



**CITY COUNCIL AGENDA
OCTOBER 5, 2015, 7:00 PM**

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. APPOINTMENTS

1. Appointment of Loni Parrish to the Newberg Downtown Improvement Plan Advisory Committee Pages 1-3

V. CITY MANAGER'S REPORT

VI. 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)

VII. CONSENT CALENDAR

1. Minutes for September 8 Pages 4-10
2. Financial Reports Pages 11-31
3. Food for Fines Page 32

VIII. PUBLIC HEARING - LEGISLATIVE

1. Ordinance 2015-2786, An Ordinance Repealing Ordinance No. 2013-2761, which adopted revised findings in support of the South Industrial Urban Growth Boundary amendment, revisions to the Economic Opportunities Analysis, amendments to the Comprehensive Plan and Transportation System Plan, and repealing certain other ordinances Pages 33-83

Agenda continued on next page

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. PUBLIC HEARING – QUASI-JUDICIAL

1. Resolution 2015-3206, A Resolution approving the transfer of approximately 87.3 acres of City property including water rights, waterline and access easements, water treatment and delivery infrastructure, and authorizing the City Manager Pro-Tem to negotiate and execute the necessary documents to complete the conveyance of the City springs water system to the Chehalem Springs Water Association. Pages 84-122

X. NEW BUSINESS

1. Resolution 2015-3229, A Resolution initiating the vacation of the Cherry Street right-of-way east of Center Street and west of the Friendsview Retirement Community Campus, and requiring public notice and a public hearing on the proposed vacation. Pages 123-126

XI. COUNCIL BUSINESS

Pages 127-128

XII. 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 two business days 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. Speakers who wish the Council to consider written material are encouraged to submit written information in writing by 12:00 p.m. (noon) the day of the meeting.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: October 5, 2015

Order ___ Ordinance ___ Resolution ___ Motion XX Information ___
No. No. No.

SUBJECT: Appoint Loni Parrish to the City of Newberg Downtown Improvement Plan Advisory Committee.

Contact Person (Preparer) for this Motion: **Bob Andrews, Mayor**

Dept.: **Administration**

RECOMMENDATION:

To consent to the appointment, by the Mayor, of Loni Parrish to the City of Newberg Downtown Improvement Plan Advisory Committee, an Ad Hoc Committee to operate between August 2015 and October 2016.

EXECUTIVE SUMMARY:

On June 2, 2014, the City Council approved Resolution No. 2014-3141 supporting the submission of a grant application to the State of Oregon's Transportation Growth Management Program to fund the development of a Newberg Downtown Revitalization Plan. On July 20, 2015 the City Council approved Resolution No. 2015-3190 authorizing the City Manager Pro Tem to enter into an Intergovernmental Agreement with the State of Oregon, acting through the Oregon Department of Transportation, for a Transportation Growth Management Grant for the Newberg Downtown Improvement Plan in the amount of \$259,630. Exhibit A to the Intergovernmental Agreement requires the formation of a Newberg Downtown Improvement Plan Advisory Committee to represent the public viewpoint in discussions, review and comment on project deliverables, provide technical and regulatory advice and disseminate information regarding the project to the community for input. The Newberg Downtown Improvement Plan Advisory Committee will additionally provide recommendations to the Planning Commission and City Council on the project goals and implementation.

The City Council consented to the appointment of fourteen committee members on August 17, 2015. This motion appoints one additional member to this committee who is a downtown property owner and business owner.

FISCAL IMPACT:

Staffing and coordination of the Newberg Downtown Improvement Plan Advisory Committee will be covered as part of the City of Newberg's in-kind contribution towards the Transportation Growth Management Grant and is contained in the Community Development Department's budget for Fiscal Year 15-16.

STRATEGIC ASSESSMENT:

The Newberg Downtown Improvement Plan Advisory Committee will further the goals of:

1. Create a clear vision for the future of Newberg, maintaining its small town feel.
2. Foster and encourage economic development in the community.
3. Maintain and modernize the City's transportation and utilities infrastructure.

Original applications are retained in the City
Recorder's Office.

Please call (503) 537-1283 to request a copy.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: October 5, 2015

Order ___ No.	Ordinance ___ No.	Resolution ___ No.	Motion <u>XX</u>	Information ___
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SUBJECT: Minutes

**Contact Person (Preparer) for this
Motion: Sue Ryan, City Recorder
Dept.: Administration
File No.:**

RECOMMENDATION:

Approve City Council minutes from September 8, 2015.

**NEWBERG CITY COUNCIL MINUTES
REGULAR SESSION
SEPTEMBER 8, 2015, 7:00 PM
PUBLIC SAFETY BUILDING (401 E. THIRD STREET)**

The work session was held at 6:00 p.m. preceding the meeting. Present were Mayor Bob Andrews, Councilors Lesley Woodruff, Stephen McKinney, Scott Essin, Denise Bacon, Mike Corey and Tony Rourke. Also present were City Manager Pro Tem Terry Mahr, City Attorney Truman Stone, City Recorder Sue Ryan, City Engineer Kaaren Hofmann, Community Development Director Doug Rux, Associate Planner Steve Olson, and Library Director Leah Griffith.

REVIEW OF COUNCIL AGENDA:

CA Stone said language had been added for clarity to the resolution on that night's consent calendar regarding the Villa Road right-of-way acquisition. Mayor Andrews clarified in the August 17 minutes under public comments toward the bottom of page 23 that Mr. Smith was not a resident of Newberg. Councilor Rourke had an edit to the August 17 minutes to show he was present at the meeting. Mayor Andrews said the following items would be brought up under Council Business: TVF&R, WAACA, and the Buckley Property.

MEDICAL AND RECREATIONAL MARIJUANA WORKSHOP

CDD Rux said in October 2014 Newberg adopted a 5% tax on the gross sales of medical marijuana and 10% on recreational marijuana. The Council also adopted a moratorium on Medical Marijuana Dispensaries until May 1. Regulations on the time, place, and manner for dispensaries were adopted in April. Two businesses were working to set up operations in Newberg. He discussed the bills that went through the 2015 legislative session regarding marijuana and how it was going to be regulated. The four key questions for Council were: 1) Did the Council want a ban on early recreational sales out of medical marijuana dispensaries that started on October 1st, 2) Did the Council want to ban medical marijuana processors, 3) Did the Council want to ban recreational producers, and 4) What did they want to do about the marijuana tax.

Regarding recreational early sales, Medical Marijuana Dispensaries could sell recreational marijuana with limits on quantity from October 1, 2015 to December 31, 2016. If Council banned Medical Marijuana Dispensaries from selling recreational marijuana, it would create a moratorium. This would last until OLCC established administrative rules and licensing for recreational marijuana, which would be done by July 2016. A ban would require an ordinance be passed by the Council at their next meeting with an emergency clause so it would be effective by October 1.

Did the Council want to create regulations for growers or processors of medical marijuana? If there was a ban on growers, processors, or dispensaries, the City would submit the decision to the Oregon Health Authority and any applications would be stopped. Any dispensaries already registered would be grandfathered in. To regulate growers and processors, staff would need to come back with time, place, and manner regulations. Regarding a ban on recreational producers, processors, wholesalers, or retail establishments, the City could regulate time, place, and manner.

To ban Recreational Marijuana Establishments, the Council would have to adopt an ordinance banning one, a combination of them or all, and place it on the next general election ballot in November 2016. If no ban was desired, staff asked for direction regarding zoning regulations to address time, place, and manner.

There was discussion on the taxes of recreational marijuana sales and revenue distribution. Up until July 1, 2017, the tax would be based on population, and then after July 1 it would be based on how many recreational facilities a city had. Medical marijuana would not be taxed by the State.

CALL MEETING TO ORDER

Mayor Andrews called the meeting to order at 7:18 p.m.

ROLL CALL

Members Present:	Mayor Bob Andrews	Scott Essin	Stephen McKinney
	Lesley Woodruff	Denise Bacon	Mike Corey
	Tony Rourke		

Staff Present: Terry Mahr, City Manager Pro Tem Truman Stone, City Attorney
Sue Ryan, City Recorder Kaaren Hofmann, City Engineer
Steve Olson, Associate Planner Doug Rux, Community Development Director
Matt Zook, Finance Director Leah Griffith, Library Director
Nancy McDonald, Interim Human Resources Director

PLEDGE OF ALLEGIANCE: The Pledge of Allegiance was performed.

APPOINTMENTS:

Mayor Andrews recommended appointing Patrick Johnson to the Planning Commission. Councilor McKinney objected to Mr. Johnson's appointment because of recent Facebook dialogue regarding the former City Manager.

MOTION: Bacon/Woodruff moved to appoint Patrick Johnson to the Planning Commission to fill a vacant position with a term expiring December 31, 2016. Motion carried (6 Yes/ 1 No [McKinney]).

PRESENTATIONS:

Public Works Director Jay Harris gave a presentation on the Springs Divestiture. He discussed how the current Springs Water System worked. The system was previously the City's main source of water. Due to increased demand and turbidity in the water, in 2009 the Springs water system was removed from the City's reservoir. The City now used water from the wellfield along the Willamette River. PWS Harris gave background on the Springs and its history. He explained how the turbidity still affected Springs customers, upgrades made to the system, rate increases to pay for the upgrades, corrosion control monitoring, operations and maintenance of the system.

In 2008, the Council approved creation of a separate billing classification for the Springs customers and mandated full cost recovery for capital costs from those users. The Council could divest itself from the ownership and operation of the Springs system and the City could consider a proposal for the transfer and ownership of the Springs system from the Four Springs Water Association or any other responsible organization. The user group formed a non-profit water association to manage the system and would contract with Hiland Water for the operation and management. Because of the various operational issues, City staff had spent a lot of time on the system. PWSD Harris summarized the Conveyance Agreement between the City and Water Association and explained the benefits of divestiture for the City, which would come before the Council at their next meeting.

Councilor Essin asked if all of the users were in favor of this. Don Guthrie, resident of Newberg, said the group was unanimously supportive of divestiture. They held meetings all through the process and discussed it at length with staff. A committee was established to draft bylaws and to incorporate as a non-profit called Chehalem Springs Water Association. PWSD Harris said the Council would take action at a future meeting. The transfer would occur when all of the easements were acquired, Hiland Water was ready to go, their officers were ready, and conveyances were signed with the title company.

CITY MANAGER PRO TEM'S REPORT:

CMPT Mahr said Stephen Rhodes, the CMPT candidate, was there today visiting the City and had met the Department Heads. He asked Council to read an article by CA Stone in the Newberg City newsletter.

PUBLIC COMMENTS:

Pat Haight, resident of Newberg, said the audit for this year stated "no opinion" in several categories because the City did not provide enough information for them to test some things. She read the total assets of the City exceeding its liabilities by \$150 million dollars. Of this amount \$17.7 million was reported as unrestricted net position accounts, amounts which were available for use to meet the City's ongoing obligations to citizens and creditors. The net position of the City increased by \$3.6 million during this fiscal year, and she wanted to know how it had increased that much in one year. There were a number of loans the City used for the Wastewater Treatment Plant and effluent reuse system for the golf course. All of the loans would end in the next eight or nine years, and the citizens would have to pay more than \$10 million dollars in interest. She asked why the City was stockpiling tax payer money and raising water rates instead of being used to fix the streets in town.

CONSENT CALENDAR:

MOTION: Bacon/McKinney moved to adopt the Consent Calendar, including minutes for July 23, 2015 and August 17, 2015 as amended; Year End Tourism Report for Chehalem Valley Chamber of Commerce; Resolution 2015-3223, A Resolution authorizing the City Manager Pro Tem to appoint recommended candidates to positions in multiple departments including Theodore Eboras as a Financial Analyst and DawnKaren Bevill as an Administrative Assistant in the Administration Department; Resolution 2015-3214, A Resolution approving the replacement of the Library Roof by Columbia Roofing in the amount of \$69,249.00; Resolution 2015-3215, A Resolution authorizing the City Manager Pro Tem to approve the replacement of the City Hall Heating, Ventilating, and Air Conditioning (HVAC) control system by the city's HVAC contractor, Alliant Systems, in the amount of \$66,979.00 and Resolution 2015-3224, A Resolution authorizing the acquisition of certain real property for the installation of sidewalk along the property at Tax Lot 3217 CD 05300. Motion carried (7 Yes/ 0 No).

Finance Director Matt Zook explained auditors said "no opinion" on many items as a disclaimer to cover themselves on the limited scope they actually reviewed. The best was an unqualified opinion and that was what the City received.

PUBLIC HEARINGS:

Ordinance 2015-2782, Temporary and Portable Signs:

Mayor Andrews opened the public hearing. He called for any abstentions, conflicts of interest, or objections to jurisdiction. There were none.

Associate Planner Steve Olson gave the staff report. He said Planning Commission recommended adoption of the following changes to the Code: To create a sign permit program to allow additional portable signs on private property within certain limits, to clarify the language for what types of signs were temporary signs and the number allowed during events, to allow some signage on umbrellas without permits, to clarify how private signs could be placed in public rights-of-way and where ODOT restrictions applied, and to allow private portable signs in the public rights-of-way outside of downtown. He said the code changes came about after years of work by the staff and Planning Commission.

The Planning Commission had looked at the issue of holidays and flags and clarified on what holidays unlimited flags would be allowed. Umbrella signs allowed signage measuring 12 inches from the lower edge without a permit. For temporary signs during events, the recommendation was unlimited for grand openings and two events per year. Permits for portable signs on private property would be good for one year in the commercial and institutional zones. The number allowed would be based on frontage length. In the C-2 and institutional zones, one sign was allowed per 100 feet and in downtown, one sign was allowed per 15 feet with a maximum of four signs.

For portable signs in the public right-of-way, they were only allowed in the C-3 and C-4 zones, which was downtown. All signs had to meet vision clearance and had to be removed from the sidewalk after business hours. They also had to leave a five foot wide clearance on the sidewalk. Businesses would have to get approval from the property owner abutting the sidewalk to place a sign in front of the property. The Planning Commission proposed allowing portable signs in the right-of-way outside of downtown. The City did not have jurisdiction on every street and ODOT did not allow private signs in the public right-of-way on resolute highways.

He explained what streets would be affected by ODOT's rules. Downtown portable signs would not be allowed on Hancock Street sidewalks except on College and Main streets' right-of-way and outside of downtown portable signs were not allowed in the right-of-way along Highway 99, 219, and 240 or on roads under Yamhill County jurisdiction. The Planning Commission recommended adoption of the ordinance. They did allow one portable sign on residential properties not to exceed six square feet. The Code would be changed to allow people to put signs in the planter strip as currently it was not allowed. Public signs were exempt from the Code, such as City approval of Neighborhood Watch signs. He explained what directional signs were and the possibility of creating an Intergovernmental Agreement with ODOT for placing signs on resolute highways.

Public Testimony:

Robert Soppe, resident of Newberg, was in favor of the ordinance. These changes were significant and made the Code more understandable, they fit the intent of the existing Code, aligned the written Code with what was enforced, and should make Code Enforcement's job easier. He commended AP Olson for his efforts on this project. He encouraged approval of the ordinance.

Mayor Andrews closed the public testimony portion of the hearing. He asked AP Olson for his recommendation. AP Olson recommended approval of Ordinance 2015-2782 as proposed.

MOTION: McKinney/Bacon moved to waive the second reading of the ordinance. Motion carried (7 Yes/ 0 No).

MOTION: McKinney/Corey moved to adopt Ordinance 2015-2782, amending the Newberg Development Code regarding temporary and portable signs to be read by title only. Motion carried (7 Yes/ 0 No).

Ordinance 2015-2784, Chapter 13 of Newberg Municipal Code:

Mayor Andrews opened the public hearing and called for any abstentions, conflicts of interest, or objections to jurisdiction. There were none.

City Engineer Kaaren Hofmann presented the staff report. Chapter 13 of the Municipal Code addressed public utilities and services in the City. The transportation, water, sewer, and storm water master plans Council had adopted had never been referenced in the Municipal Code. The ordinance would adopt the most current master plans by reference and include construction in compliance with those master plans. There was no policies or procedures or purpose section to the water section of the chapter and those would also be added.

Councilor Rourke asked about extensions under the master plans. CE Hofmann said developers would have to do it in compliance with the master plans and extend services.

Public Testimony: Mayor Andrews opened and closed the public testimony portion of the hearing.

Mayor Andrews asked CE Hofmann for her recommendation. CE Hofmann recommended approval of Ordinance 2015-2784.

MOTION: Woodruff/Rourke moved to waive the second reading of the ordinance (7 Yes/0 No).

MOTION: Essin/Bacon moved to adopt Ordinance 2015-2784, An Ordinance amending Chapter 13 of the Newberg Municipal Code to reference Utility Master plans and require permits for connection to be read by title only. Motion carried (7 Yes/ 0 No).

NEW BUSINESS:

Resolution 2015-3222, DLCD grant:

CDD Rux said this resolution would support the application for a Technical Assistance Grant from DLCD. The money would be used to update the City's Economic Opportunities Analysis.

MOTION: McKinney/Rourke moved to approve Resolution 2015-3222, A Resolution supporting an application to the Department of Land Conservation and Development for a Technical Assistance Grant for planning project assistance. Motion carried (7 Yes/ 0 No).

Resolution 2015-3226, City Manager Pro Tem appointment:

Councilor Rourke declared a potential conflict of interest as he had applied and removed himself from consideration for the position. Councilor McKinney said the CMPT Recruitment Subcommittee recommended Mr. Rhodes as City Manager Pro Tem. He explained the process the subcommittee took to recruit the City Manager Pro Tem. Mr. Rhodes would be available for six to nine months while they searched for a permanent City Manager.

Mayor Andrews asked when the appointment would be effective. CA Stone said when the resolution was drafted it was unknown when Mr. Rhodes would be available. Mr. Rhodes might potentially be available on September 21 subject to him securing housing. The Council could amend the resolution at the next Council meeting if he was not able to make September 21.

MOTION: McKinney/Bacon moved to approve Resolution 2015-3226, A Resolution appointing Stephen A. Rhodes as City Manager Pro Tem effective September 21, 2015. Motion carried (7 Yes/ 0 No).

COUNCIL BUSINESS:

Council President Bacon brought up the issue of the Police Chief's email memo to Council regarding consolidation of the City's Dispatch Center with Washington County Consolidated Communications Agency (WCCCA). This idea had been brought up a few years ago and was found not to be cost effective. An additional issue for the City would be that WCCCA only provided dispatch services, and the Police Department would still need employees to answer phones and maintain records.

There was discussion on the providing stable employment for the Dispatch Center operators, the issue of potential turnover in the department, loss of community identity and service, the consideration that a further cost benefits analysis should be completed, the timing of such a decision and the effect of a possible consolidation with Tualatin Valley Fire & Rescue (TVF & R). There was discussion regarding the pros and cons of consolidation with TVF&R.

Councilor McKinney asked about purchasing the Buckley property. PWS Harris said the City entered into a letter of intent to purchase the property for market value, and discussed how to apportion the funding of the payment to the Buckylys, which would be small payments and a lump sum payment at the end of 60 months. The utility funds could handle the purchase, but there were stresses in the General Fund and former City Manager Betz thought it best not to allocate General Fund money for a parking lot.

CDD Rux said the downtown parking analysis had not been done yet, and neither had the Facilities Master Plan. This was a good purchase, but not quantified by studies. The City told the Buckylys no, and the Buckylys were pursuing other options. He could open the discussion again and find adequate resources to purchase the property and build the parking lot. The City did need permanent parking for staff.

There was discussion on eminent domain and the property possibly being used for parking and other needs. There was consensus by the Council to put the consideration of purchasing the Buckley property back on the table.

Mayor Andrews wanted the CMPT recruitment subcommittee to continue in their roles but for the new task of finding a permanent City Manager. He said Councilors McKinney and Corey could continue, but asked if Councilor Essin would take Councilor Woodruff's place as she had a conflict due to work. He and Councilor Bacon would continue as nonvoting members.

MOTION: Bacon/Corey moved for the recruiting subcommittee to be formed of McKinney, Essin, Corey, and Bacon and Andrews as nonvoting members. Councilor Rourke abstained due to a conflict of interest as he would be applying for the position. Motion passed (6 Yes/0 No/1 Abstain).

Mayor Andrews wanted a subcommittee to do a study and give direction regarding the marijuana situation. He asked for Councilor Rourke, Councilor McKinney, and Council President Bacon to serve. He would sit on the subcommittee as a nonvoting member.

MOTION: Andrews/Woodruff moved to form a marijuana subcommittee of Rourke, McKinney, and Bacon with Andrews as a nonvoting member. Motion carried (7 Yes/0 No).

CA Stone asked for direction from Council on the early sales of recreational marijuana in Medical Marijuana Dispensaries. CA Stone said without a ban, as soon as the two dispensaries who applied became authorized, they could start selling to the recreational market. If they were approved before it was banned, they would be grandfathered in. October 1 was the day recreational marijuana could be sold out of Medical Marijuana Dispensaries. There was discussion on how to proceed.

MOTION: Rourke/Bacon moved to direct staff to do nothing regarding early recreational sales of marijuana. Motion failed (3Yes/ 4 No [Andrews/Corey/McKinney/Woodruff]).

The direction was for staff to bring back an ordinance with a ban on the sale of recreational marijuana from Medical Marijuana Dispensaries.

There would be a party for CMPT Mahr on September 21. The Council thanked CMPT Mahr for being a great leader and helping the City through a difficult time.

ADJOURNMENT: The meeting was adjourned at 10:00 p.m.

ADOPTED by the Newberg City Council this 5th day of October, 2015.

Sue Ryan, City Recorder

ATTESTED by the Mayor this ____ day of October, 2015.

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: October 5, 2015

Order ___ No.	Ordinance ___ No.	Resolution ___ No.	Motion ___	Information <u>XX</u>
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SUBJECT: Newberg Financial Report for June and July 2015

**Contact Person (Preparer) for this
Item: Matt Zook
Dept.: Finance**

EXECUTIVE SUMMARY:

Included with this report are the financial summary statements for June and July 2015. These are provided for your information only. No action is required.

June 2015

The June 2015 report is a preliminary report that is subject to change as we proceed through our annual audit. Every department was within budgeted appropriations except the Public Works departments in the Administrative & Support Services Fund. The amount of the overage was \$1,296. Public Works departments in this fund include the Fleet Maintenance and Facilities Repair/Replacement divisions, which are combined into one budget appropriation amount of \$512,413 (see the fourth page of the June financial report for the Administrative Support Fund detail).

I am pleased to report that the preliminary General Fund Ending Balance at June 30, 2015, as reflected on the first page of the June financial report, is \$2,633,650, which is higher than the June 30, 2014 balance of \$2,504,196, a positive growth in real dollars of \$129,454.

Further, the June 30, 2015 balance of \$2,633,650 is higher than anticipated in the FY 2015-16 Budget by \$105,236, which projected to be at \$2,528,414. This is primarily a result of lower than anticipated expenditures, as well as mildly higher than anticipated revenues.

Staff will provide final number to the Council after the audit is wrapped up.

July 2015

The July 2015 report is usually benign at this time of the year. There are a few departments that have expenditures higher than the "straight-line" 8% budget per month, but that is primarily due to annual payments being made in July for annual dues, fees, maintenance agreements, insurance premiums, and lease payments.

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF JUNE 2015	2014-15 YTD	Current YTD Compare to Budget	2013-14 PRIOR YTD
				100%	
City Budget Totals					
Total Beg Fund Balance	\$ 31,461,724	\$ -	\$ 28,130,941	89%	31,493,673
Total Revenues	69,301,230	5,267,474	58,631,000	85%	54,385,740
Total Beg Fund Bal & Revenues	100,762,954	5,267,474	86,761,941		85,879,413
Total Expenses	74,143,869	5,207,921	48,994,167	66%	57,508,091
Total Contingencies / Reserves	26,619,085	-	-	0%	-
Total Exp & Contingen / Reserves	100,762,954	5,207,921	48,994,167	49%	57,508,091
Total Monthly Activity Net Gain / (Loss)		\$ 59,553			
Total Ending Fund Balance			<u>\$ 37,767,774</u>		28,371,322

City Services

General Fund

Beg Fund Balance	\$ 2,249,309	\$ -	\$ 2,504,196	111%	2,835,743
Revenues					
General Government	100,000.00	-	15,155.00	15%	25,108.00
Municipal Court	31,815	2,651	28,258	89%	33,095
Police	1,152,361	88,578	1,129,245	98%	1,187,390
Fire	307,000	92,030	413,078	135%	315,530
Communications	55,994	-	56,615	101%	53,904
Library	142,712	51,559	153,716	108%	106,932
Planning	513,052	21,140	479,704	94%	254,981
Property Taxes	6,714,209	214,796	6,840,285	102%	6,589,625
Other Taxes	696,216	192,047	683,041	98%	513,042
Franchise Fees	1,508,097	81,322	1,445,277	96%	1,432,675
Intergovernmental	1,180,653	110,902	1,168,179	99%	1,122,497
Miscellaneous	2,500	9,263	10,924	437%	575
Interest	7,070	1,095	10,011	142%	9,579
Transfers	-	-	-	0%	-
Revenue Total	12,411,679	865,382	12,433,490	100%	11,644,932
Expenses					
General Government	543,314	74,251	378,821	70%	399,922
Municipal Court	364,698	27,433	323,710	89%	275,746
Police	5,682,181	444,911	5,429,160	96%	5,362,643
Fire	3,354,089	321,983	3,326,872	99%	3,196,397
Communications	1,079,640	74,106	1,072,298	99%	951,135
Library	1,182,802	95,307	1,153,627	98%	1,118,260
Planning	607,154	50,206	581,196	96%	630,798
Transfers	39,068	21,939	38,351	98%	41,578
Contingency	708,042	-	-	0%	-
Unappropriated Ending Balance	1,100,000	-	-	0%	-
Total Expenses	14,660,988	1,110,137	12,304,036	84%	11,976,479
Monthly Activity Net Gain / (Loss)		\$ (244,755)			
Ending Fund Balance			\$ 2,633,650		2,504,195

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF JUNE 2015	2014-15 YTD	Current YTD Compare to Budget	2013-14 PRIOR YTD
				100%	
<u>Public Safety Fee</u>					
Beg Fund Balance	\$ 156,030	\$ -	\$ 178,122	114%	196,153
Revenues	532,646	40,415	383,533	72%	308,463
Expenses	524,191	32,268	384,524	73%	327,507
Contingencies / Reserves	164,485	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 8,148			
Ending Fund Balance			\$ 177,131		177,109
<u>EMS</u>					
Beg Fund Balance	\$ 510,066	\$ -	\$ 606,111	119%	457,509
Revenues	1,609,000	190,860	1,972,072	123%	1,611,218
Expenses	1,829,741	159,690	1,771,230	97%	1,462,616
Contingencies / Reserves	289,325	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 31,171			
Ending Fund Balance			\$ 806,953		606,111
<u>911 Emergency</u>					
Beg Fund Balance	\$ 57,640	\$ -	\$ 62,606	109%	89,061
Revenues	196,250	49,572	197,167	100%	198,380
Expenses	240,409	22,565	238,831	99%	224,835
Contingencies / Reserves	13,481	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 27,007			
Ending Fund Balance			\$ 20,942		62,606
<u>Civil Forfeiture</u>					
Beg Fund Balance	\$ 45	\$ -	\$ 15,974	35498%	-
Revenues	5,000	9	4,172	83%	15,974
Expenses	5,045	-	-	0%	-
Contingencies / Reserves	-	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 9			
Ending Fund Balance			\$ 20,146		15,974
<u>Library Gift & Memorial</u>					
Beg Fund Balance	\$ 30,062	\$ -	\$ 86,809	289%	92,623
Revenues	139,100	765	55,600	40%	123,676
Expenses	135,500	9,514	55,975	41%	129,491
Contingencies / Reserves	33,662	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ (8,749)			
Ending Fund Balance			\$ 86,434		86,808
<u>Building Inspection</u>					
Beg Fund Balance	\$ 296,733	\$ -	\$ 387,961	131%	339,929
Revenues	384,750	30,440	650,116	169%	409,914
Expenses	430,956	36,265	417,698	97%	361,882
Contingencies / Reserves	250,527	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ (5,825)			
Ending Fund Balance			\$ 620,379		387,961

