

CITY OF NEWBERG / YAMHILL COUNTY  
NEWBERG URBAN AREA MANAGEMENT COMMISSION AGENDA  
Newberg Public Safety Building  
401 E. Third Street, Newberg  
Wednesday, September 30, 2009 at 7:00 PM

- I. **ROLL CALL**
- II. **OPEN MEETING**
- III. **CONSENT CALENDAR** (items are considered routine and are not discussed unless requested by the commissioners)
  - ◆ Approval of the September 30, 2008 NUAMC meeting minutes
- IV. **COMMUNICATIONS FROM THE FLOOR** (5 minutes maximum per person)
  - ◆ For items not listed on the agenda
- V. **QUASI-JUDICIAL PUBLIC HEARINGS**
  1. **APPLICANT:** Betsy Fettig  
**REQUEST:** Amend the Newberg Comprehensive Plan to include a 1.24 acre parcel within the Urban Growth Boundary and change the designation from Yamhill County VLDR to Newberg IND. In addition, change the zoning of the property from Yamhill County VLDR 2.5 to Yamhill County LI.  
**LOCATION:** 2716 Wynooski Road, Tax Lot 3229-00300  
**NEWBERG FILE:** UGB-09-002 / **YAMHILL COUNTY FILE:** PAZ-03-09
  2. **APPLICANT:** Betsy Fettig  
**REQUEST:** Zone change from Yamhill County HI to Yamhill County LI for a property located within the Newberg Urban Growth Boundary  
**LOCATION:** 2808 Wynooski Road, Tax Lot 3228-1800  
**YAMHILL COUNTY FILE:** Z-02-09
- VI. **NUAMC POSITION APPOINTMENT:** Sally Dallas' NUAMC term has expired; NUAMC discussion on process to appoint a new member.
- VII. **ITEMS FROM STAFF**
  1. Urban Reserve Area Update
  2. South Industrial Area Master Plan Update
  3. South Industrial UGB Amendment Update
- VIII. **ITEMS FROM COMMISSIONERS**
- IX. **ADJOURN**

FOR QUESTIONS PLEASE STOP BY, OR CALL 537-1240, PLANNING & BUILDING DEPT. - P.O. BOX 970 - 414 E. FIRST STREET

**ACCOMMODATION OF PHYSICAL IMPAIRMENTS:**

*In order to accommodate persons with physical impairments, please notify the City Recorder's office of any special physical accommodations you may need as far in advance of the meeting as possible and no later than 48 hours prior to the meeting. To request these arrangements, please contact the city recorder at (503) 537-1283. For TTY service please call (503) 554-7793.*

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**MEETING MINUTES**

**CITY OF NEWBERG / YAMHILL COUNTY  
NEWBERG URBAN AREA MANAGEMENT COMMISSION  
Newberg Public Safety Bldg. - 401 E. Third Street, Newberg, OR  
Tuesday, September 30, 2008, 7:00 PM**

**I. ROLL CALL**

Members

Present: Matson Haug (Chair) Michael Sherwood Roger Currier  
Sally Dallas Alan Halstead Leslie Lewis  
Warren Parrish

Staff

Present: Barton Brierley, City of Newberg Planning and Building Director  
Elaine Taylor, Associate Planner  
Ken Friday, Yamhill County Planning  
Jennifer Nelson, Recording Secretary

Others

Present: Lewis Schaad, Grace Schaad, John Bridges, Julie Fugate, Matt Wellner,  
Charles McClure, Naomi Zwerdling

**II. CONSENT CALENDAR**

1. Minutes of the December 12, 2007 meeting.

**Mr. Ken Friday, Yamhill County Planning**, submitted and read into the record a correction to page 8 of the minutes to include the text of his final comments on the Maerz/CPRD application (see official record for full report).

**MOTION #1: Currier/Halstead** to approve the NUAMC minutes from December 12, 2007 as amended. (7 Yes/0 No) Motion carried.

**III. COMMUNICATIONS FROM THE FLOOR**

Seven citizens were present at the beginning of the meeting, and they were offered the opportunity to speak on issues not on the agenda. No additional items were brought forth.

**IV. STAFF UPDATES**

1. Urban Reserve Area – Status

**Ms. Elaine Taylor, Newberg Associate Planner**, presented the staff report. Handouts of the Power-Point presentation were provided for public review (see official meeting

packet for a full report). The 2007 URA has been submitted to the Land Conservation and Development Commission (LCDC) for a hearing on 12/4/2008 and 12/5/2008 in Tillamook; four objection letters have been received.

**Chair Matson Haug** asked for an approximate turn around date for the LCDC hearing. Staff could not determine a time frame, noting that the previous URA included only exception land, and this URA may raise more questions.

## 2. South Industrial Plan – Status

**Ms. Taylor** presented the report indicating several reasons why a South Industrial Plan is needed, including keeping large industrial sites intact, providing clear infrastructure plans to minimize risks for developers, and giving a clear vision to land owners in and near the area (see official meeting packet for a full report).

**Commissioner Alan Halstead** asked how much industrial land was lost when the Austin family changed the zoning to commercial in the NE portion. Staff was unsure and stated they would research this but estimated 20-25 acres.

**Chair Haug** asked if any lands in the South Industrial Plan (SIP) are in the 2007 URA. Staff stated there were some lands directly involved. She discussed a grant, future community meetings, and the process involved.

**Commissioner Warren Parrish** asked if this was a separate grant for the SIP or if it comes from same source. Staff explained part of the funding for the plan would come from a \$10,000 state economic development grant, and the transportation planning required for the plan would come from a state Transportation/Growth Management grant for Transportation System Plan Update for the new URA.

**Chair Haug** invited audience members to ask any questions they had.

**Ms. Julie Fugate** asked if there were any schedules for start-up of the process. Staff replied there was no start date yet, but the plan schedule was for five to six months.

## 3. Transportation System Plan Update for new URA – Status

**Ms. Taylor** presented the staff report, and asked the Commission to consider what NUAMC's role should be in developing the Transportation System Plan (TSP) Update (see official meeting packet for full report).

**Commissioner Parrish** asked for clarification of the intent for NUAMC when it was started.

**Mr. Barton Brierley, Newberg Planning and Building Director**, discussed NUAMC's role in amendments to the Urban Growth Boundary (UGB) and changes to the

comprehensive plan outside of the City limits but in the UGB. He said that there was a general intention to bring any comprehensive planning items needing to be adopted by the governing bodies of both the City and the County before NUAMC, to develop recommendations that could be accepted by both entities.

## V. SOUTHEAST TRANSPORTATION PLAN STRATEGY

**Ms. Taylor** presented the staff report, noting that Newberg City Council had remanded the Southeast Transportation Plan back to NUAMC. She asked the Commission to consider 1) what NUAMC's role should be, 2) how the road improvements should be sequenced, and 3) how the Southeast area should connect to Hwy 99W (see official meeting packet for full report).

Discussions followed concerning the reasons why the Southeast Transportation Plan was not accepted and the removal of the east/west connector, as well as the alternatives for handling the TSP strategy from here.

**Commissioner Halstead** stated that when this commission was established, the directive was to coordinate planning development between the City and County. If this commission does not do this, then they would not be upholding the responsibility given to this body.

**MOTION #2: Halstead/Sherwood** to accept the City's remand of the Southeast Transportation Plan to develop and recommend a revised plan that both the City and County can adopt. (7 Yes/0 No) Motion carried.

**Chair Haug** recessed for five minutes at 7:50 PM.

**Ms. Taylor** referred to the evaluation packet to review the seven different concepts for connecting the Southeast area to 99W.

**Commissioner Parrish** asked if there would be another current transportation study conducted. Staff replied the consultants would come into play once the preferred alternative had been narrowed down because they could not look at everything.

**Ms. Naomi Zwerdling**, ODOT Transportation Management Group Planning, discussed her role and some of the process for evaluating the transportation plans for the whole URA; she felt discussing technical analysis at this point was premature.

**Commissioner Parrish** asked Ms. Zwerdling about the coordination of the LCDC with ODOT. She replied they were separate departments at the State and there was feedback from LCDC.

**Ms. Taylor** asked the commission if they were comfortable with the evaluation factors discussed in her presentation and if the plan should address sequencing. There was a

consensus agreement on the evaluation factors. The commission discussed what sequencing entailed, and concluded that sequencing needed to be part of the plan.

**MOTION #3: Halstead/Sherwood** to adopt a plan for sequencing the improvements as part of the program. (7 Yes/0 No) Motion carried.

Discussions followed in reference to the map and the various connection options. Due to technical difficulties, the map could not be projected for the audience and commissioners to see and discuss alternatives without confusion. The commission attempted to work through the first few options but determined it was not productive without having the map projected.

**MOTION #4: Parrish/** to table deliberations of the Southeast area connection to 99W. Motion failed for lack of a second.

Suggestions were made to update the maps with visible street names, improve the graphics, show a larger area to the south, and print each of the various options on a separate map.

**Ms. Grace Schaad** pointed out that option one, which is as it is now, was stated as having no connection. She corrected this, stating that having terminated access there is not as it is now.

**Mr. John Bridges** stated it was difficult to follow the discussion, both now and while listening to audio recordings afterwards, and did not think continuing discussions tonight would be productive. He was concerned that we were not making a good public record.

Discussions followed to see if anything was missing that needed to be included. Suggestions included continuing the north-south collector road directly north and adding another stop light north [east] of Providence. **Mr. Brierley** thought that there was a minimum ½ mile required between lights. He said that we could look at the alternative of adding a stop light and evaluate if it would meet the state criteria.

**Commissioner Haug** suggested doing a group site view of the various options to get a better idea of the mapped topography.

**Commissioner Parrish** agreed, and suggested having the tour stops coordinated with packets so the commissioners could see how alternatives would affect the area.

**MOTION #5: Halstead/Parrish** to conduct a tour of the areas with information packets to understand the various impacts of the alternative connections. (7 Yes/0 No) Motion carried.

**Commissioner Haug** said that staff would do their best to notify the audience when the tour date, time and meeting place have been set.

**Mr. Matt Wellner, Planner/Project Manager for Metropolitan Land Group**, wanted to ensure that flexibility would remain for the frontage road between connection alternatives 4.1 and 4.2, even though they were not being discussed tonight.

**Mr. McClure** would like to see the northside frontage road moved further south, into the 99W right-of-way, rather than across historic property.

**Commissioner Halstead** asked staff to verify the distance that ODOT requires between traffic lights on highways.

**MOTION #6: Halstead/Currier** to table deliberations. (7 Yes/0 No) Motion carried.

**VI. 2009 UGB STRATEGY**

**Ms. Taylor** presented report (see official meeting packet for full report).

**VII. OTHER ITEMS FROM STAFF**

None.

**VIII. ITEMS FROM COMMISSIONERS**

None.

**IX. ADJOURN**

**MOTION #7: Dallas/Currier** to adjourn the meeting at 8:53 PM. (7 Yes/0 No) Motion carried.

Passed by the Newberg Urban Area Management Commission this 30 day of September, 2009.

AYES:

NO:

ABSTAIN:  
(list names)

ABSENT:

ATTEST:

\_\_\_\_\_  
Recording Secretary Signature

\_\_\_\_\_  
Chair

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**CITY OF NEWBERG  
URBAN GROWTH BOUNDARY AMENDMENT  
NEWBERG URBAN AREA MANAGEMENT COMMISSION  
STAFF REPORT**

**NEWBERG FILE NO:** UGB-09-002

**APPLICANT/OWNER:** Elizabeth Fettig

**REQUEST:** Recommend approval of an Urban Growth Boundary (UGB) amendment to include an approximately 1.24 acre parcel. Change the Comprehensive Plan Designation from Yamhill County VLDR (Very Low Density Residential) to Newberg IND (Industrial).

**PROPERTY LOCATION:** 2716 Wynooski Road

**TAX LOT:** 3229-00300

**COMPREHENSIVE PLAN/ZONE:** Yamhill County VLDR with current zoning of VLDR 2.5 (Very Low Density Residential 2.5 acre minimum)

**NUAMC HEARING DATE:** September 30, 2009

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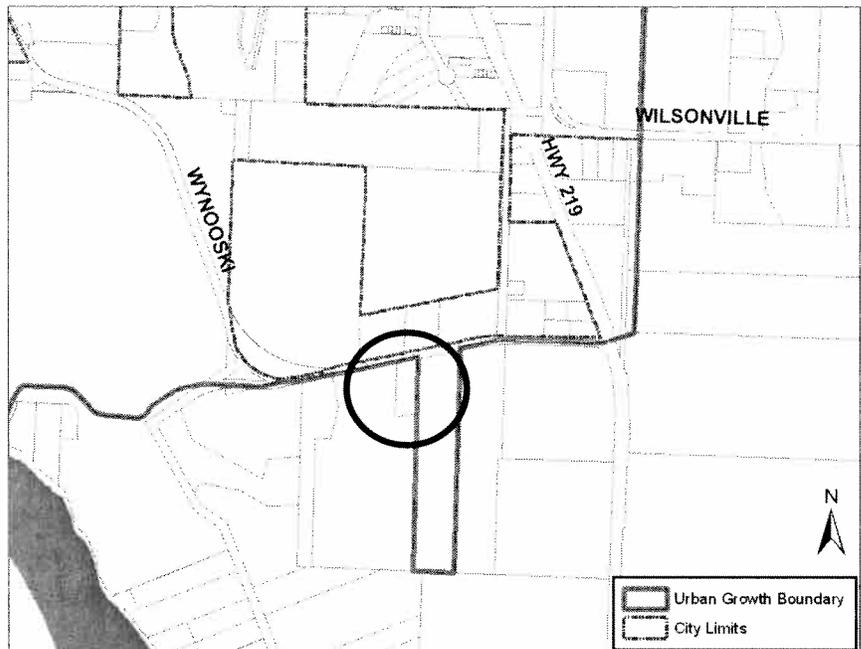
**ATTACHMENTS:**

NUAMC Res. 2009-21 with

Exhibit A: Legal Map and Legal Description

Exhibit B: Findings

1. Aerial Photo
2. Newberg Comprehensive Plan Map
3. Yamhill County Comprehensive Plan Map
4. Stream Corridor Map
5. ORS 197.298
6. OAR 660-021-0060
7. OAR 660-024-0060
8. Suitable Industrial Land Map
9. Industrial Site Suitability Comparison
10. Newberg Urban Area Growth Management Agreement
11. Wynooski Road LID Report
12. Soil Study Map
13. Application
14. Newberg Comprehensive Plan & Yamhill County Comprehensive Plan (by reference)



A. **REQUEST:** The applicant is requesting that a 1.24 acre parcel be added to the Newberg Urban Growth Boundary and that the Comprehensive Plan Designation be changed from Yamhill County VLDR (Very Low Density Residential) to City IND (Industrial).

B. **PROCESS:** The applicant's request for approval of an urban growth boundary amendment is being processed through the provisions of the Newberg Urban Area Growth Management Agreement as follows:

August 10, 2009	The Director determined the application was complete.
September 8, 2009	Yamhill County Department of Planning and Development mailed notice to surrounding property owners.
September 16, 2009	Notice was published in the <i>Newberg Graphic</i> .
September 30, 2009	NUAMC held a hearing to consider the request.

C. **CRITERIA:** The Planning staff has determined that the following criteria apply to the subject proposal. NUAMC or other interested parties should direct their comments to the criteria listed or state why they feel other criteria may apply.

**ORS Standards:**

**ORS 197.298.** ORS 197.298 establishes priorities for land to be included within an urban growth boundary. ORS 197.298 (1)(a) states: "In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities: (a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan."

**OAR Standards:**

**660-021-0060 Urban Growth Boundary Expansion.** "All lands within urban reserve areas established pursuant to this division shall be included within an urban growth boundary before inclusion of other lands, except where an identified need for a particular type of land cannot be met by lands within an established urban reserve area."

**660-024-0060 Boundary Location Alternatives Analysis.** "(1) When considering a UGB amendment, a local government must determine which land to add by evaluating alternative boundary locations. This determination must be consistent with the priority of land specified in ORS 197.298 and the boundary location factors of Goal 14, as follows:

- (a) Beginning with the highest priority of land available, a local government must determine which land in that priority is suitable to accommodate the need deficiency determined under OAR 660-024-0050.
- (b) If the amount of suitable land in the first priority category exceeds the amount necessary to satisfy the need deficiency, a local government must apply the location factors of Goal 14 to choose which land in that priority to include in the UGB.
- (c) If the amount of suitable land in the first priority category is not adequate to satisfy the identified need deficiency, a local government must determine which land in the next priority is suitable to accommodate the remaining need, and proceed using the same method specified in subsections (a) and (b) of this section until the land need is accommodated.

- (d) Notwithstanding subsection (a) to (c) of this section, a local government may consider land of lower priority as specified in ORS 197.298(3).
  - (e) For purposes of this rule, the determination of suitable land to accommodate land needs must include consideration of any suitability characteristics specified under section (5) of this rule, as well as other provisions of law applicable in determining whether land is buildable or suitable.
  - (f) Notwithstanding OAR 660-024-0050(4) and subsection (1)(c) of this rule, except during periodic review or other legislative review of the UGB, a local government may approve an application under ORS 197.610 to 197.625 for a UGB amendment proposing to add an amount of land less than necessary to satisfy the land need deficiency determined under OAR 660-024-0050(4), provided the amendment complies with all other applicable requirements.
- (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.
- (6) The adopted findings for UGB adoption or amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis. If the analysis involves more than one parcel or area within a particular priority category in ORS 197.298 for which circumstances are the same, these parcels or areas may be considered and evaluated as a single group.”

**Newberg Comprehensive Plan & Statewide Planning Goals:** Goal 1, Citizen Involvement; Goal 2, Land Use Planning;; Goal 5, Open Spaces, Scenic and Historic Areas, Natural Resources; Goal 6, Air, Water and Land Resources Quality; Goal 7, Areas Subject to Natural Disasters and Hazards; Goal 8, Recreation Needs, Goal 9, Economic Development; Goal 10, Housing; Goal 11, Public Facilities and Services; Goal 12, Transportation; Goal 13, Energy Conservation; Goal 14, Urbanization. Goals 3 and 4 do not apply to UGB amendments. Goals 15, 16, 17, 18 and 19 do not apply in this area.

**Newberg Urban Area Growth Management Agreement -Urban Growth Boundary**

**Amendment Criteria:** Amendment of the Urban Growth Boundary shall be treated as a map amendment to both City and County Comprehensive Plan maps. Change of the boundary shall be based upon consideration of the following factors:

- (a) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
- (b) Need for housing, employment opportunities, and livability;
- (c) Orderly and economic provision for public facilities and services;
- (d) Maximum efficiency of land uses within and on the fringe of the existing urban area;
- (e) Environmental, energy, economic and social consequences;
- (f) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and
- (g) Compatibility of the proposed urban uses with other adjacent uses.

**Newberg Development Code, Section § 151.122 – Newberg Comprehensive Plan**

**Amendment:** The applicant must demonstrate compliance with the following criteria:

- (a) The proposed change is consistent with and promotes the goals and policies of the Newberg Comprehensive Plan and this Code;

- (b) Public facilities and services are or can be reasonably made available to support the uses allowed by the proposed change.
- (c) Compliance with the State Transportation Planning Rule (OAR 660-012-0060) for proposals that significantly affect transportation facilities.

**Yamhill Comprehensive Plan Policies**

Addressed in County staff report.

**D. SITE INFORMATION:**

<b>Lot Area</b>	1.24 Acres
<b>Current Comprehensive Plan Designation</b>	County VLDR (Very Low Density Residential)
<b>Current Zoning Designation</b>	County VLDR 2.5
<b>Overlay Districts</b>	Stream Corridor (future City overlay district)
<b>Existing Use</b>	Vacant
<b>Surrounding Uses</b>	
<b>North</b>	Industrial Development
<b>East</b>	Residential Buildings (property zoned industrial)
<b>South</b>	Vacant
<b>West</b>	Vacant
<b>Natural Features</b>	Mature trees; southern and southwestern portion of property drops off to a stream corridor.
<b>Transportation</b>	The property borders Wyooski Road and is near the intersection of Wyooski Road and Highway 219.
<b>Utilities</b>	
<b>Sewer</b>	Sewer would need to be extended along Wyooski Road prior to any development.
<b>Water</b>	An 18-inch water line runs along Wyooski Road.
<b>Storm Drainage</b>	The site slopes to the south and southwest into a stream corridor for a natural storm drainage way.

**E. ISSUES:**

- 1. Land need.** The City’s land needs table shows a need for industrial land in the UGB:

**Buildable Land In Newberg UGB, City Limits**

Compared to Comprehensive Plan Projected Needs, as of June 30, 2009

Plan Designation	Buildable Acres Needed 2009-2029**	Buildable Acres in UGB*	Est. Years Supply in UGB	Buildable Acres in City 6/30/2009	Est. Years Supply in City
LDR	664	599	18	419	13
MDR	155	115	15	83	11
HDR	105	45	9	31	6
COM	97	92	19	60	12
IND	158	44	6	21	3
P I, PQ, or other Inst.	105 205	13 84	2 8	13 54	2 5
<b>Total</b>	<b>1,489</b>	<b>992</b>	<b>13</b>	<b>681</b>	<b>9</b>

\*The Urban Growth Boundary (UGB) includes the city

\*\*Estimated as need from 1/1/2009 to 1/1/2029

Source: Newberg Planning and Building Department

Data subject to change

- 2. Wetland Areas and Stream Corridor.** The Division of State Lands has identified hydric soils on the site and potential wetland areas. A wetland delineation is required prior to any site development. In addition, the southern and southwestern portions of the site slope down into a stream corridor. Site development should be restricted in the area of the stream corridor and comply with the City of Newberg Stream Corridor Sub-District overlay (§ 151.465).
- 3. Sewer and Water Availability.** Sewer service is not immediately available to the site. The City completed a LID (Local Improvement District) study for the Wynooski Road area that projected the costs per lot to bring sewer from the wastewater treatment plant along Wynooski Road. The applicants would have to bring sewer to the property prior to any site development. An 18-inch water line is located in Wynooski Road.

