to the height limits of the Yamhill County EF-20 zone. Development of the Retirement Parcel may occur the sooner of (i) the effective date of the Property's annexation or (ii) five (5) years from the effective date of this Agreement.

(e) Historic Landmark Designation. Upon including the Property in the URA unless otherwise approved through the Review Process, the Joseph and Virginia Chambers Farmstead, currently listed on the National Register of Historic Places and located on the Historic Parcel shall be included as a Historic Landmark in the Newberg Comprehensive Plan and shall be subject to the provisions of the NDC Historic Landmark Overlay Subdistrict as specified in Section 5(a).

(f) Stream Corridor Designation. The existing pond on the Historic Parcel is currently depicted on the National Wetlands Inventory and shall be subject to the provisions of the NDC Stream Corridor Overlay Subdistrict as specified in Section 5(a).

(g) Road Improvements. Upon development of the Subdivision Parcel, Owners shall improve Benjamin Road abutting the Proposed Development to provide for safe

vehicle, pedestrian, and bicycle access. This may be accomplished by widening Benjamin Road to sufficient width to accommodate bike lanes and provide a standard 5-foot-wide sidewalk on the east side of the road, or by providing alternate parallel pedestrian and bicycle paths through the Property that connect to Benjamin Road.

(h) Public Roads. Roads within the Property shall be dedicated as public roads. The roads, exclusive of sidewalk, shall be at least 22 feet in width with no parking within the 22-foot width, and include a five-foot (5') sidewalk on one side of the street, and be sufficient to meet City fire standards in effect when the roads are constructed.

(i) Water Lines. When developing the Property, water lines shall be situated so as to allow extension to other properties included in the UGB or URA. Water lines on the Property shall include fire hydrants to satisfy City fire standards in effect when the water lines are constructed.

6. Dedication of Land. Consistent with Section 5(h), roads within the Subdivision Parcel shall be dedicated as public roads and all rights-of-way dedicated as public roads shall become City streets upon annexation.

7. Fees and Charges. Owners shall pay all costs associated with an initial annexation election for the Property. If the election is other than a primary or general election, where Yamhill County election fees are generally waived, City and Owners shall agree to the election date. Owners shall pay all sewer and water connection and SDCs in accordance with the City's established fee schedules at the time of connection. Owners shall pay all City inspection fees for plan review and inspection of any public facilities to be maintained by City. If any City water connection and/or sewer connection occurs prior to annexation, Owners or users shall pay water and/or sewer utility rates established for out-of-City customers. After annexation, Owners

or users shall pay sewer and water utility rates as well as any other fee or charge per established rates for in-City customers. At the time of annexation, Owners shall pay all SDCs then in effect, except sewer and water connection fees, which are paid at the time of connection.

8. Continuing Effect of Agreement. In the case of any change in City regulation, regional policy, State law, federal law, or other change in circumstance which renders compliance with the Agreement impossible or unlawful, Parties will attempt to give effect to the remainder of the Agreement, but only if such effect does not prejudice the substantial rights of either party under this Agreement. If the substantial rights of either party are prejudiced by giving effect to the remainder of the Agreement, then Parties shall negotiate in good faith to revise the Agreement to give effect to its original intent. If Parties fail to agree to an amended Agreement within ninety (90) days of the commencement of negotiations, then either party may request that an arbitrator give an equitable effect to the remainder of the Agreement, and the Agreement shall thereafter be amended pursuant to the order of the arbitrator. If, because of change in policy, law or circumstance, the Agreement fails essential purpose, then the parties shall be placed into their original positions to the extent practical.

9. Binding Effect and Assignability of Agreement. This Agreement is binding upon the heirs, successors, and assigns of the Property.

10. Future Discretionary Approvals. Future discretionary approvals under this Agreement include, but are not limited to: annexation review, UGB amendment, and URA amendment. Other discretionary approvals may be required for further development of the Property not previously approved by Yamhill County, and may include subdivision review, site design review, variance or adjustment review, and conditional use permit review. All reviews following annexation shall be governed by the NDC and any other applicable City ordinance.

11. Default and Remedies.

(a) Default. The following shall constitute default on the part of a party: A breach of a material provision of this Agreement, whether by action or inaction of a party which continues and is not remedied within sixty (60) days after the other party has given notice specifying the breach; provided that if the non-breaching party determines that such breach cannot with due diligence be cured within a period of sixty (60) days, the non-breaching party may allow the breaching party a longer period of time to cure the breach, and in such event the breach shall not constitute a default so long as the breaching party diligently proceeds to affect a cure and the cure is accomplished within the longer period of time granted by the non-breaching party; or any assignment by a party for the benefit of creditors, or adjudication as a bankrupt, or appointment of a receiver, trustee or creditor's committee over a party.

(b) Remedies. Each party shall have all available remedies at law or in equity to recover damages and compel the performance of the other party pursuant to this Agreement. The rights and remedies afforded under this Agreement are not exclusive and shall be in addition to the cumulative with any and all rights otherwise available at law or in equity. The exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other parties, including, without limitation, the right to compel specific performance.

12. Amendment or Termination of Agreement. This Agreement may be amended or terminated by the Parties' mutual written consent of the Parties. Any amendment of this Agreement which relates to the term, permitted uses, density or intensity of use, height or size of

buildings, or provisions for the reservation or dedication of land shall require a public hearing before the City Council.

13. Budgetary Obligations. All City obligations to expend monies under this Agreement are contingent upon future appropriation as part of the local budget process. Nothing in this Agreement requires City to appropriate any such monies.

14. Notice. A notice or communication under this Agreement by either party shall be in writing and shall be dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by either personal delivery or nationally-recognized overnight courier (such as UPS or Federal Express) or be facsimile transmission, and

For Owners, notice or communication shall be sent to the following address:

Charles and Ellen McClure  
30295 North Highway 99W  
Newberg, OR 97132

With copy to: Steven W. Abel  
Stoel Rives LLP  
900 SW 5<sup>th</sup> Avenue, Suite 2600  
Portland, OR 97204

For City, notice or communication shall be sent to the following address:

City of Newberg City Manager  
414 E. First Street  
Newberg, OR 97132

With copy to: City of Newberg Planning Director  
P.O. Box 970  
Newberg, OR 97132

or addressed in such other way that City or Owners may request, provided that such request be in writing and given in accordance with this section. .

15. Effective Date. This Agreement shall be effective upon signing by both Owners and City (“Effective Date”).

16. Duration. This Agreement shall expire upon completion of the terms herein, or 15 years after the Effective Date, whichever comes first.

ACCEPTED BY:

\_\_\_\_\_  
Charles McClure

\_\_\_\_\_  
Ellen McClure

CITY OF NEWBERG  
ACCEPTED:

APPROVED AS TO FORM

\_\_\_\_\_  
James H. Bennett, City Recorder

\_\_\_\_\_  
Terrence D. Mahr, City Attorney

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

- Exhibits:
- Exhibit A: Legal Description
  - Exhibit B: Property Map
  - Exhibit C: Preliminary Subdivision Plat

**EXHIBIT A to McCLURE DEVELOPMENT AGREEMENT  
LEGAL DESCRIPTION**

**PARCEL 1:** BEGINNING at an iron pipe set 22.25 chains West and 4.45 chains North 00°12' East from the Southeast corner of the Benjamin Heater Donation Land Claim, Notification No. 1472, Claim No. 50, and being part of said Heater Claim and part of the Sebastian Brutscher Donation Land Claim, Notification No. 1470, Claim No. 51 in Sections 10 and 15, Township 3 South, Range 2 West of the Willamette Meridian in Yamhill County, Oregon; thence North 00°12' East, 22.55 chains to an iron pipe from which a dogwood 8 inches in diameter bears South 41° West, 33 links; thence West, 21.908 chains to an iron pipe; thence South 00°24' West, 7.46 chains to an iron pipe from which a fir 5 inches in diameter bears South 59°45' East, 62 links; thence West 0.25 of a chain to an iron pipe set on the West line of the Original Gard tract described in deed recorded in Book "T", Page 315, Deed Records for Yamhill County; thence South 00°24' West 19.54 chains to an iron pipe set for the Southwest corner of the Original Gard tract and on the South line of the Benjamin Heater Donation Land Claim; and the North line of the Sebastian Brutscher Donation Land Claim; thence East on said line, 0.36 of a chain to an iron pipe set for the Northwest corner of a certain tract of land containing 6 acres and 9 rods described in deed recorded in Book "T", Page 315, Deed Records for Yamhill County, Oregon; thence South 00°02' East parallel to the East line of the Sebastian Brutscher Donation Land Claim, 9.558 chains to an iron pipe set in the center of the County Road for the Southwest corner of a certain tract of land described in deed recorded in Book 36, Page 240, record of deeds for Yamhill County, Oregon; thence North 55°41' East with center of County Road, 5.045 chains to an iron pipe; thence North 76°17' East, 7.262 chains to an iron pipe set at a point 4.875 chains South 00°02' East and 25 links West of the Northeast Corner of the Sebastian Brutscher Donation Land Claim; thence North 00°02' West parallel to the East line of said Brutscher Donation Land Claim, 5.225 chains to an iron pipe set 25 links North of the South line of the Benjamin Heater Donation Land Claim; thence East parallel with the South line of said Heater Claim, 7.633 chains to an iron pipe; thence North 10' West, 4.30 chains to an iron pipe; thence East, 3.01 chains to the place of beginning.