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF JUNE 2015	2014-15 YTD	Current YTD Compare to Budget	2013-14 PRIOR YTD
				100%	
<u>Streets (Operating)</u>					
Beg Fund Balance	\$ 638,391	\$ -	\$ 668,873	105%	689,103
Revenues	1,350,500	221,731	1,404,348	104%	1,343,472
Expenses	1,479,719	114,644	1,271,141	86%	1,363,702
Contingencies / Reserves	509,172	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 107,087			
Ending Fund Balance			\$ 802,080		668,873
<u>Water (Operating)</u>					
Beg Fund Balance	\$ 2,741,790	\$ -	\$ 3,127,505	114%	4,783,887
Revenues	4,879,371	382,535	5,177,107	106%	4,787,012
Expenses	4,928,586	266,395	4,676,440	95%	6,443,393
Contingencies / Reserves	2,692,575	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 116,139			
Ending Fund Balance			\$ 3,628,173		3,127,506
<u>Wastewater (Operating)</u>					
Beg Fund Balance	\$ 4,188,939	\$ -	\$ 4,576,380	109%	7,576,184
Revenues	7,030,230	565,618	6,584,039	94%	6,678,368
Expenses	6,999,879	359,876	6,401,093	91%	9,678,172
Contingencies / Reserves	4,219,290	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 205,742			
Ending Fund Balance			\$ 4,759,327		4,576,380
<u>Stormwater (Operating)</u>					
Beg Fund Balance	\$ 236,855	\$ -	\$ 430,824	182%	1,004,730
Revenues	1,097,015	100,350	1,190,169	108%	1,100,496
Expenses	1,073,613	75,139	857,320	80%	1,674,402
Contingencies / Reserves	260,257	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 25,211			
Ending Fund Balance			\$ 763,673		430,824

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF JUNE 2015	2014-15 YTD	Current YTD Compare to Budget	2013-14 PRIOR YTD
				100%	
<u>Administrative Support</u>					
Beg Fund Balance	\$ 740,869	\$ -	\$ 802,648	108%	684,851
Revenues	3,682,586	305,441	3,646,380	99%	3,336,941
Expenses					
City Manager	287,592	20,921	255,347	89%	238,988
Human Resources	145,874	12,489	159,100	109%	150,849
City Recorder	150,860	7,682	108,289	72%	153,494
Emergency Management	-	96	96	#DIV/0!	7,343
Finance	528,586	38,279	543,807	103%	496,291
Gen Office(Postage/Phones)	155,000	11,647	138,273	89%	132,096
Utility Billing	287,939	22,875	257,136	89%	220,086
Information Technology	882,357	63,719	687,508	78%	597,994
Legal	456,011	37,564	437,755	96%	387,674
Fleet Maintenance	168,423	15,218	161,658	96%	183,075
Facilities Repair/Replacement	343,990	20,120	352,051	102%	353,053
Insurance	350,000	3,300	246,513	70%	298,200
Transfers	500,000	-	500,000	100%	-
Contingencies / Reserves	166,823	-	-	0%	-
Total Expenses	4,423,455	253,910	3,847,532	87%	3,219,144
Monthly Activity Net Gain / (Loss)		\$ 51,530			
Ending Fund Balance			\$ 601,496		802,648

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF JUNE 2015	2014-15 YTD	Current YTD Compare to Budget 100%	2013-14 PRIOR YTD
Capital Improvement Projects					
<u>Streets CIP's</u>					
Beg Fund Balance	\$ 158,192	\$ -	\$ 163,489	0%	109,838
Revenues	1,435,301	15,950	568,258	40%	2,019,408
Expenses	1,435,000	15,879	567,538	40%	1,965,757
Contingencies / Reserves	158,493	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 71			
Ending Fund Balance			\$ 164,209		163,488
<u>Water / Wastewater / Stormwater CIP's</u>					
Beg Fund Balance	\$ -	\$ -	\$ 451,461	0%	-
Revenues	5,944,007	1,422,357	4,095,118	69%	2,758,683
Expenses	5,944,007	106,714	3,327,536	56%	2,307,221
Contingencies / Reserves	-	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 1,315,643			
Ending Fund Balance			\$ 1,219,042		451,461
<u>Wastewater Financed CIP's</u>					
Beg Fund Balance	\$ -	\$ -	\$ (5,104,064)	0%	-
Revenues	21,088,728	881,683	12,930,676	61%	4,620,523
Expenses	21,088,728	1,236,010	8,575,708	41%	9,447,632
Contingencies / Reserves	-	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ (354,327)			
Ending Fund Balance			\$ (749,096)		(4,827,109)

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF JUNE 2015	2014-15 YTD	Current YTD Compare to Budget 100%	2013-14 PRIOR YTD
<u>Street SDC</u>					
Beg Fund Balance	\$ 2,207,054	\$ -	\$ 2,225,545	101%	2,534,551
Revenues	762,500	18,021	555,244	73%	242,129
Expenses	1,005,000	14,163	206,315	21%	551,134
Contingencies / Reserves	1,964,554	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 3,859			
Ending Fund Balance			\$ 2,574,473		2,225,545
<u>Water SDC</u>					
Beg Fund Balance	\$ 298,188	\$ -	\$ (54,053)	-18%	468,918
Revenues	1,670,466	78,018	1,645,819	99%	1,169,177
Expenses	1,965,416	769,137	1,044,704	53%	1,692,149
Contingencies / Reserves	3,238	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ (691,119)			
Ending Fund Balance			\$ 547,062		(54,053)
<u>Wastewater SDC</u>					
Beg Fund Balance	\$ 3,219,421	\$ -	\$ 3,176,180	99%	1,794,112
Revenues	693,766	46,011	1,287,685	186%	1,777,872
Expenses	1,681,745	61,095	344,668	20%	395,804
Contingencies / Reserves	2,231,442	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ (15,084)			
Ending Fund Balance			\$ 4,119,197		3,176,180
<u>Stormwater SDC</u>					
Beg Fund Balance	\$ 166,722	\$ -	\$ 148,161	89%	351,007
Revenues	67,000	3,252	37,857	57%	25,180
Expenses	102,500	5,487	54,602	53%	228,026
Contingencies / Reserves	131,222	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ (2,235)			
Ending Fund Balance			\$ 131,416		148,161

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF JUNE 2015	2014-15 YTD	Current YTD Compare to Budget 100%	2013-14 PRIOR YTD
Debt					
<u>Debt Service (General Op)</u>					
Beg Fund Balance	\$ 197,349	\$ -	\$ 206,903	105%	195,259
Revenues	892,667	(7,160)	885,251	99%	883,458
Expenses	889,332	6,615	889,331	100%	875,870
Contingencies / Reserves	200,684	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ (13,775)			
Ending Fund Balance			\$ 202,823		202,847
<u>City Hall</u>					
Beg Fund Balance	\$ 545,937	\$ -	\$ 548,803	101%	576,115
Revenues	95,909	6,726	97,263	101%	49,568
Expenses	114,751	2,123	110,465	96%	108,223
Contingencies / Reserves	-	-	-	0%	-
Unappropriated Ending Balance	527,095	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 4,603			
Ending Fund Balance			\$ 535,601		517,460

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF JUNE 2015	2014-15 YTD	Current YTD Compare to Budget 100%	2013-14 PRIOR YTD
Reserves					
<u>Water Replacement Reserve</u>					
Beg Fund Balance	\$ 4,709,677	\$ -	\$ 4,782,060	102%	2,961,007
Revenues	615,000	2,232	624,224	101%	2,317,771
Expenses	707,500	32,272	258,956	37%	496,719
Contingencies / Reserves	4,617,177	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ (30,040)			
Ending Fund Balance			\$ 5,147,328		4,782,059
<u>Wastewater Replacement Reserve</u>					
Beg Fund Balance	\$ 5,510,301	\$ -	\$ 5,365,101	97%	1,234,745
Revenues	1,015,000	2,812	1,029,239	101%	4,750,793
Expenses	1,468,500	509,745	414,135	28%	620,593
Contingencies / Reserves	5,056,801	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ (506,933)			
Ending Fund Balance			\$ 5,980,205		5,364,944
<u>Stormwater Replacement Reserve</u>					
Beg Fund Balance	\$ 811,500	\$ -	\$ 812,069	100%	-
Revenues	52,500	296	53,650	102%	812,069
Expenses	217,500	-	181,017	83%	-
Contingencies / Reserves	646,500	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 296			
Ending Fund Balance			\$ 684,702		812,069

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF JUNE 2015	2014-15 YTD	Current YTD Compare to Budget 100%	2013-14 PRIOR YTD
<u>Vehicle / Equipment Replacement</u>					
Beg Fund Balance	\$ 1,133,710	\$ -	\$ 1,206,430	106%	1,658,968
Revenues	\$ 1,242,464	\$ 28,111	\$ 783,774	63%	881,428
Expenses					
General Government	-	-	-	0%	-
City Manager's Office	-	-	-	0%	1,632
Human Resources	-	-	-	0%	-
City Recorder/Clerk	-	-	-	0%	-
Finance	-	-	-	0%	1,762
Information Technology	384,172	-	202,899	53%	536,872
Legal	-	-	-	0%	-
Municipal Court	-	-	-	0%	-
Police	123,017	-	89,453	73%	88,255
Fire	543,111	-	117,474	22%	-
Communications	15,000	-	6,149	41%	19,000
Library	-	-	-	0%	-
Planning	11,548	-	11,137	96%	-
Building	-	-	-	0%	-
PW Administration	162,551	-	146,552	90%	666,649
Fleet Maintenance	12,500	70	539	0%	264
Facilities Repair/Replacement	75,000	1,098	53,575	71%	19,531
Contingencies / Reserves	1,049,275	-	-	0%	-
Total Expenses	2,376,174	1,168	627,778	26%	1,333,966
Monthly Activity Net Gain / (Loss)		\$ 26,943			
Ending Fund Balance			\$ 1,362,426		1,206,430
<u>Fire & EMS Equip Fee</u>					
Beg Fund Balance	\$ 100,371	\$ -	\$ 110,942	111%	174,453
Revenues	141,000	12,214	144,427	102%	195,877
Expenses	241,371	-	11,179	5%	259,388
Contingencies / Reserves	-	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 12,214			
Ending Fund Balance			\$ 244,190		110,942

SUMMARY REPORT

FUNDS	2014-15 BUDGET	MONTH OF JUNE 2015	2014-15 YTD	Current YTD Compare to Budget 100%	2013-14 PRIOR YTD
Community Projects					
<u>Cable TV Trust</u>					
Beg Fund Balance	\$ 26,895	\$ -	\$ 41,942	156%	41,744
Revenues	150	16	178	119%	195
Expenses	15,000	-	4,782	32%	-
Contingencies / Reserves	12,045	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 16			
Ending Fund Balance			\$ 37,339		41,939
<u>Economic Development</u>					
Beg Fund Balance	\$ 529,678	\$ -	\$ 601,964	114%	643,183
Revenues	266,645	3,819	194,142	73%	322,766
Expenses	514,429	7,113	149,634	29%	363,985
Contingencies / Reserves	281,894	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ (3,294)			
Ending Fund Balance			\$ 646,472		601,964

SUMMARY REPORT

FUNDS	2015-16 BUDGET	MONTH OF JULY 2015	2015-16 YTD	Current YTD Compare to Budget	2014-15 PRIOR YTD
				8%	
City Budget Totals					
Total Beg Fund Balance	\$ 33,133,594	\$ -	\$ -	0%	31,493,673
Total Revenues	55,031,136	2,305,405	2,305,405	4%	54,385,740
Total Beg Fund Bal & Revenues	88,164,730	2,305,405	2,305,405		85,879,413
Total Expenses	65,422,358	2,535,828	2,535,828	4%	57,508,091
Total Contingencies / Reserves	22,742,372	-	-	0%	-
Total Exp & Contingen / Reserves	88,164,730	2,535,828	2,535,828	3%	57,508,091
Total Monthly Activity Net Gain / (Loss)		\$ (230,423)			
Total Ending Fund Balance		\$ (230,423)			28,371,322

City Services

General Fund

Beg Fund Balance	\$ 2,528,413	\$ -	\$ -	0%	2,835,743
Revenues					
General Government	-	-	-	0%	25,108.00
Municipal Court	31,000	2,303	2,303	7%	33,095
Police	1,074,135	117,493	117,493	11%	1,187,390
Fire	330,504	15	15	0%	315,530
Communications	59,686	14,894	14,894	25%	53,904
Library	112,859	4,451	4,451	4%	106,932
Planning	476,700	17,870	17,870	4%	254,981
Property Taxes	7,200,000	41,172	41,172	1%	6,589,625
Other Taxes	1,400	50	50	4%	513,042
Franchise Fees	1,486,882	-	-	0%	1,432,675
Intergovernmental	1,246,755	105,822	105,822	8%	1,122,497
Miscellaneous	2,500	1,672	1,672	67%	575
Interest	7,300	323	323	4%	9,579
Transfers	555,000	-	-	0%	-
Revenue Total	12,584,721	306,065	306,065	2%	11,644,932
Expenses					
General Government	178,758	20,918	20,918	12%	399,922
Municipal Court	356,023	28,799	28,799	8%	275,746
Police	5,695,178	439,775	439,775	8%	5,362,643
Fire	3,356,599	268,271	268,271	8%	3,196,397
Communications	1,061,396	134,889	134,889	13%	951,135
Library	1,251,056	82,175	82,175	7%	1,118,260
Planning	613,035	50,205	50,205	8%	630,798
Transfers	39,067	-	-	0%	41,578
Contingency	1,462,022	-	-	0%	-
Unappropriated Ending Balance	1,100,000	-	-	0%	-
Total Expenses	15,113,134	1,025,033	1,025,033	7%	11,976,479
Monthly Activity Net Gain / (Loss)		\$ (718,968)			
Ending Fund Balance		\$ (718,968)			2,504,195

SUMMARY REPORT

FUNDS	2015-16 BUDGET	MONTH OF JULY 2015	2015-16 YTD	Current YTD Compare to Budget 8%	2014-15 PRIOR YTD
<u>Public Safety Fee</u>					
Beg Fund Balance	\$ 134,969	\$ -	\$ -	0%	196,153
Revenues	480,600	40,324	40,324	8%	308,463
Expenses	522,796	36,240	36,240	7%	327,507
Contingencies / Reserves	92,773	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 4,085			
Ending Fund Balance			\$ 4,085		177,109
<u>EMS</u>					
Beg Fund Balance	\$ 595,725	\$ -	\$ -	0%	457,509
Revenues	1,791,600	155,776	155,776	9%	1,611,218
Expenses	1,789,930	121,449	121,449	7%	1,462,616
Contingencies / Reserves	597,395	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 34,327			
Ending Fund Balance			\$ 34,327		606,111
<u>911 Emergency</u>					
Beg Fund Balance	\$ 19,768	\$ -	\$ -	0%	89,061
Revenues	196,200	6	6	0%	198,380
Expenses	197,566	15,223	15,223	8%	224,835
Contingencies / Reserves	18,402	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ (15,217)			
Ending Fund Balance			\$ (15,217)		62,606
<u>Civil Forfeiture</u>					
Beg Fund Balance	\$ 19,596	\$ -	\$ -	0%	-
Revenues	4,100	6	6	0%	15,974
Expenses	23,696	-	-	0%	-
Contingencies / Reserves	-	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 6			
Ending Fund Balance			\$ 6		15,974
<u>Library Gift & Memorial</u>					
Beg Fund Balance	\$ 48,169	\$ -	\$ -	0%	92,623
Revenues	129,389	971	971	1%	123,676
Expenses	171,000	1,761	1,761	1%	129,491
Contingencies / Reserves	6,558	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ (790)			
Ending Fund Balance			\$ (790)		86,808
<u>Building Inspection</u>					
Beg Fund Balance	\$ 404,838	\$ -	\$ -	0%	339,929
Revenues	407,850	55,989	55,989	14%	409,914
Expenses	456,453	35,736	35,736	8%	361,882
Contingencies / Reserves	356,235	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 20,253			
Ending Fund Balance			\$ 20,253		387,961

SUMMARY REPORT

FUNDS	2015-16 BUDGET	MONTH OF JULY 2015	2015-16 YTD	Current YTD Compare to Budget 8%	2014-15 PRIOR YTD
<u>Streets (Operating)</u>					
Beg Fund Balance	\$ 808,548	\$ -	\$ -	0%	689,103
Revenues	1,343,520	3,585	3,585	0%	1,343,472
Expenses	1,516,339	70,008	70,008	5%	1,363,702
Contingencies / Reserves	635,729	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ (66,424)			
Ending Fund Balance			\$ (66,423)		668,873
<u>Water (Operating)</u>					
Beg Fund Balance	\$ 3,294,255	\$ -	\$ -	0%	4,783,887
Revenues	9,851,130	590,220	590,220	6%	4,787,012
Expenses	8,298,954	236,092	236,092	3%	6,443,393
Contingencies / Reserves	4,846,431	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 354,128			
Ending Fund Balance			\$ 354,128		3,127,506
<u>Wastewater (Operating)</u>					
Beg Fund Balance	\$ 4,403,799	\$ -	\$ -	0%	7,576,184
Revenues	11,780,602	568,965	568,965	5%	6,678,368
Expenses	8,419,662	281,652	281,652	3%	9,678,172
Contingencies / Reserves	7,764,739	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 287,313			
Ending Fund Balance			\$ 287,313		4,576,380
<u>Stormwater (Operating)</u>					
Beg Fund Balance	\$ 573,645	\$ -	\$ -	0%	1,004,730
Revenues	1,924,972	100,285	100,285	5%	1,100,496
Expenses	1,680,019	83,397	83,397	5%	1,674,402
Contingencies / Reserves	818,598	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 16,888			
Ending Fund Balance			\$ 16,888		430,824

SUMMARY REPORT

FUNDS	2015-16 BUDGET	MONTH OF JULY 2015	2015-16 YTD	Current YTD Compare to Budget 8%	2014-15 PRIOR YTD
<u>Administrative Support</u>					
Beg Fund Balance	\$ 563,272	\$ -	\$ -	0%	684,851
Revenues	3,652,103	307,137	307,137	8%	3,336,941
Expenses					
City Manager	529,362	34,643	34,643	7%	238,988
Human Resources	-	-	-	0%	150,849
City Recorder	-	-	-	0%	153,494
Emergency Management	-	-	-	0%	7,343
Finance	544,827	48,641	48,641	9%	496,291
Gen Office(Postage/Phones)	155,000	11,759	11,759	8%	132,096
Utility Billing	275,106	27,748	27,748	10%	220,086
Information Technology	683,610	60,538	60,538	9%	597,994
Legal	497,180	37,156	37,156	7%	387,674
Fleet Maintenance	178,772	17,645	17,645	10%	183,075
Facilities Repair/Replacement	417,695	25,268	25,268	6%	353,053
Insurance	353,168	269,381	269,381	76%	298,200
Transfers	-	-	-	0%	-
Contingencies / Reserves	580,655	-	-	0%	-
Total Expenses	4,215,375	532,778	532,778	13%	3,219,144
Monthly Activity Net Gain / (Loss)		\$ (225,640)			
Ending Fund Balance			\$ (225,641)		802,648

SUMMARY REPORT

FUNDS	2015-16 BUDGET	MONTH OF JULY 2015	2015-16 YTD	Current YTD Compare to Budget 8%	2014-15 PRIOR YTD
Capital Improvement Projects					
<u>Streets CIP's</u>					
Beg Fund Balance	\$ 164,193	\$ -	\$ -	0%	109,838
Revenues	778,425	4,472	4,472	1%	2,019,408
Expenses	777,625	4,426	4,426	1%	1,965,757
Contingencies / Reserves	164,993	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 46			
Ending Fund Balance			\$ 46		163,488
<u>Water / Wastewater / Stormwater CIP's</u>					
Beg Fund Balance	\$ -	\$ -	\$ -	0%	-
Revenues	6,346,875	13,352	13,352	0%	2,758,683
Expenses	6,346,875	13,352	13,352	0%	2,307,221
Contingencies / Reserves	-	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ -			
Ending Fund Balance			\$ -		451,461
<u>Wastewater Financed CIP's</u>					
Beg Fund Balance	\$ -	\$ -	\$ -	0%	-
Revenues	-	-	-	0%	4,620,523
Expenses	-	258	258	#DIV/0!	9,447,632
Contingencies / Reserves	-	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ (258)			
Ending Fund Balance			\$ (258)		(4,827,109)

SUMMARY REPORT

FUNDS	2015-16 BUDGET	MONTH OF JULY 2015	2015-16 YTD	Current YTD Compare to Budget 8%	2014-15 PRIOR YTD
<u>Street SDC</u>					
Beg Fund Balance	\$ 1,918,739	\$ -	\$ -	0%	2,534,551
Revenues	47,839	11,050	11,050	23%	242,129
Expenses	259,125	1,466	1,466	1%	551,134
Contingencies / Reserves	1,707,453	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 9,584			
Ending Fund Balance			\$ 9,584		2,225,545
<u>Water SDC</u>					
Beg Fund Balance	\$ 36	\$ -	\$ -	0%	468,918
Revenues	927,540	16,171	16,171	2%	1,169,177
Expenses	846,856	-	-	0%	1,692,149
Contingencies / Reserves	80,720	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 16,171			
Ending Fund Balance			\$ 16,171		(54,053)
<u>Wastewater SDC</u>					
Beg Fund Balance	\$ 3,475,181	\$ -	\$ -	0%	1,794,112
Revenues	75,120	25,724	25,724	34%	1,777,872
Expenses	739,361	127	127	0%	395,804
Contingencies / Reserves	2,810,940	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 25,598			
Ending Fund Balance			\$ 25,598		3,176,180
<u>Stormwater SDC</u>					
Beg Fund Balance	\$ 138,259	\$ -	\$ -	0%	351,007
Revenues	3,980	3,746	3,746	94%	25,180
Expenses	3,125	-	-	0%	228,026
Contingencies / Reserves	139,114	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 3,746			
Ending Fund Balance			\$ 3,746		148,161

SUMMARY REPORT

FUNDS	2015-16 BUDGET	MONTH OF JULY 2015	2015-16 YTD	Current YTD Compare to Budget 8%	2014-15 PRIOR YTD
Debt					
<u>Debt Service (General Op)</u>					
Beg Fund Balance	\$ 206,309	\$ -	\$ -	0%	195,259
Revenues	896,711	20,055	20,055	2%	883,458
Expenses	895,317	-	-	0%	875,870
Contingencies / Reserves	207,703	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 20,055			
Ending Fund Balance			\$ 20,055		202,847
<u>City Hall</u>					
Beg Fund Balance	\$ 529,638	\$ -	\$ -	0%	576,115
Revenues	89,400	2,875	2,875	3%	49,568
Expenses	108,240	-	-	0%	108,223
Contingencies / Reserves	-	-	-	0%	-
Unappropriated Ending Balance	510,798	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 2,875			
Ending Fund Balance			\$ 2,875		517,460

SUMMARY REPORT

FUNDS	2015-16 BUDGET	MONTH OF JULY 2015	2015-16 YTD	Current YTD Compare to Budget 8%	2014-15 PRIOR YTD
Reserves					
<u>Water Replacement Reserve</u>					
Beg Fund Balance	\$ 5,018,630	\$ -	\$ -	0%	2,961,007
Revenues	-	-	-	0%	2,317,771
Expenses	5,018,630	-	-	0%	496,719
Contingencies / Reserves	-	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ -			
Ending Fund Balance			\$ -		4,782,059
<u>Wastewater Replacement Reserve</u>					
Beg Fund Balance	\$ 5,193,602	\$ -	\$ -	0%	1,234,745
Revenues	-	-	-	0%	4,750,793
Expenses	5,193,602	-	-	0%	620,593
Contingencies / Reserves	-	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ -			
Ending Fund Balance			\$ -		5,364,944
<u>Stormwater Replacement Reserve</u>					
Beg Fund Balance	\$ 814,722	\$ -	\$ -	0%	-
Revenues	-	-	-	0%	812,069
Expenses	814,722	-	-	0%	-
Contingencies / Reserves	-	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ -			
Ending Fund Balance			\$ -		812,069

SUMMARY REPORT

FUNDS	2015-16 BUDGET	MONTH OF JULY 2015	2015-16 YTD	Current YTD Compare to Budget 8%	2014-15 PRIOR YTD
<u>Vehicle / Equipment Replacement</u>					
Beg Fund Balance	\$ 1,367,710	\$ -	\$ -	0%	1,658,968
Revenues	\$ 653,111	\$ 58,485	\$ 58,485	9%	881,428
Expenses					
General Government	1,348	-	-	0%	-
City Manager's Office	4,856	-	-	0%	1,632
Human Resources	-	-	-	0%	-
City Recorder/Clerk	-	-	-	0%	-
Finance	17,267	-	-	0%	1,762
Information Technology	241,635	12,323	12,323	5%	536,872
Legal	411	-	-	0%	-
Municipal Court	4,548	-	-	0%	-
Police	530,369	-	-	0%	88,255
Fire	494,099	-	-	0%	-
Communications	97,865	-	-	0%	19,000
Library	11,374	-	-	0%	-
Planning	-	-	-	0%	-
Building	49,573	-	-	0%	-
PW Administration	381,089	49,403	49,403	13%	666,649
Fleet Maintenance	14,521	102	102	0%	264
Facilities Repair/Replacement	157,000	538	538	0%	19,531
Contingencies / Reserves	14,866	-	-	0%	-
Total Expenses	2,020,821	62,366	62,366	3%	1,333,966
Monthly Activity Net Gain / (Loss)		\$ (3,881)			
Ending Fund Balance			\$ (3,881)		1,206,430
<u>Fire & EMS Equip Fee</u>					
Beg Fund Balance	\$ 244,012	\$ -	\$ -	0%	174,453
Revenues	143,700	12,157	12,157	8%	195,877
Expenses	387,712	-	-	0%	259,388
Contingencies / Reserves	-	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 12,157			
Ending Fund Balance			\$ 12,157		110,942

SUMMARY REPORT

FUNDS	2015-16 BUDGET	MONTH OF JULY 2015	2015-16 YTD	Current YTD Compare to Budget 8%	2014-15 PRIOR YTD
Community Projects					
<u>Cable TV Trust</u>					
Beg Fund Balance	\$ 38,171	\$ -	\$ -	0%	41,744
Revenues	200	11	11	5%	195
Expenses	38,371	-	-	0%	-
Contingencies / Reserves	-	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 11			
Ending Fund Balance			\$ 11		41,939
<u>Economic Development</u>					
Beg Fund Balance	\$ 629,395	\$ -	\$ -	0%	643,183
Revenues	66,448	7,982	7,982	12%	322,766
Expenses	446,640	3,048	3,048	1%	363,985
Contingencies / Reserves	249,203	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ 4,934			
Ending Fund Balance			\$ 4,934		601,964
<u>Transient Lodging Tax</u>					
Beg Fund Balance	\$ -	\$ -	\$ -	0%	-
Revenues	855,000	(3)	(3)	0%	-
Expenses	855,000	11,417	11,417	1%	-
Contingencies / Reserves	-	-	-	0%	-
Monthly Activity Net Gain / (Loss)		\$ (11,420)			
Ending Fund Balance			\$ (11,420)		-

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: October 5, 2015

Order ___ No.	Ordinance ___ No.	Resolution _ No.	Motion <u>XX</u>	Information ___
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SUBJECT: Approve a Food for Fines project for the Library

Contact Person (Preparer) for this
Resolution: Leah M. Griffith, Director
Korie Buerkle, Assistant Director
Dept.: Library
File No.:

RECOMMENDATION: Approve a Food for Fines event for the Newberg Public Library for October 20-31, 2015 in conjunction with the 40th anniversary of Newberg FISH.

EXECUTIVE SUMMARY: Many libraries hold Food for Fines events periodically to encourage library users to pay off fines (up to \$20) in exchange for food for the local food bank. The last time Newberg Public Library held a Food for Fines was in February 2012 in conjunction with leap year.

This Food for Fines would be in recognition of the 40 years that Newberg FISH (Friends in Service to Humanity) has been providing food to the neediest in our community. They are celebrating their 40th anniversary with a number of activities including having a display in the library lobby and sponsoring the showing of the Back to The Future trilogy which is celebrating its “future”, October 20, 2015. We will be showing all three films, with one each night of October 20th, 21st and 22nd.

Library users would be allowed to pay off up to \$20 in overdue fines only, food will not be accepted for replacement fees, lost item charges or damaged charges.

A list of acceptable items for Food for Fine will be posted. Perishable, damaged, expired and unlabeled items will not be accepted.

FISCAL IMPACT: The loss of revenue at the February, 2012 Food for Fines was negligible. And other libraries find the same thing. Many people come in and pay their fines in addition to bringing in food. There is the potential loss of \$300 in fines, however as noted above, revenue loss is expected to be minimal or not at all.