**H. PRELIMINARY STAFF RECOMMENDATION:** The preliminary staff recommendation is made in the absence of public hearing testimony, and may be modified subsequent to the close of the public hearing. At this writing, the staff recommends the following motion:

- × Move to adopt NUAMC Resolution 2009-21 which recommends that the City Council and Yamhill County Board of Commissioners approve the requested Urban Growth Boundary amendment and corresponding Comprehensive Plan amendment from Yamhill County VLDR to City IND, with a stream corridor overlay.

## NUAMC RESOLUTION NO. 2009-21

**A RESOLUTION OF THE NEWBERG URBAN AREA MANAGEMENT COMMISSION RECOMMENDING APPROVAL OF AN URBAN GROWTH BOUNDARY AMENDMENT FOR PROPERTY LOCATED AT 2716 WYNOOSKI ROAD, YAMHILL COUNTY TAX LOT 3229-00300, WITH A COMPREHENSIVE PLAN AMENDMENT FROM COUNTY VLDR TO CITY IND (INDUSTRIAL) WITH A SC (STREAM CORRIDOR) OVERLAY, FILE #UGB-09-002.**

### RECITALS

1. Elizabeth Fettig submitted an application for an Urban Growth Boundary amendment on August 10, 2009. The application was deemed complete on the same day. The application included two requests: 1) to include a 1.24 acre parcel in Newberg's Urban Growth Boundary, and 2) to change the Comprehensive Plan designation of the same parcel from Yamhill County VLDR (Very Low Density Residential) to Newberg IND (Industrial). The parcel is located at 2716 Wynooski Road and is identified as Yamhill County tax lot 3229-00300.
2. The Yamhill County Department of Planning and Development mailed notice to surrounding property owners on September 8, 2009.
3. The Newberg Graphic newspaper published notice of the application request and upcoming hearing on September 16, 2009.
4. On September 30, 2009, the Newberg Urban Area Management Commission (NUAMC) held a hearing to consider the requests.
5. NUAMC finds that the applicable criteria have been met, and that approval of the application is in the best interests of the community.

**NOW THEREFORE, BE IT RESOLVED** by the Newberg Urban Area Management Commission that it recommends that the City Council and Yamhill County Board of Commissioners:

1. Include the property shown and described in Exhibit A and Exhibit B in the Newberg Urban Growth Boundary.
2. Amend the Comprehensive Plan to change the designation of the parcel from Yamhill County VLDR (Very Low Density Residential) to Newberg IND (Industrial), with a SC (Stream Corridor) overlay.
3. Require a wetland determination prior to any development on the site.

This recommendation is based on the staff report, findings and testimony.

**DATED** this 30<sup>th</sup> day of September, 2009.

AYES:

NAYS:

ABSTAIN:

ABSENT:

ATTEST:

\_\_\_\_\_  
Recording Secretary

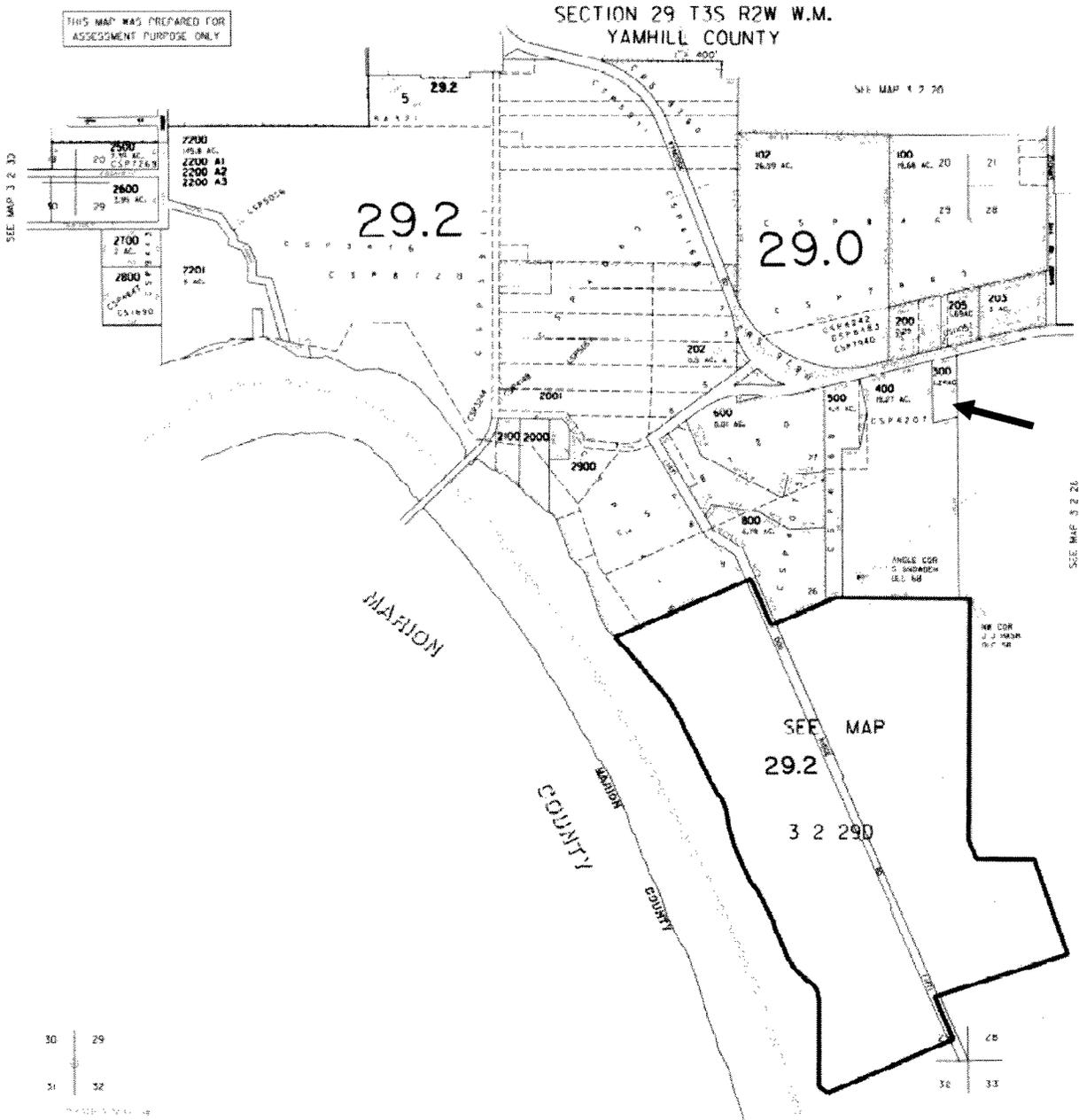
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NUAMC Chair

Exhibits:

Exhibit A: Legal Map and Legal Description

Exhibit B: Findings

# EXHIBIT A: LEGAL MAP & LEGAL DESCRIPTION



## LEGAL MAP AND LEGAL DESCRIPTION (CONTINUED)

Real property in the County of Yamhill, State of Oregon, described as follows:

Being a part of the Samuel D. Snowden Donation Land Claim, Notification No. 1476, Claim No. 68, in Section 29, Township 3 South, Range 2 West of the Willamette Meridian in Yamhill County, Oregon; and beginning at the Northeast corner of a tract of land deeded by Etta B. Church to Emma B. Jacobsen and Gearhardt W. Jacobsen, on July 30, 1943, recorded in Book 122, Page 284 of the Deed Records of Yamhill County, Oregon, said point being 24.53 chains North and 1.03 chains West of the Quarter Section corner between Sections 29 and 28; thence South 400 feet; thence South **760** West 150 feet; thence North 400 feet to the center of County Road; thence North **760** East 150 feet along center of County Road to the place of beginning.

Tax Parcel Number: R3229-300

**EXHIBIT B: URBAN GROWTH BOUNDARY FINDINGS  
UGB-09-002**

**Approval of an urban growth boundary amendment for 1.24 acres.**

**I. ORS Standards:**

**ORS 197.298.** ORS 197.298 establishes priorities for land to be included within an urban growth boundary. ORS 197.298 (1)(a) states: “In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities: (a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.”

**Finding:** The subject property was included in Newberg’s Urban Reserve Area in 1995, through Newberg Ordinance 95-2370, and therefore is first priority for inclusion in the Urban Growth Boundary.

**II. OAR Standards:**

**660-021-0060 Urban Growth Boundary Expansion.** All lands within urban reserve areas established pursuant to this division shall be included within an urban growth boundary before inclusion of other lands, except where an identified need for a particular type of land cannot be met by lands within an established urban reserve area.

**Finding:** The subject property was included in Newberg’s Urban Reserve Area in 1995, through Newberg Ordinance 95-2370, and therefore is first priority for inclusion in the Urban Growth Boundary.

**660-024-0060 Boundary Location Alternatives Analysis.** “(1) When considering a UGB amendment, a local government must determine which land to add by evaluating alternative boundary locations. This determination must be consistent with the priority of land specified in ORS 197.298 and the boundary location factors of Goal 14, as follows:

- (a) Beginning with the highest priority of land available, a local government must determine which land in that priority is suitable to accommodate the need deficiency determined under OAR 660-024-0050.
- (b) If the amount of suitable land in the first priority category exceeds the amount necessary to satisfy the need deficiency, a local government must apply the location factors of Goal 14 to choose which land in that priority to include in the UGB.
- (c) If the amount of suitable land in the first priority category is not adequate to satisfy the identified need deficiency, a local government must determine which land in the next priority is suitable to accommodate the remaining need, and proceed using the same method specified in subsections (a) and (b) of this section until the land need is accommodated.
- (d) Notwithstanding subsection (a) to (c) of this section, a local government may consider land of lower priority as specified in ORS 197.298(3).
- (e) For purposes of this rule, the determination of suitable land to accommodate land needs must include consideration of any suitability characteristics specified under section (5) of this rule, as well as other provisions of law applicable in determining whether land is buildable or suitable.

(2) Notwithstanding OAR 660-024-0050(4) and subsection (1)(c) of this rule, except during periodic review or other legislative review of the UGB, a local government may approve an

application under ORS 197.610 to 197.625 for a UGB amendment proposing to add an amount of land less than necessary to satisfy the land need deficiency determined under OAR 660-024-0050(4), provided the amendment complies with all other applicable requirements.

- (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.
- (6) The adopted findings for UGB adoption or amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis. If the analysis involves more than one parcel or area within a particular priority category in ORS 197.298 for which circumstances are the same, these parcels or areas may be considered and evaluated as a single group.”

**Finding:** Pursuant to subsection (2) above, this UGB amendment application was initiated by the landowner. According to the buildable lands table below, the city has a need for an additional 114 acres of buildable industrial land in the UGB. This UGB amendment application is limited to a 1.24 acre parcel and is therefore not enough land to satisfy the industrial land deficiency. However, the amendment proposal complies with all other applicable requirements and with subsection (2) above.

**Buildable Land In Newberg UGB, City Limits**

Compared to Comprehensive Plan Projected Needs, as of June 30, 2009

Plan Designation	Buildable	Buildable	Est. Years Supply in UGB	Buildable	Est. Years
	Acres Needed 2009-2029**	Acres in UGB* 6/30/2009		Acres in City 6/30/2009	Supply in City
LDR	664	599	18	419	13
MDR	155	115	15	83	11
HDR	105	45	9	31	6
COM	97	92	19	60	12
IND	158	44	6	21	3
P I, PQ, or other	105	13	2	13	2
Inst.	205	84	8	54	5
<b>Total</b>	<b>1,489</b>	<b>992</b>	<b>13</b>	<b>681</b>	<b>9</b>

\*The Urban Growth Boundary (UGB) includes the city

\*\*Estimated as need from 1/1/2009 to 1/1/2029

Source: Newberg Planning and Building Department

Data subject to change

In accordance with subsection (5) above, the city does have specified characteristics necessary for suitable industrial land. The industrial site suitability characteristics are specified in the *Ad Hoc Committee on Newberg’s Future Report to Newberg City Council* (Accepted by Newberg City Council in July 2005) and are as follows:

1. Site Size: Larger (20+ acre) sites serve two purposes: 1) they can meet the siting needs of larger employers; or 2) they can provide land for industrial and business parks that provide shovel ready lots for smaller firms.
2. Topography: Industrial sites need to be relatively flat, generally less than 5% slope, and not more than 10% slope.

3. Land Ownership: Generally, large industrial sites should have no more than 2 separately owned parcels that combine to meet buildable site needs.
4. Level of Development: Although undeveloped sites are preferred, developed sites may be more attractive to developers in a limited supply situation.
5. Natural Features: Unbuildable land is removed from the calculation. Land with protected natural features is not included in the buildable land calculations. Streams or wetlands that are located in the middle of a site could have the effect of dividing a large site, and reducing the area available for development.
6. Street Access: Industries are heavily dependent on surface transportation for efficient movement of goods, commodities, and workers. Poor access to I-5 is a key constraint for Newberg. Direct access to Highway 99 or the future bypass is an important factor for most industries.
7. Shape: Industrial users are attracted to sites that offer adequate flexibility in site circulation and building layout.
8. Services: Sanitary sewer and water service must be available or feasible.
9. Compatibility: Industrial areas have operational characteristics that do not blend well with residential land uses. Generally, as industrial use intensifies, so too does the importance of buffering to mitigate impacts of noise, outdoor lighting, odors, traffic, and 24-hour 7-day week operations. Therefore, industrial sites should not be located next to low- or medium-density residential areas.

Subsection (5) permits limiting the location analysis to these 9 industrial site suitability characteristics. To also satisfy subsection (1) above, we will review the locational analysis by beginning with the highest priority of land available and applying the 9 suitability criteria. The highest priority of lands would be those already included within the Urban Reserve Area. These areas include: Klimek Lane URA area, South Springbrook Road URA area, North Hills URA area, and Wyooski Road URA area (which the subject property is part of).

According to the site suitability comparison (see Attachment 9), each of the areas includes larger parcels than the subject property. However, in many cases the other study areas have considerable constraints as well, including future impacts from the bypass and/or slopes that would hamper industrial development. The subject property does have considerable slopes on the southern and southwestern portions of the property; however, when taken into consideration with the adjacent parcel (as they share ownership), together they have approximately 440 feet of street frontage and comprise approximately 10.8 acres in size. The subject property also has direct access onto Wyooski Road and is very close to Highway 219 for easy truck access. Many of the other study areas have constrained access or would have to use local roads for quite a distance to get to one of the major highways. The subject property is located near the wastewater and water treatment plants and could feasibly be served with city utility infrastructure.

One of the most important site suitability criteria is the compatibility measure. The subject property is located adjacent to other industrially zoned and developed properties and therefore development on the site would have a lesser impact than if it were adjacent to residentially developed properties. All of the other study areas are located either adjacent to residentially zoned and developed properties or adjacent to resource lands. Industrial development in these areas would have a negative impact on the surrounding uses.

Overall, the subject property is the best choice for future industrial development due to its location, access, limited impact on surrounding uses, and size (when combined with the adjacent parcel).

### **III. Statewide Planning Goals and Newberg Comprehensive Plan:**

As required by State Senate Bill 100, the Newberg Comprehensive Plan addresses and is consistent with the established statewide planning goals and guidelines. Each of the goals within the Comprehensive Plan corresponds with an applicable statewide planning goal and implements the goal through the guise of local needs and desires. Because an Urban Growth Boundary amendment is also a Comprehensive Plan amendment, it must be found that “the proposed change is consistent with and promotes the goals and policies of the Newberg Comprehensive Plan and this Code (Development Code)” (NDC § 151.122). Statewide planning goals 3, 4, 15, 16, 17, 18, and 19 do not apply to this application. The remaining goals are addressed through the applicable Comprehensive Plan goals and policies below:

- A. Citizen Involvement (Statewide Goal 1).** NCP Goal: To maintain a Citizen Involvement Program that offers citizens the opportunity for involvement in all phases of the planning process.

**Finding:** Ordinance 91-2297 amended Ordinance 1967 with a new citizen involvement strategy. Part of the evaluation of the current program notes that, in addition to other avenues of citizen participation, “involvement is also encouraged through citizen involvement at public meetings”. The analysis section of the report also noted that “the City of Newberg has a sound and comprehensive citizen involvement program” (ORD 91-2297). We are currently using the same citizen involvement program as described and analyzed by Ordinance 91-2297.

The proposed UGB amendment offers several opportunities for citizens to be involved in the planning process. Yamhill County Department of Planning and Development sent mailed notices of the project and NUAMC hearing date to surrounding property owners, inviting them to either send in written comments about the proposal or to testify at the meeting. In addition, a similar public notice will be sent to surrounding property owners prior to the Newberg City Council meeting, which is the next step for this proposal.

- B. Land Use Planning (Statewide Goal 2).** NCP Goal: To maintain an on-going land use planning program to implement statewide and local goals. The program shall be consistent with natural and cultural resources and needs.

**Finding:** This goal provides for creating and maintaining a Comprehensive Plan for the city. The statewide goal further states that “city...plans and actions related to land use shall be consistent with the comprehensive plans...adopted under ORS Chapter 268”. This staff report serves to determine the compliance of the proposal with the City’s adopted Comprehensive Plan and statewide goals.

- C. Agricultural Lands (Statewide Goal 3 – Goal 3 does not apply to UGB amendments).** NCP Goal: To provide for the orderly and efficient transition from rural to urban land uses.

Applicable Comprehensive Plan Policies: 1) The conversion of urbanizable land from agricultural to urban land uses shall be orderly and efficient; 2) Agriculture is a part of our heritage, uniqueness, culture and future. Inclusion of lands in agricultural use within the Urban Growth Boundary is recognition of a commitment to future urbanization, as such lands are necessary to meet long-range population and economic needs, based on criteria outlined in the statewide Urbanization Goal. Urbanization of agricultural land shall be carefully considered and balanced with the needs of the community as a whole.

**Finding:** The subject parcel is currently located in the Urban Reserve Area and is therefore considered to be a future area for urbanization. There are several reasons why this parcel is an appropriate choice to bring into the Urban Growth Boundary: 1) the parcel is located adjacent to the current city limits and is classified as exception land so the conversion of this parcel to future urban land uses would be orderly and efficient with no “leapfrog” development pattern; 2) city utility services are not currently located near this parcel but could be brought down Wynyoski Road to serve the parcel in the future; and 3) the city’s long range population, economic, and buildable land needs forecasts show that we have a shortage of industrially designated and zoned properties to serve our population. This property is an exception area, currently zoned VLDR 2.5 (Very Low Density Residential 2.5 acre minimum), and is not classified or zoned for agricultural use.

**D. Wooded Areas (Statewide Goal 4 – Goal 4 does not apply to UGB amendments).**

NCP Goal: To retain and protect wooded areas.

Applicable Comprehensive Plan Policies: 2) Development in drainageways shall be limited in order to prevent erosion and protect water quality. Trees provide needed protection from erosion and should be maintained.

**Finding:** The southern and southwestern portions of the property slope off to a natural drainageway stream corridor. The City has regulations governing development within mapped stream corridors. Because the subject property is located outside of the current Urban Growth Boundary, the City does not yet have the stream corridor mapped on the parcel. A wetland delineation to map the stream corridor and any onsite wetlands would have to be done prior to any development on the site, and development would have to comply with the stream corridor regulations in the Newberg Development Code.

**E. Air, Water, and Land Resource Quality (Statewide Goal 6).** NCP Goal: To maintain, and where feasible, enhance the air, water and land resource qualities within the community.

Applicable Comprehensive Plan Policies: 1) Development shall not exceed the carrying capacity of the air, water or land resource base; 3) As public sanitary sewer systems become available, all development shall connect to the public system; 5) New industry should be located in areas which minimize impacts upon the air, water, and land resource base, as well as upon surrounding land uses.

**Finding:** The subject parcel would be designated industrial if it were included within the Urban Growth Boundary. The parcel is an appropriate place for industrial development as it is located adjacent to other industrially zoned and developed parcels, is adjacent to a road and near the highway, and can be adequately served with sewer and water. As noted above, any

site development would have to comply with the city's stream corridor regulations to protect the natural vegetation and the quality of water in the stream corridor.

**F. Areas Subject to Natural Disasters and Hazards (Statewide Goal 7).** NCP Goal: To protect life and property from natural disasters and hazards.

Applicable Statewide Goal 7 Standards: A.2. (Natural Hazard Planning) Natural hazards for purposes of this goal are: floods (coastal and riverine), landslides, earthquakes and related hazards, tsunamis, coastal erosion, and wildfires. Local governments may identify and plan for other natural hazards; B.4. (Implementation) When reviewing development requests in high hazard areas, local governments should require site-specific reports, appropriate for the level and type of hazard prepared by a licensed professional.

**Finding:** The Division of State Lands has identified hydric soils on the site and potential wetland areas. In addition, the area of the property sloping to the stream corridor has a relatively steep slope. Development in these areas would be limited, and a wetland delineation would be required prior to any development.

**G. Open Space, Scenic, Natural, Historic and Recreational Resources (Statewide Goals 5 & 8).** NCP Goals: 1) To ensure that adequate land shall be retained in permanent open space use and that natural, scenic and historic resources are protected; 2) To provide adequate recreational resources and opportunities for the citizens of the community and visitors; 3) To protect, conserve, enhance and maintain the Willamette River Greenway.

Applicable Comprehensive Plan Policies: 1.e) The floodplains and natural drainageway areas in Newberg should be preserved with a largely open character to provide a basic open space framework for the community. The capacities of these areas shall be maintained to provide a natural stormwater and natural drainage system, as well as to continue to provide a natural habitat for local fish and wildlife. Natural drainageways should be kept in open space uses. Bicycle and pedestrian pathways might be included in these areas. Care should be taken to minimize disturbances in these often erosive and steep areas. All uses should be compatible with the specific sites.