**PARCEL 2:** BEGINNING at the Northeast corner of the Sebastian Brutscher Donation Land Claim, Notification No. 1470, Claim No. 51 in Section 15, Township 3 South, Range 2 West of the Willamette Meridian in Yamhill County, Oregon running thence South along the East line of said Sebastian Brutscher Claim, 4.975 chains to an iron pipe set on the North side of the County Road; thence West 0.25 of a chain to an iron pipe on the North side of County Road; thence North parallel to and 25 links West of the East line of said Brutscher Claim, 5.225 to an iron pipe set 25 links North of the South line of the Benjamin Heater Claim; thence East parallel to and 25 links North of the South line of the Benjamin Heater Donation Land Claim to the West line of the property owned by the City of Newberg, 7.633 chains; thence South 25 links to the South line of the Benjamin Heater Claim and thence West along the South line of the Benjamin Heater Claim, 7.383 chains to the place of beginning.

**PARCEL 3:** BEGINNING at the Northwest corner of the Original Donation Land Claim of Ira Orton, Notification No. 4161 situated in Section 15, Township 3 South, Range 2 West of the Willamette Meridian in Yamhill County, Oregon and running thence South, 20 rods to the County Road leading from Portland to Dayton; thence Easterly along said road, 23 rods to an iron pin; thence Northeasterly, 29 rods and 8 feet to a point and iron pin on the North line of said Donation Land Claim, 39 rods and 11 feet East of said beginning point; thence West 39 rods and 11 feet on the North line of said Claim to the place of beginning.

EXCEPTING THEREFROM the following tract conveyed by L. Reed Chambers to the City of Newberg, by deed recorded in Book 63, Page 500, Deed Records of Yamhill County, Oregon described as follows:

BEGINNING at an iron pipe set 9.258 chains East of the Northwest corner of the Ira Orton Donation Land Claim, Notification No. 4161 in Township 3 South, Range 2 West of the Willamette Meridian; thence South 46°53' West 5.05 chains to an iron pipe; thence South 3°24' West 1.835 chains to an iron pipe set on the North side of the Dayton and Portland County Road; thence South 84°27' East on the North line of said Road, 0.45 of a chain to an iron pipe; thence North 3°24' East, 1.672 chains to an iron pipe; thence North 46°53' East, 5.33 chains to an iron pipe set on the North line of said Ira Orton Claim; thence West on the North line of said Orton Claim, 0.858 chains to the place of beginning.

LEGAL DESCRIPTION  
TICOR TITLE INSURANCE COMPANY  
1628 SW Salmon  
Portland, OR 97205

3

ALSO EXCEPTING THEREFROM that portion conveyed to Eleanor V. McDonald by deed recorded May 14, 1962 in Film Volume 22, Page 685, Deed and Mortgage Records.

ALSO EXCEPTING THEREFROM those portions conveyed to State of Oregon by Deed recorded

December 12, 1934 in Book 109, Page 595, Deed Records and by deed recorded July 25, 1962 in Film Volume 24, Page 267, Deed and Mortgage Records.

ALSO EXCEPTING THEREFROM that portion conveyed to the City of Newberg by Deed recorded November 16, 1967 in Film Volume 218, Page 230, Deed and Mortgage Records.

LEGAL DESCRIPTION  
TICOR TITLE INSURANCE COMPANY  
1629 SW Salmon  
Portland, OR 97205