These events are also known for the return of long overdue materials, the value of which quickly exceeds the loss in revenue.

STRATEGIC ASSESSMENT: A Food for Fines event can assist in the return of long overdue materials which then do not have to be replaced. It can clear up fines for a number of readers. It also provides an opportunity for the public to support the community food bank, especially in its 40th year of service. This project will not be a yearly event as we do not want to encourage people to wait for an appointed time to pay off fines with food each year.

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: October 5, 2015

Order ___ Ordinance XX Resolution ___ Motion ___ Information ___
No. No. 2015-2786 No.

SUBJECT: Repeal Ordinance No. 2013-2761

Contact Person (Preparer) for this
Motion: Jessica Pelz
Dept.: Community Development
File No.: UGB-09-001

HEARING TYPE: LEGISLATIVE QUASI-JUDICIAL NOT APPLICABLE

RECOMMENDATION: Adopt Ordinance No. 2015-2786, repealing Ordinance No. 2013-2761.

EXECUTIVE SUMMARY: City Council adopted Ordinance No. 2013-2761 on May 20, 2013, to adopt revised findings in support of the south industrial urban growth boundary amendment, revisions to the economic opportunities analysis, amendments to the comprehensive plan and transportation system plan, and repealing certain ordinances. The other ordinances repealed by Ordinance No. 2013-2761 included Ordinances Nos. 2010-2723, 2010-2740, 2012-2751, and 2013-2759, which were all related to earlier versions of the economic opportunities analysis, south industrial urban growth boundary amendment, and related amendments. Due to space constraints, the text of those ordinances is not included here, but they can be found individually on the city website at codepublishing.com/OR/Newberg/ under “tables” in the table of contents.

Repeal of Ordinance No. 2013-2761 does the following:

- Repeals the South Industrial UGB Report and Findings, including its appendices.
- Removes certain area from the Newberg Urban Growth Boundary that was added as part of the South Industrial UGB Report, and would *not* apply the proposed comprehensive plan designation of those properties to Newberg IND (Industrial) and PQ (Public/Quasi-Public).
- Would *not* apply a comprehensive plan designation of IND to tax lots 3221-2600 and 3228BB-100; these tax lots will retain their current Medium Density Residential (MDR) designation.
- Repeals the updated Newberg Economic Opportunities Analysis (EOA); the current version of the EOA will be the adopted 2006 version, which can be found on the city website at www.newbergoregon.gov/economic-opportunities-analysis.
- Repeals proposed Comprehensive Plan text amendments related to updated population numbers, updated buildable land supply and need information, and several policies related to the updated EOA. The current Comprehensive Plan can be found on the city website at www.newbergoregon.gov/comprehensive-plan.
- Repeals the future transportation plan text and map for the South Industrial area.
- Also repeals Ordinance Nos. 2010-2723, 2010-2740, 2012-2751, and 2013-2759.

Note: the full text of Ordinance No. 2013-2761 can be found online here: www.newbergoregon.gov/ord2761.pdf.

This action is necessary to withdraw Newberg’s application for the south industrial urban growth boundary amendment, revised Economic Opportunities Analysis, and related amendments from the Department of Land Conservation and Development, as directed by Resolution No. 2015-3189. The next steps in this process are to work with Yamhill County to repeal Yamhill County Ordinance 882 adopting Newberg’s South Industrial Area UGB amendment, and then to notify the Land Conservation and Development

Commission that we have completed our local repeal of the proposed UGB amendment and withdraw our application from their consideration. This action is anticipated to be at the December 3-4, 2015, Commission meeting.

FISCAL IMPACT: No impact at this time.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS): Future planning for the city, including urban growth boundary amendments, is related to Council goals #1: Create a clear vision for the future of Newberg, maintaining its small town feel, and #4: Foster and encourage economic development in the community.

ATTACHMENTS:

1. Resolution No. 2015-3189



RESOLUTION No. 2015-3189

A RESOLUTION AUTHORIZING STAFF TO WITHDRAW NEWBERG'S APPLICATION FOR THE SOUTH INDUSTRIAL URBAN GROWTH BOUNDARY AMENDMENT, REVISED ECONOMIC OPPORTUNITIES ANALYSIS, AND RELATED AMENDMENTS FROM THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

RECITALS:

1. City Council adopted Ordinance No. 2013-2761 in May, 2013, which adopted revised findings in support of the south industrial urban growth boundary amendment (UGB), revisions to the Economic Opportunities Analysis (EOA), amendments to the comprehensive plan and transportation system plan, and repealed certain ordinances.
2. The city submitted the UGB application to the Department of Land Conservation and Development (DLCD) in August, 2013. DLCD referred Newberg's application to the Land Conservation and Development Commission (LCDC) in December, 2013. LCDC held hearings on Newberg's UGB application on 2/13/14 and 3/14/14. DLCD staff has recommended that LCDC remand Newberg's application on multiple points.
3. Many of the proposed remand points are centered on the information in Newberg's EOA. Statewide Planning Goal 9 (Economy) requires cities to adopt EOAs to guide long-term economic development. State rules allow local governments to specify site characteristics necessary for land to be suitable for employment land. The Land Use Board of Appeals and Oregon Court of Appeals recently ruled on how to determine site suitability characteristics in the court cases *Friends of Yamhill County v. City of Newberg*, OR LUBA (August, 2010) and *Friends of Yamhill County v. City of Newberg*, Or App (February 2011).
4. Newberg's revised EOA contained cited research from other cities, published studies, reports, and other documents meant to address the court's ruling. DLCD's proposed remand order undermines the court's ruling by setting an impossibly high bar for local governments to meet with regard to determining site suitability characteristics and "proof" of what is "necessary" and "typical" for industries.
5. If Newberg were to accept the proposed remand, there is a high likelihood the EOA would be significantly negatively affected, which would hinder future long-term planning efforts. By choosing to withdraw the entire application from DLCD, Newberg can take a step back from the legal process, examine the options, and choose the right path to enable healthy long-term planning for the city's future.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. Staff is hereby authorized to withdraw Newberg's application for the south industrial urban growth

boundary amendment, revised Economic Opportunities Analysis, and related amendments from the Department of Land Conservation and Development.

2. Exhibit "A", DLCD second supplemental report to LCDC, dated March 7, 2014, and Exhibit "B", timeline of events related to the Newberg South Industrial UGB Amendment, dated March 27, 2014, are hereby attached and by this reference incorporated.

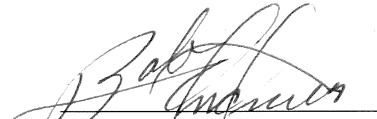
➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: May 5, 2015.

ADOPTED by the City Council of the City of Newberg, Oregon, this 4th day of May, 2015.



Sue Ryan, City Recorder

ATTEST by the Mayor this 7th day of May 2015.



Bob Andrews, Mayor



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD



March 7, 2014

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director
Carrie MacLaren, Deputy Director
Rob Hallyburton, Community Services Division Manager

SUBJECT: Agenda Item 13, March 13-14, 2014, LCDC Meeting

CITY OF NEWBERG – URBAN GROWTH BOUNDARY AMENDMENT SECOND SUPPLEMENTAL REPORT

I. SUMMARY

The Land Conservation and Development Commission (commission) conducted a hearing on February 13, 2014, to consider a referral from the director of the Department of Land Conservation and Development (department) of an amendment to the Newberg urban growth boundary (UGB) submitted by the City of Newberg (city) and Yamhill County. The commission received oral argument from the city and several objectors, deliberated, and continued the hearing to its March 13-14, 2014 meeting. This report addresses issues raised at the hearing, other items in objections, exceptions, and materials submitted after the February 13, 2014 hearing that the commission has not yet considered.

A. Staff Contact Information

If you have questions about this agenda item, please contact Angela Lazarean, Mid-Willamette Valley Regional Representative, at (503) 934-0056 or angela.lazarean@state.or.us.

B. Recommendation

The department recommends the commission remand the Newberg UGB amendment submittal for further development of the record and analysis. The specific recommendations are provided below, with changes to the recommendation in the Staff Report indicated by underscore for additions and ~~overstrike for deletions~~.

The department recommends the commission instruct the city, on remand, to:

1. Demonstrate that the following “site characteristics” identified by the city pursuant to OAR 660-009-0015(2) and OAR 660-024-0060(5) are meaningfully connected with the operation of a target industry or a group of target industries with compatible operational requirements, or consider the site and area needs during the analysis of alternative expansion areas under the Goal 14 location factors:

~~Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.~~

Exclude sites that require truck traffic to travel through or adjacent to a residential neighborhood to reach an arterial street or state highway.

Exclude sites that, for community centers, abut residential neighborhood on more than 50 percent of the site perimeter unless effective topographical or road buffers are present or planned.

Include parcels or contiguous group of parcels [that] adjoin an existing industrial or commercial area or an area with sufficient buildable land to allow expansion of the industrial district.

Include parcels or contiguous group of parcels [that] adjoin an existing industrial or commercial area, or an area with sufficient buildable land to allow expansion of the industrial district.

Include parcels or contiguous group of parcels [that] have suitable truck access to a state highway or arterial street within one-quarter mile.

Exclude [study areas] that are not predominantly less than 5 percent slope within buildable areas.

2. Demonstrate that the following “site characteristic” identified by the city pursuant to OAR 660-009-0015(2) and OAR 660-024-0060(5) is typical of and meaningfully connected to the operation of a target industry or a group of target industries with compatible operational requirements or consider the site and area needs during the analysis of alternative expansion areas under the Goal 14 location factors:

Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.

-
3. Explain why target industrial uses must be in close proximity to an arterial street or state highway and not a collector.
 4. Provide adequate evidence regarding the number of industrial sites needed during the planning period.
 5. Include the content required in OAR 660-009-0015(3) in the employment land inventory.
 6. Provide information regarding why the vacant A-dec site was not included in the buildable lands inventory.
 7. Provide information regarding whether a portion of the Springbrook District Village area is designated for non-commercial uses and how the land it was accounted for in the employment land inventory.
 - ~~8. Explain how the determination of the capacity of the existing UGB to accommodate employment growth considered employment growth on fully developed land.~~
 8. Clarify that the Zimri Road area (Site VI) is not adjacent to commercially zoned land, and provide adequate justification as to why this site cannot reasonably accommodate industrial uses, or consider it in the Goal 14 analysis of alternative locations to accommodate industrial land needs under OAR 660-024-0050(4).
 9. Adequately justify why the portion of South Springbrook Road outside the existing UGB (Subarea 12) is unsuitable for industrial use or consider the area in the Goal 14 analysis of alternative locations to accommodate industrial land needs.
 10. Adequately justify why Sites 8 and 9 (Newberg-Dundee corridor) are unsuitable for industrial use or consider them in the Goal 14 analysis of alternative locations to accommodate industrial land needs.
 11. Consider the Waste Management site vacant in the employment land inventory.
 12. Supplement the analysis of alternative expansion areas with an adequate factual base to demonstrate the Goal 14 location factors have been considered and balanced.

II. RECORD

The materials before the commission are:

1. The [written record](#) submitted by the city (listed in the department's January 23, 2014 staff report at p. 14)
2. Objections to the submittal submitted by:

- a. [Kathleen Carl](#)
 - b. [Shirley Cooper](#)
 - c. [Lee M. Does](#)
 - d. Friends of Yamhill County and 1000 Friends of Oregon ([Friends objection](#))
 - e. [Ranee Salmonsson](#), and
 - f. [Grace Schaad](#)
3. The department's January 23, 2014 staff report to the commission ([Staff Report](#))
 4. Exceptions to the Staff Report:
 - a. City of Newberg ([Newberg exception](#))
 - b. Friends of Yamhill County and 1000 Friends of Oregon ([Friends exception](#))
 5. The department's February 10, 2014 supplement staff report ([Supplemental Report](#))
 6. List of [questions](#) presented to the commission by the department at the February 13, 2014 hearing
 7. Newberg's February 20, 2014 response to issues raised at the LCDC hearing ([Newberg response](#))
 8. [Lee M. Does February 26](#), 2014 rebuttal to Newberg response
 9. Friends of Yamhill County and 1000 Friends of Oregon February 27, 2014 rebuttal to Newberg response ([Friends rebuttal](#))

All of these materials are hyperlinked above and available collectively at http://www.oregon.gov/LCD/Pages/newberg_ugb.aspx.

III. SITE CHARACTERISITCS

The city's use of site characteristics for limiting its consideration of land for UGB expansion has been a central issue in the objections to the submittal, and in the commission's initial hearing. The commission discussed to what extent its decision is bound by the opinion of the Land Use Board of Appeals (LUBA) and subsequent decision by the Court of Appeals in an earlier appeal of Newberg's Economic Opportunities Analysis (EOA).¹ Specifically, the commission discussed the appropriate interpretation of when a characteristic of a site is "necessary" for the site to be suitable for the intended use or for the intended use to operate.

To review, the relevant rule regarding application of site characteristics to a UGB amendment is OAR 660-024-0060(5):

"If a local government has specified characteristics such as parcel size, topography, or proximity that are *necessary for land to be suitable for an identified need*, the local government may limit its consideration to land that has the specified characteristics when it conducts the boundary location alternatives analysis and applies ORS 197.298." (Emphasis added.)

¹ [Friends of Yamhill County v. City of Newberg](#), 62 Or LUBA 5 (2010) *aff'd* [240 Or App 738](#) (2011). Note that the hyperlinks are to electronic versions of the opinions.

For employment land, a local government specifies site suitability characteristics during completion of an EOA. The definition of a “site characteristic” as it applies to employment land is found in OAR 660-009-0005(11):

“‘Site Characteristics’ means the attributes of a site *necessary for a particular industrial or other employment use to operate*. Site characteristics include, but are not limited to, a minimum acreage or site configuration including shape and topography, visibility, specific types or levels of public facilities, services or energy infrastructure, or proximity to a particular transportation or freight facility such as rail, marine ports and airports, multimodal freight or transshipment facilities, and major transportation routes.” (Emphasis added.)

LUBA and the Court of Appeals both interpreted how strictly the term “necessary” should be applied in the determination of site characteristics. The Court of Appeals’ opinion states:

“[W]e agree with LUBA that ‘site characteristics’ need not be ‘indispensable’ to a particular use in order to be ‘necessary for a particular industrial or other employment use to operate.’ The intent of Division 9 is to ensure that there is an ‘adequate supply of land for economic development and employment growth in Oregon,’ OAR 660-009-0000, which is vital to the health, welfare, and prosperity of the state * * *.’ That overriding intent to allow and plan for anticipated economic growth--in part, through the identification of ‘site characteristics’ that make the land ‘suitable’ to meet the needs of anticipated growth--suggests something other than petitioners’ strict ‘indispensability’ test that would take into consideration only those ‘site characteristics’ without which particular industry and employment uses could not operate. Rather, the planning scheme (based on projections and economic trends) suggests, as LUBA adopted, a more pragmatic approach toward accommodating economic growth: That ‘necessary’ site characteristics are those attributes that are *reasonably necessary* to the successful operation of particular industrial or employment uses, in the sense that they bear some *important relationship* to that operation. *Friends of Yamhill County v. City of Newberg*, 240 Or App 738, 747 (2011) (emphasis added).

The Court of Appeals articulated its understanding of the upper boundary of how strictly the term “necessary” should be applied as it interprets the commission’s rule: not as “indispensable,” but rather as “reasonably necessary” in a way that bears some “important relationship” to the particular operation. LUBA, in its opinion, used the term “meaningful connection.”² While neither body addressed the lower boundary in detail, LUBA’s opinion states:

² As noted in the Staff Report, the Court of Appeals’ articulation of “necessary” differed from LUBA’s. See Staff Report at 16-17. Specifically, the Court of Appeals articulates a “necessary” site characteristic as one that is “reasonably necessary” in the sense that it bears an “important relationship” to the operation of the particular use. LUBA characterized “necessary” in a two prong test: whether the site characteristic was “typical” and “meaningfully connected” to the operation of the particular use. While using different terminology, the Court of Appeals notes that the interpretation is essentially the same: “LUBA’s formulation of the relevant inquiry adequately captures the concept of reasonable necessity that is embodied in the rule.” *Friends*, 240 Or App at 747.

“[T]he city’s apparent belief that it can select site characteristics solely to give it sites that will have competitive advantages gives no meaning to the OAR 660-009-0005(11) requirement that a site characteristic must be an ‘attribute’ that is ‘necessary’ for the desired industrial use to ‘operate.’ The city’s exclusive focus on marketing concerns also runs the risk that the city might run afoul of other statewide planning goal and statutory obligations for establishing urban growth boundaries in a way that balances the need to provide adequate land for industrial development and statutory and goal standards for protecting agricultural, forest and other sensitive lands.” *Friends of Yamhill County v. City of Newberg*, 62 Or LUBA 5, 19-20 (2010) (slip op at 15), *aff’d* 240 Or App 747 (2011).

To summarize, LUBA and the Court of Appeals rejected interpretations of the term “necessary” that would mean “indispensable” (at one end of the spectrum) or simply a “marketing advantage” (at the other). Instead, the appellate bodies believed the commission intended something in between, but still with substance: reasonable, important, and meaningful as related to operational needs.

In its review, the department did not question whether LUBA’s two-pronged definition was appropriate but rather analyzed the submittal and objections with the assumption that a site characteristic is “necessary for a particular industrial or other employment use to operate” if the city demonstrated that LUBA’s two prongs – “typical” and “meaningfully connected” – were satisfied.³ Accordingly, the department’s review focused on whether the city’s findings and conclusions are reasonable and based on substantial evidence, *not* whether it was the only or best application of the rules as interpreted by LUBA and the Court. In several instances, the department found that only one, or neither, component of LUBA’s definition had been demonstrated

However, as discussed at the hearing in February, the commission has the authority to interpret its own rules. Thus, the issue before the commission is whether the city has demonstrated that the challenged site characteristics are “necessary for a particular industrial or other employment use to operate” such that the city can appropriately exclude certain lands from consideration as a UGB expansion area.⁴

³ LUBA articulated the two-part test as follows:

“we believe that site characteristics are properly viewed as attributes that are (1) typical of the industrial or employment use and (2) have some meaningful connection to the operation of the industrial or employment use.” *Friends*, 62 Or LUBA at 19.

⁴ For continuity between reports, the department continues to use the phrase “meaningfully connected” to mean “necessary.”

IV. ISSUES BEFORE THE COMMISSION

The department provided a list of questions to the commission at the February 13, 2014 hearing. The department intended the list to be an inventory of issues raised in objections to the Newberg UGB amendment submittal and in exceptions to the January 23, 2014 DLCD staff report to the commission. The questions and the department's recommended response follow.

1. *Did the city inappropriately exclude land from consideration for a UGB expansion under OAR 660-024-0060(5) due to its interpretation of the definition of "site characteristics"?* (Friends Objection 1; Staff Report at 19-34; Friends Exception 1, Newberg exception at 6-14; Supplemental Report at 4; Newberg response at 4-6; Friends rebuttal at 4-9)

The department concluded that the answer to this question is "yes," for the reasons set forth in the answers to the following subset of questions.

- a. *Did the city demonstrate that the challenged site characteristics are "typical" of a particular use?* (Friends Objection 1; Staff Report at 26; Friends Exception 1; Newberg Exception at 6-10; Newberg response at 7; Friends rebuttal at 4-7; subsection V.A.1 of this report)

The department notes that the city's analysis of what is "typical" was undertaken in response to the first prong of LUBA's two-prong interpretation of "necessary." In the department's view, LUBA included "typical" because OAR 660-009-0015(2) directs cities to identify site needs based in part on site characteristics that are "typical of expected uses." This rule provided LUBA context for interpreting the commission's intent for the term "necessary" in the definition of "site characteristic." As noted in chapter III, the commission need not adopt LUBA's interpretation.

The department found that the submittal includes substantial evidence to demonstrate that most of the site characteristics the city employed are typical of target industrial uses. The department found that the city's study of industrial uses in similar cities in the region adequately described the typical attributes of particular industrial uses in the area because the city chose areas that included Newberg's target industries. The department notes that there are a variety of ways that the term "typical" can be interpreted, and the department found the city's interpretation reasonable. The department concluded that one site characteristic has not been justified as "typical":

"Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park."

The department found that "wanting to be a good neighbor and not blending well with residential use do not address the *operational needs* of employment uses. (Emphasis in original.) Staff Report at 24. Notwithstanding the sample of industrial area that showed the observed uses have

less than 25 percent of their boundaries adjacent to residential areas, the department did not find that the city demonstrated complaint avoidance to be an operational need of industry.

- b. Did the city demonstrate that the challenged site characteristics are “meaningfully connected” to a particular use? (Friends Objection 1; Staff Report at 19-34; Newberg exception at 7; Newberg response at 4-6, 7; Friends rebuttal at 7-9)*

The department concluded that the city has not demonstrated that most of the site characteristics it employed are meaningfully connected to a particular use. This conclusion was based on the city’s method of defining required site characteristics, which began with general industry operational needs (not related to particular or targeted industries) and refining these based on attributes observed in industrial areas in similarly sized cities in the region. This stage of refinement also did not connect the site characteristics to particular uses, but rather to industrial districts. After developing a list of typical site characteristics, the city related them to the target industries. Table 12-24, Rec. at 5882-5888. The department found that the record did not adequately explain the operational needs of the target industries or reasonably establish that many of the site characteristics are meaningfully connected to the operation of those industries. For example, the city only considered areas suitable if they are located within one-quarter mile of an arterial street or state highway. The findings for the transportation needs of high-tech manufacturing state:

Typical uses have frequent truck traffic to receive supplies and deliver product.
Many serve other industries, so close access is important.

While the department does not disagree with this finding, this finding does not explain the operational needs of high-tech manufacturing adequately to demonstrate that this use needs to be within one-quarter mile of an arterial.

- c. Is an industrial district or park a “particular use” as that term is used in OAR 660-009-0015(2)? (Friends Objection 1; Staff Report at 17; Newberg exception at 11-13; Supplemental Report at 6; Newberg response at 7; Subsection V.B.1 of this report)*

The department concluded that an industrial district is not a “particular use.” The department provided its explanation of the level of particularity at which the analysis of required site characteristics should focus. The department concluded that “the term ‘particular’ should be interpreted in a way that allows a city a reasonable and practical path to compliance with the rules while addressing its economic development needs. At the same time, it cannot be construed so broadly that it renders the term ‘particular’ moot.” Staff Report at 17. This led to the department recommendation that the commission reject something as general as “manufacturing” or “business district” as a “particular use” for the purposes of establishing site characteristics.

The city’s exception pointed out that the administrative rule permits grouping of uses when the various uses have compatible site needs. The department addressed this exception in the

Supplemental Report, agreeing but stating that combining is permissible only to the extent that it would not result in the exclusion of a site that would be included if the site characteristics of an individual particular use were applied. Otherwise, the grouping of particular uses would undermine the “particular use” provision. *See* Supplemental Report at 6.

- d. *Did the city use site characteristics under OAR 660-009-0015(2) to exclude land from further analysis for the UGB when the factors the city used to exclude the property were appropriately considered when addressing the Goal 14 location factors? (Friends Objection 1.A-1.D; Staff Report at 18; Newberg exception at 13, 14; Newberg response at 8)*

The department concluded that a site characteristic is not invalid simply because it resembles a Goal 14 boundary location factor. The purpose of using site characteristics is to identify land that is suitable for the intended employment use while the purpose of the location factors is to decide which suitable land best balances a variety of potentially conflicting objectives. For example, land that cannot reasonably be served redundant power may be unsuitable for a particular use, and that land would be excluded from subsequent UGB analysis. The remaining, suitable land that can most efficiently be served with redundant power is an appropriate consideration during application of the location factors.

The department concluded that several of the site characteristics employed by the city were not valid, but not because they should have been considerations during the location factor analysis. Rather, the department recommended that the commission remand the site characteristics with instructions to the city to demonstrate that they are meaningfully connected to target industrial uses. The department noted that the city could choose to instead use that consideration when employing the location factors.

2. *Did the city demonstrate that residential compatibility is an operational need for industrial use or should it have included it during consideration of the Goal 14 location factors? (Friends Objection 1.A and 1.C; Staff Report at 23, 28; Newberg exception at 16; Friends Exception 2; Newberg response at 8; Friends rebuttal at 9; Does rebuttal; subsection V.A.2 of this report)*

The department concluded that the city had not demonstrated that the residential compatibility site characteristics it employed are meaningfully connected to or typical of target industrial uses, and therefore the city “should have. . . considered compatibility with adjacent residential uses during consideration of the Goal 14 location factors.” Staff Report at 25. (*See also* the department’s response to question 1.a, above.) The city demonstrated that the industrial areas in the cities it surveyed had particular locational relationships with residential land, but the department does not find that the city has demonstrated that these attributes constitute an operational need for target industrial uses. The recommended remand would not prevent the city, however, from attempting to justify residential compatibility site characteristics on remand.

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- a. *If residential compatibility is an appropriate site characteristic, is the city required to make a distinction between urban and rural residential in its compatibility analysis? (Friends Objection 1.C; Staff Report at 28; Newberg exception at 19; Section V.B.2 of this report)*

The department recommends the commission find that the city has not demonstrated that the residential compatibility site characteristics it employed comply with the rule. (See the department's responses to questions 1.a and 2, above.) The department has not recommended a finding that residential compatibility can never be an appropriate site characteristic, however.

The department recommended that the commission instruct the city, on remand, to analyze whether the land use pattern within a rural residential area leads to incompatibility with industrial use rather than assuming that all areas within a rural residential zone pose such conflicts (if the city chooses to continue with residential compatibility site characteristics).

3. *Can the location of a site be a valid site suitability characteristic? (Friends Objection 1.A; Staff Report at 24; Newberg response at 9)*

The department found that the location *is* an attribute of land and it could be a valid site characteristic if the attribute is found to be necessary for the operation of the intended use.

4. *Was the city correct in limiting its consideration of "close and suitable access" to arterials, or should it have considered major collectors? (Friends Objection 1.D and 1.E; Staff Report at 31; Friends Exception 4; Newberg response at 9-10; Friends rebuttal at 12-14; subsection V.A.4 of this report)*

The department found that limiting consideration to arterials and state highways could be reasonable because a functional classification is not just about the width of a street or other design standards, but the intended function of the street. While a street may be *built* to a standard that would handle truck traffic, this does not mean the city's transportation system plan calls for it to *function* as a truck route.

The submittal contains no explanation or evidence regarding why the city made this determination, however so the department recommends a remand so the city can provide the appropriate evidence.

5. *Did the city err in excluding study areas that had slopes predominantly greater than five percent? (Friends Objection 1.F; Staff Report at 31; Newberg exception at 23; Newberg exception at 23-25; Newberg response at 10; Friends rebuttal at 8; subsection V.A.3 of this report ("Sub-objection 1F"))*

The department concluded that the city has not demonstrated that this site characteristic is meaningfully connected to targeted industrial uses. See the department's response to question 1.b for a general explanation of meaningful connection. The department does not contend that grade

is never an appropriate consideration in determining suitability of land for industrial use, but the city's target industries list includes uses such as wineries that frequently site on greater slopes.

6. *Did the city adequately describe the nature of farm use and the impacts of urban development in its consideration of Goal 14 location factors? (Friends Objection 7; Staff Report at 56; Newberg exception at 39; subsection V.B.6 of this report)*

The department found that the city's explanation of the relative effects of the various alternative boundary locations did not adequately consider the nature of farm use in the area. The department accepted that, because the alternatives are quite close together, the effects are probably similar for each area as the city concluded. The department found that the analysis, however, was cursory and lacks an adequate factual basis. The full quote of the findings is in the Staff Report at p. 54. This will be an issue for the city if this submittal gets remanded and the city subsequently considers additional areas for expansion.

7. *Did the city adequately consider the impacts of the UGB expansion on farmland in northern Marion County? (Friends Objection 7; Carl objection; Staff Report at 57)*

The city concluded that the transportation routes through Marion County are designed or planned to accommodate expected traffic, or both. The department found that the city considered this issue and that there is substantial evidence in the record that the city appropriately addressed it in its findings.

8. *Did the city correctly implement ORS 197.298? (Multiple objections; Staff Report at 19)*

The department raises this issue because many of the objections cite ORS 197.298 in the list of laws that the submittal allegedly violates. The department found that ORS 197.298 includes a priority of land types that a city is to adhere to when including land in the UGB, and that Newberg adhered to the priorities. The allegations of non-compliance with ORS 197.298 stem from the objectors' contentions that the city did not include enough land, especially non-farmland, in the analysis. While it may seem like a legal technicality, the department finds that the commission's record should show that ORS 197.298 does not address which lands are to be considered, but instead provides a framework for how to consider them. The department did not find fault with the city's analysis under ORS 197.298.