Applicable Statewide Goal 5 Standards: Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations.

Applicable Statewide Goal 8 Standards: To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

**Finding:** In accordance with Goal 5, Newberg has adopted stream corridor regulations to protect and conserve the area within the stream corridor as open space for the city. According to the stream corridor map (Attachment 4), the south and southwest portion of the property appear to be located within a stream corridor and would be an appropriate place for the stream corridor zoning overlay. Any development on the site would have to comply with the stream corridor regulations. The stream corridor regulations restrict any development or mechanized removal of vegetation and seek to minimize any disturbance in the corridor area.

The subject parcel is within the study area for the South Industrial Area Master Plan. The draft plan shows a parks and trails system through the area, including through the stream corridor on the subject property, that takes advantage of the natural open spaces. Bicycle and

pedestrian paths might be included in those areas in the future for the enjoyment of the public.

**H. The Economy (Statewide Goal 9).** NCP Goal: To develop a diverse and stable economic base.

Applicable Comprehensive Plan Policies: 2.a) Industrial expansion shall be located and designed to minimize impacts on surrounding land uses; 2.f) Concerted community efforts should be made to see that industrial development expands outward from existing areas rather than occurring in haphazard patterns.

**Finding:** The subject property would be designated industrial if it were included within the Urban Growth Boundary. It is located in an appropriate place for industrial development as it is adjacent to other industrially zoned and developed properties, as well as an access road. Including this parcel in the Urban Growth Boundary would promote a sensible extension of industrial development and would not result in haphazard “leapfrog” development patterns.

**I. Housing (Statewide Goal 10).** NCP Goal: To provide for a diversity in the type, density and location of housing within the City to ensure there is an adequate supply of affordable housing units to meet the needs of City residents of various income levels.

**Finding:** Inclusion of the subject property in the Newberg Urban Growth Boundary will not help provide housing as prescribed by this goal. However, it will provide additional industrial land which in turn will provide jobs, helping City residents afford housing. In addition, industrial land provides a stable tax base for the city that generally doesn’t use many City resources (Police, Fire). The City is currently exploring options to use tax revenue to assist in funding affordable housing programs. Therefore, inclusion of industrial land in the Urban Growth Boundary, and eventually annexing it into the city, may be beneficial to the housing goals and policies of the City.

**J. Urban Design.** NCP Goals: 1) To maintain and improve the natural beauty and visual character of the City; 2) To develop and maintain the physical context needed to support the livability and unique character of Newberg.

Applicable Comprehensive Plan Policies: 1.e) Developments should respect the natural ground cover of their sites to the extent possible and plans should be made to preserve existing mature, non-hazardous trees in healthy condition; 2.a) Industrial development should be encouraged to located in industrial parks offering good access, buffering and landscaping.

**Finding:** The subject property is located near other industrially zoned and developed properties, making it a good choice to add to the Urban Growth Boundary. The property has good access to Wynooski Road and Highway 219, and would have to comply with applicable City landscaping and buffering regulations upon site development. In addition, any development on the site would have to comply with the City’s stream corridor regulations to preserve and protect trees and other vegetation within the stream corridor.

**K. Transportation (Statewide Goal 12).** NCP Goals: 1) Establish cooperative agreements to address transportation based planning, development, operation and maintenance; 2) Establish consistent policies which require concurrent consideration of transportation/land use system impacts; 3) Promote reliance on multiple modes of

transportation and reduce reliance on the automobile; 4) Minimize the impact of regional traffic on the local transportation system; 5) Maximize pedestrian, bicycle, and other non-motorized travel throughout the City; 6) Provide effective levels of non-auto oriented support facilities (e.g. bus shelters, bicycle racks, etc.); 7) Minimize the capital improvement and community costs to implement the transportation plan; 8) Maintain and enhance the City's image, character and quality of life; 9) Create effective circulation and access for the local transportation system; 10) Maintain the viability of existing rail, water and air transportation systems; 11) Establish fair and equitable distribution of transportation improvement costs; 12) Minimize the negative impact of a Highway 99 bypass on the Newberg community.

**Finding:** The 2005 update of the Transportation System Plan (TSP) assumed that this property would eventually be zoned industrial upon annexation into the city. Therefore, all the transportation models were done with that assumption, and any perceived traffic impacts from future development are already built into the TSP. Any future development of this property would require improvements along the Wynooski Road frontage to meet the needs of bicycles and pedestrians and bring the street frontage up to city standards.

**L. Public Facilities and Services (Statewide Goal 11).** NCP Goal: To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban development.

Applicable Comprehensive Plan Policies: 1.e) Owners of properties which are located on unimproved streets should be encouraged to develop their streets to City standards; 2.d) Sewer and water service shall not be provided outside the City limits except for cases of health hazards, where no other alternative exists, and where property owners agree to annex upon request of the City.

Applicable Statewide Goal 11 Standards: A.5) A public facility or service should not be provided in an urbanizable area unless there is provision for the coordinated development of all the other urban facilities and services appropriate to that area.

**Finding:** The subject property is located along Wynooski Road, a major collector with direct access to Highway 219. Wynooski Road is currently improved to county standards along the property's frontage. If included within the Urban Growth Boundary, any development on the site should have to complete a half street improvement on Wynooski Road to improve it up to city standards with curb, gutter, sidewalk and street trees.

The property is not currently served with city sewer and water lines. If included within the Urban Growth Boundary, development on the site should be limited to temporary type uses (parking, storage) until such time that annexation into the city occurs and city utility lines are extended to serve the site. The City has completed work on a Wynooski Road local improvement district study that determined the costs per property to extend sewer service along Wynooski Road. This document can be used as a guideline for the property owners to help determine the size, cost, and location of extending necessary sewer lines to their property. The property must be served with city sewer and water prior to any permanent development on the site.

**M. Energy (Statewide Goal 13).** NCP Goal: To conserve energy through efficient land use patterns and energy related policies and ordinances.

Applicable Comprehensive Plan Policies: 1.a) The city will encourage energy-efficient development patterns. Such patterns shall include the mixture of compatible land uses and a compactness of urban development.

Applicable Statewide Goal 13 Standards: B.1) Land use plans should be based on utilization of the following techniques and implementation devices which can have material impact on energy efficiency: a. lot size, dimension, and siting controls; b. building height, bulk and surface area; c. density of uses, particularly those which relate to housing densities; d. availability of light, wind and air; e. compatibility of and competition between competing land use activities; and f. systems and incentives for the collection, reuse and recycling of metallic and nonmetallic waste.

**Finding:** The subject property is located adjacent to a major transportation facility (Wynooski Road to Highway 219), and is adjacent to other industrially zoned and developed properties. By including this property in the Urban Growth Boundary with an Industrial designation, the City would be encouraging energy-efficient development patterns. Any industrial development on this property could have a symbiotic relationship with surrounding industrial uses, and would not require supply and delivery trucks to travel far off the main transportation facility. In addition, any industrial development on the property would have to comply with the Newberg Development Code standards (once annexed) for lot dimensions, density, bulk, and other similar standards in accordance with statewide Goal 13.

**N. Urbanization (Statewide Goal 14).** NCP Goals: 1) To provide for the orderly and efficient transition from rural to urban land uses; 2) To maintain Newberg's identity as a community which is separate from the Portland Metropolitan Area; 3) To create a quality living environment through a balanced growth of urban and cultural activities.

Applicable Comprehensive Plan Policies: 1.a) The conversion of lands from rural to urban uses within the Urban Growth Boundary will be based on a specific plan for the extension of urban services; 1.b) The City shall oppose urban development outside the city limits but within the Newberg Area of Influence; 1.c) The City shall encourage urban development within the city limits; 1.d) The Urban Growth Boundary shall designate urbanizable land; 1.e) The City will support development within the areas outside the city limits but within the Newberg Urban Growth Boundary or Urban Reserve Area based on the following standards or restrictions: ...New commercial or industrial uses will generally be discouraged within the UGB and Urban Reserve Area; 3.b) The City shall coordinate planning activities with the County in order that lands suitable for industrial use but not needed within the planning period are zoned in a manner which retains these lands for future industrial use.

Applicable Statewide Goal 14 Standards:

Land Need – Establishment and change of urban growth boundaries shall be based on the following: 1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and 2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, street and roads, schools, parks or open space, or any combination of the need categories in this subsection (2). In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need. Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.

**Boundary Location** – The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197.298 and with consideration of the following factors: 1) Efficient accommodation of identified land needs; 2) Orderly and economic provision of public facilities and services; 3) Comparative environmental, energy, economic and social consequences; and 4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.

**Land Need Finding:**

The Comprehensive Plan contains recent population forecasts that were prepared in 2004 by Barry Edmonson, Director of the Population Research Center at Portland State University. Two different methods were used to complete the population projections: a ratio method based on Yamhill County forecasts, and a cohort component method. While the two methods produced similar results, City staff and the Ad Hoc Committee on Newberg’s Future felt that the cohort component method was based on sounder methodology and data. The Committee selected the medium growth projections as the most likely and used those for the future land needs analysis. Based on the medium growth projection, Newberg’s population will be 38,352 in 2025 and 54,097 in 2040. This population project was adopted into the Comprehensive Plan and coordinated with Yamhill County.

Based on the population forecasts and long range employment forecasts, the industrial land need for the 2005-2025 period was set at 150 acres (comprised of a need for 50 acres of small/medium sites and 100 acres of large, 20+ acre sites) and 157 acres for the 2026-2040 period (37 acres of small/medium sites and 120 acres of large sites). City staff recently updated the buildable lands inventory by interpolating the adopted land need to the 2009-2029 planning period.

**Buildable Land In Newberg UGB, City Limits**  
Compared to Comprehensive Plan Projected Needs, as of June 30, 2009

Plan Designation	Buildable Acres Needed 2009-2029**	Buildable Acres in UGB* 6/30/2009	Est. Years Supply in UGB	Buildable Acres in City 6/30/2009	Est. Years Supply in City
LDR	664	599	18	419	13
MDR	155	115	15	83	11
HDR	105	45	9	31	6
COM	97	92	19	60	12
IND	158	44	6	21	3
P I, PQ, or other	105	13	2	13	2
Inst.	205	84	8	54	5
<b>Total</b>	<b>1,489</b>	<b>992</b>	<b>13</b>	<b>681</b>	<b>9</b>

\*The Urban Growth Boundary (UGB) includes the city

\*\*Estimated as need from 1/1/2009 to 1/1/2029

Source: Newberg Planning and Building Department  
Data subject to change

There is very little suitable industrial land located within the current UGB. Of the available suitable industrial land, much of it is compromised by the future bypass or by steep slopes

associated with the stream corridor. Due to the limited amount of available suitable industrial land and our demonstrated land need, we must look outside the current UGB for industrial land.

**Boundary Location Finding:**

ORS 197.298 specifies the priority of land to be included within the UGB and states, “(1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities: (a) First priority is land that is designated urban reserve land under ORS 195.145 (Urban Reserves), rule or metropolitan service district action plan”. The subject property meets the requirement of ORS 197.298 as it is located within an acknowledged Urban Reserve Area. Analysis of the four boundary location factors is as follows:

- 1) Efficient accommodation of identified land needs: Including the subject property in the UGB is an efficient accommodation of identified land needs as it is located adjacent to other industrially zoned and developed properties so it will not have significant negative impacts on surrounding uses. It is also located adjacent to the current city limits and UGB, making it an efficient choice because it is on the urban fringe. In addition, it is located adjacent to Wyooski Road and near Highway 219 for easy truck access.
- 2) Orderly and economic provision of public facilities and services: The subject property is located near the wastewater and water treatment plants. City sewer and water services can feasibly be extended along Wyooski Road to serve this and other properties in the vicinity. Any development on the site would require the street frontage to be improved to City standards, providing pedestrian and bicycle infrastructure as well as street trees and landscaping.
- 3) Comparative environmental, energy, economic and social consequences: The site appears to have a significant stream corridor located in the southern and southwestern portions of the site. One condition of including this property in the UGB would require that a stream corridor overlay be placed on the property along with the IND Comprehensive Plan designation. In addition, any development on the site would first require a wetland determination so that any wetland areas may be protected. Including this property as a location for future industrial development is appropriate due to its location near a major highway – less travel time for trucks in town on congested roadways reduces the energy impacts generated by the site. Because the site is located near the wastewater treatment plant, any industrial development may be able to take advantage of the city’s “purple pipe” system of using recycled water for irrigation or other non-potable purposes. Including this property within the UGB has the potential to provide future jobs in local industry. Finally, the subject property is in an appropriate place for industrial development. In comparison to other potential areas for future industrial use, this area is the only one that is adjacent to other exception lands that are zoned and developed industrially. The other study areas are located either adjacent to residential or resource lands where industrial development would have a negative social impact on the surrounding uses.
- 4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB: None of the areas adjacent to the subject property are being used in active agricultural or forest activities. The adjacent areas to the west, south and east are all exception lands that are zoned for industrial

use and the properties to the north are within the city limits and are actively used for industrial development.

#### **IV. Newberg Urban Area Management Agreement -Urban Growth Boundary Amendment**

**Criteria:** Amendment of the Urban Growth Boundary shall be treated as a map amendment to both City and County Comprehensive Plan maps. Change of the boundary shall be based upon consideration of the following factors:

- (a) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
- (b) Need for housing, employment opportunities, and livability;
- (c) Orderly and economic provision for public facilities and services;
- (d) Maximum efficiency of land uses within and on the fringe of the existing urban area;
- (e) Environmental, energy, economic and social consequences;
- (f) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and
- (g) Compatibility of the proposed urban uses with other adjacent uses.

**Finding:** See section II above for a discussion of the industrial/employment land needs to accommodate our long-range population forecast. The subject property is located near the wastewater and water treatment plants and is in a location that is feasible and reasonable to serve with city utility infrastructure. The subject property is adjacent to the existing city limits and UGB boundaries and is therefore a viable choice to add to the UGB for maximum efficiency of land without extending beyond the fringe of the urban area. Adding the subject property to the UGB has the future potential to add jobs to Newberg in an appropriate area that would not negatively impact surrounding residential uses. Any development on the site would have to comply with the City's Stream Corridor overlay, protecting the natural stream corridor environment on the site. The subject property is in an exception area and not in agricultural use.

#### **V. Newberg Development Code, Section § 151.122 – Newberg Comprehensive Plan**

**Amendment:** The applicant must demonstrate compliance with the following criteria:

- (a) The proposed change is consistent with and promotes the goals and policies of the Newberg Comprehensive Plan and this Code;

**Finding:** See section III above for a full discussion of how the proposed change meets the Comprehensive Plan goals and policies.

- (b) Public facilities and services are or can be reasonably made available to support the uses allowed by the proposed change.

**Finding:** Public facilities and services may be made available to serve the site prior to urban development.

- (c) Compliance with the State Transportation Planning Rule (OAR 660-012-0060) for proposals that significantly affect transportation facilities.

**Finding:** The proposal is in compliance with the State Transportation Planning Rule as the updated Transportation System Plan (2005) assumed that this property would be designated as

industrial and developed with industrial type uses. Therefore, all traffic modeling was done with this assumption. Any future industrial development of the property would fit the existing models and assumptions from the TSP.

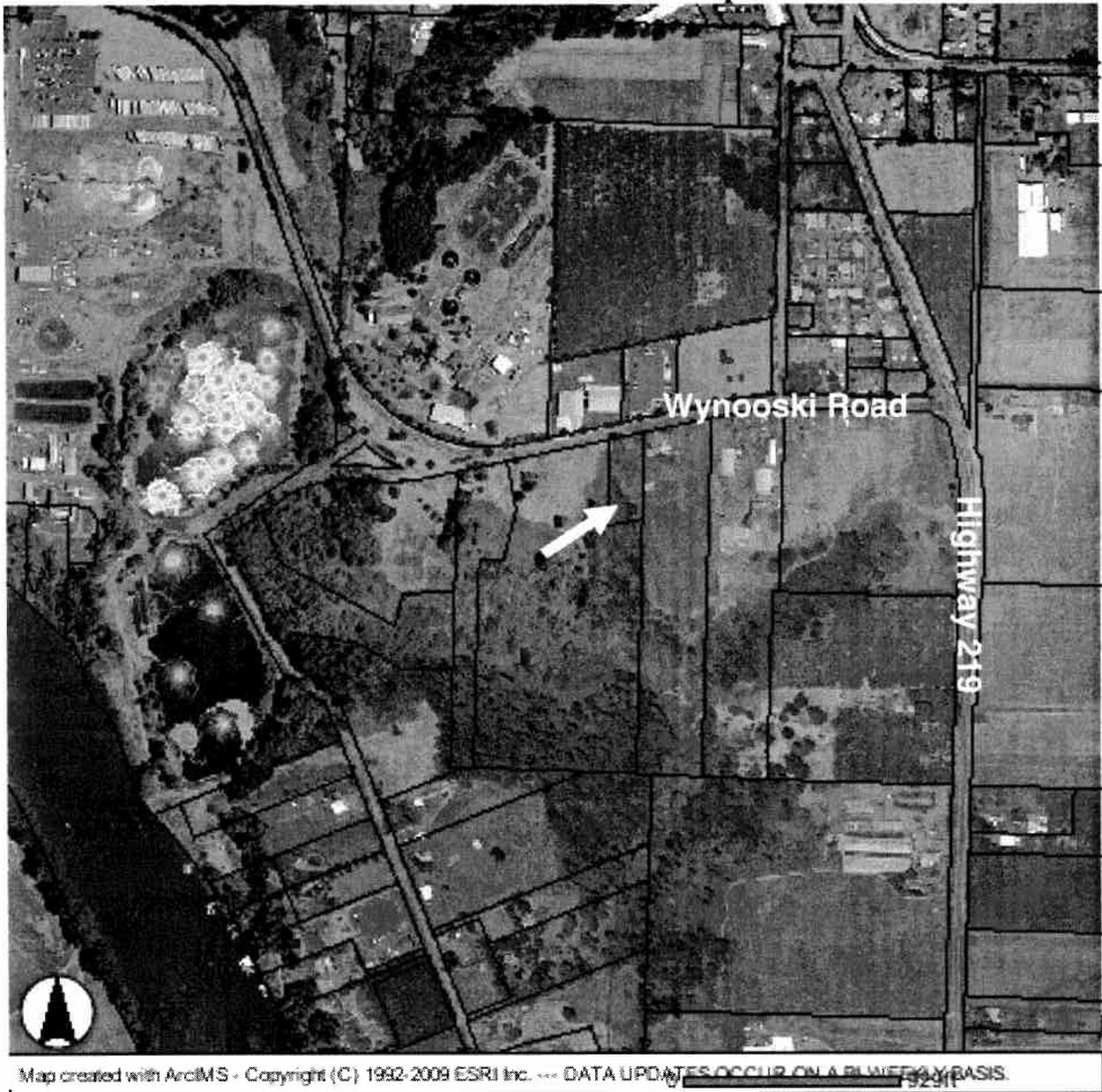
## **VI. Yamhill Comprehensive Plan Policies**

Yamhill County comprehensive plan policies are addressed in the Yamhill County staff report and in the application.

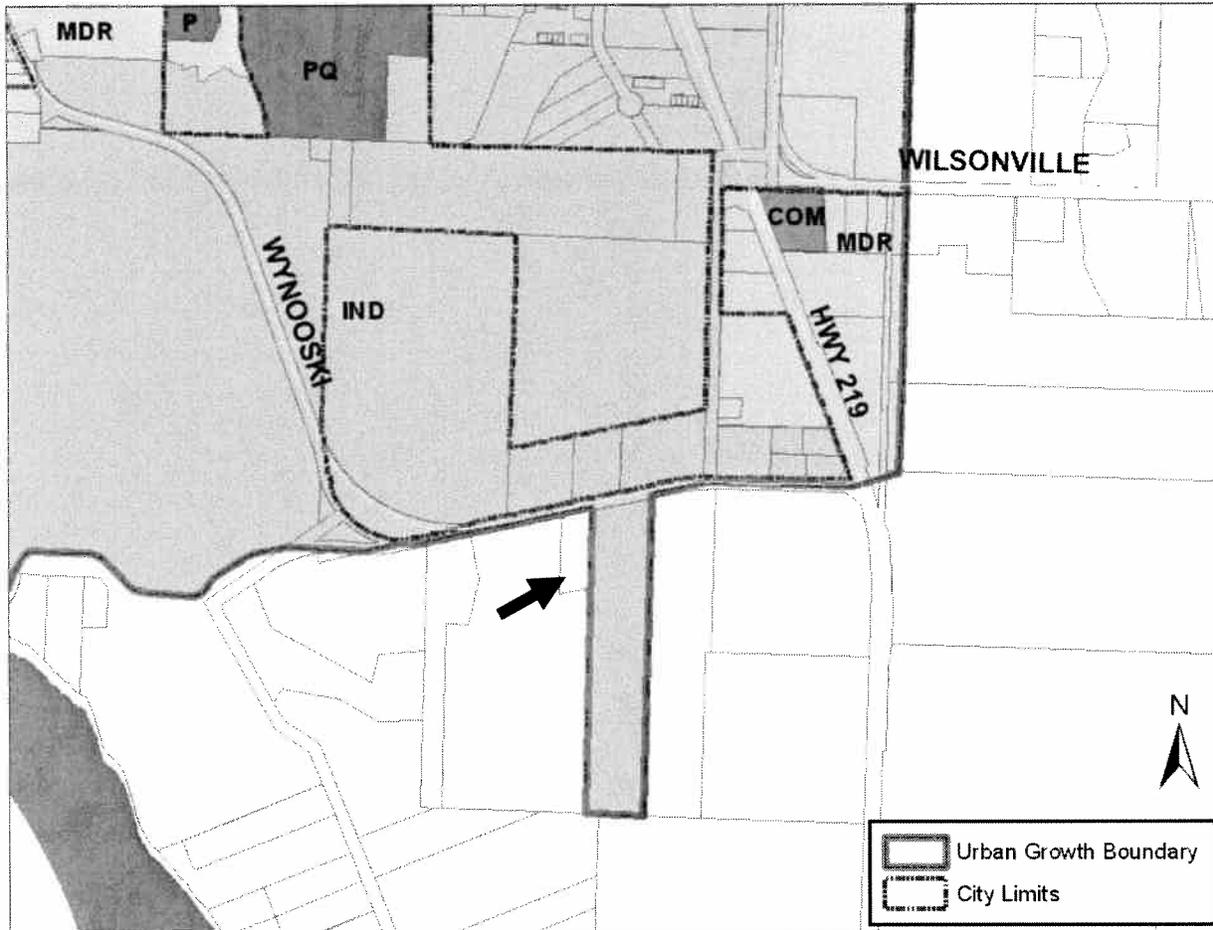
## **VI. CONCLUSION:**

Based on all of the above mentioned findings, and with the conditions noted, the application meets the criteria for an Urban Growth Boundary amendment.