4

EXHIBIT B to McCLURE DEVELOPMENT AGREEMENT  
PROPERTY MAP

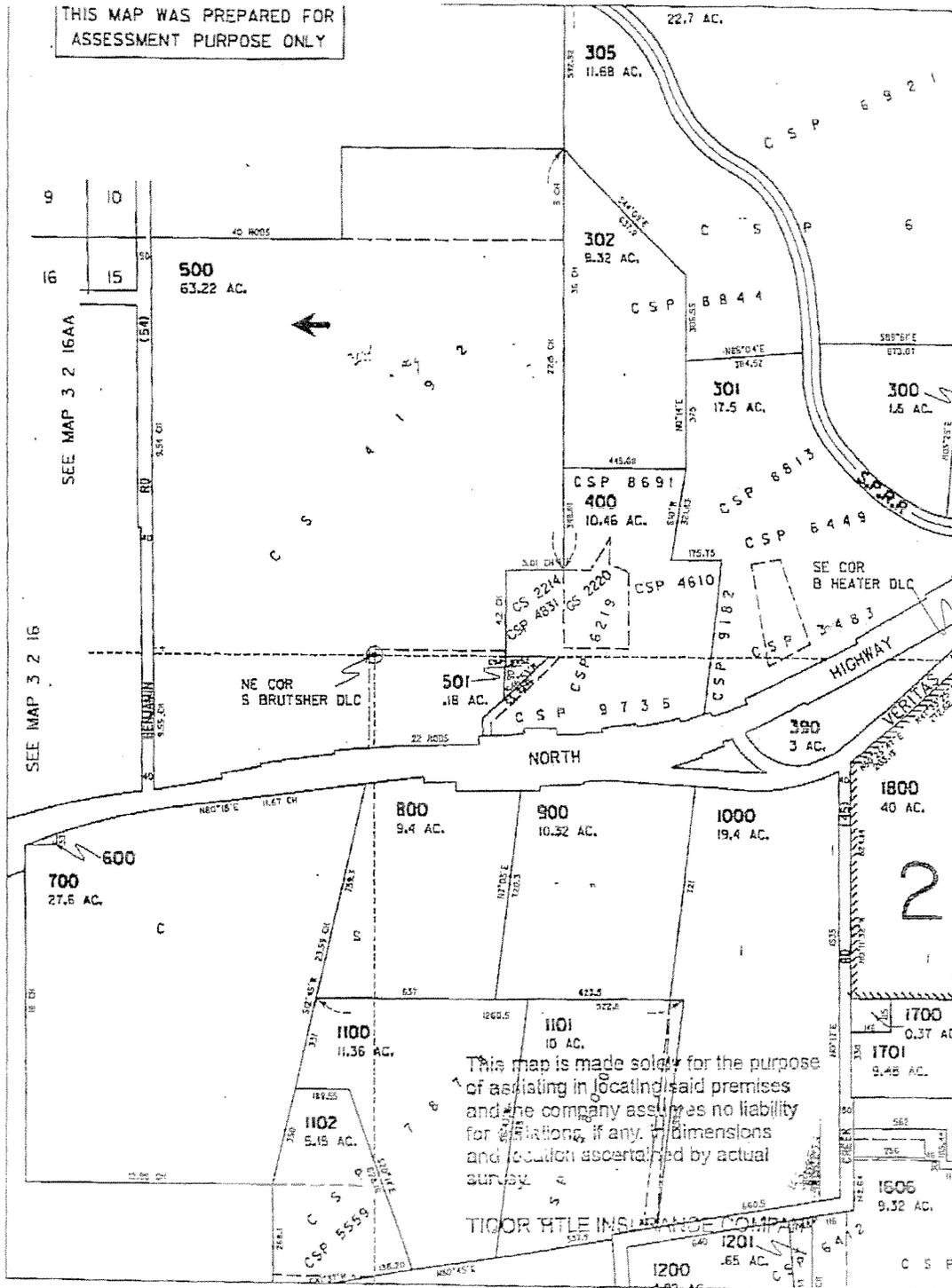
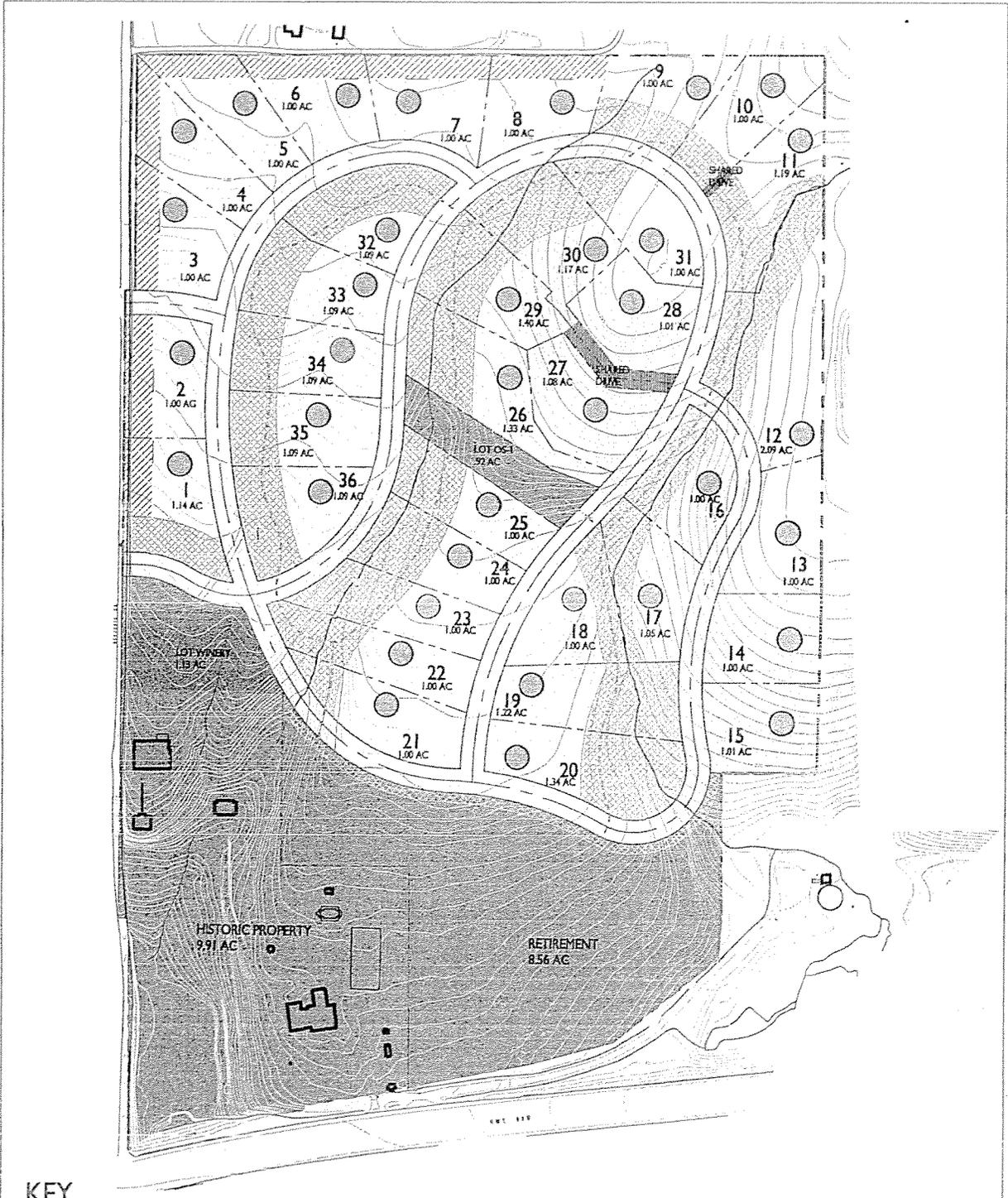




EXHIBIT C to McCLURE DEVELOPMENT AGREEMENT  
PRELIMINARY SUBDIVISION PLAN



KEY

- Open Space - Common
- Open Space - Use Easement
- Open Space - Landscape Easement
- Single-Family - Large
- Winery
- Historic
- Retirement
- Trail

McClure Nut Farm Project		Land Use	
	Acres	Percent	
Total Planning area	68.95	100.00%	
Open Space Development area	68.00	100.00%	
Winery			
Common Open Space	11.17	17.00%	
Historic Area	9.91	14.24%	
Winery	11.13	16.14%	
Open Space Development area	33.79	49.00%	
Winery	2.76	3.99%	
Open Space - Winery Lot	13.17	17.64%	not included in overall totals and totals table
McClure Nut Farm Development			
Single Family Lots	35.47	51.45%	1,200
Retirement	1.36	1.97%	36
Total	36.83	53.42%	1,236

Land Use Plan  
McClure  
Springbrook Nutfarm

NORTH

Walker Macy  
Westlake Consultants  
February 28, 2007

OFFICIAL YAMHILL COUNTY RECORDS  
JAN COLEMAN, COUNTY CLERK

200721250



\$111.00

00282561200700212500180189

09/26/2007 03:17:08 PM

DMR-AGRDMR Cnt=1 Stn=2 ANITA  
\$90.00 \$10.00 \$11.00

**DEVELOPMENT AGREEMENT**

between Charles and Ellen McClure  
and the City of Newberg, Oregon

This Development Agreement ("Agreement") is made and entered into by and between The Charles J. McClure and Ellen R. McClure Trust, U/I/D October 25, 1999 (the "Trust") and the City of Newberg, Oregon ("City") (together, "Parties") pursuant to ORS 94.504 to 94.528 and Newberg Development Code ("NDC") §§ 151.255 to 151.259.

RECITALS

FIRST AMERICAN TITLE C 83

A. This Agreement relates to certain real property owned by the Trust legally described in Exhibit A and diagrammatically shown in Exhibit B, hereinafter known as the "Property."

B. The Property is currently located outside the City's limits, outside the Newberg Urban Growth Boundary ("UGB") and Urban Reserve Area ("URA"), and is zoned Yamhill County EF-20.

C. On March 1, 2006, Yamhill County issued Board Order 06-130, approving the Trust's local Measure 37 claim on the Property, and on July 20, 2006, the State of Oregon through the Department of Administrative Services and the Department of Land Conservation and Development ("State"), issued Final Order Claim No. M122204, approving the Trust's State Measure 37 claim. Under Final Order Claim No. M122204, the Trust is authorized to divide and develop the Property into approximately forty (40) one-acre lots, with a dwelling on each newly-created lot and develop the remaining Property for commercial uses, subject to the standards in effect on May 15, 1967.

D. The Trust seeks to develop the Property pursuant to the approved Measure 37 claims and the Trust filed subdivision application with Yamhill County for the Property

(“Proposed Development”). The preliminary subdivision plat for the Proposed Development is attached as Exhibit C (the “Preliminary Subdivision Plat”). The Preliminary Subdivision Plat accommodates thirty-six (36) one (1) acre residential lots, substantial open space, public trails, roads with a five (5) foot sidewalk on one side, a winery, and future development for retirement or assisted residential living.

E. The Property is located at the eastern gateway into the City of Newberg. Proper development of the Property could serve to enhance the Newberg area and provide an attractive and suitable entrance to the City and provide opportunities for housing and other uses not currently available in Newberg. The Trust seeks to develop the Property in a manner that offers exceptional quality and design while taking advantage of the natural topography, enhancing the natural environment, protecting the historic homestead area, and providing a superior quality of residential environment unequalled in the area. In order to achieve these goals, the Trust is interested in receiving City municipal water service and other services that the City may provide. If the Property is to receive City services, City wants to ensure that it is developed in a manner that will promote an attractive and functional entrance into Newberg, enhance the community, and take advantage of the unique opportunities the Property provides.

F. City is considering whether to add the Property into the URA and the UGB.

G. Newberg Comprehensive Plan Policy N.2.(c), and the NDC § 151.261 prohibit annexing property outside the URA and UGB, and Newberg City Ordinance § 52.11 and § 51.63 limit extending City utilities outside the City’s limits. Pursuant to NDC § 151.255 and City Ordinance 2007-2671, the City has authority to initiate annexation of the Property to the City and extend municipal water service to the Property upon execution of this Agreement.