9. *Did the city's study of comparable industrial areas contain methodological problems? (Friends objection 1.B, 1.E, and 1.F; Friends exception 3; Newberg response at 11; Friends rebuttal at 9-11; subsection V.A.3 of this report)*

This is really more than one issue, as Friends alleged several problems with the way the city completed the study of similar cities' industrial uses that the department did not address in the Staff Report. The issues concern elements of objections related to the city's exclusion and grouping of sites in its study of similar cities, how the city measured the distance to a nearby street, and whether site slope is a typical requirement for target industries. The department

concedes that it failed to address these issues in the Staff Report and considered them below. The department did not find that any of these issues resulted in a change to its recommendation.

10. Is the city required to address possible future road alignments and functional classifications when assessing site suitability? (Friends Objections 1.D and 1.E; Friends exception 5; Newberg response at 12; Friends rebuttal at 11; subsection V.A.5 of this report)

No. The department found no authority that requires a city to address potential future street networks or functional classification changes in its analysis of site suitability.

11. Did the city's analysis of required industrial site sizes include conclusions unsupported by evidence that resulted in required site sizes larger than the record shows is necessary? (Friends Objection 2, Staff Report at 34; Friends exception 6; Newberg response at 12; Friends rebuttal at 14; subsection V.A.6 of this report)

Yes. The department initially recommended that the commission reject Friends' objection that the site sizes the city used as the basis for its industrial land needs determination are unsupported. Upon analysis of the exceptions and the other materials submitted since the Staff Report, the department has concluded that the objection was correct and it should be sustained.

The central issue is to what extent assumptions must be explained in the findings. The city relied on expert's evidence in determining its industrial land need. Forecasts will always be subject to professional judgment, but the department found that record does not explain what that judgment was based on or what the conclusions were (except the final outcome). The department has changed its recommendation to remand with instructions to the city to provide adequate evidence regarding the number of industrial sites needed during the planning period.

12. Was the city's inventory of employment land completed in conformity with the requirements of OAR 660-009-0015(3)? (Friends Objection 4, Staff Report at 37; Friends exception 7; Newberg exception at 27; subsection V.A.7 of this report)

No. The department initially recommended that the commission reject Friends' objection that the city's employment land inventory was not supported by evidence in the record. Upon further review, the department has concluded it previously misconstrued the evidence. Upon analysis of the exceptions and the other materials submitted since the Staff Report, the department has concluded that the objection was partially correct and it should be sustained.

The issue is whether the city provided the descriptions of employment land within the existing UGB that is required by OAR 660-009-0015(3) in its employment land inventory. The department's initial review indicated that the information resided in the record (a 2009 inventory), but further inspection showed that information required to be included in the inventory was not in the record because the 2009 inventory had been updated and only a summary of the required information is in the record. The department recommends that the

commission remand the decision to allow the city to supplement the record with information regarding specific sites from the 2009 BLI, as updated in 2012.

- a. Did the city appropriately address the capacity of the UGB to accommodate employment on fully developed land? (Friends Objection 3; Staff Report at 36; Newberg exception at 26; subsection V.B.3 of this report)*

This issue relates to how the city accounted for employment growth at existing firms where the site is already fully developed. Friends objected that the city's employment land need analysis did not assume that any future employment would occur on such sites. The department initially did not find an explanation of how the city addressed this issue and recommended remand for the city to explain its assumptions regarding the capacity of fully developed sites to absorb part of the employment growth.

With information contained in the city's exception, the department performed additional review of the record and found that the information is in the record. Record at 5723. The city accounted for "intensification" of land in the UGB and reduced the allocation of employment growth to new sites accordingly.

- b. Does the city have a surplus of commercial land in the UGB? (Friends Objection 4; Staff Report at 38; Friends exception 7; Newberg response at 15; Friends rebuttal at 15; subsection V.A.7 of this report)*

The EOA addressed industrial and commercial land need and shows a deficit of each in the UGB, but the city decided to accommodate only industrial land at this time. Friends objected that the commercial land component of the EOA was not completed in conformity with the requirements of OAR 660-009-0015(3) for employment land inventories. Friends pointed to land it contended was vacant and designated for commercial use but was unaccounted for in the EOA as buildable employment land. The department reviewed the record and concluded that the objector was mistaken and recommended the commission reject the objection.

With the benefit of additional information and argument provided since completion of the Staff Report, the department has found that its initial review was not based on a full understanding Friends' objection. In its response to Friends' exception in this report, the department has found that, notwithstanding the city's reasonable argument that mixed-use zones are not expected to absorb as many jobs as pure commercial zones, the record does not explain how or whether certain vacant commercial lands are included in the employment land inventory. Consequently, the department recommends that the commission remand the submittal with instructions to supplement the record with information regarding whether a portion of the Springbrook District Village Area is designated for non-commercial uses or how the land was accounted for in the employment land inventory.

13. Is the city's analysis of alternative areas to accommodate needed industrial land adequate? (Friends Objection 5; Cooper objection; Does objection; Schaad objection; Salmonsson objection; Staff Report at 39-49; Friends exception 8; Newberg exception at 27-34; Newberg response at 14; subsection V.A.8 of this report)

Several objectors contend that the city did not adequately consider alternative locations to accommodate industrial land needs that are not high-value farmland. Each of the objections points to specific areas where the objector believes the city could accommodate at least a portion of the industrial land need without moving the UGB onto high-value farmland. The specific objections relate to a host of alleged deficiencies including adequacy of the record, conduct of the analysis of vacant and re-developable land, the site characteristics used to exclude the area, and boundaries of study areas. The Staff Report addressed the specific areas and made recommendations on whether the city satisfied relevant requirements; the department recommended sustaining some of the objections and denying others. Friends and the city submitted exceptions to the staff report, and the department's response to those exceptions are contained in this report.

The areas specifically cited in one or more objection include:

- Zimri Drive (Site VI, inside the existing UGB on the north side)
- South Springbrook Road (Site XII and Site 12, inside and outside the existing UGB on the southeast side)
- "Surplus commercial lands" (two areas inside the existing UGB zoned for commercial use)
- "Other commercial sites within the UGB" (several individual parcels inside the existing UGB zoned commercial not alleged to be surplus commercial land)
- Newberg-Dundee Corridor (Sites 8 and 9, outside the UGB on the west side)

Friends objected to many of the site characteristics generally. These objections apply those objections to specific sites. If the commission opts to remand the decision based on its use of site characteristics, many of the property-based objections will be decided.

The department is mindful of the commission's scope of review in this report. The commission's role is not to make an independent assessment of whether the areas listed above can accommodate Newberg's industrial land needs; the appropriate inquiry is whether the record contains substantial evidence, the city's conclusions were reasonable, and the result complies with applicable goals and rules.

Specific components of the major issues are addressed under subsequent questions, below.

- a. *Is the analysis of alternative areas based on substantial evidence? (Friends Objection 5; Cooper objection; Does objection; Schaad objection; Salmonsson objection; Staff Report at 39-49; Friends exception 8; Newberg exception at 27-34; Newberg response at 14; subsection V.A.8 of this report)*

The objections contain several allegations that the conclusions are unsupported by findings. The department has found one issue with the evidence in the record regarding a specific area and recommends a narrow remand regarding whether the Zimri Road area is adjacent to commercially zoned land (Staff Report at 39-42). The Staff Report recommends remand of the South Springbrook Road and Newberg-Dundee Corridor areas based on application of site characteristics that the department found to be invalid; the city's findings for why the areas are unsuitable for industrial use are therefore insufficient.

- b. *Does the analysis demonstrate how much of the need can reasonably be accommodated inside the existing UGB? (Friends Objection 5; Cooper objection; Does objection; Schaad objection; Salmonsson objection; Staff Report at 39-49; Friends exception 8; Newberg exception at 27-34; Newberg response at 14; Does rebuttal; subsection V.A.8 of this report)*

The department responded to several objections regarding the employment land inventory generally, and found some deficiencies. (See questions 11 and 12, above.) Issues specifically related to sites inside the existing UGB include whether (a) the city appropriately considered urban areas currently zoned residential and commercial for re-designation to industrial and (b) whether invalid site characteristics were applied. Except for an evidentiary issue with the Zimri Road area, the department recommends rejections of these objections. The submittal does not adequately demonstrate what portion of the industrial land need can reasonably be accommodated inside the existing UGB because of deficiencies in the employment land inventory for this reason and for the reasons explained under questions 11 and 12.

- c. *If areas studied for suitability to accommodate industrial need inside and outside the existing UGB are adjacent, must the city consider them as one study area or, alternatively, explain why they are not considered together? (Friends Objection 5; Staff Report at 43; Friends Exception 8 at 18; Newberg response at 14-15; Friends rebuttal at 22; subsection VI.A.8 of this report, under "North Valley/Chehalem Road Area")*

The department found that the legal framework for analyzing potential areas to accommodate industrial land needs is different for areas inside the existing UGB from the alternative expansion area. The standard for areas already in the UGB is whether the land can "reasonably accommodate" the need. OAR 660-024-0050(4). For potential expansion areas, a city addresses site characteristics, ORS 197.298, and the Goal 14 boundary location factors to decide which areas to include.

The department finds it reasonable that a city would address adjacent areas inside and outside the existing UGB together. However, because of the different criteria, the department concludes that requiring such combining could lead to potentially unresolvable complexities in the analysis. Friends contends it should be a case-by-case determination and a city should analyze areas split by the UGB when the area can reasonably be considered as a unit. The city agrees with this proposition generally, but asserts that it doesn't matter in this case due to specific facts regarding the suitability of the contested areas for industrial use.

This issue matters in this case if the commission decides to remand the submittal. If the reasons the city found an area to be unsuitable for industrial use are found invalid, the city will benefit from this guidance on how to move forward on remand.

14. Did the city include more large sites in the UGB than its own analysis showed is needed? (Friends Objection 6.A; Staff Report at 49; Friends exception 9; Newberg response at 15; Friends rebuttal at 21; subsection V.A.9 of this report)

Friends objection contends that the EOA shows a need for one site in the 10- to 30-acre category and one in the 30- to 50-acre category, but the city included two sites in each category, resulting in an overly large UGB amendment. The department found that the acreage the city included in the UGB matched the demonstrated need and recommended the commission reject the objection. There has been further written argument on this topic and the issues are better explained, but the department's conclusion is the same: the city calculated a need for a certain number of sites in varying size ranges and *also* determined an acreage need. That some of the acreage need was accommodated on large sites does not result in a conclusion that the city included more sites than it needs.

a. Is the "Waste Management" site vacant? (Friends Objection 6.A; Staff Report at 50; Newberg exception at 34; Friends rebuttal at 20; subsection V.B.5 of this report)

Yes. The department recommended that the commission remand the submittal with instructions to consider the Waste Management site vacant. The city and the objector each provided reasonable arguments regarding the status of this parcel subsequent to that recommendation. Upon consideration of the additional materials, the department remains unpersuaded that the site is improved, and therefore continues to recommend remand.

15. Did the city inappropriately include extra acreage that is unbuildable and for which no need was demonstrated? (Friends Objection 6.B; Staff Report at 50; Friends Exception 10; Newberg exception at 34; Newberg response at 15; Friends rebuttal at 20; subsection V.A.10 of this report)

This issue relates to land the city included in the UGB that is in excess of the identified need for industrial land. The objection contends that the city has not demonstrated a need for the land, while the city points to where the findings specify a livability need as permitted by Goal 14, need

factor 2. Friends contends that, “If the city *had* demonstrated a need for additional land for “livability” the regulatory framework requires a showing that the need cannot be accommodated on higher-priority land and application of the locational factors in Goal 14.” Friends rebuttal at 21. While that might be true in circumstances where a city had identified a general “livability” need, whereas here, that need is in conjunction with another need, the department finds that it is reasonable to only consider those lands that can reasonably accommodate the identified need, *i.e.*, lands proximate to the industrial land to which the livability need is related.

The department recommended the commission reject the objection based partly on an administrative rule that encourages boundary locations on existing parcel lines, which mitigated the relatively large size of the “excess” acreage included. Considering the administrative rule and a lack of definition for or bounds on the use of “livability” as a need, the department recommended that the objection be rejected. The commission’s direction on this matter will help define the appropriate application of Goal 14, need factor 2 with regards to livability need in this and future UGB amendments. The commission may conclude that the city has not established a need for this amount of land as a livability need on this record, but afford the city the opportunity to make such a demonstration on remand.

V. RESPONSE TO EXCEPTIONS

The department received exceptions to its Staff Report from the city and Friends. The exceptions raise complex issues that require analysis by the department. Several of the exceptions contend the department misconstrued either what the city adopted or what the objector meant. The exceptions were not explicitly addressed at the commission’s February 13, 2014 hearing.

A. Friends

Friends submitted 10 exceptions on February 3, 2014 (Friends exception). The exceptions were submitted within the time required by OAR 660-025-0160(5).

1. Exception 1: Misapplication of Standards for Site Characteristics

LUBA’s two-pronged test for determining whether a site characteristic is appropriate for use in Goal 9 analyses (*see* Section V.A, Staff Report at 15-17) includes that the attribute is “typical” and “meaningfully connected” to a particular use. Friends objected to several of the site characteristics that the city employed as not satisfying either part of this test. The department agreed with some of the objections and has recommended remand of the decision with instructions to the city to demonstrate that the site characteristics are “necessary” for the operation of the target industrial uses; the department found that in most cases they city had demonstrated that the site characteristics are typical of the target uses, and it is to this conclusion that Friends takes exception.

Friends contends that the department did not explain why the city’s analysis is sufficient to establish what is “typical” for its targeted industries. Friends exception at 4.

Regarding one site characteristic, the Staff Report states:

“The findings rely on evidence from multiple sources that employment uses typically cluster together. The findings address the disputed proximity characteristic along with two others that are not objected to in this sub-objection. The city derived the site characteristics from its study of the industrial districts in similar cities that contain similar industrial uses. The study (‘Typical Characteristics of Industrial Sites,’ Rec. at 5965-95) considers the characteristics of industrial areas in several northern Willamette Valley cities chosen ‘because of their similar size and close location to Newberg.’ Rec. at 5972. Newberg ‘identified all industrial areas within these communities’ and ‘used the zoning and comprehensive plan maps from the communities to identify industrial areas.’ The study ‘examined each of these industrial areas and determined whether they either initially developed or had significant redevelopment since 1970, and whether they contained primarily [Newberg’s targeted] industries.’ Rec. at 5973.

“Although the analysis starts with the attributes of the industrial *areas* rather than with particular employment *uses*, the city has made adequate demonstration that the target industries typically locate in proximity to other employment uses because the tie to those uses has been made.” Staff Report at 26-27 (emphasis in original).

This passage was incorporated by reference regarding other site characteristics. *See, e.g.*, Staff Report at 31. The Staff Report also states, “The study looked at industrial areas containing Newberg’s target industries. The department finds that this is evidence that a reasonable person would rely on to establish that the target industries typically locate in proximity to other employment uses.” Staff Report at 27 (internal record references omitted).

Perhaps the department did not explain its reasoning well, so further explanation is provided. The city’s analysis of “typical” site characteristics for its targeted industrial uses is found in its study entitled “Typical Characteristics of Industrial Sites.” Rec. at 5965-5995. The city looked at industrially zoned lands within eight north Willamette Valley communities: Canby, Forest Grove, McMinnville, Newberg, Sherwood, Tualatin, Wilsonville, and Woodburn. The study identified 25 industrial areas within these communities for analysis (see discussion under Friends Exception 3 for discussion of the study’s exclusion of some industrial areas within these communities from the analysis). Contrary to the assertions of the objection, the study looked at many different types and sizes of industrial areas, ranging from single-user sites to very large districts such as North Wilsonville and West Tualatin.

The department found the city’s decision to study similarly sized communities in the north Willamette Valley to be reasonable because it provides a reasonable comparison for Newberg. Within those cities, the study found that almost all of the studied industrial areas consisted of districts, or aggregations of individual industrial users. The study states:

“[M]any existing industries have reused old lumber or agricultural processing sites, rail or water access sites, and small sites tucked in downtown areas largely due to historical happenstance. Where such recycled sites are not available, industries are looking to expand on large level industrial districts with good road access and few neighbor conflicts.” Rec. at 5972.

The results of the study itself, that 23 of the 25 studied sites consist of multiple rather than single industrial users, validate this assertion. It should be noted that it is not only industrial users that seem to want to congregate in industrial districts with certain site attributes – it has also been the policy of most cities since the creation of zoning ordinances and districts in the early 20th Century to isolate industrial districts to protect the city’s residents from the impacts of industrial uses.

Since industrial users are almost always grouped into industrial districts, the city’s study of site characteristics of such districts, as opposed to a more detailed breakdown of industrial users, is appropriate for determining what is “typical” of such industrial uses. It is only when the city gets to its “meaningful connections” analysis that its study of industrial districts rather than more specific industrial users or groups of industrial users lacks the necessary specificity.

Therefore, the department continues to recommend rejection of this objection.

2. Exception 2: Conclusions in Report Not Reflected in Recommendations

This exception contends that two of the city’s site characteristics that the department found were not adequately justified as “typical” were not reflected as such in the department’s final recommendation for remand. Staff Report at 3 and 61. As written in the Staff Report, the recommendation is to remand based only on a failure to demonstrate that the site characteristics are “meaningfully related” to a particular use.

The two site characteristics are:

Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.

Exclude sites that, for community [commercial] centers, abut residential neighborhood on more than 50% of the site perimeter unless effective topographical or road buffers are present or planned.

Regarding the first site characteristic – 25 percent of the perimeter – Friends is correct, and the recommendation should be amended.

As to the second site characteristic – 50 percent perimeter for community centers – the department [did] not find that the city used this site characteristic to exclude any potential UGB expansion areas from analysis. Staff Report at 26. Accordingly, the department did not

recommend remand of the decision based on the use of this site characteristic. That finding and conclusion has not changed.

Unless amended for reasons related to other exceptions, the department's recommendation should say:

The department recommends the commission instruct the city, on remand, to:

Demonstrate that the following "site characteristic" identified by the city pursuant to OAR 660-009-0015(2) and OAR 660-024-0060(5) is typical of and meaningfully connected with the operation of a target industry or a group of target industries with compatible operational requirements or consider the site and area needs during the analysis of alternative expansion areas under the Goal 14 location factors:

Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.

3. Exception 3: Methodological Problems

This exception identifies allegations of non-compliance Friends made in three separate objections that the department did not address in the Staff Report. Friends exception at 6. The department notes that its recommendation is to remand the decision on all three of the objections. The department explained its basis for recommending remand, but in fact did not address these other points.

OAR 660-025-0100, relating to review of objections to periodic review tasks, and by extension UGBs reviewing in the manner of a periodic review task, provides:

"(5) If the department receives one or more valid objections, the department must issue a report that addresses the issues raised in valid objections. * * * A valid objection must either be sustained or rejected by the department or commission based on the statewide planning goals and related statutes and administrative rules."

The department focused too much on the second sentence regarding sustaining or rejecting the objections and neglected to address every issue raised as required in the first sentence of the quoted rule. It is in the city's and the commission's interest that these issues be addressed so that the city has clear guidance in the event of a remand as to which issues need to be addressed, and which do not.

Sub-objection 1B: Among many other matters, this objection asserted that Newberg's report entitled "Typical Characteristics of Industrial Sites" (Rec. at 5965-5995), contained significant

factual errors resulting in an inappropriate conclusion that, in order for an area to be suitable for target industrial uses, it must “adjoin an existing industrial or commercial area, or an area with sufficient buildable land [defined as 50 acres] to allow expansion of the industrial district.” Specifically, the objection alleged the city: excluded 12 smaller districts within the eight north Willamette Valley cities studied in the report; reported inaccurate acreage figures for some of the districts; and inappropriately grouped non-contiguous districts together creating the appearance of one larger district. Friends asserts that these analytical errors resulted in an unreliable factual basis for determining a typical industrial area size. Friends objection at 8.

When this issue was raised during the local hearings, the city pointed out that the 12 industrial sites excluded from the study were not created or substantially developed within the last 40 years, so they do not represent expected future uses. Rec. at 3230-3231. Specifically, the city found that industrial uses sited prior to the 1970’s had much different site requirements, with a heavy emphasis on water and then rail access, and less of a need for level sites with good road access. In addition, several of these sites did not contain any of the industrial uses or types of businesses targeted by the city. Therefore, the city did not include the 12 industrial sites in its study. Rec. at 5971-5972. The department finds the city appropriately explained why it excluded the sites, based its decision on evidence in the record, and reached a reasonable conclusion.

Regarding the inaccurate acreage figures, the objection mentioned two specific areas where acreage figures in the city’s study appear to be inaccurate, one in Canby and one in Woodburn. In response to the Canby subareas, Newberg noted that the objectors misread the Canby zoning map and excluded an area zoned for “Heavy Commercial Manufacturing” from its analysis. Inclusion of these lands connects two other industrially zoned areas and creates one large industrial district. Rec. at 231. Regarding the Woodburn situation, Newberg did not specifically address the allegation, but the objection did not provide specificity regarding the acreage discrepancy (whether the Woodburn Commerce Way site was less than 50 acres), and, even if the site is less than 50 acres, this implicates only one of the 25 subareas studied, and thus constitutes minor error.

Regarding the alleged inappropriate grouping of non-contiguous districts together, the objection raised two specific instances – one in Wilsonville and one in Tualatin. The city noted that in both cases the intervening land is designated for industrial use by another jurisdiction – the county in Wilsonville and another city in the Tualatin example. Rec. at 3231. Whether these intervening lands integrate otherwise separate industrial areas is not explained in the city’s findings. The methodology section of the study says that sites were identified using “the zoning and comprehensive plan maps from the communities...” Rec. at 5973. The department finds that this is a pragmatic method for selecting areas for analysis, that the city explained its process and followed it, and that the city reached reasonable conclusions that the areas were of the reported size. Whether this method led to a couple of anomalous results does not undermine the whole study.

The department recommends the commission reject the allegations contained in this exception. The department again notes that the department recommends remand of the challenged site characteristic based on other grounds contained in sub-objection 1B. Staff Report at 27-28.

Sub-objection 1E: Among many other matters, the objection asserted that the city's study of industrial districts erroneously found that such districts needed to be at least one-quarter mile from a state highway or arterial street because it measured the distance of the arterial to the edge of the industrial district, not the distance to individual sites within that district. As a result, many of the individual sites within the district are more than one-quarter mile from the major roadway, thus showing error in the city's assertion that the one-quarter mile maximum distance from a major roadway is "typical." Friends objection at 22-23.

The city maintained that it established the site characteristics based on what is typical of business districts, not the lots or sites within those districts. Rec. at 5972. There seems to be no argument about the facts. The department recommended that the commission find the city adequately established that target industries typically locate in business districts that exhibit the challenged transportation characteristics, but to remand the characteristics because the city did not demonstrate that the site characteristics are meaningfully connected to the operation of the target industries. Staff Report at 29-31. The Staff Report did not explicitly address the component of the sub-objection raised in this exception, but the conclusions are the same. The department recommends that the commission find that applicable administrative rules require that a valid site characteristic relate to the needs of a particular use, and that an industrial district is not a particular use.

Sub-objection 1F: Among other matters, the objection asserted that the city's report entitled "Typical Characteristics of Industrial Sites," which found that "typical" industrial land has a slope less than five percent, is skewed.⁵ In the Staff Report, the department concurred with much of Objection 1F as it relates to "meaningful connections" between slope and the needs of industrial users, but the exception is correct that the department did not make a conclusion regarding whether this slope characteristic is typical of targeted industrial uses. Staff Report at 31-33.

The city's study looked at nearby northern Willamette Valley cities and their industrial areas. The industrial districts studied all had slopes less than five percent. This factual information satisfies the assertion made by the city that slopes of less than five percent are "typical" of the industrial districts, and the industrial uses within them. See also subsection V.A.1 of this report. Therefore, the department continues to find that the study of nearby cities adequately establishes "typical" attributes and recommends the commission reject this portion of the objection.

⁵ The objection states:

"However, the reason the Site Study found that "typical" industrial land is less than 5% slope is that all areas it included were, like most of the Willamette Valley floor, fairly flat. In areas that do not have any sloped land, all industrial districts will be flat by default, whether or not the resident businesses needed that characteristic to operate successfully. The results of the Site Survey therefore cannot establish the slope needs of particular industries." Friends objection at 25.

The city also took exception to the conclusion in the Staff Report that the city erred in applying the slope characteristic to entire study areas rather than examining potentially suitable portions of the larger area. Because this exception is topically related, the department addresses it here. Specifically, the city's exception to the Staff Report states that the objector and department confuse "suitable" and "buildable."⁶ The city's exception also states, "[I]f the only thing lacking for a site to meet all the suitability characteristics was drawing different boundaries, then that is what would be done. In the two examples cited, both sites are far from meeting the suitability characteristics, so defining different boundaries is not necessary." Newberg exception at 25. The city found one study area (Area 15) could be bifurcated and part of the study area considered separately from the rest (this study area was found unsuitable for other reasons). This provides credibility to the city's assertion.

The department has reassessed its analysis of the slope site characteristic based on the city's exception. The department formerly found error with how the city applied the site characteristic, concluding that the city had not demonstrated that it is meaningfully connected to particular uses. The department admits that the city did evaluate partial study areas for consideration of different slopes within the area.

This leaves the question of whether the city demonstrated a meaningful connection between the slope characteristic and targeted industrial uses. For reasons stated in the staff report, the department continues to conclude that the answer is no. The department found the evidence in the record to be anecdotal. The city provided an excerpt from the record that is not anecdotal evidence, but it addresses industry generally and does not provide information regarding any particular uses. Accordingly, the department continues to recommend that the commission find the city has not demonstrated that the slope site characteristic is meaningfully connected to targeted industrial uses.

4. Exception 4: Major Collectors vs. Arterials

This exception deals with the city's site characteristics related to transportation access and how the department treated the objections. The specific issue relates to two site characteristics that assert a site is only suitable for target uses if it is within a prescribed distance of a state highway

⁶ The city's exception states:

"Rules are clear that 'buildable' and 'suitable' are separate considerations. The definition of 'suitable' under OAR 660-009-0005 (12) is:

"(12) 'Suitable' means serviceable land designated for industrial or other employment use that provides, or can be expected to provide the appropriate site characteristics for the proposed use.

"The fact that a site may be 'buildable' does not make that site 'suitable.' The fact that part of a site might be buildable with a 5-10 percent slope doesn't automatically mean that the whole site is 'suitable' even if it lacks areas with under 5 percent slope. This is the 'strict indispensability' test in another form that the Courts already have rejected." Newberg exception at 23.

or an arterial street. Newberg uses a familiar street classification system that identifies the function of each street, including arterials and collectors, and the city has established design standards for each class of street. Rec. at 6767.

Friends' objections state that the city did not explain why proximity to an arterial makes an area suitable for industrial use while proximity to a major collector does not, when the design standards for the two are similar. Friends objection at 20; Friends exception at 7. The department again notes that its recommendation includes sustaining these objections, just not for these reasons. The department did not locate any findings in the record explaining the city's reliance on arterials and state highways, but nevertheless found the city's reliance on proximity to an arterial street reasonable. To explain this further, a functional classification is not just about the width of a street or other design standards, but the intended function of the street. The objection was based primarily on the physical design of a minor arterial versus a major collector.⁷ As the city points out, while a street may be *built* to a standard that would handle truck traffic, this does not mean the city's transportation system plan calls for it to *function* as a truck route. Newberg response at 10. Thus, the department did not find this part of Friends' objection convincing and it did find the city's explanation persuasive.

The department conceded (and continues to concede) that the record does not explain why it is necessary that the streets be either arterials or state highways. Staff Report at 31. Rather, the city relied on general findings regarding the importance of available transportation in industrial siting and a survey of sample business district characteristics which found they are always within one-quarter mile of an arterial or state highway. Thus, as with other site characteristics, the department found the survey to demonstrate that a site characteristic is "typical" but not "meaningfully connected" to a particular use.

The city addressed this objection in its exception, but did not choose to elaborate on why proximity to a major collector is unsuitable for target uses. Newberg exception at 21. The city addressed the need for access to arterials at the February 13, 2014 hearing, providing reasoning why its choice was correct, but did not identify where this was addressed in the record. While the department is persuaded that the city's use of arterial streets and state highways in its analysis of site suitability was reasonable, there is insufficient evidence in the record to demonstrate why, so the department must recommend remand.