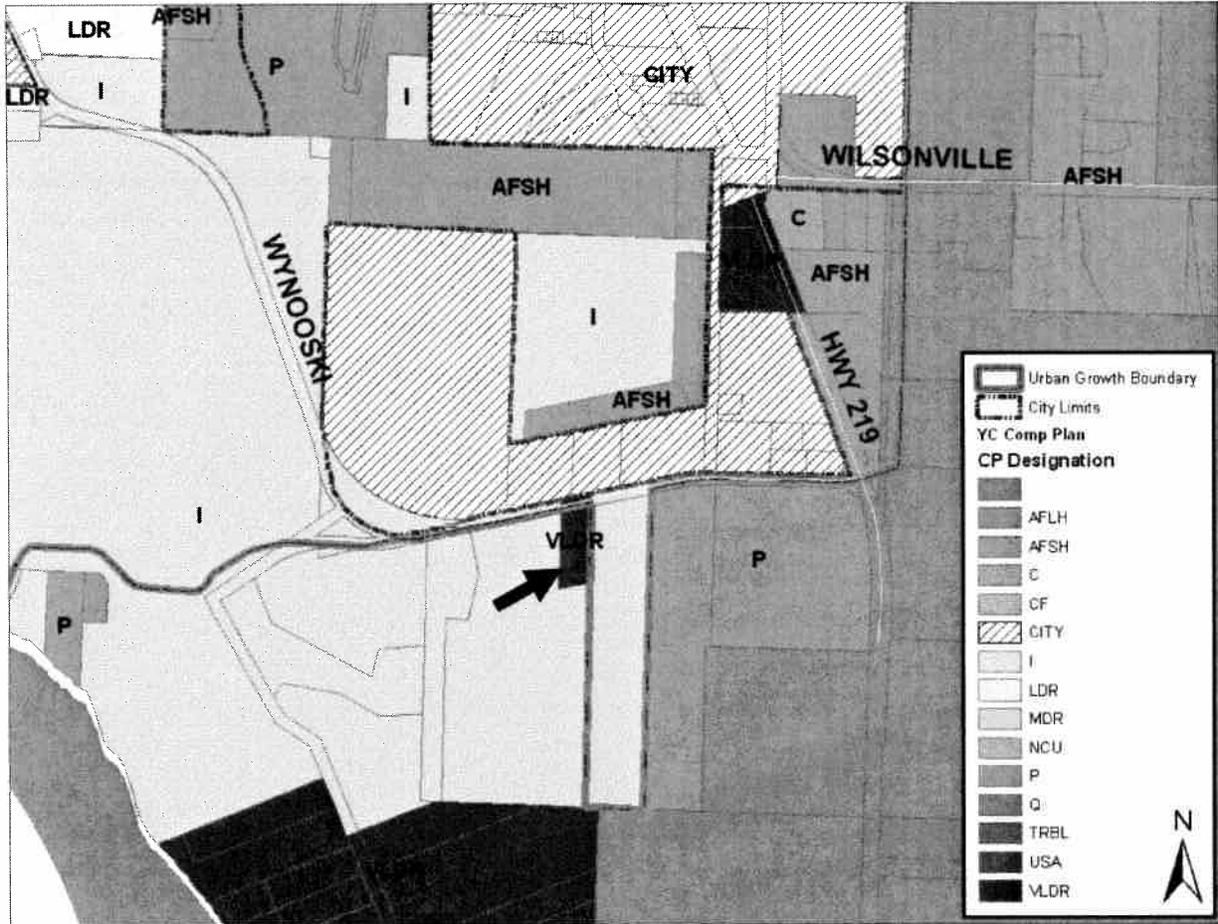
# Attachment 1: Aerial Map



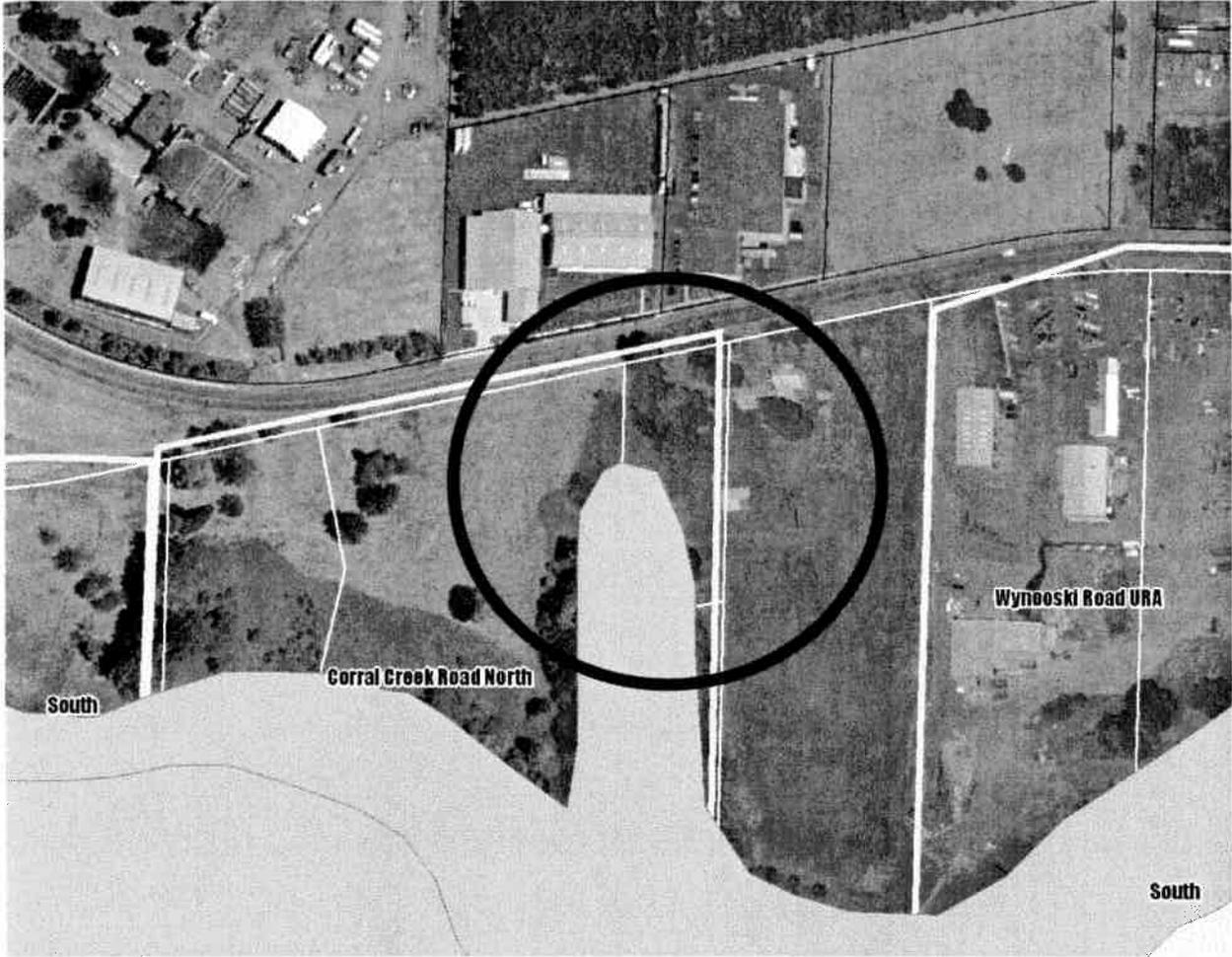
## Attachment 2: Newberg Comprehensive Plan Map



### Attachment 3: Yamhill County Comprehensive Plan Map



## Attachment 4: Stream Corridor Map



# Attachment 5

## 2007 ORS § 197.298<sup>1</sup>

### Priority of land to be included within urban growth boundary

- (1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:
  - (a) First priority is land that is designated urban reserve land under ORS 195.145 (Urban reserves), rule or metropolitan service district action plan.
  - (b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710 (High-value farmland description for ORS 215.705).
  - (c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247 (1991 Edition).
  - (d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both.
- (2) Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.
- (3) Land of lower priority under subsection (1) of this section may be included in an urban growth boundary if land of higher priority is found to be inadequate to accommodate the amount of land estimated in subsection (1) of this section for one or more of the following reasons:
  - (a) Specific types of identified land needs cannot be reasonably accommodated on higher priority lands;
  - (b) Future urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints; or
  - (c) Maximum efficiency of land uses within a proposed urban growth boundary requires inclusion of lower priority lands in order to include or to provide services to higher priority lands. [1995 c.547 §5; 1999 c.59 §56]

**660-021-0060**

**Urban Growth Boundary Expansion**

All lands within urban reserves established pursuant to this division shall be included within an urban growth boundary before inclusion of other lands, except where an identified need for a particular type of land cannot be met by lands within an established urban reserve.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.145

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00; LCDD 1-2008, f. & cert. ef. 2-13-08

**660-024-0060**

**Boundary Location Alternatives Analysis**

(1) When considering a UGB amendment, a local government must determine which land to add by evaluating alternative boundary locations. This determination must be consistent with the priority of land specified in ORS 197.298 and the boundary location factors of Goal 14, as follows:

(a) Beginning with the highest priority of land available, a local government must determine which land in that priority is suitable to accommodate the need deficiency determined under OAR 660-024-0050.

(b) If the amount of suitable land in the first priority category exceeds the amount necessary to satisfy the need deficiency, a local government must apply the location factors of Goal 14 to choose which land in that priority to include in the UGB.

(c) If the amount of suitable land in the first priority category is not adequate to satisfy the identified need deficiency, a local government must determine which land in the next priority is suitable to accommodate the remaining need, and proceed using the same method specified in subsections (a) and (b) of this section until the land need is accommodated.

(d) Notwithstanding subsection (a) to (c) of this section, a local government may consider land of lower priority as specified in ORS 197.298(3).

(e) For purposes of this rule, the determination of suitable land to accommodate land needs must include consideration of any suitability characteristics specified under section (5) of this rule, as well as other provisions of law applicable in determining whether land is buildable or suitable.

(2) Notwithstanding OAR 660-024-0050(4) and subsection (1)(c) of this rule, except during periodic review or other legislative Dept. of Land Conservation and Development 660\_024 review of the UGB, a local government may approve an application under ORS 197.610 to 197.625 for a UGB amendment proposing to add an amount of land less than necessary to satisfy the land need deficiency determined under OAR 660-024-0050(4), provided the amendment complies with all other applicable requirements.

(3) The boundary location factors of Goal 14 are not independent criteria. When the factors are applied to compare alternative boundary locations and to determine the UGB location, a local government must show that all the factors were considered and balanced.

(4) In determining alternative land for evaluation under ORS 197.298, "land adjacent to the UGB" is not limited to those lots or parcels that abut the UGB, but also includes land in the vicinity of the UGB that has a reasonable potential to satisfy the identified need deficiency.

(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.

(6) The adopted findings for UGB adoption or amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis. If the analysis involves more than one parcel or area within a particular priority category in ORS 197.298 for which circumstances are the same, these parcels or areas may be considered and evaluated as a single group.

(7) For purposes of Goal 14 Boundary Location Factor 2, "public facilities and services" means water, sanitary sewer, storm water management, and transportation facilities.

(8) The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:

(a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the UGB;

(b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the UGB; and

(c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

Stat. Auth.: ORS 197.040, Statewide Planning Goal 14

Stats. Implemented: ORS 195.015, 195.036, 197.295 - 197.314, 197.610 - 197.650, 197.764

Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07; LCDD 2-2009, f. 4-8-09, cert. ef. 4-16-09



**Industrial Site Suitability Comparison of Current URA Areas**

Area	Size	Topography	Ownership	Development	Natural Features	Access	Shape	Services	Compatibility
<b>Subject Parcel (in Wynooski Road URA)</b>	1.24 acres. Adjacent parcel has same owner; together they sum ~10.8 acres	1/3 to 1/2 of site slopes to stream corridor. Remainder is flat, particularly when combined with adjacent parcel.	One owner	Vacant	1/3 to 1/2 of site has a natural stream corridor with significant slopes.	Accessed directly from Wynooski Road and near Highway 219.	Rectangular	Feasible to provide	Very compatible for industrial use - adjacent to other industrially zoned and developed properties.
<b>Klimek Lane URA</b>	One larger parcel, likely to be impacted by the bypass; several smaller parcels	Relatively flat	Many owners	Residential	Some wetland areas	Adjacent to Highway 99W	Rectangular parcels	Feasible to provide	Not compatible for industrial use - adjacent to residential uses.
<b>Springbrook Road South URA</b>	Several larger parcels, likely to be impacted by the bypass	Relatively flat, has stream corridor running down along eastern 1/3	Many owners	Mostly vacant, some residential use	Stream corridor running along eastern 1/3 of URA area	No easy access onto Springbrook Rd; southern parcels access Wilsonville Rd	Rectangular parcels	Feasible to provide; may be somewhat difficult due to landlocked position	Not compatible for industrial use - majority is adjacent to medium density residential and a golf course
<b>North Hills URA</b>	Several larger parcels, many are sloped	Many parcels have slopes over 5%, some have slopes in excess of 10%	Many owners	Residential	Some stream corridor areas; some wooded areas	Access comes from local roads down to Highway 99W	Rectangular parcels	Difficult to provide services due to slopes and elevation	Not compatible for industrial use - adjacent to residential uses and slopes are incompatible with industrial users

## Newberg Urban Area Growth Management Agreement

**Adopted by Newberg City Council on July 2, 1979 and Yamhill County Board of Commissioners on June 20, 1979; As Amended by Newberg City Council on November 2, 1998 and Yamhill County Board of Commissioners on December 3, 1998; As Further Amended by Newberg City Council on June 5, 2000 and Yamhill County Board of Commissioners on December 14, 2000.**

### Preface

Seen from above, the modern city edges imperceptibly out of its setting. There are no clear boundaries. Just now the white trace of the super highway passed through cultivated fields; now it is an asphalt image of streets and buildings. As one drives in from the airport or looks out from the train window, clumps of suburban houses, industrial complexes, and occasional green space flash by; it is hard to tell where city begins or county ends." (Oscar Handlin, "The Modern City as a Field of Historical Study" in The Historian and the City (Cambridge, Mass. 1963, p.1).

### I. Introduction

The City of Newberg and Yamhill County recognize the need for coordination and cooperation in the management of growth in and around the Newberg Urban Area. This agreement is formulated in accordance with this principle.

This agreement establishes a process for maintaining ongoing planning efforts, designed to keep pace with growth and change. It is essential that intergovernmental coordination be maintained to assure the citizens of the City of Newberg and Yamhill County that growth occurs in an orderly and efficient manner.

To that end, this agreement sets forth the means by which a plan for management of the unincorporated area within the Urban Growth Boundary will be implemented and by which the Urban Growth Boundary may be modified.

### II. Definitions

Area of Influence - An area of land designated by the City of Newberg and Yamhill County that extends one mile outside Newberg's Urban Growth Boundary wherein the County will give the City an opportunity to participate in land use actions to be taken by the County.

Urban Growth Boundary - A line jointly adopted by the City of Newberg and Yamhill County that encircles the City and separates rural and urbanizable land. Newberg's Urban Growth Boundary is shown on the attached map.

### III. General

1. Plan Map Conflicts. The 1979 Comprehensive plan Land Use Map adopted by the City of Newberg on July 2, 1979 shall be the plan map for the area within the Urban Growth Boundary, and shall replace conflicting portions of the Yamhill County Comprehensive Plan Map (1974) pertinent to this area. Where said maps conflict, Yamhill County shall initiate the process necessary for consideration of a map amendment.
2. Urban Growth Boundary. In accordance with the comprehensive Plan of the City of Newberg, the jointly adopted Urban Growth Boundary shall define the geographical limits of urbanization. The City of Newberg shall prepare for the orderly extension of public facilities and services within the boundary. -Lands outside the boundary shall be maintained in accordance with the Yamhill County Comprehensive
3. Urbanization. The City of Newberg and Yamhill County shall encourage urbanization within the boundary to occur in an orderly and efficient manner, resulting in a compact, balanced urban center meeting long-term economic and social needs of the residents of the area regardless of political boundaries.
4. Implementation and Coordination. The very nature of planning requires continual refinement of various elements of the Comprehensive Plan. This includes the preparation of implementing ordinances, refinement plans and functional plans. As the Newberg Comprehensive Plan is implemented, the City and County will work together in a coordinated effort to achieve the goals of the Yamhill County and Newberg Comprehensive Plans.
5. Concurrence and Recommendation. The legitimate interests of the City and County overlap within the City's Urban Growth Boundary and Area of Influence. This agreement attempts to resolve these overlapping interests by providing for concurrence of City and County governing bodies for certain decisions and by providing for recommendations of one governing body to the other for other decisions.
  - a. Concurrence. Where concurrence is required, the City and County shall agree upon a decision. If agreement cannot be reached, procedures outlined in ORS 197.300 may be invoked.
  - b. Recommendation. Where a recommendation is required, the City and County need not agree upon a decision. The procedures are these: The right to object to any item referred to a jurisdiction for a recommendation shall be deemed to have been waived unless the referring jurisdiction is notified otherwise within thirty days; the time limit for consideration of items referred for recommendation shall begin to run from the time the item is received by the jurisdiction whose recommendation is being solicited; each jurisdiction shall have standing to appeal the decision of the other governing body.

IV. Term of this Agreement; Amendment

1. The term of this agreement runs from July 2, 1979, to July 2, 1980, and may be extended thereafter by increments of one year. During the term of the agreement or extension, the agreement may be changed by mutual consent of the parties hereto. This agreement is automatically renewed at the end of such term or extension unless either party hereto requests revision of the agreement by so notifying the other party at least ninety days before the end of the current term or extension.

V. Urban Services

1. The City of Newberg is recognized as the ultimate provider of urban services within the Urban Growth Boundary. To this end:
  - a. Special Districts. Before Yamhill County shall create any special district for the provision of utilities, transportation, or other public facilities or services, the matter shall be referred to the City of Newberg for a recommendation. The County shall not act contrary to such recommendation.
  - b. Service Capacity. Development within the Urban Growth Boundary shall not exceed the capacity of existing services.
  - c. Annexation. Annexation shall occur in accordance with the Newberg Comprehensive Plan. Before final action by the City Council on an annexation proposal, the proposal shall be forwarded to the Board of County Commissioners for its recommendation. In order to provide the board with advance notice of reasoning for a proposed annexation, the findings adopted by the City Planning Commission shall be referred to the board following the Commission action.
  - d. Service Expansion Plans. As the ultimate provider of urban services, the City shall prepare and from time to time update utility expansion plans. These plans shall provide a basis for the extension of services within the Urban Growth Boundary and as such shall be referred to Yamhill County for information and comment.
  - e. Roads. The County and City shall cooperatively develop an implementation policy regarding streets and roads within the Urban Growth Boundary which is consistent with the City Comprehensive Plan. Such policy shall include, but not be limited to, the following:
    - (1) The circumstances under which the City will assume ownership of and maintenance responsibility for County roads within the corporate limits.
    - (2) The conditions under which new public streets and roads will be developed within the urban Growth Boundary.

- (3) The conditions under which existing roads designated as future arterial in the City Comprehensive Plan will be improved.
  - (4) The conditions under which County and other roads should meet City standards within the Urban Growth Boundary. Roads should be compatible with City street alignments and extensions. Upon annexation of property, roads adjacent to (and which serve) such property should also be annexed.
- f. The County and the City through its departments shall coordinate their planning efforts and actions that affect land use with those of special districts.

VI. Establishment of the Newberg Urban Area Management Commission

The City of Newberg and Yamhill County do hereby establish the Newberg Urban Area Management Commission (NUAMC) as a hearings officer in accordance with ORS 215.406. The NUAMC shall be composed of the following members:

- Commissioner of the Yamhill County Board of Commissioners designated by the board.
- Mayor or council person of the City of Newberg designated by the Council.
- Member of Newberg Planning Commission designated by the City Council.
- Member of the Yamhill County Planning Commission Designated by the Board of County Commissioners.
- Member of the Newberg-Dundee P.A.C. designated by the Board of County Commissioners.
- Member of the Newberg Citizen Involvement Advisory Committee designated by the City Council.
- Member-at-large chosen by the above NUAMC members and ratified by the City Council and County Board.

Duties and Responsibilities. The NUAMC shall function in accordance with by-laws to be adopted by the Newberg City Council and the Yamhill County Board of Commissioners.

It shall be the responsibility of the Newberg Urban Area Management Commission to hold hearings, make findings, and present its decision to City and County governing bodies as outlined in this agreement and the by-laws.

VII. Establishment of Land Use Review Procedures

1. Urban Growth Boundary Amendment

Amendment of the Urban Growth Boundary may be initiated by the Yamhill County Board of Commissioners, the Newberg City Council, or by an individual owner(s) of property who request(s) inclusion in or exclusion from the Urban Growth Boundary.

Amendment of the Urban Growth Boundary shall be treated as a map amendment to both the City and County Comprehensive Plan maps.

The joint fee for individual amendment shall be the sum of fees established from time to time by each governing body.