H. Extending municipal water service to the Property is consistent with Statewide Planning Goal 11 because the Proposed Development is not dependent on the extension of City municipal water service. The development density is dependent on the Yamhill County and State Measure 37 approvals whereby the Trust is authorized to divide and develop the Property into approximately one-acre residential lots. The extension of municipal water service therefore does not increase the base density in a residential zone due to the availability of water, allow a higher density for residential development than would otherwise be authorized without such service, or allow an increase the allowable density of residential development due to the extension of the municipal water service. The Property could be developed regardless of the availability of the City's municipal water service.

I. Given the Yamhill County and State Measure 37 approvals for the Property, the length of time needed to consider URA and UGB amendments, the length of time needed to consider and annex the Property, and City's and the Trust's goals for the Property's development, City and the Trust enter into this Agreement to allow the extension of municipal water service to the Property prior to annexation, to establish certain standards for the Property's development prior to and upon annexation, and to establish processes for considering and including the Property in the URA, UGB, and the City limits.

J. The Newberg City Council authorizes the City Manager to enter into this Agreement through Ordinance 2007-2671, adopted on June 4, 2007.

#### AGREEMENT

1. Urban Reserve Area and Urban Growth Boundary Amendments. City agrees to continue its process for including the Property in the URA and the UGB. City anticipates considering the URA proposal in 2007 and the UGB proposal in 2008. City will diligently

pursue, and the Trust will support, the process for including the Property in the URA and UGB. The Trust and City understand that these proposals are subject to legislative approval through City, Yamhill County, and State processes, including appeals processes, and that the inclusion of the Property in the URA and UGB ultimately may not be approved and may exceed the timeframes noted above.

2. Annexation. Upon request of the City, but no sooner than such date that the Property becomes contiguous to the City, the Trust shall submit an application for annexation using the City's standard forms. City shall consider the application, and if the City Council so elects, the City shall submit the question of annexation to the City electorate at a special, primary, or general election. In accordance with this Agreement and the special authorization under Ordinance 2007-2671, annexation may, but is not required to occur before the Property is included in the URA or UGB or before City municipal water service is extended to the Property. If an annexation vote is not approved, City may in accordance with City policy applicable at that time resubmit the annexation question at a subsequent election. The Trust agrees to annexation when the Property becomes contiguous to the City.

3. City Utility Services. Upon the effective date of this Agreement, development on the Property shall be allowed to use City municipal water service in the same manner as other properties within the City. Upon inclusion of the Property into the UGB, the development on the Property shall be allowed to use City sewer service in the same manner as other properties within the City. If, prior to annexation into the City, some or all of the Property has been approved for, developed, or served by septic tanks or other private septic systems, such systems shall be allowed to remain on such private septic systems for a period of fifteen (15) years following installation of the septic tank or construction of the private septic system. Each separate property

may have a separate beginning date for the period depending upon installation or construction. City and the Trust agree that upon approval of the Proposed Development by Yamhill County, such private septic tanks or other private septic systems shall be approved for purposes of this paragraph and Agreement. City and the Trust also agree that the fifteen (15) year period referenced in this paragraph shall survive the term of this Agreement. Thereafter, if City requires connection to the public sanitary sewer system, the Trust or its assigns shall pay for and install all required infrastructure and pay all associated fees, except as may be installed by City capital improvement programs or other entities, subject to System Development Charge (“SDC”) credits where applicable. The Trust shall prebuild sanitary sewer infrastructure on the Property at the time of construction of the subdivision infrastructure to be made operable upon the later of (1) such time as City sewer service is extended to the Property, and the City requests connection, or (2) the fifteen year period set forth above. City agrees to allow construction of such utilities to the City standards at the time of construction, subject to City’s review and approval under existing standards. If City standards are amended subsequent to City’s approval and prior to the Property’s annexation, City will not require alteration of the system to the new City standards. The Trust will assure to City that the system functions as designed and is not in need of repair at the time the City annexes the Property.

4. City and County Development Review. The Parties understand that prior to annexing the Property to the City, Yamhill County has land use jurisdiction over the development and any development prior to annexation must be approved by Yamhill County. Upon receiving approval from Yamhill County, the Trust may proceed with the Proposed Development, except that any development of public water and public sanitary sewer systems on the Property that occurs prior to annexation to the City shall be submitted to the City for

engineering review and approval in accordance with City standards prior to construction of such systems. After annexation and subject to the provision of Section 3 above, any subsequent development not previously approved by Yamhill County shall be subject to approval from the City in accordance with the NDC and any other applicable City ordinance.

5. City Development Standards and Requirements.

(a) Preliminary Subdivision Plat. The development on the Property shall be in substantial conformance with the Preliminary Subdivision Plat set forth in Exhibit C.

(b) Comprehensive Plan Designations. Upon the Property's inclusion in the URA, the following City Comprehensive Plan designations shall apply to the Property. The north subdivision parcel as depicted on Exhibit C ("Subdivision Parcel") shall be designated Low Density Residential - 1/A allowing one dwelling unit per acres. The 9.91-acre parcel labeled Historic Property on Exhibit C ("Historic Parcel") shall be designated Lower Density Residential – 0.11/A allowing one dwelling unit per nine acres and shall be subject to the Historic Landmark and Stream Corridor Overlay Subdistricts, except the existing bed and breakfast establishment and accessory carriage house and cottage structures located on the Historic Property are allowed notwithstanding these designations. The 9.56 acre parcel labeled Retirement on Exhibit C ("Retirement Parcel") shall be designated Public/Quasi-Public. The 1.13 acres labeled Winery on Exhibit C ("Winery Parcel") shall receive a designation that allows the Winery as an outright permitted use.

(c) Zoning Districts. Upon the Property's inclusion in the URA, the following City Zoning Districts shall apply to the Property. The Subdivision Parcel shall be zoned Low Density Residential-1/A District. The Historic Property shall be zoned Low Density Residential-0.11/A District with Historic Landmark and Stream Corridor Overlay Subdistricts.

The Trust has a vested right in the existing bed and breakfast establishment and accessory carriage house and cottage structures located on the Historic Property, and upon the Property's inclusion in the URA, the bed and breakfast establishment and accessory structures shall be allowed to continue outright as a conditional use in the Low Density Residential Zoning District. The Retirement Parcel shall be zoned Institutional District. The Winery Parcel shall be zoned with a zone that allows the Winery as an outright permitted use.

(d) Development Density, Uses, and Height. Prior to the Property's annexation, the Property shall be subject to the densities and uses allowed by the Yamhill County and State Measure 37 claim approvals. Development shall be subject to the height limits of the Yamhill County EF-20 zone. Development of the Retirement Parcel may occur the sooner of (i) the effective date of the Property's annexation or (ii) five (5) years from the effective date of this Agreement.

(e) Historic Landmark Designation. Upon including the Property in the URA unless otherwise approved through the Review Process, the Joseph and Virginia Chambers Farmstead, currently listed on the National Register of Historic Places and located on the Historic Parcel shall be included as a Historic Landmark in the Newberg Comprehensive Plan and shall be subject to the provisions of the NDC Historic Landmark Overlay Subdistrict as specified in Section 5(a).

(f) Stream Corridor Designation. The existing pond on the Historic Parcel is currently depicted on the National Wetlands Inventory and shall be subject to the provisions of the NDC Stream Corridor Overlay Subdistrict as specified in Section 5(a).

(g) Road Improvements. Upon development of the Subdivision Parcel, the Trust shall improve Benjamin Road abutting the Proposed Development to provide for safe

vehicle, pedestrian, and bicycle access. This may be accomplished by widening Benjamin Road to sufficient width to accommodate bike lanes and provide a standard 5-foot-wide sidewalk on the east side of the road, or by providing alternate parallel pedestrian and bicycle paths through the Property that connect to Benjamin Road.

(h) Public Roads. Roads within the Property shall be dedicated as public roads. The roads, exclusive of sidewalk, shall be at least 22 feet in width with no parking within the 22-foot width, and include a five-foot (5') sidewalk on one side of the street, and be sufficient to meet City fire standards in effect when the roads are constructed.

(i) Water Lines. When developing the Property, water lines shall be situated so as to allow extension to other properties included in the UGB or URA. Water lines on the Property shall include fire hydrants to satisfy City fire standards in effect when the water lines are constructed.