5. Exception 5: Existing vs. Potential Road Network

This exception contends that the department did not address an issue raised in Objections 1D and 1E – that the city excluded potential sites based upon the existing road network without consideration of the potential road network when an area develops. Friends exception at 8. The exception is correct; the Staff Report did not address these objections. Staff Report at 29-31.

⁷ Friends' objection states: "Both arterials and major collectors traverse residential areas. Major collectors are nearly as wide as arterials, and like arterials, do not provide any parking and have bikeways on both sides." Friends objection at 20.

OAR chapter 660, division 24 provides no specific guidance on whether a city must consider changes to its Transportation System Plan (TSP) road classifications during the UGB analysis process. The objection asserts, “The city must instead consider the access that *could* be provided once a new industrial area is developed” and “The absence of an urban road system cannot be a reason to exclude rural properties, or underdeveloped parts of the existing city or UGB, from consideration as future urban industrial land.” (Emphasis in original) Friends objection at 20 and 21, respectively. The objection does not cite what provision in a statute or rule requires this. The city most recently stated:

“In applying this characteristic, Newberg looked both at the existing transportation network and potential future transportation network. In at least one case (Wilsonville Road), Newberg concluded that an arterial reasonably could be provided in the area to provide access, and thus found that area suitable for industrial uses. See Record 5761. In other cases, such as Zimri Drive, Newberg concluded that an arterial could not reasonably be provided to serve the area. See Record 5730. Thus Friends’ blanket assertion that Newberg did not consider future road networks is false. The department’s question about whether Newberg is required to consider future road networks is an intriguing one, but in fact is moot because Newberg did consider both existing and future road networks.”
Newberg response at 12.

Friends contradicts these assertions. Friends rebuttal at 12. The department’s review of the record indicates that the city’s conclusion that Wilsonville Road would need to be upgraded to arterial status was made during consideration of the Goal 14 location factors, not when applying the site characteristics at the beginning of the analysis. The department found multiple examples of the city addressing the possibility of upgrading streets in the context of re-designating lands already in the UGB (including Zimri Drive). Rec. at 5729-5732. Such analysis for potential expansion areas was not found, so the department does not find Friends’ objection moot.

Friends contends that the city should consider upgrading the southernmost one-quarter mile of Zimri Drive, presumably to an arterial. The city contends:

“The real issue is that Friends believe that creating an arterial is a much more casual process than the facts show. As explained in the hearing, creating a state highway or arterial is not a simple process. State highways and arterials primarily serve through traffic. Thus creating one requires through destinations, in addition to a myriad of other analysis.” City response at 12.

The department agrees that arterial streets are, by definition, through routes. A city would not designate a quarter-mile segment at the end of a street differently than the remainder of the route, especially as an arterial; to suggest otherwise is unreasonable. The city made an unrebutted finding that Zimri Drive is not suitable as an arterial based on the grade along the full length of the street, and the department finds this conclusion is reasonable and based on evidence in the record. Rec. at 5730.

The larger question of to what extent a city must consider future changes to the transportation system plan (TSP) in determining whether land is suitable for a particular use is not answered by these specific examples. The city rightly points out that the definition of "site characteristic" uses "proximity to a particular transportation or freight facility such as . . .major transportation routes" as an example of what the term includes.

Such an analysis could come into question at several points during a UGB expansion process: when considering the ability of lands within an existing UGB to accommodate the need, when considering suitable site characteristics used to exclude lands outside of the existing UGB from further analysis, or when considering boundary location factors to choose among candidate lands for inclusion in a UGB. Some analysis of potential TSP amendments in concert with a UGB analysis may be appropriate, as the boundary is intended to accommodate long-term needs so future changes to the transportation can be planned.

Because the department finds no explicit requirement that a city address potential changes to the TSP when analyzing a UGB amendment, the department does not find that the city's failure to do so requires a remand. However, if the commission remands this submittal, the department recommends that the city consider this issue on remand.

6. Exception 6: Site Sizes

This objection contends that the site sizes the city used as the basis for its industrial land needs are unsupported. Friends exception at 9.

The city expresses its industrial land need in number of sites and number of acres. The city calculated its industrial land need by forecasting the number of sites it needs in a variety of size ranges and translated this to acres by multiplying the number of sites by the midpoint of the range, with an adjustment for right-of-way needs. The site-size ranges were correlated with the sizes of the firms expected to expand or locate in Newberg. The results of the analysis are displayed in Table 12-20. Rec. at 5863.

The city advanced the number of sites and acres shown to be needed in Table 12-20 to the final need determination in Table 12-25. Rec. at 5892. The objection contends these site sizes are unexplained and lead to an inflated need determination. Friends objection at 26-30. The department recommended the commission reject this objection because it concluded the city's distribution of the employment forecast among the site-size ranges was based on substantial evidence. Staff Report at 34-36.

Friends' exception states that the department's analysis was flawed because it relied on evidence that does not pertain to Table 12-20 but instead pertains to a different set of data in a different table. The exception reiterates the objection that the record does not support the assumptions the city used in assigning the site-size ranges to the firm sizes.

Table 12- 20: Site Size Distribution by Firm Employment Through 2032

Emps. per Firm	Percent of Emp.	Number of New Emps.	Number of Firms	Sites Needed	Size Range (Acres)	Ave. Site Size (Acres)	Ave. ROW Need (Acres)	Gross Buildable Acres Needed
0-9	15%	273	46	23	<2	1	0.15	26
				23	infill & redevelopment			0
10 to 74	40%	729	21	14	2 - 10	5	0.75	81
				7	infill & redevelopment			0
75 +	45%	820	3	2	10 - 30	20	1.00	42
				1	30 - 50	40	2.00	42
				1	infill & redevelopment			0
Total	100%	1,822	71	71				191

Source: Winterbrook Planning 2009, Newberg Planning Division 2012

The city states that it relied on expert opinion in assigning the firm- and site-size ranges in Table 12-20 and cites a case to support its contention that this is enough. Newberg response at 12. Friends states that even if expert testimony is relied on, the record must contain an explanation of what the assumptions and findings are that led to the conclusions. Friends rebuttal at 14.

The department stated:

As LUBA recognized, determining site characteristics is a somewhat subjective process. Rec. at 2006. Regarding industrial site size requirements, there is no standard parcel size or configuration that applies uniformly. Operational needs vary within any particular industrial category, and from firm to firm. The best a city can provide is an estimate that captures a reasonably significant portion of the target industries, an explanation of its assumptions, and reasonable conclusions. Staff Report at 36.

During its initial review the department found that the city had adequately justified its conclusions in Table 12-20. With the further explanation provided in Friends' exception and subsequent materials provided by the city and Friends, the department has concluded its original analysis was based on a misunderstanding of the record as detailed in Friends' exception. The department relied on evidence that the target industries utilized sites in the specified ranges that did not address contents of Table 12-20. Upon further review, the department does not find an explanation of how the city derived the data in Table 12-20.

The EOA contains considerable analysis of the local and regional economy, trends affecting the city's economy, the city's comparative advantages and disadvantages, and prospects for future industrial growth. This is valuable and useful information, but the department has not found where the city translated it into the data contained in Table 12-20. There is no formula that realistically translates opportunities into needs, and a component of professional judgment will

always be required. But the assumptions and findings of that professional judgment must be articulated in the record. OAR 660-009-0010(5) provides:

“The effort necessary to comply with OAR 660-009-0015 through 660-009-0030 will vary depending upon the size of the jurisdiction, the detail of previous economic development planning efforts, and the extent of new information on national, state, regional, county, and local economic trends. A jurisdiction's planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of this division.”

The department finds that the city has not explained what information is available or what data or assumptions it used. Consequently, the department amends its recommendation regarding Friends' Objection 2 and it recommends the commission sustain the objection and remand the submittal with instructions to the city to provide adequate evidence regarding the number of industrial sites needed during the planning period.

7. Exception 7: Inventory of Employment Land

The exception asserts several matters related to its Objection 4. The department recommended that the commission reject Objection 4. Staff Report at 37-38.

Employment Land Inventory. The exception asserts that the department erroneously relied on an unacknowledged buildable lands inventory (BLI), remanded by LUBA in 2010,⁸ to determine that the city had included a legally compliant employment land inventory in the record. The exception contends the city did not include this unacknowledged BLI in the record and that the only reason it is in the record is that the objectors themselves inserted it as an attachment to written comments during the local proceedings. Friends exception at 12.

The referenced BLI was remanded by LUBA in 2010. However, the city, in its exception, notes that the remand of the BLI was based entirely on its residential land, and did not involve employment land. Newberg exception at 17. The city also asserts that the inventory summary tables contain enough information to constitute a commercial and industrial buildable land inventory without further elaboration. Rec. at 5890-91, 5900, 5902.

Upon further review, the department does not agree with all of the city's contention. While the employment land inventory was not subject to the cited LUBA remand, specific information regarding specific sites is nevertheless required by OAR 660-009-0015(3),⁹ and the department

⁸ *Friends of Yamhill County v. City of Newberg*, 62 Or LUBA 2011 (2010). Slip opinion [here](#).

⁹ OAR 660-009-0015(3) provides in relevant part: “Comprehensive plans for all areas within urban growth boundaries must include an inventory of vacant and developed lands within the planning area designated for industrial or other employment use.

“(a) For sites inventoried under this section, plans must provide the following information:

“(A) The description, including site characteristics, of vacant or developed sites within each plan or zoning district;

“(B) A description of any development constraints or infrastructure needs that affect the buildable area of sites in the inventory ***”

could not find this information in the record. It is plausible that the city could refute these particular objections by citing to detailed information regarding specific sites from the 2009 BLI, which the city states was updated in 2012. However, absent some identification of where this material is in the record, the department agrees with this exception.

The department recommends that the commission sustain Friends' Objection 4 on these grounds and remand the decision to allow the city to supplement the record with detailed information regarding specific sites from the 2009 BLI, as updated in 2012.

Failure to Account for All Land. The exception asserts that the department did not address an issue brought up as its objection: that a vacant site in the Springbrook Industrial Park was omitted from the EOA inventory of vacant industrial land, but was included on a map of buildable industrial land elsewhere in the record. The department agrees that the Staff Report did not address this portion of the objection. The city indicated that the disputed four-acre site, while vacant, is part of the A-dec dental equipment industrial site, and is not available and thus not included in the BLI. Newberg response at 13. The submittal includes evidence on which the city relied to conclude the land is unavailable.¹⁰ The department does not find this to be substantial evidence. The statements are speculative and conclusory and there is no attribution to a source.

The department recommends that the commission sustain Friends' Objection 4 on these grounds and a remand of the decision to allow the city to supplement the record with information regarding why the vacant A-dec site was not included in the buildable lands inventory.

Commercial Land Missing from Summary Tables and Maps. The objection asserted that Newberg's EOA did not include vacant commercial land located along Springbrook Road in the vicinity of Mountain View Drive. The exception contends that the department mistakenly rejected this objection based upon reliance on an employment land inventory that had been remanded by LUBA. If the land were to be included in the commercial land inventory, the objection asserted, the city would have a surplus of commercial land, and thus could redesignate some of it for industrial use.

The city has indicated that it did not include areas of the Springbrook District Village Area, which is the location of the missing commercially designated lands, that were designated in the mixed-use village plan for residential uses. Newberg response at 13. The city states it is a "mixed-use area planned part for residential uses and part for commercial uses." While the city's explanation is plausible, the department has not found a map or other explanation in the record

¹⁰ The full content of the first piece of evidence is in planning commission minutes and states: "One example is the land we all presume A-DEC will expand into, which is already available and zoned for industry. This vacant land will be used by one of Newberg's existing industrial users, which is part of one of our targeted clusters." Rec. at 854.

The second citation is from a 2010 staff report to the Newberg Planning Commission, and it states: "Notably, neither of Newberg's current largest campuses are likely to have much if any infill. . . .The A-dec campus has infilled numerous times over the past decade, and has little additional potential for further infill. Further expansion is more likely to occur on adjoining buildable land being held by the business owner." Rec. at 1024.

that demonstrates this assertion. The record contains a map of the Springbrook Master Plan (Rec. at 496), but the area in question is all designated "Village," with no distinction between residential and commercial areas. Cities do not typically specify which areas within mixed-use designations will contain which uses because they are expected to be mixed. The record should, however, explain the assumptions the city used in determining the amount of commercial use that would be accommodated in mixed-use areas.

Friends' provides evidence that all of the land is in fact zoned for commercial use but only a portion of the land is included in the employment land inventory. Friends rebuttal at 15. Without necessarily accepting this as factual, the evidence presented is credible and casts doubt on the city's explanation. The department is unable to ascertain from the information in the record whether or why the city discounted the employment capacity of the Springbrook District Village Area.

The department recommends sustaining this exception, and remanding the decision to allow the city to supplement the record with information regarding whether a portion of the Springbrook District Village area is designated for non-commercial uses and how the land it was accounted for in the employment land inventory.

Other Employment Zones Missing from EOA. The objection asserted that the city ignored certain classifications of employment land when adopting its EOA, particularly land zoned for residential-professional and institutional uses. The exception asserts that the department did not address this issue in its report. Friends exception at 15.

The department agrees that this portion of the objection was not addressed in the Staff Report. Newberg asserts that it did in fact consider institutional and residential professional land in its employment land inventory when it determined that inclusion was appropriate. Newberg response at 13. As an example, the city notes that it included, as Site VIII, land adjacent to Providence Hospital that is currently zoned as Institutional and Residential-Professional. Rec. at 5730. This fact refutes the claim in the objection and exception, that the city ignored such lands in its EOA. The allocation of the employment forecast to various sectors in Tables 12-15 and 12-19 includes an "other" category, which includes "includes schools, churches, government water and waste water plants, on-site construction, and home occupations." Rec. at 5845. This analysis was carried forward into the commercial land needs analysis in Table 12-26.

The department recommends that the commission reject this portion of the objection because the city considered non-commercial lands in its "other employment land" need determination.

8. Exception 8: Accommodation of Land Needs

This exception asserts several matters, which will each be discussed separately, below.

Zimri Drive (Site VI). This site is located within the UGB. The exception asserts that the department correctly recommended remand of the city's analysis of this subarea, but cited the wrong site characteristic as the reason for remand. Instead of citing the site characteristic based

upon a minimum of 20 buildable acres, the department should have cited the site characteristic based upon adjacency to an existing industrial or commercial area or a site size of at least 50 buildable acres. Friends exception at 16. The department recommended remand of both site characteristics based upon the city's inadequate explanation of the "meaningful connections" prong of the "necessary site characteristics" test set forth by LUBA.

The city's exception addressed this site, reiterating why its findings and application of site characteristics complied with applicable rules. Newberg exception at 28. The Staff Report recommended remand of the city's findings regarding this specific area on narrow grounds regarding adequacy of the record, but noting also that several of the site characteristics the city used to find the area unsuitable for industrial use were invalid. The department finds nothing in the city's exception that changes its conclusions in the Staff Report.

The department agrees with the Friends' exception, and alters the staff recommendation to reflect the correct site characteristic (adjacency to existing commercial or industrial areas).

Surplus Commercial Lands. Friends' Objection 5 identified several vacant commercial parcels within Newberg's UGB and asserted that these parcels could accommodate industrial use. Friends objection at 45-47. The department recommended rejection of the objection because the city did not have a demonstrated surplus of commercial land in the UGB. Staff Report at 45-46. The exception reasserts a contention that the city does have a surplus of commercial land (see also exception 7, above), noting that the department's original recommendation was based upon reliance on the unacknowledged and remanded BLI. The exception also asserts that, even if the city does not have a surplus of commercial land, it is obliged to determine if the commercial designations can be relocated onto different parcels within the city, and replaced by industrial designations on these properties.

The department recognizes that the Newberg employment land inventory cannot be relied upon to find whether there is a surplus of commercial lands within the city, and also recognizes that the city should provide additional evidence regarding commercial designation of an existing parcel near the intersection of Springbrook Road and Mountain View Drive (see discussion under exception 7, above).

The department recommends that the commission find this part of Friends' objection moot because, just as the city cannot rely on the employment land inventory to find that there is no surplus of commercial lands, the objector cannot rely on the same inventory to find that there is a surplus. The evidence as to whether such a surplus exists is inconclusive – thus the record contains no definitive information that a surplus exists such that industrial uses can be "reasonably accommodated."

North Valley/Chehalem Road Area Adjacent Sites Inside and Outside of UGB. Friends' Objection 5 identified two subareas outside of the UGB (Sites 1 and 3) that are adjacent to a site inside the UGB (Site I), and asserts that these sites should be combined and, as combined, would meet additional identified site characteristics for industrial land. Friends objection at 54-55. The

exception disagrees with the department's recommended rejection of this argument, stating that the department's apparent position is that a city is never required to study lands within a UGB in combination with lands outside of a UGB because of the different legal standards of review, and the department's apparent position that lands within a UGB can always be assumed to be indispensable in meeting a city's identified long-term land needs. Friends exception at 17-19.

The department believes that combining study of lands within a UGB and lands outside a UGB in a single study area for purposes of meeting identified land needs, in order to optimize the use of land to meet those needs, is a good practice and should be encouraged. However, the department does not agree with an assertion that cities are *required* to combine study of lands within a UGB and lands outside a UGB in a single study area. Such a requirement would expose an already complex analysis of a UGB expansion to the additional, perhaps unresolvable, complexities of having a single subarea with individual components of land subject to different legal standards regarding meeting identified land needs.

The department continues to recommend that the commission reject of this portion of the objection.

9. Exception 9: Additional Large Sites

Friends Objection 6A contended that the city had included too many large sites in its proposed UGB expansion, adding two 10- to 30-acre sites and two 30- to 50-acre sites when its projected need was for only one of each of these sized sites. The department recommended rejection of the objection on the grounds that the city identified a need for 131 acres, and the expansion provides 129 acres, and that therefore the city included as much land as was needed, not more. Staff Report at 49-50. The exception asserts that the city's need is based upon the number of sites needed, not total acres. Friends exception at 19.

The city states that the plan anticipates some of the currently large parcels could be subdivided to meet identified needs for smaller parcels in an industrial park-type development, Newberg exception at 34. The city also points out that the EOA determined a need for both a number of appropriately sized sites and a specific number of buildable acres for industrial land. Newberg response at 15. The EOA identifies the city's need as one 30- to 50-acre site, one 10- to 30-acre site, and "industrial park sites totaling approximately 71 buildable acres." Rec. at 5892. The latter is a summation of the acreage of smaller sites that the city found cannot be accommodated inside the existing UGB.

The number of acres is relevant. The 131 acres of industrial land the city found it needed was based on one site in each of the two larger site-size categories. Although the number of larger parcels the city included in the UGB exceeds the need for large sites, the second large parcel included in each size category was not included to accommodate a *site* need, it was included to provide an adequate number of *acres*.

The department finds the EOA has not included excess lands for the reasons stated in Friends' Objection 6A and continues to recommend that the commission reject this basis for the objection.

10. Exception 10: Extra Acreage

The objection contended that the proposed inclusion of 128 "unbuildable" acres with the 132 buildable industrial acres, doubling the size of the expansion, was unacceptable because the city had not demonstrated a need for 128 acres of additional land on the fringe of the UGB expansion area. The exception disputes the department's recommended rejection of the objection on the grounds that the department did not state the demonstrated need it believes will be satisfied by the inclusion of the additional land. Friends exception at 20-23.

The department recognizes that the reasons the department cited for its recommendation to reject the objection do not relate directly to need, but rather relate to practical aspects of the city's decision: the preference for clearly demarcated boundary lines for the UGB; the city's projected use of the lands for parks; and the city's floodplain regulations, which greatly restrict development in floodplains and riparian areas. In addition, the department concedes that the public facility need for three acres is minimal justification for the 128 additional acres. Staff Report at 50-51.

The exception states that the city did not establish a need for the additional land. The city did assert a need: that the additional acres are included to promote livability, as allowed by the second Goal 14 need factor. The land, according to the city, will provide amenities for the employees within the industrial area. Rec. at 5791-5792.

The department wishes to expound on a statement the Staff Report, which says, "if buffering were the only reason to include the land in the UGB, the riparian area can serve that function equally well outside the UGB." Staff Report at 51. The issue is that "buffering" as defined by the city is more than just a passive vegetated area dividing the industrial lands from other uses. It is also intended to help "create a quality, attractive, and balanced working environment for workers in that area." Providing amenities to fulfill this intention may require uses and structures that are not allowed on lands outside a UGB and on lands designated for agricultural use.

The exception points out that the Staff Report does not explain whether the department finds the city's inclusion of nearly twice as much land as it needs for industrial use to be *de minimis*. Friends exception at 22. To be clear, the department does not find 128 acres of a total 230-acre expansion to be *de minimis*, but neither does the department concede that all of the acreage is not needed, because to make that finding would require that the department ignore the city's findings of need related to livability. Livability as a need factor is not defined in Goal 14, so the commission will need to determine whether the city has established that the inclusion of the 128-acres was done to meet an identified livability need that is consistent with the intent of the goal. Friends contends that the city is required to analyze whether the livability need can be accommodated on higher-priority lands. The department notes that the city made a location-

specific determination for this need, as it will enhance the livability for those who are employed in the adjacent industrial area.

The department's recommendation for rejection of the objection was based partly on an administrative rule provision, provided in footnote 10 of the Staff Report:

OAR 660-024-0020(2) provides: "The UGB and amendments to the UGB must be shown on the city and county plan and zone maps at a scale sufficient to determine which particular lots or parcels are included in the UGB. Where a UGB does not follow lot or parcel lines, the map must provide sufficient information to determine the precise UGB location."

Because the city found a need for land to enhance livability and the rule encourages a jurisdiction to use existing parcel lines, the department found that following existing property boundaries and natural features to be consistent with relevant goals and rules and recommended the objection be rejected. The commission may find that the city's action is either not an acceptable application of Goal 14 need factor 2 and come to a different conclusion or that the city had not adequately demonstrated the livability need for inclusion of this particular amount of land.

Incidentally, the Staff Report states: "If buffering were the only reason to include the land in the UGB, the riparian area can serve that function equally well outside the UGB." The city takes exception to this and states its stream buffering standards only go into effect if the land is brought into the UGB. To explain the department's position more fully, the land will not be subject to development pressure if left out of the UGB because it will continue to be subject to Yamhill County's acknowledged Goal 5 program, and the existing EFU zoning is fairly restrictive. The department does not agree that the city has established that the resource will be better protected if included in the UGB.

B. City of Newberg

The city submitted 12 exceptions, which include a response to some of Friends' objections, on February 3, 2014 (Newberg exception). The exceptions were submitted within the time required by OAR 660-025-0160(5). The exception letter begins with an explanation of the city's view of what constitutes a valid site characteristic and why the record before the commission provides substantial evidence to justify the city's submittal as consistent with applicable goals and rules. Newberg exception at 6-14. Most of the city's exceptions refer to this discussion and assert the department erred in recommending remand, primarily in relation to interpretations of whether a site characteristic is "meaningfully connected" to a "particular use."

The department has explained its understanding of site characteristics. Staff Report at 15-17; Supplemental Report at 4-6; chapter III of this report. The department continues to find that the reasons for its recommendation to remand the submittal are correct, and the city's individual exceptions are not addressed with specificity unless they raise a unique or specific issue not already discussed.

Several of the city's exceptions concern issues addressed in section A of this chapter, as the issues were initially raised by objectors. The department considered these exceptions while responding to Friends exceptions, so those are not repeated here.

Remaining exceptions from Newberg are considered below.

1. Group of Parcels as a "Particular Use"

The city contends the department was wrong when it recommended the commission find that a business district is not a "particular use" and therefore site characteristics based on business districts are not a valid reason to exclude land from the UGB analysis. The city's exception contains its view of how a group of parcels (an "industrial district" or "industrial park") is properly considered a "particular use." Newberg exception at 11-13. The department addressed the city's exception in a general way in the Supplemental Report.

The city states:

"This is very much analogous to identifying site characteristics for a shopping center. A local plan may identify a need for a shopping center, and one would expect it to identify site characteristics based on typical characteristics of the comparable shopping centers, such as a minimum site size of 10, 20, or 30 acres and access to a major road. One would not expect to look solely at the characteristics of *each business individually* within that shopping center. A shopping center may have a combination of large and small businesses that individually occupy from over 10-acres to as little as a X acre each. In theory a city could parse those individual stores out to separate scattered lots all over the city, dispense with the need to find a single 10, 20, or 30 acre site, and still meet its total commercial acreage need. But there are reasons ('meaningful connections') that many some stores locate in shopping centers as opposed scattered individual sites, such as attracting regional customers." Newberg exception at 13. (Emphasis in original.)

The department responded:

"If the city is attempting to exclude a site based on site characteristics, the city may combine two or more 'particular uses.' The department believes such combining might be permissible, but only to the extent that it would not result in the exclusion of a site that would be included if the site characteristics of any individual particular use were applied. Otherwise, the grouping of particular uses would undermine the "particular use" requirement." Supplemental Report at 6.

The city's further argument contends: "If targeted industrial uses need to locate in industrial parks rather than on isolated parcels, but Newberg's industrial land supply consists only of isolated parcels, and then Newberg won't have the opportunity to locate targeted industrial uses

in the community.” Newberg response at 8. The department found that the city has not demonstrated that its target industrial uses need to locate in industrial parks.

The city’s findings provide general statements about industry practices and the results of its survey of similar cities. While this evidence is compelling, and likely applies to industry generally, the city has not demonstrated that its target industries all have this need. For example, the city determined that most agricultural business cluster firms will locate in new industrial districts. *See* Table 12-24, Rec. at 5882. While Table 12-24 identifies wineries and several other agricultural businesses that are located in business districts in the study, but the record does not in any way establish that they need to be in a group, only that they are.

The department continues to recommend that the commission find that the city has not demonstrated that a business district is a “particular use” for the purposes of applying site characteristics to exclude land from a UGB analysis.

2. Residential Proximity

Most of this exception is rebuttal to the department’s conclusions that the city’s residential compatibility site characteristics are not meaningfully connected to the operation of target industrial uses. Newberg exception at 16-19. The city also takes exception to the department’s recommendation that rural residential development should be treated differently than urban residential areas. Staff Report at 28-29. The exception contends the city only applied this site characteristic when the area was adjacent to small-lot “semi-urban” zoning, which it defines as a zone with a minimum lot size smaller than 2.5 acres. The department’s review of the record indicates that Areas 3-8, 12, 19, and 20 were found to be unsuitable for industrial use do to proximity to residential use. Rec. at 5747-5752. Only Areas 3, 4, 6, and 8 are adjacent to “semi-urban” residential zoning. (Yamhill County zoning map, Rec. at 6176.)

The city also takes issue with the department’s conclusion that an assessment of the land use pattern, rather than the current zoning designation, is appropriate. The city states that conflicts are with residential *use*, not just residential *buildings* and that land use patterns can change if allowed by the zoning. The department concurs with this assessment, but continues to contend that the threat of conflicts with rural residential use is different from that for urban density housing and warrants more analysis than the broad exclusion of land the city employed.

3. Built Space Capacity

The department recommended remand of the submittal based on its review of the method the city used to account for future employment in existing buildings. Staff Report at 36. The department found that all of the employment forecast had been allocated to vacant or re-developable land, and none to land that was already fully developed. The objector provided evidence that existing firms had considerable capacity to absorb additional employment. The city addressed this in its exception and provided additional information. Newberg exception at 26.

Upon further review, the department finds that the city included adjustments when it distributed its employment forecast among new current and expected future firms that account for

employment on developed land. *See* Table 12-20, reproduced on page 27 of this report. The table indicates only “infill & redevelopment” as locations for employment, but the narrative in the EOA states that the city included infill, redevelopment *and intensification* of existing employment land in this calculation. Rec. at 5723. Intensification means adding employees in existing firms. While the city did not establish how much of this employment would go to infill and redevelopment as opposed to intensification, the city did account for up to 44 percent of its expected employment growth to be accommodated inside the existing UGB.

The department previously stated:

The department recognizes that cities have options regarding the method employed to estimate the capacity of the existing UGB to accommodate job growth, and that no method should be held to an unreasonably high standard for accuracy. The department does not find that the city’s lack of assigning employment growth to fully developed land is necessarily an error, but rather that the EOA at least needs to discuss how this aspect of accommodating growth has been accounted for in the analysis. Staff Report at 37.

The department has now found that discussion and recommends that the commission reject this objection.

4. Alternative Sites

The city’s exception generally disputes the department’s recommended remand on specific issues related to several of the subareas analyzed and excluded by Newberg due to site characteristics. For two of these subareas, both located in the Newberg-Dundee corridor (Subareas 8 and 9), the exception alleges that the department’s reasons were based upon errors of fact.