Each application shall include a map and sufficient information to make a decision based on the following factors:

- a. Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
- b. Need for housing, employment opportunities, and livability;
- c. Orderly and economic provision for public facilities and services;
- d. Maximum efficiency of land uses within and on the fringe of the existing urban area;
- e. Environmental, energy, economic and social consequences;
- f. Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,
- g. Compatibility of the proposed urban uses with nearby agricultural activities.

Applications shall be filed with the Newberg Planning Department which shall collect the joint fee and forward the Yamhill County fee along with notice to the Yamhill County Department of Planning and Development. Applications must be complete prior to consideration by the Newberg Urban Area Management Commission.

Applications shall be accumulated and referred quarterly to the Newberg Urban Area Management Commission for a Public Hearing for which at least ten days advance public notice shall be given by publication in a newspaper of general circulation in the County (or published in the territory so concerned--ORS 215.060).

Following the Public Hearing, the NUAMC shall make and forward its findings and decision directly to the governing body of each jurisdiction which shall then make a determination based

upon the facts and record presented at the NUAMC hearing and shall not be required to hold a public hearing thereon.

Nothing included in this process requires or prohibits the City or County from referring the application to its respective Planning Commissions for information.

If the governing bodies do not concur in their final decision within sixty days of referral of the matter to them by the NUAMC, a joint meeting shall be held to resolve differences. If agreement cannot be reached, procedures for resolutions of conflict provided within ORS 197.300 may be invoked.

2. Comprehensive Plan Amendment

- a. Inside U.G.B., but outside city limits. This amendment shall be filed with Yamhill County, and shall otherwise be treated as an amendment to the Urban Growth Boundary.
- b. Inside city limits. The application shall be processed by the City of Newberg and shall be referred to Yamhill County for a recommendation.
- c. Outside the Urban Growth Boundary, but within the "Area of Influence". This amendment shall be processed by Yamhill County and shall be referred to the City of Newberg for a recommendation.

3. Zone Changes

The City of Newberg and Yamhill County recognize that each jurisdiction has authority to zone within its legal boundaries. However, the Urban Growth Boundary recognizes the eventual assumption of authority by the City of Newberg. Therefore, the following procedures are established:

- a. Zone change outside city limits but within the Urban Growth Boundary. Prior to filing an application with Yamhill County, the applicant shall apply for and receive a recommendation from the City of Newberg concerning the requested land use action. Requests shall be processed following the procedures outlined in the Addendum to this agreement, Section 2, item 5 (b). No fee shall be charged for processing a recommendation from the City of Newberg. Applications submitted without this recommendation will be deemed incomplete. The application then shall be processed in accordance with Yamhill County ordinances, except that the application will be referred to the NUAMC for a hearing in lieu of the Yamhill County Planning Commission. Appeals of the NUAMC decision shall be heard by the Yamhill County Board of Commissioners.
- b. Inside city limits. The application shall be processed by the City of Newberg and shall be referred to Yamhill County for information and/or comment.

- c. Outside the Urban Growth Boundary but within the "Area of Influence". The application shall be processed by Yamhill County and shall be referred to the City of Newberg for information and/or comment.

4. Other Items Affecting Land Use

- a. Items having a substantial impact upon land use under the jurisdiction of Yamhill County within Newberg's Area of Influence shall be referred to the City of Newberg for information and comment. Items having a substantial impact upon land use under the jurisdiction of Yamhill County within Newberg's U.G.B. shall be reviewed by the City of Newberg. Prior to filing an application with Yamhill County, the applicant shall apply for and receive a recommendation from the City of Newberg concerning the requested land use action. Requests shall be processed following the procedures outlined in the Addendum to this agreement, Section 2, item 5 (b). No fee shall be charged for processing a recommendation from the City of Newberg. Applications submitted without this recommendation will be deemed incomplete. Items not having a substantial impact may be so referred. Items having a substantial impact upon land use shall include but are not limited to:

- (1) Conditional Use Permits, (Excluding Temporary Hardship Dwellings)
- (2) Planned Unit Developments
- (3) Subdivisions and Partitions
- (4) Public Improvement Projects
- (5) Health Hazards
- (6) Special Exceptions
- (7) Capital Improvement Programs
- (8) Major Transportation Improvements

- b. Within the U.G.B., when Yamhill County ordinances require a Planning Commission public hearing on any of the above items, either as a recommendation or as a final action, the application shall be referred to NUAMC who shall hear the matter in lieu of the Yamhill County Planning Commission. Appeals of the NUAMC decision shall be heard by the Yamhill County Board of Commissioners.
- c. Items having substantial impact upon land use under the jurisdiction of the City of Newberg shall be referred to Yamhill County for information and/or comment. Items not having a substantial impact may be so referred. Items having a substantial impact upon land use shall include but are not limited to:

- (1) Conditional Use Permits
  - (2) Planned Unit Developments
  - (3) Subdivisions and Partitions
  - (4) Public Improvement Projects
  - (5) Extension of the Public Sewer, Water or Storm Drainage systems
  - (6) Capital Improvement Programs
  - (7) Major Transportation Improvements
5. Any of the above applications which may affect an agency identified in the City of Newberg or Yamhill County agency coordination list shall be referred to said agency for information and/or comment.

## **ADDENDUM TO NEWBERG URBAN AREA GROWTH MANAGEMENT AGREEMENT**

This Addendum to Newberg Urban Area Growth Management Agreement pursuant to Newberg City Ordinance #1967 dated July 2, 1979 (hereinafter "Addendum") is made by agreement between Yamhill County ("County") and the City of Newberg ("City").

### **RECITALS**

- A. The City and the County have previously entered into an intergovernmental agreement known as the Newberg Urban Area Growth Management Agreement ("NUAGMA") pursuant to Newberg City Ordinance #1967 dated July 2, 1979 and Yamhill County Ordinance 214 dated June 20, 1979, setting forth their respective rights and responsibilities with respect to the Urban Growth Boundary (UGB) and Area of Influence.
- B. The County and the City have previously adopted an Urban Reserve Area for the City of Newberg as required by OAR Chapter 660, Division 21, as shown on their comprehensive plan and zoning maps, plan policies and land use regulations, to guide the management of these areas in accordance with the requirements of OAR Chapter 660 Division 21. Newberg City Ordinance 95-2397, Yamhill County Ordinance 596 (copies attached).
- C. The Urban Reserve Area is intended over time to be incorporated into an urban growth boundary. Because full urban services are not yet available in the area, urban level development is not permitted. Very limited rural development of property can occur in the area, but only when such usage is consistent with and does not impede the future urbanization of property.
- D. The purpose of this Addendum is to clarify planning and zoning intents and add provisions to the existing intergovernmental agreement for the purpose of satisfying the requirements of OAR Chapter 660, Division 21 relating to Urban Reserve Areas.

### **AGREEMENT**

NOW, THEREFORE, the City and County agree as follows:

#### **Section 1**      **Definitions:**

- (1) "Urban Reserve Area" has the same meaning as set forth in OAR 660-021-0010 (1), and means lands outside of an urban growth boundary identified as highest priority for inclusion in the urban growth boundary when additional urbanizable land is needed in accordance with the requirements of Goal 14.

#### **Section 2.**      **Compliance with OAR Chapter 660, Division 21.** In accordance with the applicable requirements of Chapter 660, Division 21, City and County agree as follows:

- (1) As required by OAR 660-021-0040(3):

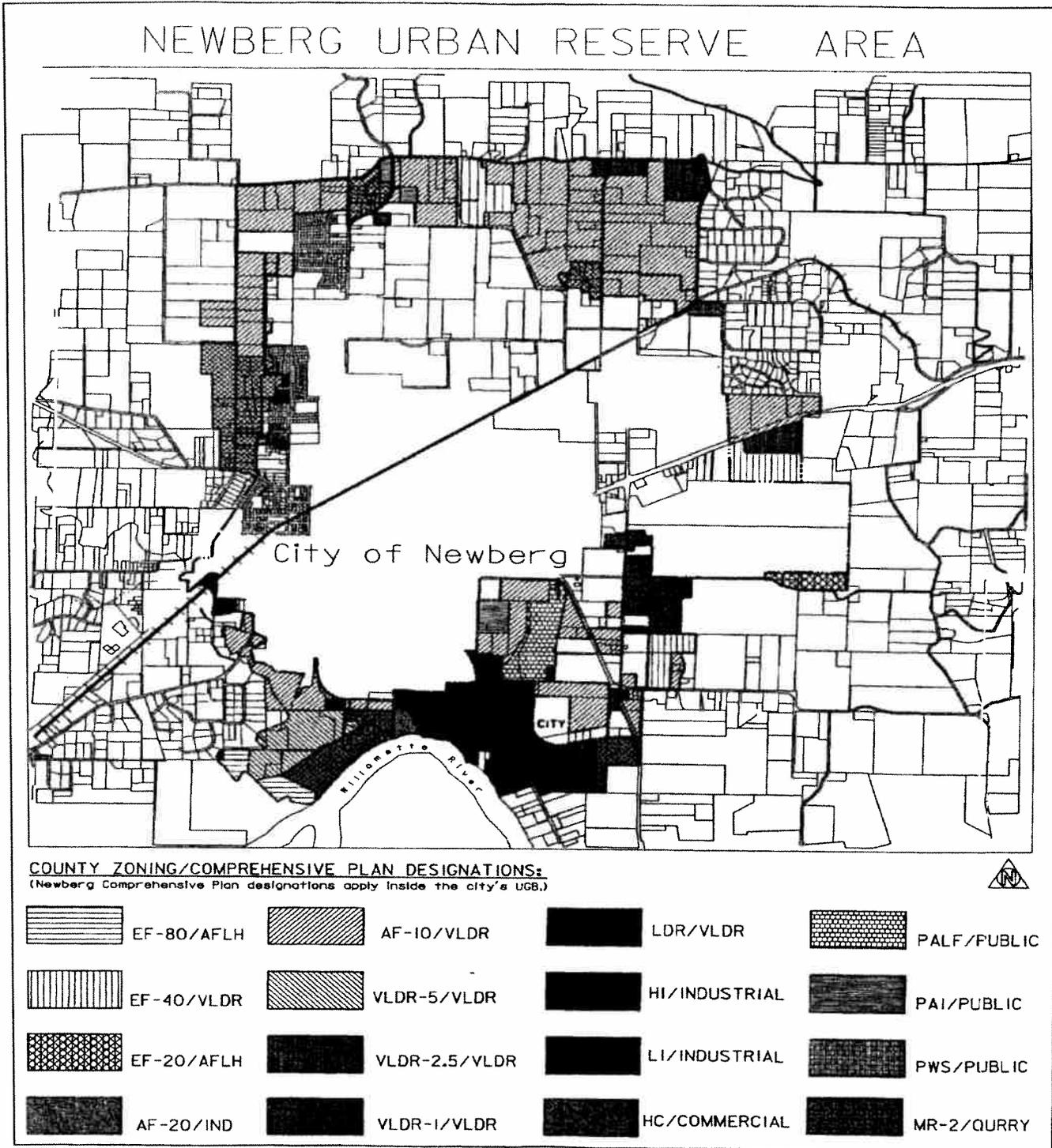
- (a) The County shall prohibit zone amendments allowing more intensive uses, including higher residential density, than permitted at the date of this agreement.
- (2) As required by OAR 660-021-0050(1), unless otherwise agreed to, designation of the local government responsible for building code administration and land use regulation in the URA shall be:
- (a) Prior to inclusion within the UGB: County
  - (b) After inclusion within the UGB : County
  - (c) After annexation into the city: City
- (3) Designation of service responsibility, as required by OAR 660-021-0050(2):
- (a) The local government or special district responsible for services (including sewer, water, fire protection, parks, transportation, storm water) for areas within the URA are designated and shown on map(s) attached hereto and incorporated herein as Exhibit "1A."
  - (b) The areas projected for future urban service responsibility after inclusion in the urban growth boundary are shown on map(s) attached hereto and incorporated herein as Exhibit "1A."
- (4) As required by OAR 660-021-0050(3), the terms and conditions under which service responsibility will be transferred or expanded, for areas where the provider of service is expected to change over time, is described in Exhibit "1B," attached hereto and incorporated herein.
- (5) As required by OAR 660-021-0050(4), procedures for notification and review of land use actions to ensure involvement by all affected local governments and special districts:
- (a) Within the Urban Reserve Area, Comprehensive Plan Amendments, zone changes, and other applications affecting land use, including conditional use, PUDs, subdivisions and partitions, public improvement projects, health hazards, capital improvement programs and major transportation improvements, shall be processed by Yamhill County. Prior to filing an application with Yamhill County, the applicant shall apply for and receive a recommendation from the City of Newberg concerning the requested land use decision. Applications submitted without this recommendation will be deemed incomplete.
  - (b) Upon request or application for a recommendation on a requested land use decision in the URA, the City shall use the following procedures in developing a recommendation (see Exhibit 1C for criteria to be used by the City in the recommendation process):

- (1) Applicant shall file with the City a substantially complete Yamhill County application and include a future development plan as provided in this agreement.
- (2) The City staff or City Council may refer the application to the City Planning Commission for a recommendation to the City Council.
- (3) The recommendation to Yamhill County shall be from the City Council.
- (4) Notice of any hearings shall be to the general public and any hearings shall be legislative in nature. Additional notice may be provided as the City deems necessary. This shall not be a quasi-judicial hearing since the City of Newberg is making a recommendation.
- (5) The City of Newberg shall furnish to the applicant its recommendation to Yamhill County within 60 days of the date that the request for recommendation is filed with the City of Newberg. City staff may request additional information from the applicant concerning the application prior to making a recommendation. Unless otherwise agreed between City and applicant, failure to furnish the recommendation within 60 days will waive the requirement to have a recommendation accompany the application.
- (6) The City reserves the right to make additional recommendations and comments concerning the application to Yamhill County during the Yamhill County process.
- (7) Nothing in this agreement limits the rights of either party in participating in the land use process before either jurisdiction.
- (8) Nothing in this agreement shall be construed as mandatory county approval criteria.

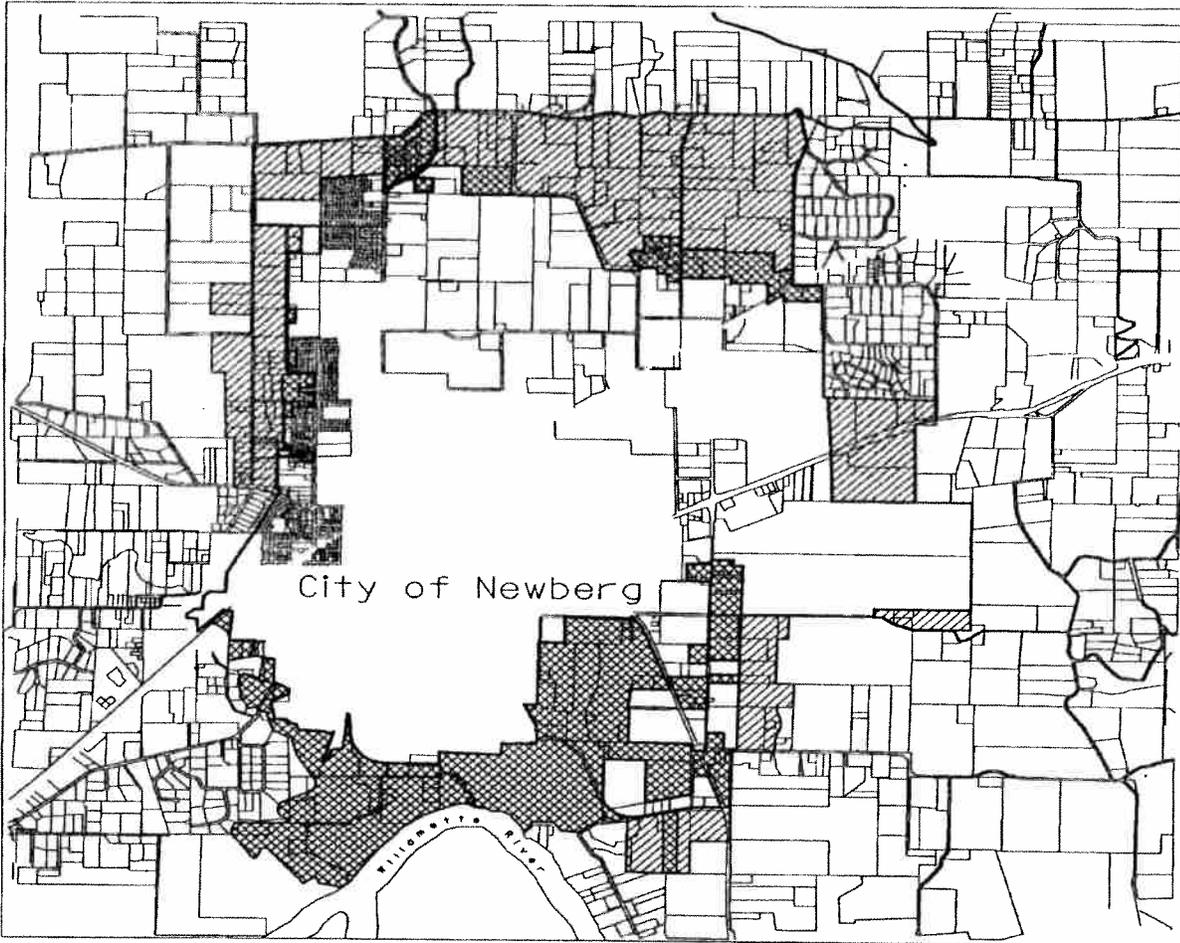
Section 3. In all other respects, the Newberg Urban Area Growth Management Agreement shall remain in full force and effect.

Section 4. Effective Date. This Addendum becomes effective on November 2, 1998.

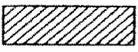
**EXHIBIT 1A  
URBAN RESERVE AREA MAPS**



# NEWBERG URBAN RESERVE AREA



**LEGEND:**



Urban Reserve Area



Urban Growth Boundary

————— City Boundary Line

————— Urban Reserve Area

————— Urban Growth Boundary



- Special Districts:
- Yamhill County Extension Service
  - Yamhill County Soil and Water Conservation Service
  - School District 29J, Newberg
  - Yamhill Educational Service District
  - Newberg Fire Protection District
  - Chehalem Park and Recreation District
  - Portland Community College

**EXHIBIT 1B**  
**URBAN SERVICE TRANSITION POLICIES**

Service Responsibility in General The following “Existing Service Provider” shall be responsible for providing public services within the Urban Reserve Areas. The “Future Urban Service Provider” is the provider projected to have responsibility after inclusion in the UGB or in the City depending on the terms and conditions identified below. The timing for changing the responsible service provider will be flexible, depending on citizen needs and location of properties.

<u>Service</u>	<u>Existing Service Provider</u>	<u>Future Urban Service Provider</u>
Sanitary Disposal	No Public Provider	City of Newberg
Water	Service Districts	City of Newberg
Fire Protection	Newberg Rural Fire District	City of Newberg
Parks & Recreation	Chehalem Park and Recreation District/Yamhill County	Chehalem Park and Recreation District/Yamhill County
Transportation	Yamhill County/ODOT	City of Newberg/ODOT
Storm Water	Yamhill County	City of Newberg

Terms and Conditions under which Service Responsibility will be transferred or expanded.

- D. Special Districts. The City shall agree to the formation of any special district within the Urban Reserve Area prior to the approval of the formation of the district by Yamhill County. This provision shall not apply to County-wide service districts formed under ORS Chapter 451.
  
- B. Annexation. Annexation of property from the URA may be permitted if contiguous to City limits and shall occur in accordance with the Newberg Comprehensive Plan. Before final action by the City Council on an annexation proposal, the proposal shall be forwarded to the Board of County Commissioners for a recommendation. In order to provide the Board with advance notice of a proposed annexation, the findings adopted by the City Planning Commission shall be referred to the Board following the Planning Commission action.
  
- C. Service Expansion Plans. Service expansion plans shall be consistent with the Newberg Urban Area Growth Management Agreement. As the future provider of sanitary disposal, storm water and water services, the City shall prepare and from time to time update utility expansion plans. These plans shall provide a basis for the extension of services within the Urban Growth Boundary, and as such shall be referred to Yamhill County for information and comment.
  
- D. Transition Policies Relating to Service Responsibility
  - 1. Sanitary Sewer Service There will be no public provider of these services until City services are available, except in the case of a state mandate due to a health hazard. At the time of annexation, the City will require hook-up to City sanitary sewer services. Nothing in this provision shall limit the ability of individuals to provide services on their own private property within the Urban Reserve Area.

2. Potable Water Service The City of Newberg shall be the sole and only public provider of water in this area, except for existing water districts, unless new districts are expanded or created through mutual agreement by the City and the County. Nothing in this provision shall limit the ability of individuals to provide services on their own private property within the Urban Reserve Area.
3. Fire Protection The Newberg Rural Fire District provides fire protection services to property within the Urban Reserve Area and the Urban Growth Boundary. The City will provide fire protection services to property within the city limits.
4. Parks and Recreation Chehalem Park and Recreation District and Yamhill County provide park and recreation services within the Urban Reserve Area and the Urban Growth Boundary. Chehalem Park and Recreation District and Yamhill County will remain providers of these services within the city limits unless agreed otherwise.
5. Transportation and Street Improvements Yamhill County provides Transportation services on county roads within the Urban Reserve Area. Yamhill County policies for transfer of jurisdiction are outlined in the Yamhill County Transportation System Plan Section 5.1, Policy 1.5, and Section 5.2.2, Goals and Policies 4, 5, 6 (See attachment Exhibit 1. B.). In summary, the policy is to transfer jurisdiction and maintenance responsibilities to the city upon annexation and improvement to City standards.

Roads in the Urban Reserve Area ultimately are to be developed to City standards. Development in the Urban Reserve Area shall provide adequate transportation facilities to serve the development as provided in Yamhill County ordinances.