6. Dedication of Land. Consistent with Section 5(h), roads within the Subdivision Parcel shall be dedicated as public roads and all rights-of-way dedicated as public roads shall become City streets upon annexation.

7. Fees and Charges. The Trust shall pay all costs associated with an initial annexation election for the Property. If the election is other than a primary or general election, where Yamhill County election fees are generally waived, City and the Trust shall agree to the election date. The Trust shall pay all sewer and water connection and SDCs in accordance with the City's established fee schedules at the time of connection. The Trust shall pay all City inspection fees for plan review and inspection of any public facilities to be maintained by City. If any City water connection and/or sewer connection occurs prior to annexation, the Trust or users shall pay water and/or sewer utility rates established for out-of-City customers. After

annexation, the Trust or users shall pay sewer and water utility rates as well as any other fee or charge per established rates for in-City customers. At the time of annexation, the Trust shall pay all SDCs then in effect, except sewer and water connection fees and sewer and water SDC charges, which are paid at the time of connection.

8. Continuing Effect of Agreement. In the case of any change in City regulation, regional policy, State law, federal law, or other change in circumstance which renders compliance with the Agreement impossible or unlawful, Parties will attempt to give effect to the remainder of the Agreement, but only if such effect does not prejudice the substantial rights of either party under this Agreement. If the substantial rights of either party are prejudiced by giving effect to the remainder of the Agreement, then Parties shall negotiate in good faith to revise the Agreement to give effect to its original intent. If Parties fail to agree to an amended Agreement within ninety (90) days of the commencement of negotiations, then either party may request that an arbitrator give an equitable effect to the remainder of the Agreement, and the Agreement shall thereafter be amended pursuant to the order of the arbitrator. If, because of change in policy, law or circumstance, the Agreement fails essential purpose, then the Parties shall be placed into their original positions to the extent practical.

9. Binding Effect and Assignability of Agreement. This Agreement is binding upon the heirs, successors, and assigns of the Property.

10. Future Discretionary Approvals. Future discretionary approvals under this Agreement include, but are not limited to: annexation review, UGB amendment, and URA amendment. Other discretionary approvals may be required for further development of the Property not previously approved by Yamhill County, and may include subdivision review, site

design review, variance or adjustment review, and conditional use permit review. All reviews following annexation shall be governed by the NDC and any other applicable City ordinance.

11. Default and Remedies.

(a) Default. The following shall constitute default on the part of a party: A breach of a material provision of this Agreement, whether by action or inaction of a party which continues and is not remedied within sixty (60) days after the other party has given notice specifying the breach; provided that if the non-breaching party determines that such breach cannot with due diligence be cured within a period of sixty (60) days, the non-breaching party may allow the breaching party a longer period of time to cure the breach, and in such event the breach shall not constitute a default so long as the breaching party diligently proceeds to affect a cure and the cure is accomplished within the longer period of time granted by the non-breaching party; or any assignment by a party for the benefit of creditors, or adjudication as a bankrupt, or appointment of a receiver, trustee or creditor's committee over a party.

(b) Remedies. Each party shall have all available remedies at law or in equity to recover damages and compel the performance of the other party pursuant to this Agreement. The rights and remedies afforded under this Agreement are not exclusive and shall be in addition to the cumulative with any and all rights otherwise available at law or in equity. The exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other parties, including, without limitation, the right to compel specific performance.

12. Amendment or Termination of Agreement. This Agreement may be amended or terminated by the mutual written consent of the Parties. Any amendment of this Agreement

which relates to the term, permitted uses, density or intensity of use, height or size of buildings, or provisions for the reservation or dedication of land shall require a public hearing before the City Council.

13. Budgetary Obligations. All City obligations to expend monies under this Agreement are contingent upon future appropriation as part of the local budget process. Nothing in this Agreement requires City to appropriate any such monies.

14. Notice. A notice or communication under this Agreement by either party shall be in writing and shall be dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by either personal delivery or nationally-recognized overnight courier (such as UPS or Federal Express) or be facsimile transmission, and

For the Trust, notice or communication shall be sent to the following address:

Charles and Ellen McClure  
30295 North Highway 99W  
Newberg, OR 97132

With copy to: Steven W. Abel  
Stoel Rives LLP  
900 SW 5<sup>th</sup> Avenue, Suite 2600  
Portland, OR 97204

For City, notice or communication shall be sent to the following address:

City of Newberg City Manager  
414 E. First Street  
Newberg, OR 97132

With copy to: City of Newberg Planning Director  
P.O. Box 970  
Newberg, OR 97132

or addressed in such other way that City or the Trust may request, provided that such request be in writing and given in accordance with this section.

15. Effective Date. This Agreement shall be effective upon signing by both the Trust and City ("Effective Date").

16. Duration. This Agreement shall expire upon completion of the terms herein, or 15 years after the Effective Date, whichever comes first.

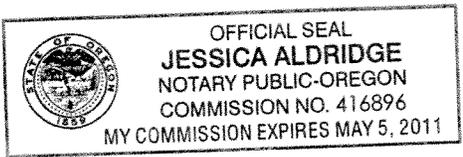
ACCEPTED BY:

THE CHARLES J. MCCLURE and ELLEN R. MCCLURE TRUST,  
U/I/D OCTOBER 25, 1999

Charles McClure, Te  
Charles McClure, Trustee

Ellen McClure, trustee  
Ellen McClure, Trustee

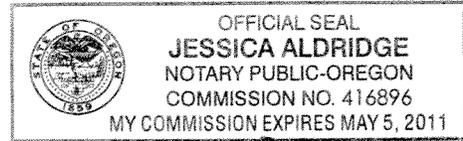
STATE OF OREGON )  
 )ss.  
COUNTY OF YAMHILL )



This instrument was acknowledged before me August 23, 2007, by Charles McClure, Trustee of the Charles J. McClure and Ellen R. McClure Trust, U/I/D October 25, 1999.

Jessica Aldridge  
Notary Public  
My commission expires:  
Commission No.:

STATE OF OREGON )  
 )ss.  
COUNTY OF YAMHILL )



This instrument was acknowledged before me August 23, 2007, by Ellen McClure, Trustee of the Charles J. McClure and Ellen R. McClure Trust, U/I/D October 25, 1999.

Jessica Aldridge  
Notary Public  
My commission expires:  
Commission No.:

12/18



**EXHIBIT A to McCLURE DEVELOPMENT AGREEMENT  
LEGAL DESCRIPTION**

**PARCEL 1:** BEGINNING at an iron pipe set 22.25 chains West and 4.45 chains North 00°12' East from the Southeast corner of the Benjamin Heater Donation Land Claim, Notification No. 1472, Claim No. 50, and being part of said Heater Claim and part of the Sebastian Brutscher Donation Land Claim, Notification No. 1470, Claim No. 51 in Sections 10 and 15, Township 3 South, Range 2 West of the Willamette Meridian in Yamhill County, Oregon; thence North 00°12' East, 22.55 chains to an iron pipe from which a dogwood 8 inches in diameter bears South 41° West, 33 links; thence West, 21.908 chains to an iron pipe; thence South 00°24' West, 7.46 chains to an iron pipe from which a fir 6 inches in diameter bears South 59°45' East, 62 links; thence West 0.25 of a chain to an iron pipe set on the West line of the Original Gard tract described in deed recorded in Book "T", Page 315, Deed Records for Yamhill County; thence South 00°24' West 19.54 chains to an iron pipe set for the Southwest corner of the Original Gard tract and on the South line of the Benjamin Heater Donation Land Claim; and the North line of the Sebastian Brutscher Donation Land Claim; thence East on said line, 0.36 of a chain to an iron pipe set for the Northwest corner of a certain tract of land containing 8 acres and 9 rods described in deed recorded in Book "T", Page 315, Deed Records for Yamhill County, Oregon; thence South 00°02' East parallel to the East line of the Sebastian Brutscher Donation land Claim, 9.558 chains to an iron pipe set in the center of the County Road for the Southwest corner of a certain tract of land described in deed recorded in Book 36, Page 240, record of deeds for Yamhill County, Oregon; thence North 55°41' East with center of County Road, 5.045 chains to an iron pipe; thence North 76°17' East, 7.262 chains to an iron pipe set at a point 4.975 chains South 00°02' East and 25 links West of the Northeast Corner of the Sebastian Brutscher Donation Land Claim; thence North 00°02' West parallel to the East line of said Brutscher Donation Land Claim, 5.225 chains to an iron pipe set 25 links North of the South line of the Benjamin Heater Donation Land Claim; thence East parallel with the South line of said Heater Claim, 7.633 chains to an iron pipe; thence North 10' West, 4.30 chains to an iron pipe; thence East, 3.01 chains to the place of beginning.