The city points out that the staff report erroneously states that these two subareas are already within the UGB. Newberg exception at 32. The exception is correct. Additionally, the department notes a formatting error in the Staff Report on p. 47. The part of the page below Table 3 should read as follows:

Subarea 8 is also found by the city to not meet the following criterion:

1. Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.

Subarea 9 is also found by the city to not meet the following criteria:

1. Exclude [study areas] that are not predominantly less than 5 percent slope within buildable areas.

2. Exclude sites that require truck traffic to travel through or adjacent to a residential neighborhood to reach an arterial street or state highway.

Each of these site characteristics is considered below.

The department believes that the formatting error in the staff report, corrected above, resolves the second alleged error in the staff report, that the department recommended remand of Subarea 8 based on a city finding that the site lacked proximity to an arterial roadway.

The department's analysis was not predicated upon these parcels already being within the UGB; the reasons for remand remain valid for these two subareas although they are not within the UGB. The department's recommendation for remand is based on the fact that the city did not generally prove a "meaningful connection" for any of the site characteristics used by the city to exclude these subareas.¹¹

Therefore, the department continues to recommend the commission sustain Friends' Objection 5 as explained in the Staff Report, with the corrections noted above.

5. Lands Included in the UGB

In response to Friends' Objection 6, the department recommended the commission remand the submittal with instructions to consider a particular parcel, the "Waste Management site," vacant. Staff Report at 50. The city's exception provides additional information regarding the use of the site that the department did not consider for the Staff Report. Newberg exception at 35-38. The city calculated that the site contains only 3.32 acres of buildable land. Rec. at 5767. The remainder is classified as built or unbuildable (due to areas within a stream corridor). The site is adjacent to a neighboring lot under the same ownership that contains structures. Rec. at 5807.

The department considers these to be significant pieces of information. A finding that a relatively small area of buildable land currently in use is unlikely to redevelop is more credible than the same finding for a 13-acre parking lot, which was the assumption behind the department's recommendation.

The city continues to rely in part on the *lack* of substantial evidence that the site will redevelop during the planning period. Newberg exception at 38. The department said:

The city relies partially on the statement, "There is nothing in the record to suggest that Waste Management will abandon this site or develop it into something else." Rec. at 6003. There is nothing apparent in the record that suggests it will *not* be developed, and the department finds that without evidence either way, the city is required to consider the land vacant and available for development. To conclude otherwise would render moot the entire inventory

¹¹ Of note regarding the Newberg-Dundee corridor subarea, the record does not contain any explanation as to why the city created these two subareas without including adjacent rural lands. This is relevant because it appears that including those lands could have created of a larger, potentially viable industrial district adjacent to the UGB.

requirement in OAR 660-009-0015(3) or, alternatively, require a city to complete an onerous exercise of documenting the development plans of every owner of vacant employment land in the city. (Emphasis in original.) Staff Report at 50.

The department finds that this conclusion is still valid. The department is recommending the commission remand the employment land inventory to document the status of the "A-dec site" on similar grounds (*See* subsection V.A.7 of this report.) The primary difference here is that the land is in use by an existing operation.

The city provided analysis why this site contains "permanent structures." Newberg exception at 36-37. The department remains unconvinced that fencing and landscaping constitutes "an addition or change that makes something better or more valuable" that is "continuing or enduring without fundamental or marked change." (*See* Newberg exception at 36.) The structural improvements on the west side of the site (albeit on a separate tax lot) are certainly permanent structures.

On balance, the department is unpersuaded that the site is improved. The department continues to recommend that the commission remand with instructions to consider the Waste Management site vacant in the employment land inventory.

The city indicated that the department erroneously stated the Waste Management site is in the existing UGB, while it is actually in the expansion area. Newberg exception at 35. The findings should be amended to reflect this correction.

6. Goal 14 Location Factors

Newberg takes exception to the department's recommended remand based on a finding that the record "do(es) not describe the nature of the farm use in the vicinity or the effects of the urban use proposed, so no meaningful comparison of the effects of alternative boundary locations can result." The exception contends the city completed the proper analysis. Newberg exception at 39.

The department found that "at least some specific consideration of the nature of the farm use in the area and potential impacts from industrial use is needed" but wasn't apparent in the record. The department conceded, however, that, "Since all of the alternative areas are in close proximity, even overlapping, the expected level of findings and analysis may be different in this case than would be expected for more widely distributed alternatives." The department's recommendation attempts to balance the practical aspects of what level of specificity is required for any Goal 14 analysis versus the varying level of effort needed in a specific case. The department believes that, since the alternative expansion areas present in this case are fairly homogeneous, the level of findings required may not be as extensive as would be expected when the alternative areas are more diffuse. But the department found that an analysis of effects on "nearby agricultural activities" cannot be complete without an explanation of what those activities are. None was present in the record.

The department also recognized that the recommendation included proposed remands on several items that could result in the city considering additional alternative expansion areas. If that transpires, the city would almost certainly need to provide a more robust analysis for the Goal 14 location factors than is present in the current submittal, and the report points that out.

The department continues to recommend that the commission remand the submittal with instructions that the city supplement the analysis of alternative expansion areas with an adequate factual base to demonstrate the Goal 14 location factors have been considered and balanced.

VI. DEPARTMENT RECOMMENDATION AND DRAFT MOTIONS

A. Recommendation

The analysis, findings, conclusions, and recommendations contained in this report agree in some cases with those in the Staff Report and in other cases modify or amend the earlier report. Based on review of the record, objections, exceptions, and other submitted materials, the department recommends the commission remand the Newberg UGB amendment submittal for further development of the record and analysis. The specific recommendations are provided below, with changes to the recommendation in the Staff Report indicated by underscore for additions and ~~overstrike for deletions~~.

The department recommends the commission instruct the city, on remand, to:

1. Demonstrate that the following "site characteristics" identified by the city pursuant to OAR 660-009-0015(2) and OAR 660-024-0060(5) are meaningfully connected with the operation of a target industry or a group of target industries with compatible operational requirements, or consider the site and area needs during the analysis of alternative expansion areas under the Goal 14 location factors:

~~Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.~~

Exclude sites that require truck traffic to travel through or adjacent to a residential neighborhood to reach an arterial street or state highway.

Exclude sites that, for community centers, abut residential neighborhood on more than 50 percent of the site perimeter unless effective topographical or road buffers are present or planned.

Include parcels or contiguous group of parcels [that] adjoin an existing industrial or commercial area or an area with sufficient buildable land to allow expansion of the industrial district.

Include parcels or contiguous group of parcels [that] adjoin an existing industrial or commercial area, or an area with sufficient buildable land to allow expansion of the industrial district.

Include parcels or contiguous group of parcels [that] have suitable truck access to a state highway or arterial street within one-quarter mile.

Exclude [study areas] that are not predominantly less than 5 percent slope within buildable areas.

2. Demonstrate that the following "site characteristic" identified by the city pursuant to OAR 660-009-0015(2) and OAR 660-024-0060(5) is typical of and meaningfully connected with the operation of a target industry or a group of target industries with compatible operational requirements or consider the site and area needs during the analysis of alternative expansion areas under the Goal 14 location factors:

Exclude sites that abut residential neighborhoods on more than 25% of the site perimeter unless effective topographical buffers are present, such as a stream corridor, arterial street, state highway, rail line, or park.

3. Explain why target industrial uses must be in close proximity to an arterial street or state highway and not a collector.
4. Provide adequate evidence regarding the number of industrial sites needed during the planning period.
5. Include the content required in OAR 660-009-0015(3) in the employment land inventory.
6. Provide information regarding why the vacant A-dec site was not included in the buildable lands inventory.
7. Provide information regarding whether a portion of the Springbrook District Village area is designated for non-commercial uses and how the land it was accounted for in the employment land inventory.
8. ~~Explain how the determination of the capacity of the existing UGB to accommodate employment growth considered employment growth on fully developed land.~~
8. Clarify that the Zimri Road area (Site VI) is not adjacent to commercially zoned land, and provide adequate justification as to why this site cannot reasonably accommodate industrial uses, or consider it in the Goal 14 analysis of alternative locations to accommodate industrial land needs under OAR 660-024-0050(4).

-
9. Adequately justify why the portion of South Springbrook Road outside the existing UGB (Subarea 12) is unsuitable for industrial use or consider the area in the Goal 14 analysis of alternative locations to accommodate industrial land needs.
 10. Adequately justify why Sites 8 and 9 (Newberg-Dundee corridor) are unsuitable for industrial use or consider them in the Goal 14 analysis of alternative locations to accommodate industrial land needs.
 11. Consider the Waste Management site vacant in the employment land inventory.
 12. Supplement the analysis of alternative expansion areas with an adequate factual base to demonstrate the Goal 14 location factors have been considered and balanced.

The department also notes there are recommended corrections to the proposed findings and conclusions contained this report that do not change the final recommendation.

B. Proposed Motion

Recommended Motion: I move the commission remand Newberg's urban growth boundary amendment submittal based on the findings and conclusions in the January 23, 2014, staff report, the February 10, 2014, supplemental report, and the March 7, 2014, supplemental report, with specific instructions as defined in Section VI.A of the March 7 report.

C. Optional Motions

Remand on other bases: I move the commission remand Newberg's urban growth boundary amendment submittal based on the findings and conclusions in the January 23, 2014, staff report, the February 10, 2014, supplemental report, and the March 7, 2014, supplemental report, with the following changes: _____.

For approval: I move that the commission approve Newberg's urban growth boundary amendment submittal based on the commission's findings that: _____.

Exhibit “B”
to Resolution No. 2015-3189

**Timeline of events related to the
 Newberg South Industrial UGB Amendment
 March 27, 2014**

12/4/2003	City Council establishes the Ad Hoc Committee on Newberg’s Future, and asked them to make recommendations on how the city should provide for future industrial and other types of development.
4/2004 – 6/2005	Ad Hoc Committee on Newberg’s Future holds 25 meetings and two open houses. Working with consultants, the committee develops projections for employment land and other land needs. The committee considers a number of options for growth.
7/21/2005	Ad Hoc Committee on Newberg’s Future delivers their report “Recommendations on Newberg’s Future.” The Committee recommends that the South Industrial area be included in the UGB to meet 20 –year industrial land needs, and that additional land be included in an urban reserve to meet land needs through 2040.
8/1/2005	City Council adopts Resolution No. 2005-2590, directing staff to undertake activities needed to implement the recommendations of the Ad Hoc Committee on Newberg’s Future.
11/21/2005	City Council adopts Ordinance No. 2005-2626, adopting industrial and other land needs.
1/3/2006	City Council adopts Ordinance No. 2006-2635, adopting an economic opportunities analysis
2/7/2007	The County Commissioners approve a Measure 37 Claim for the Gaibler property, enabling them to develop a rural residential subdivision on the property.
8/5/2007	City Council adopts Ordinance No. 2007-2673, authorizing a development agreement with the Gaiblers, agreeing that the city would pursue a UGB amendment and annexation for their property in exchange for the Gaiblers agreeing to an industrial designation instead of developing the property as residential.
7/2/2008	City Council adopts Ordinance No. 2008-2698, including the South Industrial area and other land into the Urban Reserve area.
7/21/2009	The Oregon Department of Land Conservation remands the urban reserve to the city for various technical reasons. DLCD issues an opinion that, “the city may well be able to demonstrate the need for large, relatively flat industrial land based on its recent economic opportunities analysis,” but indicated that the city should pursue a UGB

**Exhibit “B”
 to Resolution No. 2015-3189**

	amendment to do such, not an urban reserve amendment. The DLCDC director encourages the city to pursue such a UGB amendment.
3/2009-10/2009	The city creates the South Industrial Master Plan through community visioning meetings, agency coordination, and consultant work.
11/2/2009	City Council adopts Resolution No. 2009-2872, accepting the South Industrial Master Plan as a vision for the south industrial area.
2/1/2010	City Council adopts Ordinance No. 2010-2723, revising the 2006 Economic Opportunities Analysis.
2/22/2010 – 2/16/2011	Several parties appeal the City Council adoption to LUBA and eventually to the Court of Appeals.
2/16/2011	The Court of Appeals remands the EOA relating to population forecast coordination, and issuing a new opinion on how to determine site suitability characteristics.
6/15/2010	The Newberg Urban Area Management Commission recommends that the City Council and County Commissioners adopt South Industrial UGB amendment.
7/18/2011	City Council adopts Ordinance No. 2010-2723, adopting the South Industrial UGB amendment, contingent on the County adopting a coordinated population forecast.
8/2011-10/2011	Newberg asks the County to adopt the city’s population forecast, along with the other cities’ population forecasts as the official County coordinated population forecasts.
10/27/2011	The County Commissioners vote to apply for grant to create their own population forecast.
3/2012-5/2012	A small group of city councilors meet with representatives of 1000 Friends of Oregon and Friends of Yamhill County to determine if there was common ground that would avoid litigation. The talks did not result in agreement.
8/20/2012	City Council adopts Ordinance No. 2012-2751, adopting the South Industrial UGB amendment based on the “safe harbor” population forecast.
10/18/2012	The County Commissioners adopt a new population forecast based on a PSU study.
11/8/2012	The County Commissioners consider the South Industrial UGB amendment and ask the City Council to (1) use the newly adopted population forecast, and (2) consider adopting the UGB amendment in two parts instead of just one.

**Exhibit “B”
 to Resolution No. 2015-3189**

1/22/2013	City Council adopts Ordinance No. 2013-2759, incorporating the revised population forecast into the South Industrial UGB findings. The Council also votes to ask the County Commissioners to adopt the UGB as one amendment instead of two.
5/20/2013	City Council adopts Ordinance No. No. 2013-2761, adopting revised findings to the South Industrial UGB amendment, revisions to the Economic Opportunities Analysis, amendments to the comprehensive plan and transportation system plan, and repealing certain Ordinances(Nos. 2010-2723, 2010-2740, 2012-2751, 2013-2759).
8/27/2013	The updated UGB amendment is sent to the Department of Land Conservation & Development (DLCD) in the manner of periodic review.
12/20/2013	DLCD refers Newberg’s UGB amendment to the Land Conservation & Development Commission (LCDC).
2/13/14 & 3/14/14	LCDC holds hearings on Newberg’s UGB amendment. At the 3/14/14 meeting, LCDC gives the city until May 22, 2014 to decide whether they will enter mediation with objectors (primarily 1000 Friends of Oregon) or accept a remand.



ORDINANCE No. 2015-2786

AN ORDINANCE REPEALING ORDINANCE NO. 2013-2761, WHICH ADOPTED REVISED FINDINGS IN SUPPORT OF THE SOUTH INDUSTRIAL URBAN GROWTH BOUNDARY AMENDMENT, REVISIONS TO THE ECONOMIC OPPORTUNITIES ANALYSIS, AMENDMENTS TO THE COMPREHENSIVE PLAN AND TRANSPORTATION SYSTEM PLAN, AND REPEALING CERTAIN OTHER ORDINANCES

RECITALS:

1. City Council adopted Resolution No. 2015-3189 on May 4, 2015, authorizing staff to withdraw Newberg's application for the south industrial urban growth boundary amendment, revised Economic Opportunities Analysis, and related amendments from the Department of Land Conservation and Development. To complete this action, the City Council must repeal Ordinance No. 2013-2761, which adopted the materials for the urban growth boundary application packet.
2. Repeal of Ordinance No. 2013-2761 does the following:
 - Repeals the South Industrial UGB Report and Findings, including its appendices.
 - Removes certain area from the Newberg Urban Growth Boundary that was added as part of the South Industrial UGB Report, and would *not* apply the proposed comprehensive plan designation of those properties to Newberg IND (Industrial) and PQ (Public/Quasi-Public).
 - Would *not* apply a comprehensive plan designation of IND to tax lots 3221-2600 and 3228BB-100; these tax lots will retain their current Medium Density Residential (MDR) designation.
 - Repeals the updated Newberg Economic Opportunities Analysis (EOA); the current version of the EOA will be the adopted 2006 version, which can be found on the city website at www.newbergoregon.gov/economic-opportunities-analysis.
 - Repeals proposed Comprehensive Plan text amendments related to updated population numbers, updated buildable land supply and need information, and several policies related to the updated EOA. The current Comprehensive Plan can be found on the city website at www.newbergoregon.gov/comprehensive-plan.
 - Repeals the future transportation plan text and map for the South Industrial area.
 - Also repeals Ordinance Nos. 2010-2723, 2010-2740, 2012-2751, and 2013-2759.

Note: the full text of Ordinance No. 2013-2761 can be found on the city website at www.newbergoregon.gov/ord2761.pdf.

THE CITY OF NEWBERG ORDAINS AS FOLLOWS:

1. Ordinance No. 2013-2761, which adopted revised findings in support of the south industrial urban growth boundary amendment, revisions to the economic opportunities analysis, amendments to the comprehensive plan and transportation system plan, and repealing certain ordinances, is hereby repealed.

2. Ordinance Nos. 2010-2723, 2010-2740, 2012-2751, and 2013-2759, which adopted previous versions of the economic opportunities analysis, south industrial urban growth boundary amendment, and related amendments, are hereby repealed.

➤ **EFFECTIVE DATE** of this ordinance is 30 days after the adoption date, which is: November 4, 2015.

ADOPTED by the City Council of the City of Newberg, Oregon, this 5th day of October, by the following votes: **AYE:** **NAY:** **ABSENT:** **ABSTAIN:**

Sue Ryan, City Recorder

ATTEST by the Mayor this 8th day of October, 2015.

Bob Andrews, Mayor

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: October 5, 2015

Order ___	Ordinance ___	Resolution <u>XX</u>	Motion ___	Information ___
No.	No.	No. 2015-3206		

SUBJECT: A resolution approving the transfer of approximately 87.3 acres of City property including water rights, waterline and access easements, water treatment and delivery infrastructure, and authorizing the City Manager Pro-Tem to negotiate and execute the necessary documents to complete the conveyance of the City springs water system to the Chehalem Springs Water Association.

**Contact Person (Preparer) for this Motion: Jay Harris, Public Works Director
 Dept.: Public Works & Engineering Services
 Departments
 File No.:**

RECOMMENDATION:

Staff recommends the adoption of Resolution No. 2015-3206.

EXECUTIVE SUMMARY:

Between 1894 and 1948 the primary source of drinking water for the City was from six (6) springs, Snider, Skelton, Atkinson, Oliver, Otis, and Gardiner. In 1948 the City well field, located south of the Willamette River in Marion County, began producing supplemental water for the City. The water from the springs is prone to water quality/turbidity issues during large rainfall events in the winter months. Gardiner and Otis springs were disconnected from City well field water system in the period from 1970 to 1989. In 2008/2009 the remaining four springs were disconnected from the City water supply. Today all water provided to customers within the city limits is supplied from the City well field system. Snider, Skelton, and Oliver springs currently provide water to 72 residential customers located outside of the existing City limits. Atkinson and Gardiner springs are not currently in use. Non potable water from Otis springs is piped to the Chehalem Glenn golf course and used for irrigation.

In 2008, Council adopted Resolution No. 2008-2776, which created a separate springs customer billing classification and mandated full cost recovery of operation, maintenance, and capital costs from the spring customers. The Resolution declared “Council is open to divesting itself of ownership and operation of the springs system, and that the City in good faith, consider any proposals for the transfer and ownership of the springs system to the Four Springs Water Association or any responsible organization”.

The 2013 Citizens Rate Review Committee reviewed and recommended phased-in rate increases for 2015 and 2016 for the springs user group meeting the projected increases to the yearly operation, maintenance, and capital improvement project costs.

For approximately the last 18 months, City staff has been in discussion with representatives of the springs user group to discuss the potential to transfer ownership of the system. Last summer the City and the springs user group signed a letter of intent to begin negotiations to form a draft agreement to convey ownership of the system. Last winter, the springs user group formed the nonprofit Chehalem Springs Water Association (Association). The Association is ready to assume management of the springs, and is

proposing to contract with Hiland Water Corporation in the operation and maintenance of the system. Hiland Water is based in Newberg and currently operates multiple water systems around the State. At the Council meeting on October 7, 2014, Hiland Water provided information regarding their experience operating small water systems; Council then later met with staff in Executive Session to discuss the potential transfer of the system to the Association. Attached is Exhibit A, a draft copy of the proposed agreement between the City and the Association.

FISCAL IMPACT:

The City consulted with Galardi Rothstein Group (GRG) to assist in the preparation of a preliminary financial impact analysis, which is included as Attachment 1. GRG used two methods to approximate the valuation of the springs systems depreciated replacement cost and discounted cash flow.

The GRG used approximate valuations for the real estate, water treatment systems, piping systems, and water rights in their analysis, which are discussed below:

1. Real Estate (87.3 acres): Much of the property to be conveyed as a part of the proposed transfer is steep/topographically constrained, and should remain undeveloped to preserve the water quality in the spring collection systems. The draft agreement, Exhibit A, will require the dedication of a blanket conservation easement over the entirety of the spring properties. The intent of the conservation easement is to protect the water quality of the springs systems, to limit future development, and to preserve the natural resource as perpetual open space.

The Yamhill County existing assessed valuation (AV) of the property is shown in the table below to total \$1.44 million. With the current municipal use, the City is exempt from paying property taxes to the County. With the addition of the blanket conservation easements, the future use of the property is limited to open space, and the value of the 87.3 acres is roughly estimated to be approximately 10% of the current assessed valuation, or approximately \$145,000.

<u>Name</u>	<u>Acreage</u>	<u>Tax Map #</u>	<u>Tax Lot #</u>	<u>Current AV*</u>
Oliver	20.1 ac.	3S-2W-05	4501	\$607,918
Oliver	4.0 ac. **	3S-2W-05	4400	\$204,144 **
Atkinson	9.7 ac.	3S-2W-06	0900	\$290,426
Skelton	17.7 ac.	2S-2W-31	4200	\$267,419
Snider	<u>39.8 ac.</u>	2S-3W-36	1900	<u>\$279,423</u>
Total: 87.3 ac.		Total AV of transfer: \$1,445,186		

*AV is the assessed value assigned by Yamhill County

**City is to retain 4 acres of the Oliver Springs property for a future reservoir site.

2. Water Treatment Systems: In 2008 upgrades were made to the treatment and monitoring systems at Oliver, Snider, and Skelton Springs at a cost of \$707,880. The SCADA telemetry systems at the each spring is proposed to be retained by the City. The value of the water treatment systems using the depreciated costs is estimated by GRG to be approximately \$515,000.
3. Piping System, Water Meters & Services: The springs piping system and services are comprised of 46,500 lineal feet of piping ranging in diameter from 3/4-inch to 6-inches. Approximately 1/3rd of the springs pipes and services systems have been replaced over the last several decades,

but large sections of piping are over 50-years in age and will require replacement near term. The value of the existing piping system using the depreciated cost is estimated by GRG to be approximately \$135,000.

4. **Water Rights:** Referring to the table below, the City currently holds water right certificates from the State of Oregon for the exclusive use of Oliver Spring, 898 gallons per minute from Atkinson Spring, 898 gallons per minute from Skelton Spring, and has a pending (in-process) 1993 water right application with the State of Oregon for the adjudication of the 1905 Snider Spring water use permit of 224 gallons per minute. The combined water right totals 2,020 gallons per minute from Atkinson, Snider, and Skelton Spring, and the exclusive use of Oliver Spring. The actual maximum water flow from all four springs is approximately 210 gallons per minute, or approximately 10% of the allocated water right. All of the springs water rights are all shown to be located in the Chehalem Mountain limited groundwater restricted area by the State of Oregon Water Resources Department (OWRD).

Name	Size	Max Flow	Current Use	Water Right	Users
Oliver	24.1 ac.	40 gpm	22.5 gpm	all flows (1894, #6829)	22
Atkinson	9.7 ac.	75 gpm	0 gpm	898 gpm (1923, #5456)	none
Skelton	17.7 ac.	25 gpm	22.3 gpm	898 gpm (1919, #5456)	50 users total on
Snider	39.8 ac.	70 gpm	30.7 gpm	224 gpm (right pending)	Snider/Skelton

Staff consulted with GSI Water Solutions Inc. (GSI), regarding the value of the spring water rights and to discuss the potential to move the location of water rights. GSI indicated that the valuation of water rights are very difficult, but can be dependent on the following:

- Use of water: municipal, agricultural, livestock, temperature mitigation, etc.
- Location: ease of access, depth to water, access to electricity, etc.
- Water quality: turbidity, PH, minerals, contaminants, taste.
- Source volume/output: existing flows & potential to increase output.
- Age of water right: senior/older water rights are more valuable.

The current use of the spring water rights is for potable/drinking water purposes. The existing water quality is fair, except that during large winter rainfall events the system is prone to high turbidity, requiring boil water notices. The spring water also has low PH and requires adjustment to prevent pipe corrosion. The location of the spring systems are in rural agricultural areas and vary from having walk-in only access (Oliver Spring) to a short gravel drive-in access (Atkinson). The water rights range in age from 1894 to 1923, and are most likely senior to most water rights in the basin.

OWRD has several water rights application modification processes where:

1. A water right certificate could be transferred,
2. The certificate holder can modify the location of the point of diversion,
3. The type of use for the water right is modified.

OWRD reviews water certificate transfer applications to determine whether the proposed change would cause injury to other existing water rights or enlargement of the right. In the past the transfer of unused water rights has been considered, such as moving the right from Atkinson

Springs to the City well field, but GSI discovered that the OWRD would not approve an application to move a water right certificate from the Chehalem Creek drainage basin to an alternate drainage basin.

An application could potentially be submitted to the Oregon Water Resources Department for the transfer of the point of diversion of a water right certificate to a different location within the same drainage basin to improve the water output and/or water quality characteristics. This process is costly, lengthy, requires significant studies, and has no guaranteed outcomes. The development of a new point of diversion in one or more of the existing springs drainage basins would most likely entail the installation of a groundwater well. Most of the existing wells in the vicinity of the springs have poor water quality and produce a limited volume of water, which is the primary reason for the existence of the springs water system and customers.

Due to aforementioned issues regarding the transfer of a water right certificate or modifications to the point of diversion, it is estimated that the value of the current water right be equal to the value of the current maximum output of raw water from each spring source. The current system of 72 residential service connections is currently near the maximum without the construction of storage reservoirs. In discussion with GSI, it is roughly estimated that the current raw water output by each of the four springs could have a water right value ranging from \$10,000 to \$20,000, for a total of \$40,000 to \$100,000.

At the October 7, 2014 Council Worksession, the Chehalem Springs Water Association spoke to the valuation of the system. The Association in conjunction with their proposed operator, Hiland Water, is of the opinion that they can operate, maintain, and complete the needed upgrades to the springs treatment and distribution system at/near the current City rate effective in January 2015. Their financial model does not include any payments to the City for past Capital projects, system improvements, water rights, or property. Hiland Water Company prepared a letter dated September 22, 2015 that discusses their opinion of the fiscal impact to the City of Newberg, and is included as Attachment 2.

The Chehalem Spring Water Association will need to fund future large capital projects to improve the existing corrosion control system and potentially an upgrade of the tablet chlorination systems to a hypochlorite (bleach) injection system. The Association will also need to fund yearly pipe replacement projects, as many of the pipes in the system are over 50-years in age. It is difficult to further increase to the spring customer water rates to generate revenue to fund the future projects identified above, and/or to recoup past system costs, as the spring user's current 2015 volume charge is \$7.73 per 100 cubic feet (ccf), which is proposed to increase to \$12.77 per ccf on 1/1/2016 for full cost recovery; whereas the in-city rate is \$3.73 per ccf.

The GRG analysis found that over a 30-year period the City would lose rate revenue from the transfer of the system to the Association, but it is no longer responsible for the liability, capital expenditures, and operations and maintenance of the system. The GRG analysis also found that the Association net cash flow over a 30-year period is estimated to be "break even" in net present value.

For the reasons cited above, Staff is in agreement with the proposal to transfer the system as-is with no cost recovery for past capital projects, property, water rights, and existing system infrastructure, to the Chehalem Springs Water Association.

STRATEGIC ASSESSMENT:

Council Resolution #2008-2776 stated that: “Council declares that it is open to divesting itself of ownership of the springs and operations of the springs system. The City will in good faith, consider and proposals for the transfer of ownership and operations of the springs system from the Four Springs Water Association, or any responsible organization.” This Resolution meets the intent of Resolution 2008-2776, whereas Council is to consider the proposal by the Chehalem Springs Water Association.