The Oregon Department of Transportation provides transportation services on state highways within the Urban Reserve area. The department retains jurisdiction and maintenance responsibilities on all state highways after incorporation into the UGB and annexation except in special cases where jurisdiction is transferred to the City or County by a specific agreement.

6. Storm Water Management Yamhill County provides public storm water management services to property where required within the Urban Reserve Area. The City will provide storm water management services to property within the city limits. Transition of public storm water management services will follow transition of road maintenance responsibilities.

## ATTACHMENT TO EXHIBIT 1B

**County Transportation Plan (Page 73):** The Transportation System Plan (TSP) of Yamhill County provides in Section 5.1, Policy 1.5, Section 5.2.2, Goals and Policies 4, 5, and 6 as follows:

***Yamhill County TSP Policy 1.5.** The lead agency for transportation project review shall be:*

- a. Yamhill County for facilities outside the UGBs*
- b. The affected city for facilities within the UGBs*
- c. The State of Oregon. Yamhill County and affected cities on projects involving state-owned facilities.*

***Yamhill County TSP Policy 4.** It is the policy of Yamhill County to coordinate the County Transportation System Plan with the transportation plans of the ten incorporated cities within Yamhill County. The County will emphasize continuity in the classification of roads and appropriate design standards for roadways which link urban areas with rural areas outside Urban Growth Boundaries. At the time of UGB amendment Yamhill County and the City involved shall agree on classification and design standards of all County Roads within the proposed UGB area prior to finalization of the amendment.*

***Yamhill County TSP Policy 5** County policy will encourage the expeditious transfer of jurisdiction of roadways to incorporated cities in conjunction with annexation. It is the policy of Yamhill County that developers of property who propose annexation and who have frontage on a road that does not meet City road standards shall have the primary responsibility for upgrading the road to City standards. Roads shall be upgraded at the time of annexation, or the developer shall sign an agreement with the City to upgrade the road, at the time of development. Transfer of jurisdiction shall require the approval of both the County and the City, in accordance with provisions in Oregon Revised Statutes 373.270.*

***Yamhill County TSP Policy 6.** It is the policy of Yamhill County to require the transfer, or an agreement to transfer with specific time lines and milestones as part of the agreement, jurisdiction of County roadways within urban growth boundaries to their respective cities at the time of annexation.*

**EXHIBIT 1C**  
**CRITERIA AND SUBMITTALS FOR CITY RECOMMENDATION**  
**REGARDING DEVELOPMENT IN THE URA**

A. Criteria: Generally, the following criteria will be used by the City of Newberg in developing City recommendations regarding land use development in the Urban Reserve Area. It is the City's intent to recommend that the County only allow development in the Urban Reserve Area that is limited in scope and that is consistent with the future urban development of the property.

1. Future Development Plan: The City Council shall recommend approval, recommend approval with conditions, or recommend against the future development plan in accordance with the following criteria:

(a) The current development shall not cause more than 10 percent of the property to be used for site improvements including buildings, parking areas, improved recreation areas, and storage areas, unless the City agrees the development intensity will not prohibit future urban development.

(b) The future development plan shall allow for the efficient future urban development of the remainder of the property. It shall allow for construction of future urban streets and utilities, and shall allow for required setbacks to current and future property lines.

(c) The plan is consistent with adopted plans and policies for the area, such as street or utility plans and policies in this agreement.

2. The City may recommend that the application be approved with conditions, which may include, but are not limited to: an agreement to annex, a deferred improvement agreement for future public facilities; construction of necessary street improvements, storm drains, or other public facilities; dedication of right-of-way, easements for utilities; special setbacks from planned right-of-ways.

B. Submittal Requirements

1. A future development plan shall be required for any development in the Urban Reserve Area requiring a Yamhill County Type B or Type C review, excluding any development that involves a change in use to existing buildings only. The future development plan shall be used solely to evaluate the current proposal's compatibility with potential future urban development. It does not bind or commit the applicants, property owners, review bodies, or governing bodies to approve or carry out the proposed future development.

2. The future development plan shall show how the property could be fully developed when incorporated into the city. The plan shall be drawn to scale and shall include the following:

(a) The location of potential future streets within and surrounding the site.

- (b) The location of potential future sewer, water, and storm drainage facilities within and surrounding the site.
- (c) The location and approximate dimensions of potential future lot lines.
- (d) Setback lines for proposed structures from current and proposed property lines.

WYNOOSKI ROAD  
LOCAL IMPROVEMENT  
DISTRICT

ENGINEERING REPORT



RENEWS: 12-31-08

CRANE & MERSETH ENGINEERING/SURVEYING  
JUNE, 2007

# WYNOOSKI ROAD LOCAL IMPROVEMENT DISTRICT ENGINEERING REPORT

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## INTRODUCTION

Local Improvement Districts (LIDs) may be formed when property owners petition the City for the purpose of constructing and funding public improvements in their neighborhood, or when the City determines that improvements to a particular area are necessary. Special assessments to the properties benefiting from the improvements are implemented by the City through the formation of an LID. Typical improvements made through the LID process are streets, water lines, sewers, sidewalks, and traffic signals. City Code 36.52 provides for the formation of Local Improvement Districts and defines the process for their creation and implementation.

The City of Newberg is exploring the possibility for providing certain properties with sanitary sewer service along Wynooski Road. In this process the city council has requested preparation of an engineering report directed at identifying and describing the properties to be included in the district, determining a potential layout of the sanitary sewer, estimating the costs for these improvements and identifying possible cost allocation methods for the project.

This report presents the results of that investigation.

## **DESCRIPTION OF THE PROPOSED DISTRICT**

Figure 1 shows an aerial photo of the project area and Figure 2 shows properties proposed for inclusion in the LID. Except for the presence of Wynooski Road and Sandoz Road, all properties are contiguous and in the vicinity of the city's wastewater treatment plant. The entire proposed LID is comprised of 15 individual parcels totaling 72.69 acres. Of the 15 properties in the proposed LID, 9 are located north of Wynooski Road and are within the Newberg city limits. The remaining 6 properties south of Wynooski Road are within the city's Urban Growth Boundary.

Zoning for these properties range from very low density residential to heavy industrial with one property zoned as agricultural/forestry.

Currently, properties where development has occurred are served through use of on-site septic systems. Two properties are an exception to this however. These are tax lots 200 and 205 located immediately east of the wastewater treatment plant along the north side of Wynooski Road. These properties receive sanitary sewer service by a small pressurized sewer system through which sewage is pumped from each property directly to the wastewater treatment plant to the west. This system is privately owned and operated.

Preliminary research by city staff indicates that the agreement allowing service to these two properties provides that they will connect to a public sewer when it is installed and that they will share in the cost of the improvements.

Tables 1 and 2 show specific information about the properties in the proposed district.

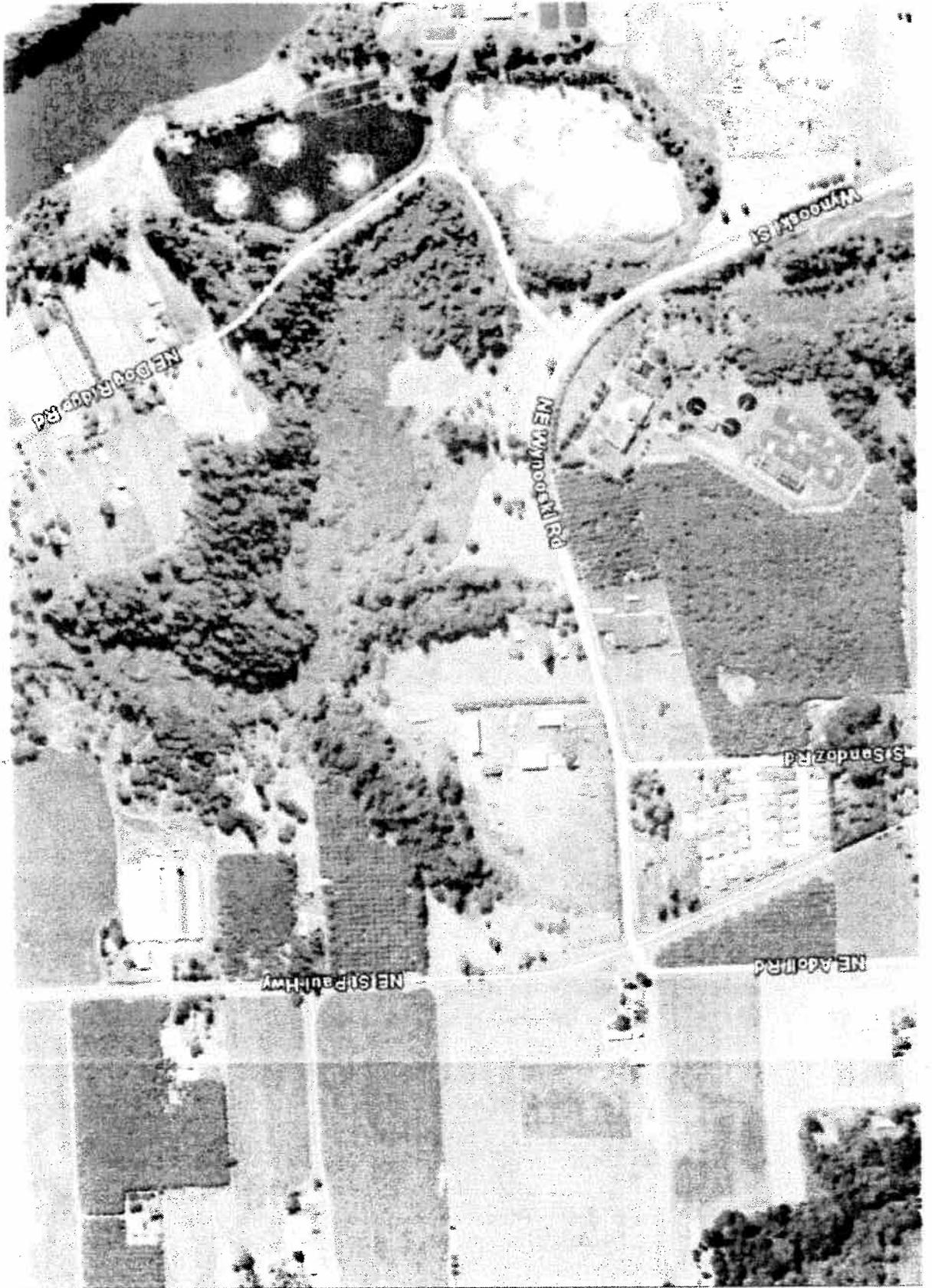
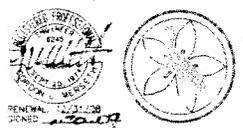
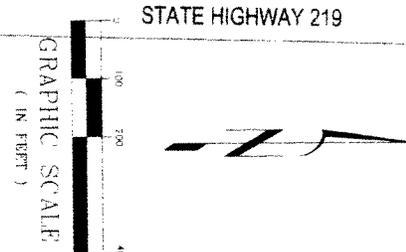
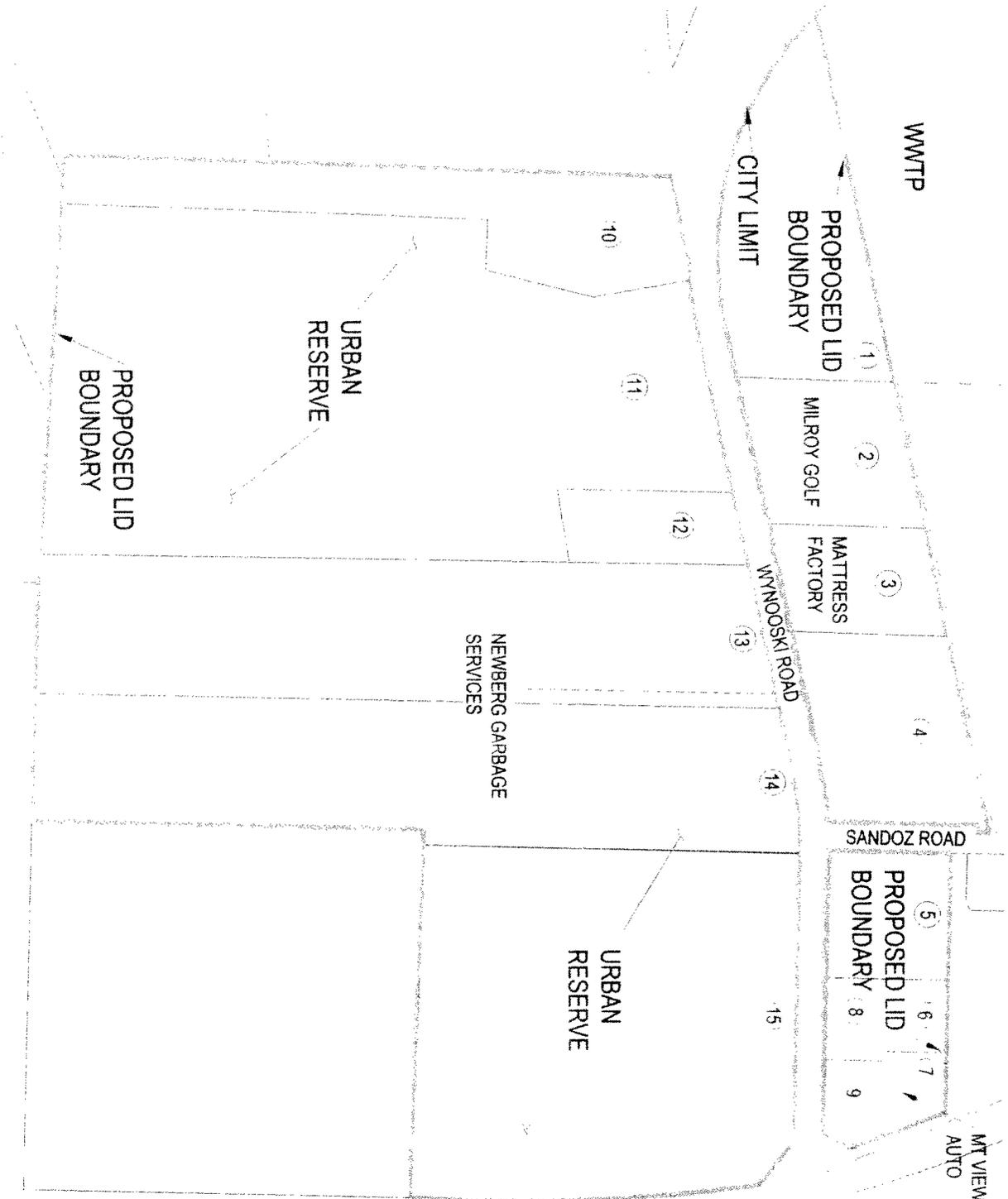


FIGURE 1  
PROJECT NO.  
109-008

CITY OF NEWBERG  
WYNOOSKI ROAD LID  
LID SITE PLAN  
Page 62 of 141



DATE: 02/20/22  
DRAWN BY: [Name]  
CHECKED BY: [Name]  
SCALE: [Scale]



**FIGURE 2**  
PROJECT NO.  
109-008

**CITY OF NEWBERG  
WYNOOSKI ROAD LID  
LID SITE PLAN**



DATE: 01/20/07  
 DRAWN BY: [Signature]  
 CHECKED BY: [Signature]  
 APPROVED BY: [Signature]  
 PROJECT NO.: 109-008

TABLE 1  
 WYNOOSKI ROAD LID  
 PARCEL OWNERSHIP

ID	Tax Lot	Owners Name	Address	City, State, Zip
1	(T#: 32 29 00201)	CITY OF NEWBERG	414 E. MAIN STREET	NEWBERG OR 97132
2	(T#: 32 29 00200)	TWO BEARS CO	PO BOX 583	CARLTON OR 97111
3	(T#: 32 29 00205)	WALKER, MELISSA	C/O OREGON MATTRESS COMPANY	NEWBERG OR 97132
4	(T#: 32 29 00203)	HALSTEAD, RONALD C & RUSSELL M	PO BOX 54	NEWBERG OR 97132
5	(T#: 32 28 BB 00400)	SALMON, EDITH	1708 S SANDOZ RD	NEWBERG OR 97132
6	(T#: 32 28 BB 00501)	NEAL, KATHLEEN A (WROS)	3215 S WYNOOSKI RD	NEWBERG OR 97132
7	(T#: 32 28 BB 00500)	NEAL, KATHLEEN A	3215 WYNOOSKI ST	NEWBERG OR 97132
8	(T#: 32 28 BB 00502)	SCHMITZ FAMILY LLC	3635 BETHEL HEIGHTS RD NW	SALEM OR 97304
9	(T#: 32 28 BB 00503)	CHISHOLM, JON B	13012 SW BROADMOOR PL	TIGARD OR 97223
10	(T#: 32 29 00500)	SOUTHEAST PAPER MANUFACTURING CO	ATTN LORI MUSCUTT	NEWBERG OR 97132
11	(T#: 32 29 00400)	SOUTHEAST PAPER MANUFACTURING CO	ATTN LORI MUSCUTT	NEWBERG OR 97132
12	(T#: 32 29 00300)	LAJOIE, MERLIN A & SANDRA K	20855 NE WILLIAMSON RD	NEWBERG OR 97132
13	(T#: 32 28 01800)	LAJOIE, MERLIN A & SANDRA K	20855 NE WILLIAMSON RD	NEWBERG OR 97132
14	(T#: 32 28 01700)	LAJOIE, MERLIN A & SANDRA K	PO BOX 1000	NEWBERG OR 97132
15	(T#: 32 28 01200)	LAJOIE, MERLIN A & SANDRA K	PO BOX 1000	NEWBERG OR 97132

TABLE 2  
WYNOOSKI ROAD LID  
PARCEL DESCRIPTIONS

ID	Tax Lot	Address	Area	Frontage	Zoning	Ownership	Development Status			
							Developed	Buildable	Nonbuildable	In City
1	32 29 201	2301 Wynooski	4.04 ac	804	M2	City of Newberg	0	4.04	0	Y
2	32 29 200	Wynooski	2.29 ac	318	M2	Two Bears Co.	1.34	0	0	Y
3	32 29 205	2751 Wynooski	1.69 ac	234	M2	Walker	1.32	0	0	Y
4	32 29 203	2801 Wynooski	3.0 ac	417	M2	Halstead	0	3	0	Y
5	32 28BB 400	1708 Sandoz	1.49 ac	259	M2	Salmon	0.25	1.23	0	Y
6	32 28BB 501	3209 Wynooski	20044 sf	0	M2	Neal	0	20044	0	Y
7	32 28BB 500	3215 Wynooski	20137 sf	0	M2	Neal	20137	0	0	Y
8	32 28BB 502	3201 Wynooski	20028 sf	171	M2	Schmitz	20028	0	0	Y
9	32 28BB 503	3223 Wynooski	20016 sf	155	M2	Chisholm	0	20016	0	Y
10	32 29 500	2600 Wynooski	4.4 ac	208	HI	SE Paper Mfg	0.84	1.19	2.37	N
11	32 29 400	2608 Wynooski	19.27 ac	451	HI	SE Paper Mfg	0.23	14.16	4.88	N
12	32 29 300	2716 Wynooski	1.24 ac	150	VLDR2.5	Lajoie	0.23	1.11	0	N
13	32 28 1800	2808 Wynooski	9.61 ac	289	VLDR2.5	Lajoie	0.35	5.86	3.79	N
14	32 28 1700	Wynooski	10.51 ac	343	VLDR2.5	Lajoie	0	0	0	N
15	32 28 1200	9475 St. Paul Hwy NE	13.31ac	1377	VLDR2.5	Lajoie	0.52	12.5	1.38	N

- Notes:
1. Zoning, and Development Status from City of Newberg, city maps website.
  2. Parcel addresses, areas and frontage from Yamhill County Assessors Office website.

Zoning Definitions:

- M-2 - Light Industrial (City of Newberg)
- VLDR2.5 - Very Low Density Residential District (Yamhill County)
- HI - Heavy Industrial (Yamhill County)

## **ESTIMATED SANITARY SEWAGE FLOWS**

Estimates of the possible sanitary sewage flows that could be generated by individual properties are shown on Table 3. Several assumptions were made to determine these flows, each based on commonly accepted engineering practice. Newberg has few comparable industries on which to base typical flow estimates and since the types of commercial and industrial facilities which can be built on land zoned for such uses can vary widely, textbook estimates were used. These figures are applied to the portion of developable land as determined by city and county planners, percentages for which are shown on Table 3. Areas of each parcel which has been determined to be "nonbuildable" were omitted in calculating flows.

The following average unit flow rates were used to forecast sanitary sewage flows:

**Residential** – 80 gallons per capita per day for a typical household comprised of 3 people

**Light Industrial** – 2000 gallons per acre per day

**Heavy Industrial** – 5000 gallons per acre per day

**Agricultural/Forestry** – 2000 gallons per acre per day

These average flows are increased to peak flow levels to account for typical diurnal variations commonly experienced in every urban environment. For purposes of this analysis, a peaking factor of 3.0 was applied to the average flows determined for each parcel.