**PARCEL 2:** BEGINNING at the Northeast corner of the Sebastian Brutscher Donation Land Claim, Notification No. 1470, Claim No. 51 in Section 15, Township 3 South, Range 2 West of the Willamette Meridian in Yamhill County, Oregon running thence South along the East line of said Sebastian Brutscher Claim, 4.975 chains to an iron pipe set on the North side of the County Road; thence West 0.25 of a chain to an iron pipe on the North side of County Road; thence North parallel to and 25 links West of the East line of said Brutscher Claim, 5.225 to an iron pipe set 25 links North of the South line of the Benjamin Heater Claim; thence East parallel to and 25 links North of the South line of the Benjamin Heater Donation land Claim to the West line of the property owned by the City of Newberg, 7.633 chains; thence South 25 links to the South line of the Benjamin Heater Claim and thence West along the South line of the Benjamin Heater Claim, 7.383 chains to the place of beginning.

**PARCEL 3:** BEGINNING at the Northwest corner of the Original Donation Land Claim of Ira Orton, Notification No. 4161 situated in Section 15, Township 3 South, Range 2 West of the Willamette Meridian in Yamhill County, Oregon and running thence South, 20 rods to the County Road leading from Portland to Dayton; thence Easterly along said road, 23 rods to an iron pin; thence Northeasterly, 29 rods and 8 feet to a point and iron pin on the North line of said Donation Land Claim, 39 rods and 11 feet East of said beginning point; thence West 39 rods and 11 feet on the North line of said Claim to the place of beginning.

EXCEPTING THEREFROM the following tract conveyed by L. Reed Chambers to the City of Newberg, by deed recorded in Book 63, Page 500, Deed Records of Yamhill County, Oregon described as follows:

BEGINNING at an iron pipe set 9.258 chains East of the Northwest corner of the Ira Orton Donation land Claim, Notification No. 4161 in Township 3 South, Range 2 West of the Willamette Meridian; thence South 46°53' West 5.05 chains to an iron pipe; thence South 3°24' West 1.835 chains to an iron pipe set on the North side of the Dayton and Portland County Road; thence South 84°27' East on the North line of said Road, 0.45 of a chain to an iron pipe; thence North 3°24' East, 1.672 chains to an iron pipe; thence North 46°53' East, 5.33 chains to an iron pipe set on the North line of said Ira Orton Claim; thence West on the North line of said Orton Claim, 0.658 chains to the place of beginning.

LEGAL DESCRIPTION  
TICOR TITLE INSURANCE COMPANY  
1629 SW Salmon  
Portland, OR 97205

3

ALSO EXCEPTING THEREFROM that portion conveyed to Eleanor V. McDonald by deed recorded May 14, 1962 in Film Volume 22, Page 585, Deed and Mortgage Records.

ALSO EXCEPTING THEREFROM those portions conveyed to State of Oregon by Deed recorded December 12, 1934 in Book 109, Page 595, Deed Records and by deed recorded July 25, 1962 in Film Volume 24, Page 267, Deed and Mortgage Records.

ALSO EXCEPTING THEREFROM that portion conveyed to the City of Newberg by Deed recorded November 16, 1967 in Film Volume 218, Page 230, Deed and Mortgage Records.

LEGAL DESCRIPTION  
TICOR TITLE INSURANCE COMPANY  
1628 SW Salmon  
Portland, OR 97205

4

EXHIBIT B to McCLURE DEVELOPMENT AGREEMENT  
PROPERTY MAP

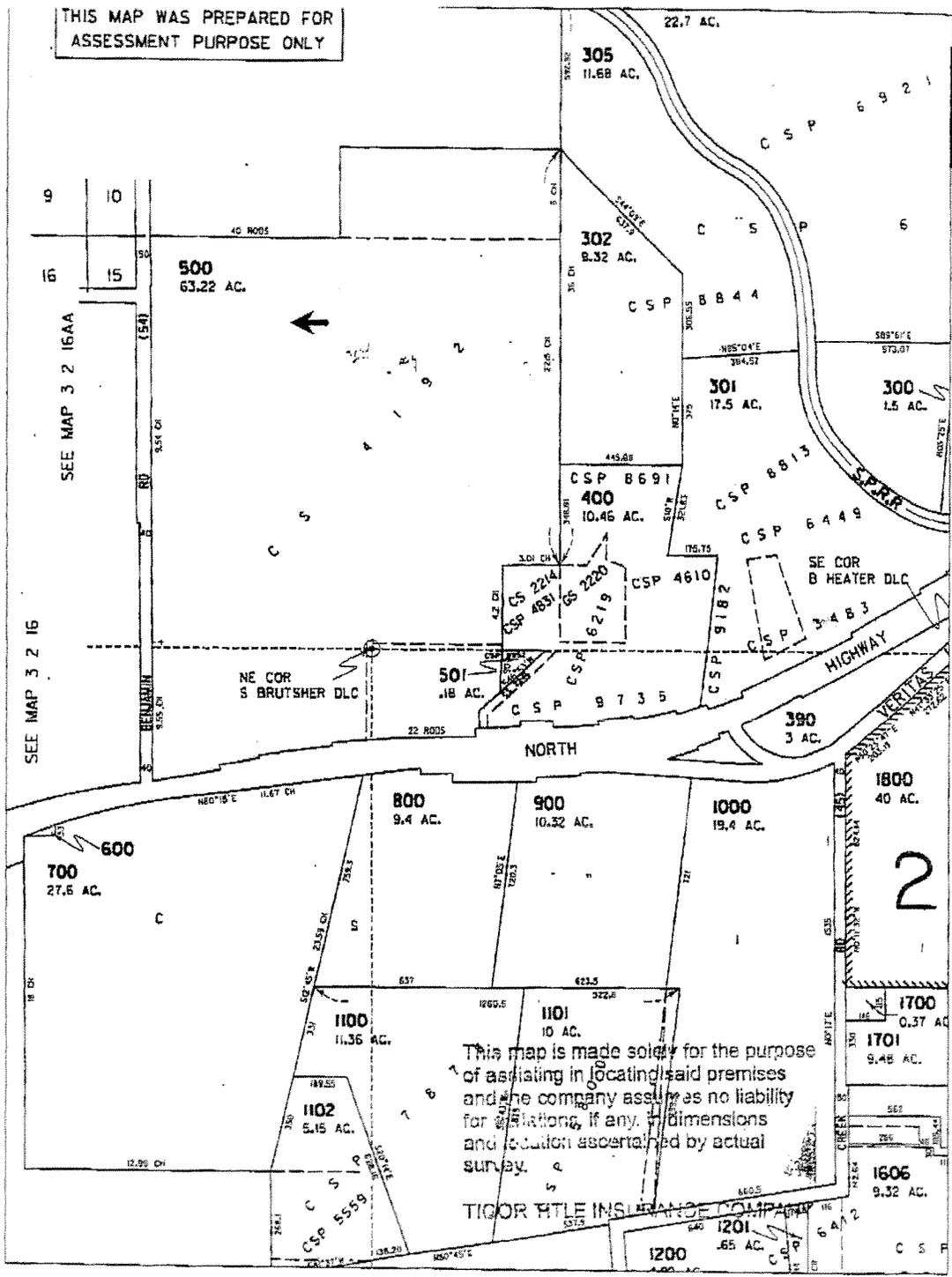
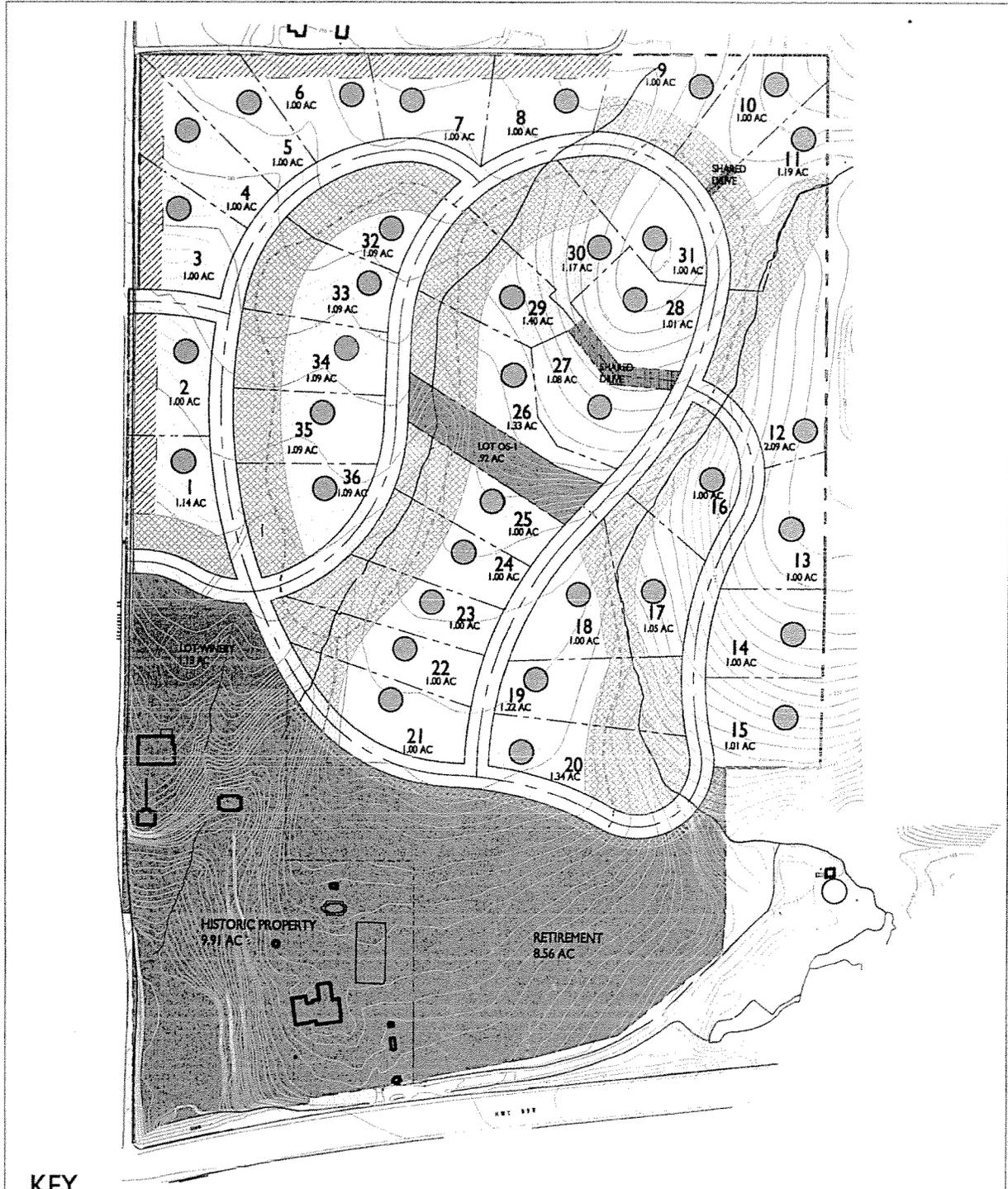