The transfer of ownership of the system from the City of Newberg to the Chehalem Springs Water Association will allow the City Operations and Maintenance Divisions to focus solely on the operations and maintenance of the City municipal water system, end the past subsidization of the springs customer water rates by the City rate payers, and provide for the nonprofit Chehalem Springs Water Association to manage the system in a manner that may decrease costs and potentially stabilize the water rates for the 72 customers of the springs system.



RESOLUTION No. 2015-3206

A RESOLUTION APPROVING THE TRANSFER OF APPROXIMATELY 87.3 ACRES OF CITY PROPERTY INCLUDING WATER RIGHTS, WATERLINE AND ACCESS EASEMENTS, WATER TREATMENT AND DELIVERY INFRASTRUCTURE, AND AUTHORIZING THE CITY MANAGER PRO-TEM TO NEGOTIATE AND EXECUTE THE NECESSARY DOCUMENTS TO COMPLETE THE CONVEYANCE OF THE CITY SPRINGS WATER SYSTEM TO THE CHEHALEM SPRINGS WATER ASSOCIATION.

RECITALS:

1. The City of Newberg currently owns and operates three spring fed water treatment and supply systems for the benefit of 72 rural customers.
2. The springs water systems provided all of the potable water to the City from 1894 until 1948 when the first well was constructed at the City well field, which is located on the south side of the Willamette River.
3. Over the years the City installed additional wells at the well field and the reliance on water from the spring water sources decreased over time. Due to water quality issues during the winter months, by 2009 all of the spring water systems were disconnected from the City well field water supply system.
4. The three springs systems are currently in use are named:
 - Oliver (27899 NE Bell Road, tax map 3S-2W-05, tax lots 4400 & 4501);
 - Skelton (18320 NE Bald Peak Road, tax map 2S-2W-31, tax lot 4200)
 - Snider (18525 NE Bald Peak Road, tax map 2S-3W-36, tax lot 1900)
5. Atkinson Spring is currently not in use and is located at 17100 NE Hillsboro Highway, tax map 3S-2W-06, tax lot 00900.
6. Costs to operate, maintain, and upgrade the spring water systems to meet State requirements for large municipal water systems has increased significantly over the last decade.
7. In 2008 Council Resolution No. 2008-2776 created a separate springs customer class, and mandated the springs customers pay the full cost of the operation, maintenance, and 50% of the capital improvement project costs for the springs system improvements. Resolution No. 2008-2776 also declared that the Council is open to divesting ownership and operation of the springs system to any responsible organization.
8. For the last 18 months a group representing the springs customers has met with City staff to develop an agreement for the group to operate and maintain the springs water system. Last winter, the user group formed the non-profit Chehalem Springs Water Association that is proposing to manage the

springs water system with the operations and maintenance assistance from Hiland Water Corporation.

9. The draft agreement for the conveyance of the springs water system from the City of Newberg to the Chehalem Springs Water Association is attached as Exhibit A to this Resolution, and is hereby incorporated.
10. The springs water system conveyance agreement, Exhibit A, includes a description of the City water system assets to be transferred to the Chehalem Springs Water Association, which includes, but not limited to, debt forgiveness, real property, water supply piping, waterline and access easements, water services and meters, water right certificates, water collection and treatment systems, chemical storage and dosing equipment, and electrical equipment.
11. The Chehalem Springs Water Association has adopted bylaws, elected Board members, and has had multiple meetings with the springs customers to discuss the transition from City ownership of the system. Upon approval of this Resolution by Council, the Association is planning to begin the operation and maintenance of the springs water system by the end of 2015.
12. Oregon Revised Statutes 221.725, requires publication of the notice of the public hearing for sale of City real property. A notice was published on September 27th, 2015, in the Oregonian, a newspaper of general circulation that meets the requirements of the Statute.
13. In compliance with ORS 221.725, a public hearing was held with the opportunity for any resident of the city, or members of the general public, to present written or oral testimony. Evidence of market value of the property was fully disclosed by the city council at the public hearing.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. **Transfer:** – The City Council finds that the best interest of the City of Newberg, and the ratepayers of Newberg, is served by a transfer of the springs water system.
2. **Conveyance Agreement:** – The draft of the springs water system conveyance agreement is attached as Exhibit A and is hereby incorporated by reference. Exhibit A, includes a draft description of the City water system assets to be transferred to the Chehalem Springs Water Association, which includes, but not limited to, debt forgiveness, real property, water supply piping, waterline and access easements, water services and meters, water right certificates, water collection and treatment systems, chemical storage and dosing equipment, and electrical equipment. The Council authorizes the sale and transfer of the springs water system in accordance with the general terms in the attached Exhibit A, subject to the delegation of authority in paragraph 3.
3. **City Manager Pro-Tem Authority** – The City Council delegates to the City Manager Pro-Tem the authority to execute the necessary documents to complete the transfer of the springs water system improvements, water rights, and real property, as identified in Exhibit A. The City Manager Pro-Tem is further authorized to negotiate any provisions of the final conveyance agreement and to sign all necessary documents to perfect the agreement. All documents and agreements shall be approved as to form and content by the City Attorney.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: October 6, 2015.

ADOPTED by the City Council of the City of Newberg, Oregon, this 5th day of October, 2015.

Sue Ryan, City Recorder

ATTEST by the Mayor this 8th day of October, 2015.

Bob Andrews, Mayor

AGREEMENT FOR THE CONVEYANCE OF THE SPRINGS WATER SYSTEM

This Agreement for the Conveyance of the Springs Water System (“Agreement”) is entered into between the City of Newberg, a municipal corporation, and the Chehalem Springs Water Association (individually, a “Party;” collectively, the “Parties”).

RECITALS

- A. The City of Newberg (“City”) owns and operates a municipal water supply system known as the Springs Water System.
- B. The Springs Water System currently relies on four springs known as the Snider Spring, Skelton Spring, Atkinson Spring, and Oliver Spring that were part of the City’s original water system.
- C. The City subsequently established a well field to provide the City with municipal water and in recent years disconnected the Springs Water System from the City Water System.
- D. While the City no longer uses the Springs Water System, a number of properties located outside the City continue to receive water from the Springs Water System.
- E. Because the Springs Water System provides water almost exclusively to property located outside the City, the City desires to convey the ownership, operations, and maintenance of the Springs Water System to the current users.
- F. The property owners who receive water from the Springs Water System similarly seek to own and operate the Springs Water System and established the Chehalem Springs Water Association (“Association”) for that purpose.
- G. The City intends to convey and the Association intends to receive all of the real property, facilities, assets and liabilities of the Springs Water system including the real property, easements, water rights, treatment and transmission facilities, equipment and documents described in this Agreement.
- H. Following notice and a public hearing in accordance with ORS 221.725, the City Council approved Resolution No. 2015-3206 directing the City Manager to negotiate and execute this Agreement.

TERMS

- 1. Purpose. The purpose of this Agreement is to convey ownership of the Springs Water System to the Association, and to relieve the City from any future responsibility arising from the ownership, operation or maintenance of the system. The Parties intend that all right, title and interest in the subject real property vested in the City arising before, on or

after the effective date of this Agreement, whether recorded or unrecorded, will transfer to and vest in the Association according to the terms of this Agreement.

2. System Assets. As used in this Agreement, the Springs Water System includes:
 - a. The individual parcels of real property that contain the Snider Spring, Skelton Spring, Atkinson Spring, and Oliver Spring, and where treatment (if any) occurs and the water is diverted into a transmission line.
 - b. Any easements, including both access and utility easements however described, whether recorded or unrecorded, established or acquired for the purpose of installing, operating and maintaining the Springs Water System.
 - c. The treatment facilities and transmission lines, except the SCADA and communications equipment described in Section 5.
 - d. The individual water meters on properties that receive water from the Springs Water System.
 - e. All access and utility easements in the City's possession necessary for the operation and maintenance of the Springs Water System.
 - f. The equipment described in Exhibit A to this Agreement.
 - g. All water rights, including water permits and certificates, appurtenant to the real property containing the Snider Spring, Skelton Spring, Atkinson Spring, and Oliver Spring.
 - h. All customer accounts for Springs Water System users in existence on the effective date of this Agreement.
3. City Obligations The City will:
 - a. Execute and record quit-claim deeds, generally in the form shown in Exhibit B to this Agreement, conveying to the Association the parcels that contain the Snider, Skelton, Atkinson Spring, and Oliver Springs.
 - b. Provide copies of the water right permits and certificates for the individual springs in the City's possession. Copies of the water rights permits and certificates for the Snider, Skelton, Atkinson Spring, and Oliver Springs known to the City are attached as Exhibit C to this Agreement.
 - c. Provide copies of any easements in the City's possession for the Springs Water System, including utility easements for the transmission lines and access easements for the individual Springs parcels.

- d. Establish a line-of-credit as described in Exhibit D to serve as a reserve account for the Association for a period not to exceed 24 months from the effective date of this Agreement to assist with initial administrative and operational costs.
 - e. Provide electronic copies for the prior three calendar years of all customer records for those properties that receive water from the Springs Water System on the effective date of this Agreement.
 - f. Provide written notice to all current customers of the Springs Water System of the change in system ownership, operations, and maintenance, including the contact information for the Association.
 - g. Notify the Oregon Water Resources Department of the change in ownership and contact information for the Association.
 - h. For a period of one year, the City will reasonably assist the Association staff or contractor as necessary to familiarize the staff or contractor with the location and condition of System assets and facilities, and the maintenance and operation of the facilities. The City expressly anticipates that such assistance will not exceed four staff hours per week. The City will respond to a request for assistance within one business day, except in case of an emergency, in which case the City will respond as quickly as possible under the circumstances.
 - i. Provide copies of Operations and Maintenance (“O&M”) records, schedules and protocols as necessary for the Association to assume responsibility for the maintenance and operation of the Springs Water System.
4. Association Obligations. The Association will:
- a. Execute and record a conservation easement in favor of the City over the parcels described in the deeds attached as Exhibit B.
 - b. Designate a person(s) to coordinate with City staff regarding the location and condition of System assets, and the operation and maintenance of the facilities.
 - c. Acquire new contracts for water service from each customer as needed.
 - d. Cooperate and coordinate with the City in any legal action initiated by the City against a third-party with respect to the real property, easements or other property interest subject to this Agreement.
5. Transition Provisions. The Parties recognize that the transition from City administration and operation of the Springs Water System to Association administration and operation will require certain close-out and notice activities. Accordingly, the Parties anticipate the transition will include substantially the following steps, as may be modified and supplemented by the City Public Works Director and the Association.

- a. Within 60 days of the effective date of this Agreement, the City will:
 - A. Conduct a final meter reading of all Springs customer accounts and bill the customers accordingly. The City is entitled to all amounts billed to Springs customers for water provided up to and including the date of the final meter reading.
 - B. Provide the written notice described in Section 3.f above to all Springs customers.
 - b. Within 30 days of the days of the effective date of this Agreement, the City will provide the Association with the customer records described in Section 3.e above.
 - c. Beginning the day after the City conducts the final meter reading, the Association will be responsible for all water service to the Springs customers.
 - d. After the City provides the final water bill to Springs customers, the Association will be responsible for all future billing and collections for water service to Springs customers.
6. Equipment and Facilities. The Parties agree that on the effective date of this Agreement, ownership of the treatment and transmission facilities and appurtenances, customer meters and related equipment of any sort is transferred to the Association, which assumes all responsibility for the facilities and equipment. Thereafter, the City shall have no continuing obligation for the operation and maintenance of the Springs Water System. The City may, in its sole discretion, and consistent with the obligations set forth in Section 3.h above, consult and cooperate with the Association and any contractor designated by the Association to ensure the Springs Water System continues to operate effectively during the transition and that the Association or contractor is adequately prepared to provide on-going water service and maintenance thereafter.

The City will retain ownership of and remove the existing SCADA and proprietary communications equipment from each of the springs prior to conveying the Springs Water System to the Association.

7. Oliver Property Line Adjustment. The Oliver Spring is located on a parcel of land recorded at [Recording No. ____], the “Oliver Parcel”, which is owned by the City. The City also owns Parcel 3, Partition Plat 92-09, which is located adjacent to the Oliver Parcel. The Oliver Parcel and Parcel 3 are depicted on Exhibit E to this Agreement.

The City anticipates preparing and filing an application for a property line adjustment (“PLA”) with Yamhill County (“County”) to adjust the property line between the Oliver Parcel and Parcel 3. However, the PLA will not be filed prior to the effective date of this Agreement. In order to accomplish the PLA following the conveyance of the Oliver Parcel to the Association, the Parties agree to the following:

- a. The City will prepare and file the PLA application with the County. The City is responsible for all administrative tasks related to the application including completing the application, providing any necessary surveys and other engineering reports, and paying the filing fee (if any).
- b. The City is responsible for managing the County land-use review process, including preparing and submitting any documents that may be required by the County and attending any public hearings.
- c. The Association will sign the PLA application form or provide such other written consent to the application as the County may require. The Association agrees to coordinate with the City to support the application, including but not limited to providing any written materials requested by the City and attending and testifying in favor of the application at any public hearing(s).

The City does not make any representations or warranties as to its ability to obtain approval of the PLA but will make reasonable, good-faith efforts to do so.

8. Emergency Water. In the event of an emergency affecting water quality or quantity or other circumstance that presents an imminent threat to a Party's ability to provide potable water to its customers and residents, the Parties each agree for itself, its heirs, successors and assigns, to provide water to the other Party to the extent such water is available.

The Parties further agree:

- a. Water provided under this section is intended to be provided on a short term basis and will be delivered in a manner determined by the Party providing the water.
 - b. The Party providing water under this section may charge the receiving Party for the water at an amount equal to the cost of production plus interest at a rate not to exceed the interest rate paid by the Local Government Investment Pool on the first day water is delivered.
 - c. The Party providing water under this section is not required to build, construct, finance, install or otherwise provide structures, facilities or other infrastructure to deliver the water.
9. Future Connection to City Water. The Parties agree that current Springs Water System customers will disconnect from the Springs Water System and connect to the City water system under the following circumstances:
 - a. A property served by the Springs Water System and located within the City's urban growth boundary or the City's urban reserve area will connect to the City water system pursuant to applicable City regulations when the property annexes into the City.

- b. A property served by the Springs Water System that is located inside the City boundary will connect to the City water system pursuant to applicable City regulations when the property is partitioned or subdivided. This requirement applies to all lots or parcels created by the partition or subdivision.
10. Notice. Any notice required under this Agreement shall be sent to:
- a. City of Newberg
c/o Public Works Director
414 E. First Street
Newberg, OR 97132
 - b. Chehalem Springs Water Association
c/o
11. Consideration, Condition of Property and Title. The Parties agree:
- a. Consideration for the real property conveyed under this Agreement consists solely of the mutual promises and obligations set forth in this agreement.
 - b. The Association accepts the real property conveyed under this Agreement “as is” in its present condition, and the City makes no warranties regarding the condition of the property.
 - c. The Association accepts the access and waterline easements conveyed under this Agreement “as is” in their present condition, and the City makes no warranties regarding the location, suitability, or rights of use of the access and waterline easements. The Association further acknowledges and accepts that, despite the City’s best efforts, access and utility easements may not exist for all of the properties where system assets are located.
 - d. The City will convey the property to the Association through a quit-claim deed.
12. Representations and Warranties. The City makes no representations, warranties or covenants except as outlined in this Agreement regarding the condition of the real property, treatment facilities and transmission lines for their intended use; the individual water meters on properties that receive water from the Springs Water System; the access and utility easements; the appurtenances and other equipment; the water rights, including water permits and certificates; the customer accounts for Springs Water System users in existence on the date of this Agreement.
13. Liability. The Parties agree:
- a. Prior to the effective date of this Agreement, the Association shall not be liable for any claim, suit or other action relating to the Springs Water System. The City shall

- be liable for any claim, suit or other action relating to the Springs Water System arising from acts or omissions occurring prior to the effective date of this Agreement and any damages arising therefrom.
- b. On and after the effective date of this Agreement:
- A. The Association shall be solely liable for any claims, suits, or other actions relating to the Springs Water System arising from acts or omissions occurring on or after the effective date of this Agreement and any damages arising therefrom.
 - B. In any action filed on or after the effective date of this Agreement that alleges damages attributable to Association acts or omission and in which the City is named as a party, the Association agrees to indemnify the City for any costs incurred by the City in defending the action and any damages assessed against or loss incurred by the City.
- c. Each party will indemnify and hold the other harmless for any negligence, act or omission of the Party, its officials, employees and agents. The City's obligations under this section are subject to the limitations of the Oregon Tort Claims Act.

GENERAL TERMS AND CONDITIONS

14. Effective Date. This Agreement is effective on the last date signed by the Parties below and remains in effect unless and until terminated as described herein.
15. Termination. This Agreement terminates five (5) years from the effective date; provided, however, the provisions of Sections 8, 9 and 13 shall survive termination.
16. Public Records. Nothing in this Agreement is intended and shall not be interpreted to require the City to disclose any documents or other information that is or may be exempt from disclosure under ORS chapter 192.
17. Agreement Binding on Successors. This Agreement is binding on the Parties, however organized, and any assigns or successors in interest.
18. Additional Documents. Grantor and Grantee agree to execute such additional documents consistent with this Agreement as may be reasonable and necessary to carry out the provisions of this Agreement, including any documents necessary to obtain the PLA.
19. Entire Agreement. This Agreement constitutes the entire agreement between the City and Association pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings.

20. Modification; Waiver. This Agreement may not be supplemented, modified or amended except by the written agreement of the parties. The waiver of any of provision of this Agreement shall not be deemed or constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. A waiver is not binding unless executed in writing by the Party making the waiver.
21. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same agreement.
22. Severability. Each provision of this Agreement is severable from any and all other provisions of this Agreement. Should any provision(s) of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect.
23. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to the conflict of law provisions thereof. Any litigation between the Parties arising under this Agreement shall be subject to the jurisdiction of Yamhill County Circuit Court and each Party is responsible for its own attorney fees and costs.
24. Signature Authority. By signing this Agreement below, the person executing the Agreement on behalf of each Party represents that the person has actual authority to bind the person's respective Party

IN WITNESS WHEREOF, and pursuant to official action of their respective governing bodies, the Parties have caused their respective officers to execute this Agreement on their behalf.

City of Newberg, Oregon

Chehalem Springs Water Association

Stephen A. Rhodes
City Manager Pro Tem

Name

Date

Title

Date

Approved as to form:

Approved as to form:

City Attorney

Association Attorney

EXHIBIT A

Springs Water System Equipment List:

1. Four (4) Spring Collection boxes (Snider, Skeleton, Oliver, and Atkinson)
2. Three (3) PGE meter and equipment pedestals (Snider, Skelton, Oliver)
3. One (1) Tuff Shed (Oliver Springs)
4. Two (2) Dosing Pumps, LMI Model #C771-27 (Snider, Oliver)
5. Three (3) Rosemount Flow Meters, Model #8712 (Snider, Skelton, Oliver)
6. One (1) Tote Heater, Pro Therm, Model # pt-16 , Serial # 880824 – (Oliver)
7. Two (2) Chemical Totes (Oliver & Snider)
8. Two (2) 50 gal. barrels – (Oliver)
9. Three (3) Chlorine analyzers with pH sensor, Rosemount Model # FCL – (Snider, Skelton, Oliver)
10. One (1) portable heater, Lasko, Model 5919 – (Snider)
11. Three (3) Severn Trent tablet feeders, Model # 200 – (Snider, Skelton, Oliver)
12. Piping mainline system, pipeline valving, and altitude valves, as generally depicted on City provided GIS maps
13. Public water services (mainline to meter box)
14. Individual water meters

All equipment conveyed “as-is.”

Note: 520R MXU Radio Read Transmitters attached to the meters will remain (no radio reading equipment will be included). If requested, City will convert the radio read system back to a touch read system and include (1) used Sensus model 4090 AutoGun, pit probe extension, and charger, serial number 4090C-072064A. City will remove and retain all of the 520R MXU Radio Transmitters (no additional touch read equipment will be included)

AFTER RECORDING RETURN TO:

City of Newberg
Springs Water Project
414 E First St
PO Box 970
Newberg OR 97132

Tax Lot No.: 2336-1900

Quit Claim Deed

The CITY OF NEWBERG ("Grantor"), a municipal corporation, does hereby release, quit claim and convey to the CHEHALEM SPRINGS WATER ASSOCIATION ("Grantee"), all of its right, title and interest in the following described real property (the "Property"):

A parcel of land located in Yamhill County, State of Oregon, (the "Property") created by deed sale in 1905, recorded at Volume 48, Page 275, Yamhill County, and being further described as:

The North-East quarter of the South -East quarter of Section Thirty Six (36) in Township Two (2) South, Range Three (3) West of the Willamette Meridian in Yamhill County in the State of Oregon, and containing 40 acres more or less.

The Property is hereby conveyed subject to all easements, conditions, covenants, and restrictions of record.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007,

SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

The true consideration for this conveyance consists of or includes other property or value given or promised which is the whole consideration.

CITY OF NEWBERG

By: _____

Title: _____

Date: _____

STATE OF OREGON)
) ss
COUNTY OF YAMHILL)

This instrument was acknowledged before me on _____, 2015 by
_____, as _____ of the City of Newberg.

Notary Public Oregon
My Commission Expires: _____

AFTER RECORDING RETURN TO:

City of Newberg
Springs Water Project
414 E First St
PO Box 970
Newberg OR 97132

Tax Lot No.: 3205-4400

Quit Claim Deed

The CITY OF NEWBERG ("Grantor"), a municipal corporation, does hereby release, quit claim and convey to the CHEHALEM SPRINGS WATER ASSOCIATION ("Grantee"), all of its right, title and interest in a parcel of land created by Deed on January 22, 1896, and recorded at Book 31, Page 465, Yamhill County, State of Oregon, (the "Property"), and being further described in Exhibit A and depicted on Exhibit B, attached hereto and incorporated by this reference. The Property is hereby conveyed subject to all easements, conditions, covenants, and restrictions of record.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

The true consideration for this conveyance consists of or includes other property or value given or promised which is the whole consideration.

CITY OF NEWBERG

By: _____

Title: _____

Date: _____

STATE OF OREGON)
) ss
COUNTY OF YAMHILL)

This instrument was acknowledged before me on _____, 2015 by
_____, as _____ of the City of Newberg.

Notary Public Oregon
My Commission Expires: _____

AFTER RECORDING RETURN TO:

City of Newberg
Springs Water Project
414 E First St
PO Box 970
Newberg OR 97132

Tax Lot No.: 2331-4200

Quit Claim Deed

The CITY OF NEWBERG ("Grantor"), a municipal corporation, does hereby release, quit claim and convey to the CHEHALEM SPRINGS WATER ASSOCIATION ("Grantee"), all of its right, title and interest in the following described real property (the "Property"):

1. A parcel of land located in Yamhill County, State of Oregon, created by Deed recorded February 10, 1942 in Volume 119, Page 267, Yamhill County, and being further described as set forth in Exhibit A and depicted on Exhibit B, both of which are incorporated herein; and
2. A parcel of land located in Yamhill County, State of Oregon, created by Deed recorded February 10, 1942 in Volume 119, Page 266, Yamhill County, and being further described as set forth in Exhibit C and depicted on Exhibit D, both of which are incorporated herein; and
3. A parcel of land located in Yamhill County, State of Oregon, . . .

The Property is hereby conveyed subject to all easements, conditions, covenants, and restrictions of record.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN

ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

The true consideration for this conveyance consists of or includes other property or value given or promised which is the whole consideration.

CITY OF NEWBERG

By: _____

Title: _____

Date: _____

STATE OF OREGON)
) ss
COUNTY OF YAMHILL)

This instrument was acknowledged before me on _____, 2015 by
_____, as _____ of the City of Newberg.

Notary Public Oregon
My Commission Expires: _____

EXHIBIT A

A parcel of land:

Beginning at a point on the South side of the present County Road, 13.04 chains South of the 1/4 Section corner between Sections 31, Township 2 South, Range 2 West of the Willamette Meridian, and Section 36 of Township 2 South, Range 3 West of the Willamette Meridian, which said beginning point is also described as being on the Range line between Ranges 2 and 3 West of the Willamette Meridian and 27.25 chains North of the Township corner between Townships 2 and 3 South and Ranges 2 and 3 West of the Willamette Meridian, in Yamhill County, State of Oregon. Running from said beginning point North along said range line 7.02 chains; thence East 9.9 chains; thence South 15.27 chains; thence West 3.4 chains to the East Line of a tract of land now owned by the City of Newberg and known as the Skelton Spring property; thence North along said East line of said Skelton Spring property 8.02 chains to the Northeast corner of said Skelton Spring property; thence West 6.51 chains along the North line of said Skelton Spring property to the place of beginning.

STATE OF OREGON

WATER DIVISION NO. 1 COUNTY OF YAMHILL

CERTIFICATE OF WATER RIGHT

(For rights perfected under original, enlargement or secondary permits)

This is to Certify, That THE CITY OF NEWBERG

of Newberg, State of Oregon 97132, has made proof to the satisfaction of the STATE WATER BOARD of Oregon, of a right to the use of the waters of The Gard and Otis springs, ~~contributing~~

for the purpose of Municipal purposes, including domestic, fire protection and manufacturing

under Permit No. 915 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon and duly confirmed by order of the STATE WATER BOARD of Oregon, made and entered

of record in the Record of Proceedings of said Board, at Salem, in Volume 1

at page 329, on the 28th day of July, 1919; that the priority of

the right hereby confirmed dates from August 23, 1911; that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not

exceed 4.00 cubic feet per second.

A description of the lands under such right, and to which the water hereby confirmed is appurtenant, or, if for other purposes, the place where such water is put to beneficial use, is as follows: The City of Newberg, in Yamhill County, Oregon.

~~The right to the use of the waters aforesaid hereby confirmed is restricted to the use of the place of use herein described.~~

Rights to the use of water for power purposes are limited to a period of forty years from the date of priority of the right, as herein set forth, subject to a preference right of renewal under the laws existing at the date of the expiration of the right for power purposes, as hereby confirmed and limited.

Witness the seal and signature of the STATE

WATER BOARD affixed this 1st day

of August, 1919.

STATE WATER BOARD

(SEAL OF STATE WATER BOARD)

By PERCY A. CUPPER
State Engineer, President

Attest: R. W. POTTER
Secretary

Recorded in State Record of Water Right Certificates, Volume 3 . Page 2389

STATE OF OREGON

Resolution 2015-3206
Exhibit A

COUNTY OF YAMHILL

CERTIFICATE OF WATER RIGHT

This is to Certify, That City of Newberg

97132

of Newberg, State of Oregon, has made proof to the satisfaction of the STATE ENGINEER of Oregon, of a right to the use of the waters of Suelton Springs, tributaries of Onahalem Creek, municipal, including domestic, fire a tributary of Willamette Watershed for the purposes of protection & manufacturing purposes under Permit No. 5977 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from June 24, 1919;

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed

2.0 cubic feet per second;

The use hereunder for irrigation shall conform to such reasonable rotation system as may be ordered by the proper state officer.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-eightieth of one cubic foot per second per acre, or its equivalent in case of rotation.

A description of the lands irrigated under the right hereby confirmed, and to which such right is appurtenant (or, if for other purposes, the place where the water is put to beneficial use), is as follows:

Southwest Quarter of the Southwest Quarter (SW¹/₄SW¹/₄) of Section Twenty (20) Township Three South, Range Two West of the Willamette Meridian, in Yamhill County, Oregon.

The right to the use of the water for irrigation purposes is restricted to the lands or place of use herein described.

Rights to the use of water for power purposes are limited to a period of forty years from the date of priority of the right, as herein set forth, subject to a preference right of renewal under the laws existing at the date of the expiration of the right for power purposes, as hereby confirmed and limited.

WITNESS the signature of the State Engineer,

affixed this 1st day of September, 1925.

Essa Luper
State Engineer.

Recorded in State Record of Water Right Certificates, Volume 6, page 5456.

STATE OF OREGON

Resolution 2015-3206
Exhibit A

COUNTY OF YAMHILL

CERTIFICATE OF WATER RIGHT

This is to Certify, That City of Newberg 91377132

of Newberg, State of Oregon, has made proof to the satisfaction of the STATE ENGINEER of Oregon, of a right to the use of the waters of a tributary of Atkinson Spring, a tributary of Chehalis Creek Willamette River for the purpose of Municipal purposes under Permit No. 8530 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from July 10, 1923;

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 2.0 cubic feet per second;

The use hereunder for irrigation shall conform to such reasonable rotation system as may be ordered by the proper state officer.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-eightieth of one cubic foot per second per acre, or its equivalent in case of rotation.