Since many of the parcels in the proposed LID are currently used for commercial or industrial uses, it has been assumed that those parcels which are currently

TABLE 3  
WYNOOSKI ROAD LID  
FLOW CALCULATIONS

ID	Tax Lot	Address	Area	Zoning	Development Status (acres)			Flows (gpm)			
					Developed	Buildable	Nonbuildable	Average	Peak	I/I	Total
1	32 29 201	2301 Wynooski	4.04 ac	M2	0.00	4.04	0	0.0	0.0	4.2	4.2
2	32 29 200	Wynooski	2.29 ac	M2	1.34	0.00	0	1.9	5.6	1.4	7.0
3	32 29 205	2751 Wynooski	1.69 ac	M2	1.32	0.00	0	1.8	5.5	1.4	6.9
4	32 29 203	2801 Wynooski	3.0 ac	M2	0.00	3.00	0	4.2	12.5	3.1	15.6
5	32 28BB 400	1708 Sandoz	1.49 ac	M2	0.25	1.23	0	2.1	6.2	1.5	7.7
6	32 28BB 501	3209 Wynooski	20044 sf	M2	0.00	0.46	0	0.6	1.9	0.5	2.4
7	32 28BB 500	3215 Wynooski	20137 sf	M2	0.46	0.00	0	0.6	1.9	0.5	2.4
8	32 28BB 502	3201 Wynooski	20028 sf	M2	0.46	0.00	0	0.6	1.9	0.5	2.4
9	32 28BB 503	3223 Wynooski	20016 sf	M2	0.00	0.46	0	0.6	1.9	0.5	2.4
10	32 29 500	2600 Wynooski	4.4 ac	HI	0.84	1.19	2.37	7.0	21.1	2.1	23.3
11	32 29 400	2608 Wynooski	19.27 ac	HI	0.23	14.16	4.88	50.0	149.9	15.0	164.9
12	32 29 300	2716 Wynooski	1.38	VLDR2.5	0.23	1.15	0	1.9	5.8	1.4	7.2
13	32 28 1800	2808 Wynooski	9.61 ac	VLDR2.5	0.35	5.86	3.79	8.6	25.9	6.5	32.3
14	32 28 1700	Wynooski	10.51 ac	VLDR2.5	0.00	6.41	4.10	8.9	26.7	6.7	33.4
15	32 28 1200	9475 St. Paul Hwy NE	13.31ac	VLDR2.5	0.52	12.50	1.38	18.1	54.3	13.6	67.8

- Notes:**
1. Zoning, and Development Status from City of Newberg, city maps website.
  2. Parcel addresses, areas and frontage from Yamhill County Assessors Office website.
  3. Zoning on parcels with current very low density residential zoning are assumed to be rezoned to light industrial

<b>Zoning Definitions:</b>		
M-2	- Light Industrial (City of Newberg)	
VLDR2.5	- Very Low Density Residential District (Yamhill Co.)	
HI	- Heavy Industrial (Yamhill County)	

<b>Flow Rates:</b>	<b>Zoning</b>	<b>Average Q</b>
Inflow/Infiltration	M2	2000 gpad
	VLDR2.5	80 gpcd
	HI	5000 gpad
	na	1500 gpd

gpad = gallons per acre per day  
gpcd = gallons per capita per day

zoned as very low density residential would likely be converted to light industrial in the future so flow calculations for these parcels were based on this change.

### **PROPOSED SANITARY SEWER CONFIGURATION**

Figure 3 shows the layout of sanitary sewer facilities which will provide service to each of the properties within the LID. This new sewer system will discharge just upstream of the wastewater treatment plant influent pump station. This discharge point was selected because the existing line is deep enough to provide service to all the properties in the LID and more properties to the east should the system be extended.

The new line is shown located along the south side of the Wyooski Road right-of-way and the west side of Hwy 219. These locations provide the most direct connection to the larger parcels in the LID with smaller service lines extended across Wyooski Road to serve the smaller parcels to the north. In addition, other utilities occupy portions of the northern half of Wyooski Road making construction of a sanitary sewer on that side more costly. Depth of the new sanitary sewer was established to provide a service connection at least 6 feet deep at the property line for each property. This allows most structures access to the sewer but will not accommodate service to a basement or to a building located very far from the public sewer. Development of a shallow system with individual pump station to serve these parcels was not considered in this report.

A detailed system layout would be completed during a preliminary design should the LID proceed. The preliminary design will resolve such things as location of existing (conflicting) utilities, availability of right-of-way, permit requirements, detailed manhole and service connections and similar issues.



TABLE 4  
 WYNOOSKI ROAD LID  
 SANITARY SEWAGE FLOWS  
 CUMULATIVE TOTALS

ID	Tax Lot	Area	Development Status (acres)			Flows (gpm)				
			Developed	Buildable	Nonbuildable	Average	Peak	I/I	Total	Cumulative Peak
15	32 28 1200	13.31ac	0.52	12.50	1.38	18.1	54.3	13.6	67.8	67.8
7	32 28BB 500	20137 sf	0.46	0.00	0	0.6	1.9	0.5	2.4	70.2
9	32 28BB 503	20016 sf	0.00	0.46	0	0.6	1.9	0.5	2.4	72.6
6	32 28BB 501	20044 sf	0.00	0.46	0	0.6	1.9	0.5	2.4	75.0
8	32 28BB 502	20028 sf	0.46	0.00	0	0.6	1.9	0.5	2.4	77.4
5	32 28BB 400	1.49 ac	0.25	1.23	0	2.1	6.2	1.5	7.7	85.1
14	32 28 1700	10.51 ac	0.00	6.41	4.10	8.9	26.7	6.7	33.4	118.5
4	32 29 203	3.0 ac	0.00	3.00	0	4.2	12.5	3.1	15.6	134.1
13	32 28 1800	9.61 ac	0.35	5.86	3.79	8.6	25.9	6.5	32.3	166.5
3	32 29 205	1.69 ac	1.32	0.00	0	1.8	5.5	1.4	6.9	173.3
12	32 29 300	1.24 ac	0.23	1.11	0	1.9	5.6	1.4	7.0	180.3
2	32 29 200	2.29 ac	1.34	0.00	0	1.9	5.6	1.4	7.0	187.3
1	32 29 201	4.04 ac	0.00	0.00	0	0.0	0.0	4.2	4.2	191.5
11	32 29 400	19.27 ac	0.23	14.16	4.88	50.0	149.9	15.0	164.9	356.4
10	32 29 500	4.4 ac	0.84	1.19	2.37	7.0	21.1	2.1	23.3	379.7

Notes: Tax lots arranged from upstream to downstream  
 Tax lots 500, 501, 502 and 503 are assumed to have new zoning of Light Industrial instead of current low density residential

## SERVICE TO INDIVIDUAL PROPERTIES

Service to individual properties in the proposed LID was predicated on being able to provide gravity sewer service at the property line with the service connection point a minimum of 6 feet deep. Each parcel will be provided with a 6" diameter service line terminated at the property line. This will allow extension of a service line into the property with a private sewer service line. The distance to which gravity sewer service can be extended into an individual property will vary from parcel to parcel depending on the individual topography of the parcel, the distance from any buildings to the service connection and the diameter of the private service line upstream from the connection to the public sewer.

Data shown on Table 2 indicated the "buildable" acreage remaining on individual parcels. These data are taken from website information provided by the City of Newberg. The terms "buildable" and "nonbuildable" are based on FEMA flood plane data and approximate the 100 foot contour elevation. This elevation is intended to denote the level at which the drainage would experience an annual 1 percent chance of flooding event to that elevation.

The construction costs of gravity sanitary sewer service are directly linked to the depth of the sewerlines in the project. Obviously, the more shallow the sewers, the less project cost to be distributed among the LID participants. Following review of the project data, participants may consider reducing the initial construction cost by asking that a more shallow sewer be designed and constructed in exchange for each property owner's agreement to purchase pumping facilities and pumping sewage from their property into the more shallow line. Cost trade-offs are not calculated as part of this report but could be estimated. Of course, for a shallow line to be constructed, each property owner would have to agree to the provisions of pumping sewage from their lot into the public line. The long term costs of power, maintenance and repair would be borne by the individual property owners.

## **PROJECT COST ESTIMATE**

As proposed the Wynooski LID system is composed of the following major items:

1. 1,710 lineal feet of 10" diameter sanitary sewer line
2. 1,645 lineal feet of 8" diameter sanitary sewer line
3. 11 Manholes
4. 13 Individual service connections to the main line
5. 350 lineal feet of 6" service line
6. 2,900 lineal feet of line requiring select backfill and repaving

Calculations based on experience and information from recent, similar projects indicate a potential construction cost for the LID of \$486,200 with total project costs estimated at \$729,300. Total project costs include allowances for city staff time, permitting and legal costs, in addition to the costs of design, inspection and similar engineering costs. Until the project design is completed and offered for public bids, the true construction cost will not be known.

Specific quantities and unit costs are shown on Table 5.

## **PROPOSED COST DISTRIBUTION**

Several methods of distributing project costs for a Local Improvement District have been used in Oregon communities. The underlying intent in assigning cost to individual properties is to cause each property owner to pay a share that reflects the proportional benefit they receive from use of a public sewer utility. Typical methods of assessing relative benefits include basing cost shares on:

1. the acreage of a parcel in proportion to the total acreage in the LID,
2. the front footage of a parcel in proportion to the total front footage

TABLE 5  
WYNOOSKI ROAD LID  
PROJECT COST ESTIMATE

**Wynooski Road Local Improvement District  
Sanitary Sewer Estimate**

Item No.	Item Description	Quantity	Unit	Unit Price	Total
1	Mobilization.	1	LS	\$8,000.00	\$8,000.00
2	Traffic Control	1	LS	\$12,000.00	\$12,000.00
3	Sediment and Erosion Control	1	LS	\$5,000.00	\$5,000.00
4	Site Restoration and Clean-up	1	LS	\$5,000.00	\$5,000.00
5	10" 3034 PVC Gravity Sewerline, including trench excavation, ¾" – 0 bedding and pipe zone material, native backfill	450	LF	\$100.00	\$45,000.00
6	10" 3034 PVC Gravity Sewerline, including trench excavation, ¾" – 0 bedding and pipe zone material, select backfill	1260	LF	\$120.00	\$151,200.00
8	8" 3034 PVC Sewerline including trench excavation, ¾" – 0 bedding and pipe zone material, select backfill	1420	LF	\$110.00	\$156,200.00
9	Manholes	11	EA	\$4,500.00	\$49,500.00
10	Service Connections	13	EA	\$1,500.00	\$19,500.00
11	AC Trench Resurfacing – Yamhill County Standards	2900	LF	\$12.00	\$34,800.00

**Construction Total**

**\$486,200.00**

Contingencies	1	LS	30 % of Construction	\$145,860.00
Engineering, Legal, Administrative Costs	1	LS	20 % of Construction	\$97,240.00

**TOTAL ESTIMATED LID COSTS**

**\$729,300.00**

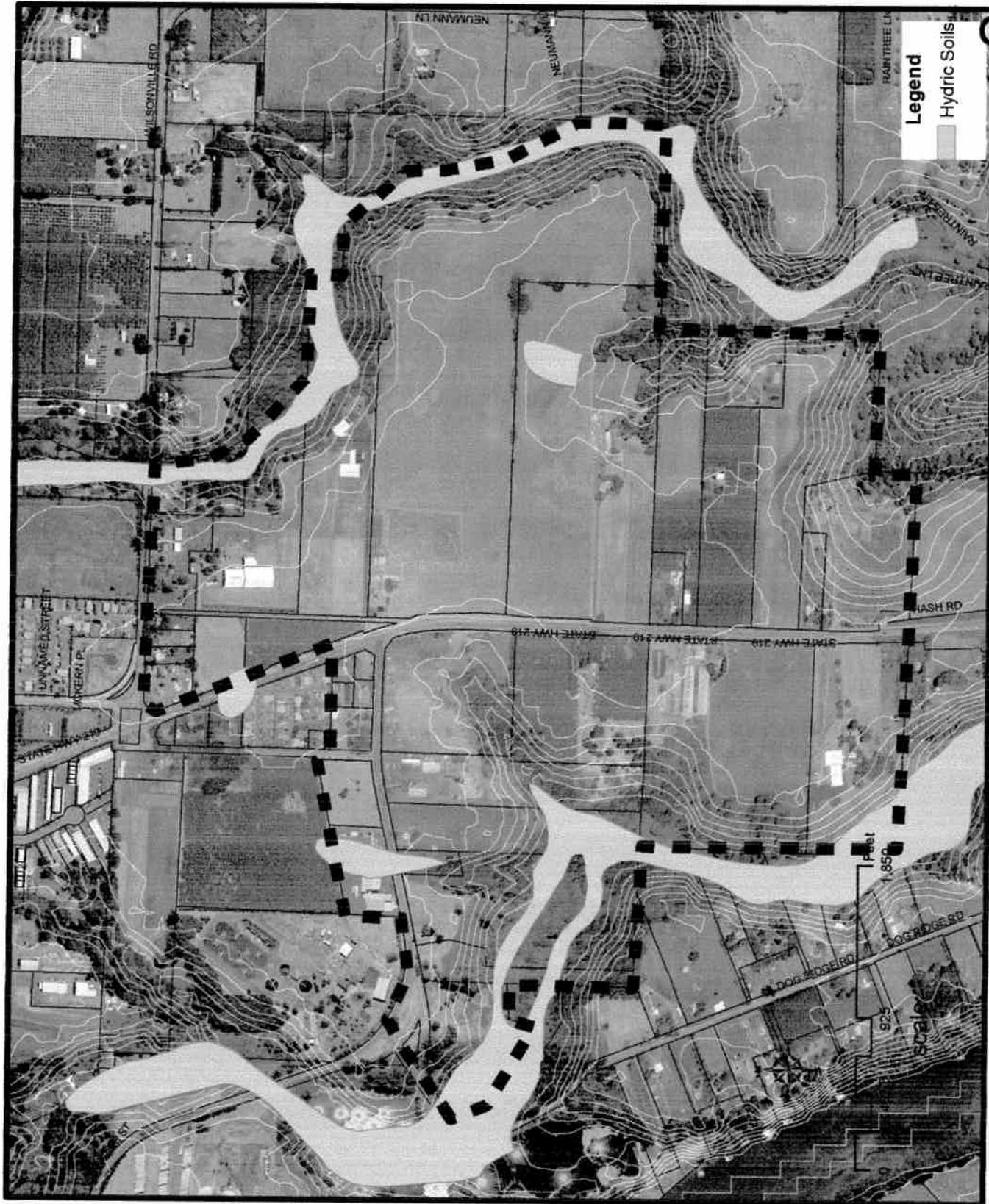
3. the area of the property within 150' – 200' of the new sewer as a percentage of the total of all participating properties
4. the percentage of peak flows contributed by each parcel as a percentage of the total peak flows,
5. a combination of any or all of these methods listed above.

A modification should be considered for those properties which have areas termed as “nonbuildable”. When land is nonbuildable, it is evident that it will not be using any of the sewer capacity and should not be assessed for a share of the costs either. It should be noted that two of the properties (lots 500 and 501) have no frontage. If using frontage as the sole means of distributing costs is selected, an allowance for these properties should be determined to include them in sharing in the project costs. Similarly, the City of Newberg owns 4 acres of land included in the proposed LID, tax lot 201. This property will contribute no sanitary sewage to the line but because of its proximity to the sewer, has the potential for infiltration/inflow (I/I) into the line and should participate on that basis.

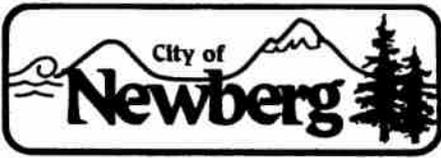
Table 6 shows the costs for the participating properties when calculated on each of these methods along with a percentage calculated by averaging the three methods. No recommendation for cost sharing is provided in this report. Determination of the cost allocation method is typically set through discussions between the city staff and LID property owners.

Table 6  
 WYNOOSKI ROAD LID  
 COST DISTRIBUTION OPTIONS

ID	Tax Lot	Area	Frontage (ft)	Peak Flow (gpm)	Frontage (%)	Allocation by Parameter						
						Cost Share (\$)	Buildable (%)	Cost Share (\$)	Flow (%)	Cost Share (\$)	Average (%)	Share (\$)
1	32 29 201	4.04 ac	804	4.2	0.16	113,284	0.00	0	0.01	8,063	0.06	40,449
2	32 29 200	2.29 ac	318	7	0.06	44,806	0.03	20,842	0.02	13,438	0.04	26,362
3	32 29 205	1.69 ac	234	6.9	0.05	32,971	0.03	20,531	0.02	13,246	0.03	22,249
4	32 29 203	3.0 ac	417	15.6	0.08	58,755	0.06	46,660	0.04	29,948	0.06	45,121
5	32 288B 400	1.49 ac	259	7.7	0.05	36,493	0.03	23,019	0.02	14,782	0.03	24,765
6	32 288B 501	20044 sf	0	2.4	0.00	0	0.02	14,314	0.01	4,607	0.01	6,307
7	32 288B 500	20137 sf	0	2.4	0.00	0	0.01	7,190	0.01	4,607	0.01	3,932
8	32 288B 502	20028 sf	171	2.4	0.03	24,094	0.01	7,173	0.01	4,607	0.02	11,958
9	32 288B 503	20016 sf	155	2.4	0.03	21,840	0.02	14,294	0.01	4,607	0.02	13,580
10	32 29 500	4.4 ac	208	23.3	0.04	29,307	0.04	31,573	0.06	44,729	0.05	35,203
11	32 29 400	19.27 ac	451	164.9	0.09	63,546	0.31	223,814	0.43	316,561	0.28	201,307
12	32 29 300	1.24 ac	150	7.2	0.03	21,135	0.03	20,842	0.02	13,822	0.03	18,600
13	32 28 1800	9.61 ac	289	32.3	0.06	40,720	0.13	96,587	0.09	62,007	0.09	66,438
14	32 28 1700	10.51 ac	343	33.4	0.07	48,329	0.00	0	0.09	64,119	0.05	37,482
15	32 28 1200	13.31ac	1377	67.8	0.27	194,020	0.28	202,506	0.18	130,157	0.24	175,561
Totals			5176	379.9	1.00	729,300	1.00	729,343	1.00	729,300	1.00	729,314



Soil  
contours



**UGB AMENDMENT APPLICATION  
QUASI-JUDICIAL REVIEW  
URBAN GROWTH BOUNDARY AMENDMENTS ONLY**

TYPES - PLEASE CHECK ONE:

- Urban Growth Boundary Amendment  
 Other: (Explain) \_\_\_\_\_

**APPLICANT INFORMATION:**

APPLICANT: Elizabeth Fetting  
 ADDRESS: P.O. Box 546 Newberg OR 97132  
 PHONE: 503-538-8017 MOBILE: 503-849-2751 FAX: 503-538-5457  
 OWNER (if different from above): \_\_\_\_\_ PHONE: \_\_\_\_\_  
 ADDRESS: same  
 ENGINEER/SURVEYOR: N/A PHONE: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_

**GENERAL INFORMATION:**

PROJECT NAME: R 3229 00300 PROJECT LOCATION: 2716 NE Wynooski Rd  
 PROJECT DESCRIPTION/USE: vacant land  
 MAP/TAX LOT NO. (i.e. 3200AB-400): R3229 00300 ZONE: VLDR 2.5 SITE SIZE: 1.24 SQ. FT.  or ACRE:   
 COMP PLAN DESIGNATION: VLDR TOPOGRAPHY: Flat and sloping land  
 CURRENT USE vacant land  
 SURROUNDING USES:  
 NORTH: HI m2 SOUTH: HI  
 EAST: HI WEST: HI

**SPECIFIC PROJECT CRITERIA AND REQUIREMENTS ARE ATTACHED**

- General Checklist:  Fees  Noticing Information  Title Report  Criteria Response  Owner Signature/Letter of Consent  
 UGB Amendment Checklist:  Site Plan  Map and Legal Description  Dedications  Easements  Measure 49 Waiver

The above statements and information herein contained are in all respects true, complete, and correct to the best of my knowledge and belief. Tentative plans must substantially conform to all standards, regulations, and procedures officially adopted by the City of Newberg. All owners must either sign the application giving applicant authorization, or submit letters of consent. Incomplete or missing information may delay the approval process.

Elizabeth Fetting 8/5/09  
 Applicant Signature Date

Elizabeth Fetting 8/5/09  
 Owner Signature Date

Elizabeth Fetting 8/5/09  
 Print Name

Elizabeth Fetting  
 Print Name



**First American**

**First American Title Insurance Company of Oregon**  
775 NE Evans Street  
McMinnville, OR 97128  
Phn - (503)472-4627  
Fax - (866)800-7294

**FOR ALL QUESTIONS REGARDING THIS PRELIMINARY REPORT, PLEASE CONTACT:**

**Clayton Carter, Title Officer**

Phone: (503)472-4627 - Fax: (866)800-7294 - Email: ctcarter@firstam.com

Elizabeth Fettig  
PO Box 546  
Newberg, OR 97132

Order No.: 1039-1453829

August 07, 2009

Attn:  
Phone No.: (503)849-2751 - Fax No.:  
Email:

Re: 2716 NE Wynooski

**Preliminary Title Report**

2006 ALTA Owners Standard Coverage	Liability \$	Premium \$	
2006 ALTA Owners Extended Coverage	Liability \$	Premium \$	
2006 ALTA Lenders Standard Coverage	Liability \$	Premium \$	
2006 ALTA Lenders Extended Coverage	Liability \$	Premium \$	
Endorsement		Premium \$	
Govt Service Charge		Cost \$	
Other Title Report		Cost \$	150.00

We are prepared to issue Title Insurance Policy or Policies in the form and amount shown above, insuring title to the following described land:

The land referred to in this report is described in Exhibit A attached hereto.

and as of August 06, 2009 at 8:00 a.m., title vested in:

Joseph A. Fettig and Elizabeth L. Fettig, as tenants by the entirety

Subject to the exceptions, exclusions, and stipulations which are ordinarily part of such Policy form and the following:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.

3. Easements, or claims or easement, not shown by the public records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or other facts which a correct survey would disclose.
5. Any lien, or right to a lien, for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the public records.

**The exceptions to coverage 1-5 inclusive as set forth above will remain on any subsequently issued Standard Coverage Title Insurance Policy.**

6. Taxes for the fiscal year 2009-2010 a lien due, but not yet payable.
7. The rights of the public in and to that portion of the premises herein described lying within the limits of streets, roads and highways.
8. Easement, including terms and conditions contained therein:
 

Granted to:	Portland General Electric Company
For:	Electric Line Easement
Recorded:	July 8, 1997
Recording Information:	199711075
9. Deed of Trust and the terms and conditions thereof.
 