EXHIBIT C to McCLURE DEVELOPMENT AGREEMENT  
PRELIMINARY SUBDIVISION PLAN



KEY

- Open Space - Common
- Open Space - Use Easement
- Open Space - Landscape Easement
- Single-Family - Large
- Winery
- Historic
- Retirement
- - - Trail

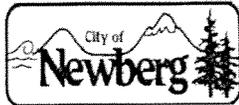
McClure Nut Farm Project		Land Use	
	Acres	Percent	
<b>Total Planning Area</b>			
	68.00	100.00%	
<b>Equal Area Development Area</b>			
	68.00	100.00%	
<b>Land</b>			
Common Open Space	-1.17	1.73%	
Historic Area	-9.91	14.59%	
Winery	-1.13	1.65%	
<b>Equal Area Development Area</b>			
	55.79	81.90%	
Land	-9.76	14.23%	
<b>Open Space Within Land</b>			
	-13.17	17.64% not exempt from use and title tax	
<b>Residential Components</b>			
	Net Acres	Percent	Average Lot Size
Single Family Lots	39.47	57.20%	1.10
Retirement	8.56	12.41%	34
	47.93	70.51%	4.73

Land Use Plan  
McClure  
Springbrook Nutfarm

NORTH

Walker Macy  
Westlake Consultants  
February 28, 2007

19/18



## *ORDINANCE No. 2007-2671*

---

**AN ORDINANCE ADOPTING A DEVELOPMENT AGREEMENT  
WITH CHARLES AND ELLEN MCCLURE CONCERNING  
PROPERTY AT 30295 HIGHWAY 99W, ALLOWING  
CONNECTION TO MUNICIPAL WATER SERVICE, AND SETTING  
FOR TERMS FOR ANNEXATION OF THE PROPERTY TO THE CITY**

---

### RECITALS:

1. Charles and Ellen McClure own property at 30295 Highway 99W, which is just east of the Newberg Urban Growth Boundary. The Property is currently located outside the City limits of Newberg, outside the Newberg Urban Growth Boundary, and is zoned Yamhill County EF-80.
2. Yamhill County and the State of Oregon have approved Measure 37 claims on the property. These approvals allow development of the property for residential and commercial uses.
3. The McClures are interested in developing the property pursuant to the approved claims. They have submitted a subdivision application to Yamhill County. The McClures are interested in receiving City water service and other services that the City may provide. They agree to annex the property to the City.
4. City is in process of considering whether to add the Property into the Newberg Urban Reserve Area (URA), and subsequently to the Newberg Urban Growth Boundary (UGB).
5. Rather than have the property develop adjacent to the City limits without proper coordination with the City and without needed utilities, the Council finds that it is in its best interest to provide City water to the property upon agreement to eventually annex the property and upon execution of a development agreement.
6. Newberg ordinances prohibit extension of City utility services outside City limits, and prohibit annexation prior to inclusion of the property into the Urban Growth Boundary. Given the unique and unusual circumstances of this particular property, the Council finds that exceptions to the City's general ordinances are needed for this particular property.

### THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. The City Manager is hereby authorized to enter into a development agreement with Charles and Ellen McClure as shown in Exhibit 1. The City Manager is delegated the authority to negotiate and amend the agreement prior to the initial execution of the

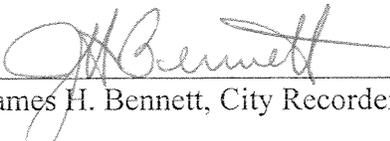
agreement in order to meet the intent of the agreement.

- 2. Notwithstanding Newberg Code § 52.11, development of the property described in Exhibit A and shown in Exhibit B of the attached development agreement (Exhibit 1), may connect to municipal water service prior to the property being annexed to the City, upon execution of a development agreement as described herein.
- 3. Notwithstanding Newberg Code § 151.261 and Newberg Comprehensive Plan Policy N.2.C., Newberg may consider annexation and annex the property described in Exhibit A and shown in Exhibit B of the attached development agreement (Exhibit 1), prior to inclusion of the property in the Newberg Urban Reserve Area or Urban Growth Boundary.
- 4. This ordinance is necessary due to the unique and special circumstance and location of the property shown herein. Nothing in this ordinance shall be construed as authorizing consideration of extension of utilities or annexation of any other property other than that specifically shown herein. Nothing in this ordinance shall be construed as requiring the City to include the property into the Urban Reserve or Urban Growth Boundary, or to annex the property to the City.