A description of the lands irrigated under the right hereby confirmed, and to which such right is appurtenant (or, if for other purposes, the place where the water is put to beneficial use), is as follows: Southwest Quarter of the Southwest Quarter (SW 1/4) of Section Twenty (20), Township Three South, Range Two West of the Willamette Meridian, in Yamhill County, Oregon.

The right to the use of the water for irrigation purposes is restricted to the lands or place of use herein described.

Rights to the use of water for power purposes are limited to a period of forty years from the date of priority of the right, as herein set forth, subject to a preference right of renewal under the laws existing at the date of the expiration of the right for power purposes, as hereby confirmed and limited.

WITNESS the signature of the State Engineer,

affixed this 1st day of September, 1925.

Boas Lumar, State Engineer.

STATE OF OREGON

Resolution 2015-3206
Exhibit A

COUNTY OF YAMHILL

CERTIFICATE OF WATER RIGHT

This is to Certify, That CITY OF NEWBERG
97132

of Newberg, State of Oregon has a right to the use of
the waters of Spring called Oliver Spring
for the purpose of Municipal use

and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for
Yamhill County, and the said decree entered of record at Salem, in the Order
Record of the STATE ENGINEER, in Volume 8, at page 369; that the priority
of the right thereby confirmed dates from 1894

that the amount of water to which such right is entitled, for the purposes aforesaid, is limited to an
amount actually beneficially used for said purposes, and shall not exceed

That said City of Newberg is entitled to the exclusive use of the waters of
said spring.

A description of the lands irrigated under such right, and to which the water is appurtenant
(or, if for other purposes, the place where such water is put to beneficial use), is as follows:

Within and in the vicinity of the City of Newberg, Oregon.

And said right shall be subject to all other conditions and limitations contained
in said decree.

The right to the use of the water for irrigation purposes is restricted to the lands or place
of use herein described.

WITNESS the signature of the State Engineer,

affixed this Twentieth day

of December, 1926

RHEA LUFER

State Engineer.

Recorded in State Record of Water Right Certificates, Volume 7, page 6829

SPRINGS WATER SYSTEM
TRANSITION RESERVE ACCOUNT
TERMS AND CONDITIONS

Recitals:

1. The City of Newberg (City) owns and operates the Springs Water System (System), which provides municipal water to properties located outside the city.
2. The City has agreed to convey the System to the Chehalem Springs Water Association (Association), which has agreed to take ownership of the system.
3. Because the Association was formed for the purpose of acquiring and operating the System but does not yet own or operate the System, it does not yet receive any revenue from the System and does not otherwise have any assets.
4. In order to facilitate the transition from City ownership and operation to Association ownership and operation of the System, the City has agreed to establish an operating reserve account to make funds available to the Association on an as-needed basis to provide working capital to the Association during the start-up period.
5. The reserve account shall be subject to the terms and conditions set forth herein.

Reserve Account Established:

From funds available in the City Water Fund, the City shall establish a non-revolving account which shall be known as the Springs Reserve Account. Monies in the account may be used to support the activities of the Springs Water Association subject to the Terms and Conditions set forth below, and further provided that the activities are limited to the operation, maintenance and repair of the Springs Water System Assets as described in the Agreement for the Conveyance of the Springs Water System (Agreement) between the City and the Association.

Terms and Conditions:

1. Term. The City shall maintain the Springs Reserve Account as a non-revolving account for a period not to exceed two years from the effective date of the Agreement.

2. Principal. The City shall make available in the Account an amount not to exceed a cumulative total of \$25,000.00. Deposits into the Account shall be made from the City Water Fund and not otherwise. The schedule and timing of deposits in the Account is subject to the sole discretion of the City Finance Director.
3. Withdrawals. The Association may withdraw amounts from the Account on an as-needed basis for the purpose of acquiring, establishing, operating, maintaining and repairing the Springs Water System, system assets, customer accounts, administration and maintenance facilities and related equipment. Withdrawals from the Account may be made only within the two-year period described in Paragraph 1 above.
4. Repayment. All funds withdrawn from the Account by the Association must be repaid, including interest, within 36 months from the date of the first withdrawal. Failure to repay all principle and interest within this 36-month period constitutes a material breach of the Agreement and these Terms and Conditions.
5. Interest. Amounts withdrawn from the Account are subject to an annual percentage rate of four and one-half (4.5) percent.
6. Remedies. In the event of a material breach of these Terms and Conditions, the Parties may seek any remedy available at law or equity. Any such action shall be brought in Yamhill County Circuit Court, subject to Oregon Law.

In addition, in the event the Association fails to make timely repayment of amounts withdrawn from the Account under paragraph 3 above, the City may file a lien against the real property for the unpaid amount in the docket of City liens in the manner provided for an assessment lien under Newberg Municipal Code 3.15.110. The lien shall accrue interest at the rate described in 3.15.220.D. The line shall be superior and prior to all other liens or encumbrances on the property insofar as the laws of the State of Oregon permit and may be enforced or foreclosed in any manner provided for by the laws of the State of Oregon.

7. Finance Director Authority. Except as expressly provided for in these Terms and Conditions, the City Finance Director is vested with exclusive authority and discretion to determine any remaining policies, terms or procedures for governing the Account including but not limited to the terms for and schedule of deposits into the Account, procedures for withdrawing funds from the Account, repayment terms, accounting requirements and enforcement.

8. Interpretation. Nothing in these Terms and Conditions is intended and shall not be interpreted to be inconsistent with the purpose or provisions of the Agreement between the parties. In the event of a conflict between these terms and conditions and one or more provisions of the Agreement, the provisions of the Agreement shall prevail.



DRAFT TECHNICAL MEMORANDUM

Preliminary and Subject to Change:

Estimated Financial Impacts Associated with Ownership Transfer of Springs Water System

PREPARED FOR: City of Newberg

PREPARED BY: Galardi Rothstein Group (GRG)

DATE: September 24, 2015

In September 2015, the City of Newberg (City) engaged Galardi Rothstein Group (GRG) to evaluate the potential financial impacts associated with the divestiture of the Springs water system.

Background

The Springs water system relies on water from three active springs (Snider, Skelton, and Oliver) to provide water to approximately 72 residential customers located outside City limits. In the past, excess water from the Springs system was used to supplement the City's existing municipal supply. However, because of persistent turbidity and other water quality issues, the Springs system was disconnected from the City's water supply in 2008/09. Since that time, the City has continued to operate and maintain the Springs system and provide service to its customers.

The City established a separate customer class and water rate for the Springs system in FY 2009 to ensure that the costs of providing service were recovered from its customers. The revenue recovery requirements include operation and maintenance costs (such as labor, equipment, and materials), depreciation expense related to a chlorination treatment (CT) project constructed in FY 2009, pipe replacement costs, a return on invested capital, and customer billing costs. Customers of the Springs water system currently pay a \$5.00 monthly customer charge and \$7.73 per hundred cubic feet (ccf) of water use. The volumetric rate is scheduled to increase to full cost-of-service levels on January 1, 2016.

Customers of the Springs water system are represented by the non-profit Chehalem Springs Water Association (CSWA). For the last 18 months, the City has been in discussion with representatives of CSWA to discuss the transfer of ownership of the Springs system.

Asset Valuation

Several City assets are used to provide service to Springs customers, including land, water rights, and existing infrastructure (treatment and pipeline assets). Assets are typically valued using one of two methodologies: Depreciated Replacement Cost or the Discounted Cash Flow (DCF) approach. The Depreciated Replacement Cost methodology establishes the value of the assets by estimating the replacement cost of the asset, then adjusting for accumulated depreciation. The accumulated depreciation of the asset is an estimate of the decline in value due to usage and time. The DCF approach values an asset or group of assets based on the ability of the assets to generate net cash flows. Present value analysis is used to estimate the capitalized value of anticipated future net income from ownership and operation of the assets.

Each methodology offers both advantages and limitations. The Depreciated Replacement Cost method provides an accurate estimate of value for the assets of a utility, since detailed information from the asset register (replacement cost, installation year, and useful life) is known or can be estimated with reasonable certainty. However, the primary shortfall of this method is that it does not consider adjustments to value based on the ability of the assets (or lack thereof) to generate net revenues for the potential owner. The DCF methodology emphasizes the ability of the assets to generate revenue, rather than the price previously paid for the assets—which is often irrelevant. However, one of the drawbacks of the DCF method is that it does not consider economic development opportunities, operational synergies, or other factors that may influence transactional value but have no bearing on the projected profitability of the asset.

In the context of the Springs water system, the value of the land and water rights assets (for example) are closely tied to the provision of water service to its customers and may not be fairly judged based on current real estate values or historical costs. Similarly, an analysis of discounted cash flows may not be appropriate for the Springs system because water utilities are rarely managed to maximize financial returns. The value of the utility is rooted in its ability to provide reliable water service, which fosters economic development and benefits residents of the community by providing for one of life's basic needs.

Depreciated Replacement Cost

Several City-owned assets are used to provide service to customers of the Springs water system: the land where the springs are located, water rights associated with the springs themselves, treatment infrastructure to ensure water quality standards, and the existing network of pipelines used to deliver water to Springs customers.

Without offering an opinion regarding the estimated values placed on the City's real estate or water rights, GRG used the Depreciated Replacement Cost method to estimate the value of the existing pipelines and treatment infrastructure for the Springs water system. The estimated value of these assets is based on information from the City's fixed asset register including data related to the original cost and age of each asset. Most of the pipelines were installed in the 1920s and are fully depreciated. For pipelines installed more recently, the City estimated the unit replacement cost of each pipe based on diameter and pipe

materials. The replacement value of the assets was then depreciated based on a 75-year useful life to determine the existing value of the pipeline network. Based on this approach, the pipeline assets that serve the Springs water system are valued at approximately \$135,000.

The Engineering News-Record (ENR) construction cost index (CCI) was used to estimate the replacement cost value of treatment-related infrastructure. This index is used throughout the water industry to develop asset replacement values based on original cost. Once again, specific data such as cost and accumulated depreciation for each asset was available in the City's fixed asset register. The replacement cost value of treatment-related assets is approximately \$515,000.

Decision Analysis

The financial impacts of the potential ownership transfer may be best estimated by forecasting the City's incremental revenues and expenses over a multi-year forecast period. This approach is similar to the DCF methodology, and is intended to delineate the financial implications of the divestiture from the City's perspective.

Lost Revenues (negative impact)

Under an ownership transfer scenario, the City would no longer collect rate revenues from Springs customers. The incremental loss in revenue is estimated by forecasting customers, water use, and water rates over time. Limitations of the Springs system preclude future customer growth, and the analysis therefore assumes that the number of customers and total water use remains constant over the forecast period. The rate revenue forecast also assumes that the City will continue to charge the existing rate to Springs customers *rather than implement full cost-of-service rates on January 1, 2016*.¹ The total estimated loss in rate revenues from Springs customers is \$2.34 million over a 30-year forecast period.

Avoided Costs (positive impact)

On the other hand, if the City transfers ownership, it is no longer responsible for future capital expenditures or operation and maintenance of Springs system assets. Future capital improvements include the near-term corrosion control project (\$350,000), annual costs related to the rehabilitation of aging pipelines (\$16,500), and other estimated expenditures associated with future regulatory requirements. The 30-year capital improvement cost total for the Springs system is estimated to be \$2.10 million.²

The City would also avoid various O&M costs associated with treatment and conveyance of water from the Springs system. For example, the City is expected to spend \$0.52 million over the forecast period on materials & equipment, mileage, water sampling, and other activities that benefit the Springs system directly. The City is also expected to incur \$0.13

¹ The full cost of service volumetric rate (\$11.24) would result in a monthly summer bill for Springs customers of \$173.60 (assuming 15 ccf per month of water use). Although this rate would ensure agreed-upon cost recovery levels associated with the previous chlorination treatment work and forthcoming corrosion control project, the rate and resulting bill does not seem tenable for such a small system.

² Estimate provided by the City based on the condition of the Springs system and anticipated treatment process changes.

million for billing Springs customers over the forecast period. If ownership of the system is transferred, the City would avoid direct O&M costs that are expected to total \$0.65 million over the 30-year period.

Because the City will incur labor costs at existing levels *regardless of the ownership decision*, labor cost savings are not realized. City water staff who, for example, currently spend part of their time maintaining the Springs system will be re-allocated to other priorities of the City's municipal system. The City will continue to pay the salaries of its staff, and the projected *labor expense for the City will not change*. The decision analysis considers only the *incremental* change in revenues and expenses associated with the ownership decision in order to accurately estimate the net cash flow stream associated with divestiture of the assets.

Net Financial Impact

From the City's perspective, net cash flows under an ownership transfer scenario are estimated to total (positive) \$0.42 million over the 30-year forecast period.³ After accounting for the timing of the incremental cash flow stream, the net present value of the ownership decision is a (positive) \$0.27 million. The positive cash flow impact indicates that, *under the existing rate structure*, the City will benefit from divestiture of the assets because total avoided costs (capital and O&M costs) will be greater than the value of the lost rate revenue stream. However, it is important to note that the net financial impact of the ownership decision is highly sensitive to the assumption that the City continues to subsidize existing Springs customers (i.e. forego implementation of full cost of service rates in 2016) if it continues to own and operate the system.⁴

Other Considerations

The City's decision to transfer ownership of the Springs system will be governed by more than financial considerations. Many different factors—beyond the scope of this analysis—should be weighed against the potential benefits and costs of the decision. Factors such as risk and liability, anticipated regulatory requirements, operational efficiencies, rate equity among customer classes, the City's priorities as a water service provider, and the administrative burden of managing the Springs system may take precedence over financial considerations.

Moreover, the estimated financial impacts of the decision can change significantly based on the Springs water rate ultimately adopted by the City, evolving water quality standards within the regulatory framework, or unanticipated capital expenditure requirements. Such risk factors may be difficult to measure, but must be considered along with the potential

³ In current (2016) dollars.

⁴ Under a scenario in which full cost of service rates are implemented on January 1, 2016, the value of the lost rate revenue stream increases to \$3.34 million and the resulting net cash flow impact is expected to be a (negative) -\$0.59 million with an NPV of (negative) -\$0.46 million.

financial and non-financial impacts of divestiture to ultimately establish a fair market value for the Springs water system.

Conclusions

Using a discounted cash flow approach, this memorandum presents an estimate of the potential financial impacts to the City if it decides to transfer ownership of the Springs water system. Under an assumption that the City would continue to subsidize the costs to serve Springs customers, the net cash flow impact of the anticipated ownership transfer is approximately \$0.42 million over a 30-year forecast period.

Other conclusions, based on GRG's analysis of system revenues and costs, include:

- Pipelines and existing treatment infrastructure of the Springs water system is valued at approximately \$650,000 based on the Depreciated Replacement Cost method.
- Although cost-of-service rates were calculated for Springs customers shortly after the chlorination treatment project was completed, Springs customers have contributed very little to the overall cost of this project as a result of phased implementation of rates and increasing O&M cost requirements.
- The City's projected financial impact is highly sensitive to the assumed 2016 water rate for Springs customers (i.e. the level of cost subsidization that will persist for Springs customers in the future if the City continues to own and operate the system).
- Ownership and operation of the Springs water system by CSWA at existing rates is projected to be a "break even" proposition from a cash flow standpoint (i.e. revenue neutral). This estimate assumes that CSWA is (1) subject to the same capital expenditure requirements outlined above, (2) that it can operate the Springs water system at approximately 80% of the City's O&M cost (or \$45,000 per year), and (3) that it continues to charge existing water rates to Springs customers.

ATTACHMENT 2



Phone: 503-554-8333
1-855-554-8333 (TF)
Mail: P.O. Box 699
Newberg, OR 97132
Email: info@hilandwater.com
Internet: www.hilandwater.com

September 22, 2015

Jay Harris
Newberg Public Works Director
414 E. First Street
Newberg, OR 97132

Re: Divestiture of Newberg Springs Fiscal Impact

Dear Mr. Harris,

I've been asked to provide some input from Hiland's perspective regarding the Fiscal Impact to the City of Newberg caused by the divestiture of the Newberg Springs to Chehalem Springs Water Association. As the most active purchaser of water systems in the State of Oregon during the last decade, Hiland may have some helpful perspective in terms of determining market valuation and providing analysis. I've prepared the following text relating to plant value. If you want, I invite you to use any or all of it as a source to write your Request for Council Action.

- 1. Real Estate (91.3 acres) and Water Rights:** This watershed has served as the source of water for the surrounding community for over 100 year and fulfills an ongoing obligation in the areas of health and safety to provide drinking water to 72 homes. This obligation serves as an encumbrance to the land as it cannot be extricated from this perpetual liability without the development of alternate water sources. Because the watershed land is steep and topographically constrained, it is highly doubtful that the development of alternate water sources would yield any value at all. On the contrary, cost would likely exceed the eventual market value of the watershed property. The same is true for the Water Rights attached to each spring: their value is in fulfilling an obligation to the surrounding community and transfer of rights to another water source would be costly, if even possible at all, while leaving a void in the obligation of service to the 72 homes served by the springs. Therefore, the property and water rights have no net stand alone value to the City of Newberg except to fulfill the City's current obligation of serving water to the community.
- 2. Piping Infrastructure:** The springs system mainlines and service lines are comprised of 46,500 lineal feet of piping, which amounts to an average of 646 lineal feet per customer. While the replacement cost of such infrastructure is high, the abnormally high ratio of lineal feet per customer actually decreases market value. This is because the large amount of pipe creates exposure in the form of higher than average operating expenses in the long run due to line replacement costs, increased water loss, and increased probability of water line breaks. Since this infrastructure no longer transports water to the City, it no longer holds the value it once had in serving the City of Newberg's water needs. Additionally, the City has been following a 75-year replacement plan, meaning a large percentage of the existing pipeline is over 40 years old and entirely depreciated. As such, the value of line replacement in recent years has been largely cancelled by the liability of outdated water lines yet to be replaced, making the value of the piping system negligible.
- 3. Treatment Systems:** The design and engineering of the significant upgrades performed in 2008 were apparently completed prior to the decision to disconnect the Springs system from the City water system. If so, that would explain why the treatment systems are oversized and currently treat 10 times the water that is required to serve domestic water to the 72 homes on the water system. Unfortunately, this has resulted in sunk construction costs incurred by the City of Newberg and environmentally unfriendly chemical wastefulness. Both issues have contributed to inflated water charges to the water users in an effort to recover construction costs and pay for unreasonably high ongoing chemical expenses. For long term financial sustainability, much of the current

treatment plant should be replaced with smaller and less costly chlorine injection and corrosion control systems. When considering cost recovery for an asset that is not fully utilized, the Oregon Public Utility Commission will often determine value based on what percentage is “used and useful.” Since only about 10% of the treatment systems are useful, its valuation would be about 10% of historic costs.

Thank you for your efforts in bringing this divestiture to fruition. I hope you find our input helpful and look forward to working with you and Chehalem Springs Water Association during the transition of operations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Silas Olson".

Silas Olson
General Manager
Hiland Water Corp.

Cc: Truman A. Stone

REQUEST FOR COUNCIL ACTION

DATE ACTION REQUESTED: October 5, 2015

Order ___ No.	Ordinance ___ No.	Resolution <u>XX</u> No. 2015-3229	Motion ___	Information ___
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SUBJECT: A request for the City to initiate the vacation of the Cherry Street right-of-way east of Center Street and west of the Friendsview Retirement Community campus.

**Contact Person (Preparer) for this Motion: Steve Olson, Associate Planner
Dept.: Community Development
File No.: VAC-15-001**

RECOMMENDATION:

Adopt Resolution No. 2015-3229, which would initiate the vacation of the Cherry Street right-of-way east of Center Street and west of the Friendsview Retirement Community Campus. This resolution does not make a decision on the vacation but would initiate the process, provide public notice, allow public comment, and schedule the issue to be considered at a public hearing at the November 16, 2015 City Council meeting.

EXECUTIVE SUMMARY: The Friendsview Retirement Community has requested the right-of-way vacation because they intend to redevelop the area west of their campus into the Friendsview University Village independent-living apartments. Friendsview owns the properties abutting the proposed vacation, and Cherry Street dead ends into the Friendsview campus. Vacating the Cherry Street right-of-way would allow Friendsview flexibility to develop the University Village area as a more pedestrian-oriented site.

The initiation of the right-of-way vacation would not make a decision for or against the proposal. It would schedule a public hearing, provide public notice, and provide an opportunity for public comment on the proposed vacation.

FISCAL IMPACT: No significant fiscal impact is expected.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS): The City supports the growth of local institutions like the Friendsview Retirement Community, and supports the development of a range of housing options needed by the community. This right-of-way vacation would assist Friendsview with the redevelopment of the area along Cherry Street with independent living apartments, for which there is strong demand at Friendsview. This portion of Cherry Street is surrounded by Friendsview property, and dead ends into the Friendsview campus. In some ways it already functions more like a driveway than a street. Vacation of the right-of-way would return the property to the abutting owners, and enable the future redevelopment of the area. The public interest in adequate access and utility services can be protected. Utility easements can be placed over existing utility lines as needed. In the short term, access to the existing houses will be preserved. In the longer term, the area north and south of Cherry Street will be redeveloped as part of Friendsview University Village, and access will be reviewed again at that time. The City Council should initiate the right-of-way vacation so the item can be considered through a public hearing process and there is an opportunity for public testimony.



RESOLUTION No. 2015-3229

A RESOLUTION INITIATING THE VACATION OF THE CHERRY STREET RIGHT-OF-WAY EAST OF CENTER STREET AND WEST OF THE FRIENDSVIEW RETIREMENT COMMUNITY CAMPUS, AND REQUIRING PUBLIC NOTICE AND A PUBLIC HEARING ON THE PROPOSED VACATION.

RECITALS:

1. The Friendsview Retirement Community has requested that the City initiate the vacation of the Cherry Street right-of-way east of Center Street and west of the Friendsview Retirement Community campus. Friendsview Retirement Community owns the parcels abutting this section of Cherry Street.
2. The City Council would like to hold a public hearing to hear public testimony, allow a chance for property owners in the affected area to comment, consider the merits of the proposal, and make a decision on the potential vacation of the Cherry Street right-of-way east of Center Street and west of the Friendsview Retirement Community campus.

THE CITY OF NEWBERG RESOLVES AS FOLLOWS:

1. The City initiates the vacation process for the Cherry Street right-of-way east of Center Street and west of the Friendsview Retirement Community campus (VAC-15-001).
2. By initiating this process the Council does not commit to take any particular action on the vacation. It only wishes to consider the potential vacation through a public hearing process.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: October 6, 2015.

ADOPTED by the City Council of the City of Newberg, Oregon, this 5th day of October, 2015.

Sue Ryan, City Recorder

ATTEST by the Mayor this 8th day of October, 2015.

Bob Andrews, Mayor

Exhibit A: Cherry Street right-of-way vacation proposal

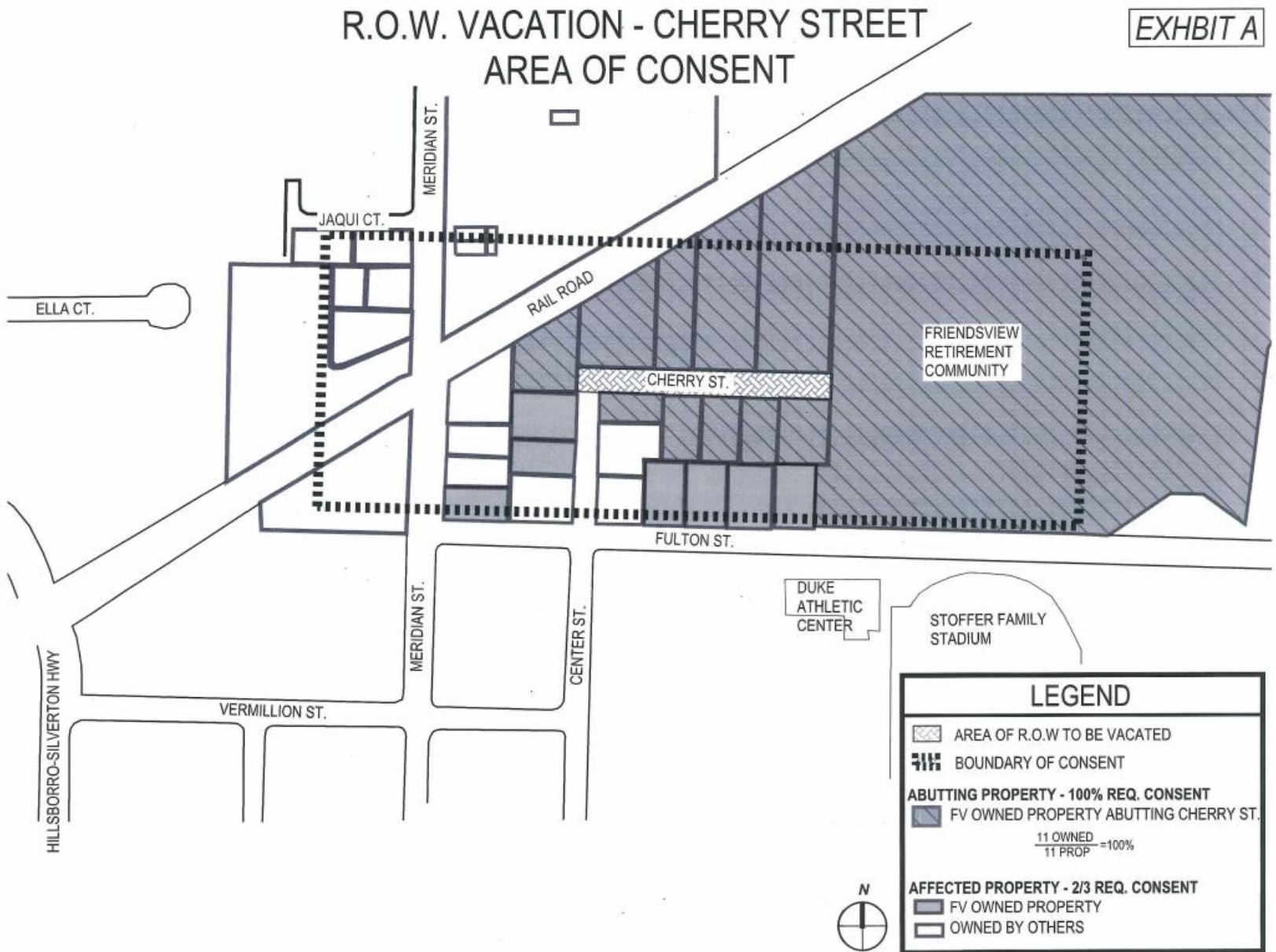


Exhibit B: Aerial photo



REQUEST FOR COUNCIL ACTION

Date of Council Meeting: October 5, 2015

Order ___ No.	Ordinance ___ No.	Resolution ___ No.	Motion ___	Information <u>XX</u>
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**SUBJECT: Forward Looking Calendar,
Online Business Registration**

**Contact Person (Preparer) for this
Item: Sue Ryan, City Recorder
Dept.:
File No.:**

EXECUTIVE SUMMARY: These items are informational for the Council and the public.

The Council Forward Looking Calendar is attached.

The City of Newberg now offers online business license registration with secure credit card payment. When you have completed your business license registration, you will be able to retrieve your business license online as a PDF document. You need a City of Newberg business license if you are operating a business of any sort within City limits, even if your business is located outside Newberg city limits.

For more details, visit <https://www.newbergoregon.gov/finance/page/online-business-license-application>

FISCAL IMPACT: None.

STRATEGIC ASSESSMENT (RELATE TO COUNCIL GOALS): To keep the citizenry informed.

NEWBERG CITY COUNCIL
2015 FORWARD LOOKING CALENDAR

Monday, October 19, 2015

Presentation on America's Best Communities application and
Economic Development Strategic Plan
Resolution 3208 Council Rules amendment
Resolution 3227 Waste Water Operations position appointments
Resolution 3231 Bid award for Reservoir Updates
Resolution 3232 Patrol vehicle purchase for Police Department
Resolution 3233 Motorola Radio purchase for Police Department/Dispatch Center
Ordinance 2788 on Comp Plan Amendment for Population and Employment numbers
Ordinance 2789 Termination of Gaibler Development Agreement

Monday, November 2, 2015

Presentation on Fire and EMS Update
Resolution 3230 Classification and Compensation Adoption

Monday, November 16, 2015

Ordinance on Cherry Street Vacation
Resolution on Library Plan adoption
Resolution on Well No. 9 bid award

Monday, December 7, 2015

Department Head Presentations
Ordinance on TSP amendment Wilsonville Road and Newberg Dundee bypass route