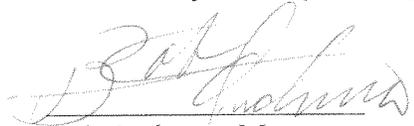
➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: August 1, 2007.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 2<sup>nd</sup> day of July 2007, by the following votes:

**AYE: 6      NAY: 1 (CURRIER) ABSENT: 0      ABSTAIN: 0**

  
 \_\_\_\_\_  
 James H. Bennett, City Recorder

**ATTEST** by the Mayor this 5th day of July, 2007.

  
 \_\_\_\_\_  
 Bob Andrews, Mayor

- Exhibits:
- Exhibit 1: Development Agreement with
    - Exhibit A: Legal Description
    - Exhibit B: Property Map
    - Exhibit C: Preliminary Subdivision Plat

**LEGISLATIVE HISTORY**

By and through \_\_\_\_\_ Committee at   /  /2007   meeting. Or,   X   None.  
(committee name) (date) (check if applicable)

# REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: February 6, 2012

Order \_\_\_      Ordinance \_\_\_      Resolution XX      Motion \_\_\_      Information \_\_\_  
No.              No.              No. 2012-2985

**SUBJECT: Authorize the city manager to negotiate contract change orders with First Cascade Corporation for added scope to the Fire Station 20 Remodel Project up to the remaining amount of the approved grant funding, estimated at \$25,000.**

Contact Person (Preparer) for this Motion: Jason Wuertz, PE, Project Manager and Dept.: Public Works Department - Engineering  
File No.:  
*(if applicable)*

**RECOMMENDATION:** Adopt Resolution No. 2011-2968, authorizing the city manager to negotiate a contract change order with First Cascade Corporation for added scope to the construction of the Fire Station 20 Remodel Project up to the full value of the grant funding. Estimated amount is \$25,000.

**EXECUTIVE SUMMARY:** An American Recovery and Reinvestment Act (ARRA) Assistance to Firefighters Fire Station Construction Grant was awarded to the Newberg Fire Department in the amount of \$764,225. The Firefighters Association has committed to funding the construction of the designed bell tower, which will cost \$17,570, increasing the total project budget to \$781,795.

On September 6, 2011, the City Council adopted a resolution authorizing the city manager to enter into a contract for \$592,028 with First Cascade Corporation for the construction of the Fire Station 20 Remodel Project. Several change orders have been required in order to complete this original scope of work. Those change orders are listed as Group A in the attached Exhibit "A".

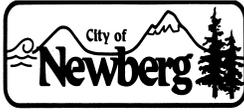
The other elements of the project include design, permit fees, special inspections, relocation of a natural gas line, purchase of various appliances, and built-in bunk room casework. While some of these costs are considered owner costs, all of them are fully funded through the grant. Owner costs are listed in the project cost summary in the attached Exhibit "A".

The remainder of the grant will be used to add value to the project. This will be accomplished by negotiating change orders to add selected items in a priority order without exceeding the approved grant amount. Those change orders are listed as Group B and Group C in the attached "Exhibit A".

City Code allows for contract change orders to be authorized by the city manager until the total cost exceeds 10% above the original contract amount. At that point City Council authorization is required for additional work. This authorization is required in order to complete Group C change orders. This resolution will authorize staff to negotiate contract change orders for those items listed in Group C, up to the amount remaining in the approved grant, which is estimated at \$25,000.

**FISCAL IMPACT:** The total project costs will not exceed the approved grant funding. FY 11/12 budget, under account number 1-2220-610534, supports this contract amount while receiving reimbursements from the approved ARRA grant.

**STRATEGIC ASSESSMENT:** This project addresses firefighter health and safety as well as allows additional space for increased staffing which will improve the firefighter's ability to serve the citizens.



## ***RESOLUTION No. 2012-2985***

---

---

**AUTHORIZE THE CITY MANAGER TO NEGOTIATE A CONTRACT CHANGE ORDER WITH FIRST CASCADE CORPORATION FOR ADDED SCOPE TO THE FIRE STATION 20 REMODEL PROJECT UP TO THE REMAINING AMOUNT OF THE APPROVED GRANT**

---

---

### **RECITALS:**

1. The City has received a grant totaling \$764,225 from the American Recovery and Reinvestment Act (ARRA) Assistance to Firefighters Fire Station Construction. The Firefighter's Association has agreed to contribute \$17,570 to the project increasing the total project budget to \$781,795.
2. On September 6, 2011, the City Council adopted a resolution authorizing the city manager to enter into a contract for \$592,028 with First Cascade Corporation for the construction of the Fire Station 20 Remodel Project.
3. Several change orders, authorized by the city manager have been required to complete the original scope. In addition, the grant funding also pays for those items considered to be "owner costs".
4. The amount of money left in the grant that can be allocated to the contract is estimated at \$25,000. The City and contractor have created a list of contract changes that will utilize the remaining grant money to add value to the project. The categorized list is attached as Exhibit "A" (Groups B and C).
5. The City will negotiate with the contractor to include as many of these items as possible without exceeding the grant funding.
6. This project is included in the FY 2011-2012 budget with reimbursement for all expenses coming from the ARRA grant and the Firefighter's Association.

**THE CITY OF NEWBERG RESOLVES AS FOLLOWS:**

The City Council, acting as Contract Review Board for the City, does hereby authorize the city manager to negotiate contract change orders with First Cascade Corporation for added scope to the Fire Station 20 Remodel Project in the amount not to exceed full value of the grant. That amount is estimated to be \$25,000 and is further shown in the attached Exhibit "A". Exhibit "A" is hereby adopted and by this reference incorporated.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: February 6, 2012.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 7<sup>th</sup> day of February 2012.

\_\_\_\_\_  
Norma I. Alley, City Recorder

**ATTEST** by the Mayor this 9<sup>th</sup> day of February 2012.

\_\_\_\_\_  
Bob Andrews, Mayor

**Group A – \$30,152**

**Contract Change Orders Necessary to Complete Original Scope of Project**

(total cost does not exceed 10% of original contract; therefore these change orders have been or will be approved prior to this council resolution being adopted)

- Change Order Proposal Request (COPR) #2 – Flag Pole Accessories (refurbishing flag pole)
- COPR #3 – Miscellaneous Demolition (construction plan clarification)
- COPR #4 - Remove slab below cabinets in Day Room
- COPR #5 – Structural beam adjustments in Training Room
- COPR #8 – Lighting clarification at Bell Tower
- COPR #10 – Mason labor increase due to brick size availability
- COPR #11 – Re-route ducting in Turnout Room
- COPR #13 – Turnout washer / Floor Sink Clarification
- COPR #15 – Gas line relocation inside facility due to meter relocation

**Group B – \$11,016**

**Contract Change Orders Adding Value to Project**

(total cost of these plus Group A still does not exceed 10% of original contract; therefore these change orders have been or will be approved prior to this council resolution being adopted)

- COPR #6 – Canopy Expansion
- COPR #9 – Install Kitchen Appliances (purchased by City, installed by Contractor)

**Group C – \$44,938**

**Contract Change Orders Adding Value to Project**

(these change orders will bring the total contract value over the 10% threshold and therefore each one requires city council approval)

- COPR # 1 – Toilet Replacement
- COPR #7 – Built In TV Casework
- COPR #12 – New kitchen sink/faucet
- COPR #16 – Corner guards in dining/kitchen area
- COPR #17 – Floor Finishes Upgrades throughout building
- COPR #18 – Painting Upgrade throughout building

**Project Cost Summary**

<b>General Contractor Construction Cost</b>	<b>\$592,028.00</b>
"Required" Change Orders To Date (Group A)	\$30,152
Value Added Change Orders (Group B)	\$11,016
<b>Contract Subtotal</b>	<b>\$633,196</b>

<b>Consultant Costs</b>	
A/E Design and Construction Administration	\$77,986.00
<b>Subtotal</b>	<b>\$77,986.00</b>
Special Inspections	\$2,356.00
<b>Subtotal Consultants</b>	<b>\$80,342.00</b>
Consultants Contingency	1.50%
<b>Subtotal</b>	<b>\$1,205.13</b>
<b>Subtotal Consultants</b>	<b>\$81,547.13</b>

<b>Owner Cost</b>	
NW Natural Gas Relocation	\$7,869.00
Kitchen Appliances	\$10,000.00
Built In Bunk Room Casework	\$11,000.00
<b>Subtotal</b>	<b>\$28,869.00</b>
Permit Fees (Allowance)	\$12,000.00
BOLI Fees	\$700.00
<b>Subtotal</b>	<b>\$12,700.00</b>
Subtotal Owner costs	\$41,569.00
Owner Contingency	2.50%
<b>Subtotal</b>	<b>\$1,039.23</b>
<b>Subtotal Owner Costs</b>	<b>\$42,608.23</b>

<b>Project Total</b>	<b>\$757,351.36</b>
----------------------	---------------------

Project Budget: (\$764,225+17,570)= \$781,795      Remaining: \$24,443.65

**Optional Items to Negotiate (Group C)**      \$44,938.00