Grantor/Trustor:	Joseph A Fettig and Elizabeth L Fettig
Grantee/Beneficiary:	First Federal Savings and Loan
Trustee:	David C Haugeberg
Amount:	\$285,000.00
Recorded:	August 19, 2008
Recording Information:	200814296
10. Line of Credit Trust Deed, including the terms and provisions thereof, given to secure an indebtedness of up to \$200,000.00
 

Grantor:	Joseph A. Fettig and Elizabeth L. Fettig
Beneficiary:	First Federal S&L Assn. of McMinnville
Trustee:	David C. Haugeberg, Attorney
Dated:	August 18, 2008
Recorded:	August 19, 2008
Recording Information:	200814297

- END OF EXCEPTIONS -

NOTE: According to the public record, the following deed(s) affecting the property herein described have been recorded within 24 months of the effective date of this report: 1) Warranty Deed, Merline A. LaJoe and Sandra K. LaJoie, Grantor, to Joseph A. Fettig and Elizabeth L. Fettig, Grantee, recorded August 19, 2008 as Instrument No. 200814295.

NOTE: We find no judgments or United States Internal Revenue liens against Joseph A. Fettig or Elizabeth L. Fettig

NOTE: Taxes for the year 2008-2009 PAID IN FULL

Tax Amount:	\$743.27
Map No.:	R3229-300
Property ID:	66859
Tax Code No.:	29.2

Situs Address as disclosed on Yamhill County Tax Roll:

2716 NE Wynooski Rd., Newberg, OR 97132

**THANK YOU FOR CHOOSING FIRST AMERICAN TITLE!  
WE KNOW YOU HAVE A CHOICE!**

**RECORDING INFORMATION**

Filing Address: **Yamhill County**  
535 NE Fifth Street  
McMinnville, OR 97128

Recording Fees: \$ **26.00** for the first page  
\$ **5.00** for each additional page

cc: Joseph A. Fettig and Elizabeth L. Fettig



## First American Title Insurance Company of Oregon

### SCHEDULE OF EXCLUSIONS FROM COVERAGE

#### ALTA LOAN POLICY (06/17/06)

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

#### ALTA OWNER'S POLICY (06/17/06)

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risks 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

### SCHEDULE OF STANDARD EXCEPTIONS

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, or claims of easement, not shown by the public records; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any encroachment (of existing improvements located on the subject land onto adjoining land or of existing improvements located on adjoining land onto the subject land), encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the subject land.
5. Any lien or right to a lien, for services, labor, material, equipment rental or workers compensation heretofore or hereafter furnished, imposed by law and not shown by the public records.

**Exhibit "A"**

Real property in the County of Yamhill, State of Oregon, described as follows:

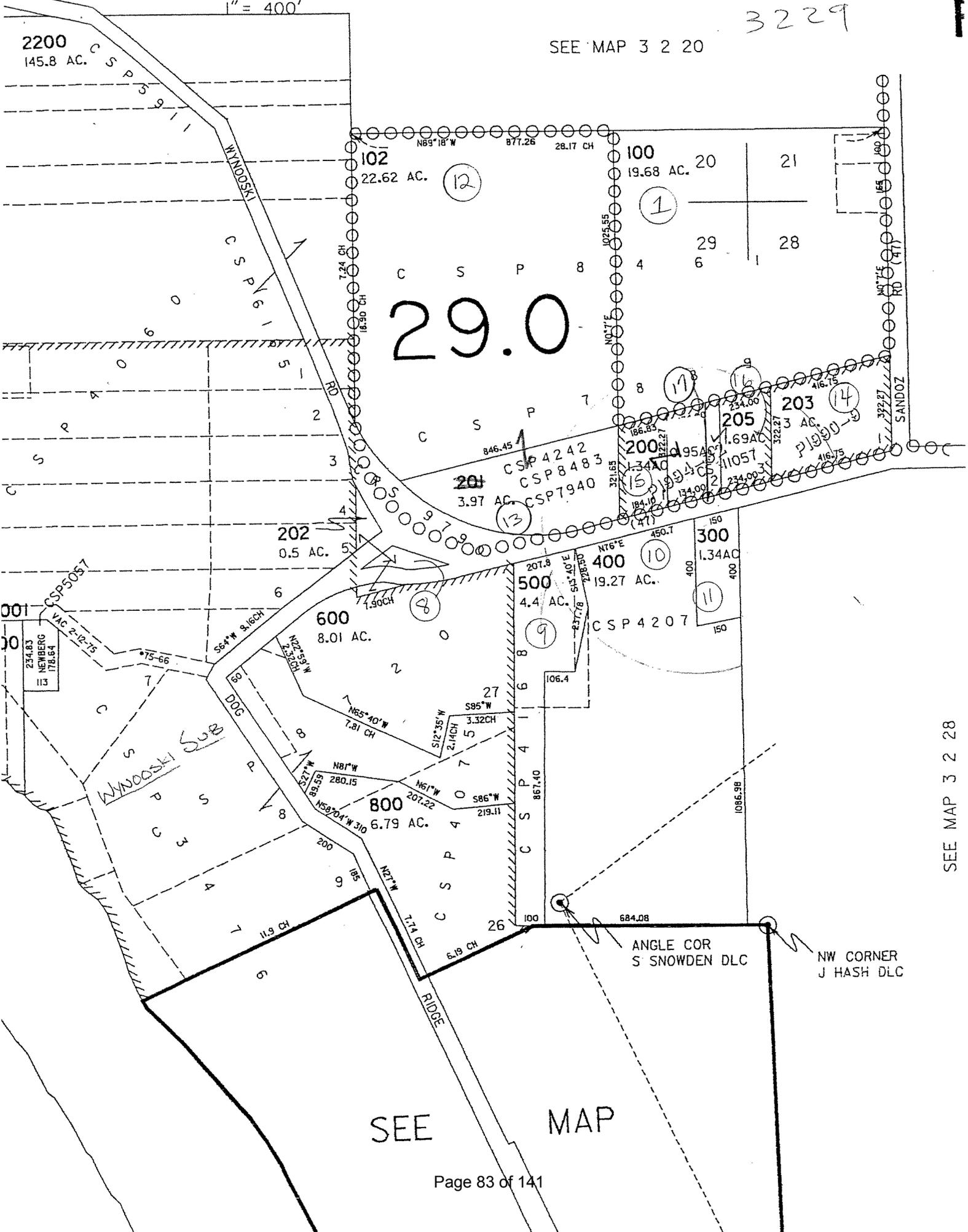
Being a part of the Samuel D. Snowden Donation Land Claim, Notification No. 1476, Claim No. 68, in Section 29, Township 3 South, Range 2 West of the Willamette Meridian in Yamhill County, Oregon; and beginning at the Northeast corner of a tract of land deeded by Etta B. Church to Emma B. Jacobsen and Gearhardt W. Jacobsen, on July 30, 1943, recorded in Book 122, Page 284 of the Deed Records of Yamhill County, Oregon, said point being 24.53 chains North and 1.03 chains West of the Quarter Section corner between Sections 29 and 28; thence South 400 feet; thence South 76° West 150 feet; thence North 400 feet to the center of County Road; thence North 76° East 150 feet along center of County Road to the place of beginning.

Tax Parcel Number: R3229-300

1" = 400'

3229

SEE MAP 3 2 20



THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

3228

20	21
29	28

Now map 3228 BB

29

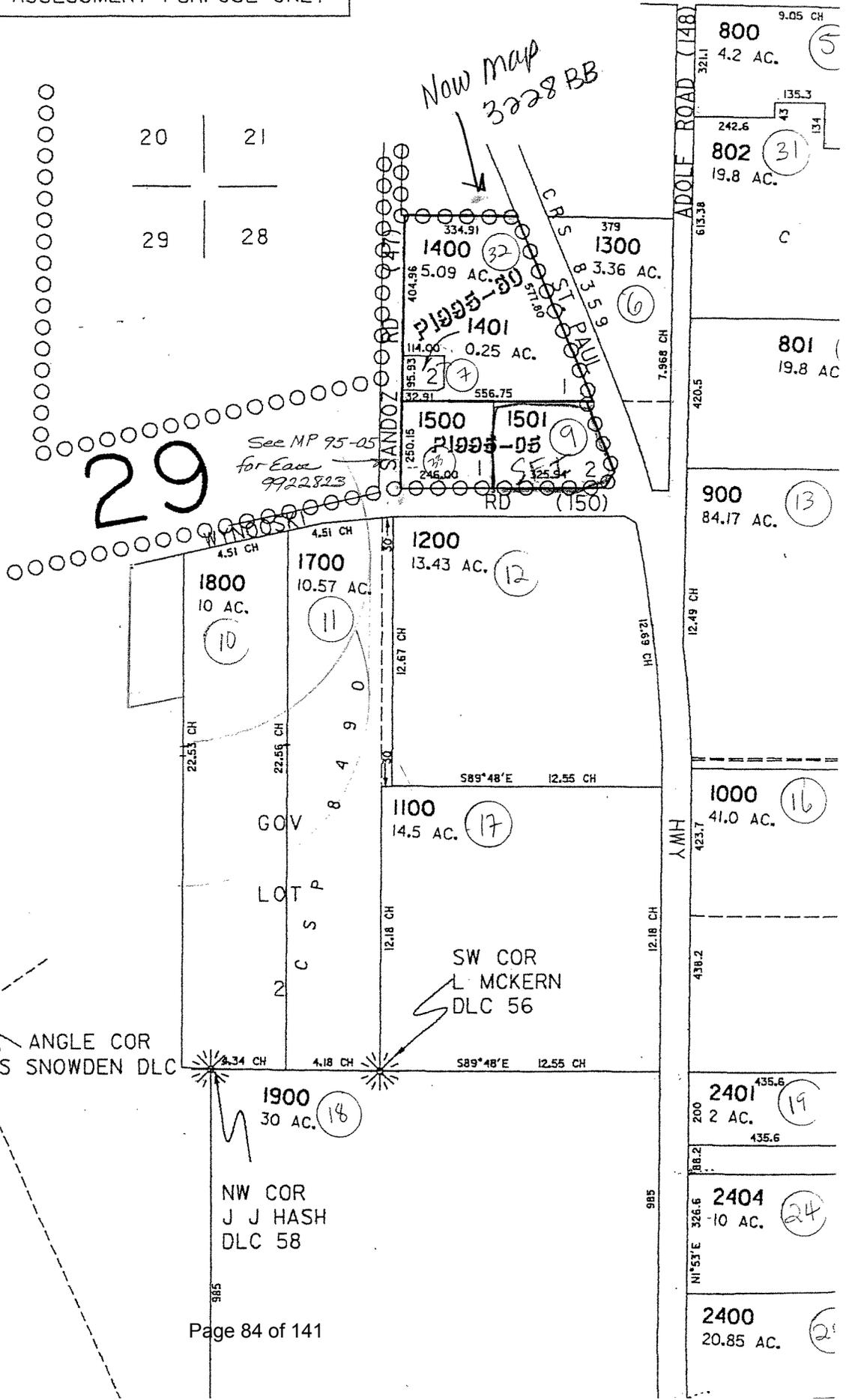
See MP 95-05 for Easement 9722823

SEE MAP 3 2 29

ANGLE COR S SNOWDEN DLC

1900 30 AC. (18)

NW COR J J HASH DLC 58



## Criteria Response

Our application to bring tax lot R3229 00300, into the Urban Growth Boundary supports the following;

### Newberg Urban Area Management Agreement:

- a) This small 1.24 acre piece of property is in an area that will accommodate the long-range population growth in respect to Industrial parcels that are needed to support small business in the Newberg area. The Statewide LCDC goals are considered with regards to Goal 2 and 9.
- b) The addition of this property will allow support employment opportunities in the near future.
- c) The area has some public services near by and the vision of bringing public services to this area in the near future.
- d) The parcel is surrounded by Industrial used property and lends itself well to the uses in the area.
- e) No harm will be done to present uses of property in this area.
- f) No agricultural land is affected by this request.
- g) The property is surrounded on all sides by Industrial used property.

### Goal 14 Location Factors:

The amount of other sites within the UGB that could be used for Light Industrial business is minimal. This site is well suited for the zoning because of the current Industrial uses that surround the property. This property has no farmland use and is not bordered by any farmland zoning. The area is currently used by several other industrial companies.

The need is strong for Industrial zoned property in the UGB. Owners of businesses are finding themselves looking in surrounding towns for property to house their facilities because there is little if anything available in Newberg.

The Newberg Planning and Building Department Development Report 08-09, shows that the current access to available, buildable, industrial zoned property is very low compared to the need.

Any proposed Light Industrial use of this property would have little effect on surrounding agricultural use as it is a small parcel and has a large amount of distance between it and agricultural zoned properties.

#### Newberg Comprehensive Plan

- a) The property is located in the area that the City of Newberg is proposing as an Industrial area.
- b) Public facilities and services are in the vision of the current comprehensive plan. Some are close to available now.
- c) This small parcel will not have an effect on the transportation facilities to my knowledge.
- d) Sewer and water are not available to this property at this time. There is a chance that water could be accessed and sewer is proposed for the near future in this area. An existing well and septic system are on the property, but the condition of them are unknown.
- e) The exact use of this property is not determined at this point so therefore the traffic impact to the area is unknown. Because of the small size of the property, it would be unlikely that there would be much of a traffic increase to the property.

**Exhibit "A"**

Real property in the County of Yamhill, State of Oregon, described as follows:

Being a part of the Samuel D. Snowden Donation Land Claim, Notification No. 1476, Claim No. 68, in Section 29, Township 3 South, Range 2 West of the Willamette Meridian in Yamhill County, Oregon; and beginning at the Northeast corner of a tract of land deeded by Etta B. Church to Emma B. Jacobsen and Gearhardt W. Jacobsen, on July 30, 1943, recorded in Book 122, Page 284 of the Deed Records of Yamhill County, Oregon, said point being 24.53 chains North and 1.03 chains West of the Quarter Section corner between Sections 29 and 28; thence South 400 feet; thence South 76° West 150 feet; thence North 400 feet to the center of County Road; thence North 76° East 150 feet along center of County Road to the place of beginning.

Tax Parcel Number: R3229-300

## General Land Use Plan

The 1.24 acre piece is currently vacant. When brought into the UGB we hope to change the zoning to LI. The new Light Industrial Zone would allow this piece to be used in a way that could provide additional employment opportunities. The property would be able to support much needed light industrial property for use by Newberg business. The proposed new zoning will fit into the current surroundings very well and will support the vision the City of Newberg has for an Industrial Area at this location.

## ESEE Analysis

We do not have a proposed development of this property at this time so therefore it is unknown if there are any negative effects it will produce.

If we are successful in the Light Industrial zone change, any proposed use will fit within the zone and be approved by the county and city offices at that time.

Environmental- Any proposed use of this site would have to be considerate of the drainage ditch that runs on one side of the property. This ditch is man made and does not appear to be wet lands. An evaluation of the area is desired.

Social- Any proposed Light Industrial use would fit well in this area as it is surrounded by like zoning both city and county currently.

The property bordering the East side of this property is currently in the UGB.

Economic- The economic consequences of this site being brought into the UGB is in direct relationship with the vision Newberg has for the Industrial Use area. It would allow a small business or similar use to enter into the area.

Light Industrial zoning on this parcel would allow a better chance that jobs can be created than the current VLDR 2.5 could provide.

It is possible that this property could be used to produce products that are local and or regional.

Energy- The off-site impact would vary depending on the type of business the property houses. Because of the small size of the property (1.24 acres with only about 1 acre usable), it is unlikely that there would be a heavy impact.

Alternate energy sources could be considered when development of this parcel is decided on.

The utility lines to this site are currently above ground.

### Public Facilities Plan

Currently, there has been some conversation about the access to a public water source directly across the street. There is concern that the line can not be connected to at this time to be used by this parcel.

Currently, there is no sewer connection available to this parcel. There have been several conversations regarding the City of Newberg's desire to provide sewer service to this area.

The cost of these services would be dependent on the amount of properties that are to be served.

R3228 01700  
Merlin & Sandra Lajoie  
PO Box 1000  
Newberg, OR 97132

R3228 01800  
Joseph & Elizabeth Fettig  
PO Box 546  
Newberg, OR 97132

R3229 00100  
Rock Resources Baker  
21880 SW Farmington Rd  
Beaverton, OR 97007

R3229 00102  
Newberg City of  
PO Box 970  
Newberg, OR 97132

R3229 00200  
Two Bears Co  
PO Box 583  
Carlton, OR 97111

R3229 00202  
Southeast Paper Manufacturing Co  
PO Box 70  
Newberg, OR 97132

R3229 00203  
Ronald & Russell Halstead  
PO Box 54  
Newberg, OR 97132

R3229 00205  
Melissa Walker  
PO Box 72  
Newberg, OR 97132

R3229 00400  
Southeast Paper Manufacturing Co  
PO Box 70  
Newberg, OR 97132

R3229 00500  
Southeast Paper Manufacturing Co  
PO Box 70  
Newberg, OR 97132

*List of neighbors*

**AFTER RECORDING RETURN TO:**

City of Newberg  
Planning and Building Department  
PO Box 970 - 414 E. First Street  
Newberg, OR 97132

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**COVENANT OF WAIVER OF RIGHTS AND REMEDIES**

**Recitals**

1. The undersigned, Joseph Fetta and Elizabeth Fetta (hereinafter referred to as ■Owner or ■Owners) has/have petitioned the City of Newberg (hereinafter referred to as ■City) to commence certain proceedings, relating to 2716 NW Wynoski Rd, for the real property described in Exhibit A which is attached hereto and incorporated herein.
2. Pursuant to the enactment of Ballot Measure 49 (adopted November 6, 2007), if a public entity enacts one or more land use regulations that restrict the residential use of private real property or a farming or forest practice and that reduce the fair market value of the property, then the owner of the property shall be entitled to just compensation from the public entity that enacted the land use regulation or regulations as provided in Measure 49.
3. There is the potential that the Oregon electors or the Oregon Legislature may, in the future, enact further statutory or constitutional amendments relating to compensation for the impact of local regulations upon real property, under certain circumstances.
4. City does not wish to approve the Owner/s/Owners requested proceedings if the result would or could arguably give rise to a later claim by the Owner or Owners, or the Owner/s/Owners successors or assigns for compensation for the land use regulations in effect upon the effective date of the proceedings, or would or could arguably require the City to waive the City's land use regulations in effect upon the effective date of the proceedings, which are being newly imposed upon the property by reason and result of the proceedings.
5. Owner(s) seek(s) to induce the City to proceed with the proceedings and therefore Owner(s) agree(s) to eliminate the potential of claim for compensation or the right to seek waiver from the City's land use regulations existing as of the effective date of the proceedings.

**NOW THEREFORE**, the undersigned Owner(s) warrant(s) that the Owner(s) executing this covenant hold(s) the full and complete present ownership or any interest therein in the property, and hereby agree(s) and covenant(s) as follows:

1. As inducement to the City to proceed with the following proceeding(s) affecting the subject real property: 2716 NW Wynoski Rd, which may include designation of the property as subject to additional applicable overlay zones and districts, e.g., Limited Use Overlay District, (all inclusively referred to herein as ■proceedings), the undersigned Owner(s), on behalf of Owner(s), Owner/s/Owners heirs, devisees, executors, administrators, successors and assigns, agree(s) and covenant(s) to the City of Newberg, its officers, agents, employees and assigns that the undersigned hereby remises, waives, releases and forever discharges, and agrees that Owner(s) shall be stopped from asserting any rights and remedies, actions, causes of action, suits, claims, liabilities, demands, and rights to waivers arising under or granted by any statutory or constitutional regulatory compensation or waiver provisions, including but not limited to Ballot Measure 49 (2007) or otherwise enacted after the date of this proceeding which would create a right of claim for compensation or waiver from City land use regulations that exist upon the effective date of the proceeding and which, by the approval of the proceeding, are then applicable to the property.

2. This waiver and release shall bind the undersigned as heirs, devisees, executors and administrators, successors in interests, and assigns. This covenant, waiver, release and discharge shall run with the land, and this instrument, or a memorandum hereof, may be recorded in the official records of the County in which the subject real property is located. This instrument may be terminated upon the filing of a Notice of Termination of Covenant filed by the City of Newberg.
3. If this instrument is given contemporaneous with a consent to future proceedings to be initiated by the City, Owner(s) acknowledge(s) that the proceedings may be initiated by the City of Newberg at any time in the discretion of the City of Newberg, and that this waiver and release is applicable to any ordinances adopted prior to the effective date of the proceeding.
4. This document is executed of my/our own free will and without duress. I, or if more than one, each of us respectively acknowledge that I/we have been advised to obtain legal advice prior to the execution of this document, and that either I, or each of us respectively, have either obtained legal advice or have independently elected not to seek legal advice prior to the execution of this document, recognizing that this document may affect my/our legal rights and remedies.

OWNER

Joseph A. Fetting

OWNER

Elizabeth Fetting

STATE OF OREGON            )  
  ) ss.  
County of Yamhill         )

This instrument was acknowledged before me on this 20<sup>th</sup> day of August, 2009, by Joseph Fetting and Elizabeth Fetting.

Monica Combs  
Notary Public for Oregon  
My Commission expires: 7-27-10



CITY OF NEWBERG

APPROVED AS TO FORM:

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

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

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

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

**YAMHILL COUNTY STAFF REPORT**  
**NEWBERG URBAN AREA MANAGEMENT COMMISSION**

---

**HEARING DATE:** September 30, 2009

**DOCKET NO.:** PAZ-03-09

**REQUEST:** To amend Newberg's Urban Growth Boundary to take in 1.24 acres. Approval of the request would allow eventual inclusion of the property into the city limits. The application includes a request for a comprehensive plan designation from VLDR Very Low Density Residential to the City plan designation of Industrial and a zone change from VLDR 2.5 Very Low Density Residential to LI Light Industrial.

**APPLICANT:** Elizabeth L. Fetting

**TAX LOTS:** 3229-300

**LOCATION:** 2716 NE Wynooski Road, Newberg

**COMPREHENSIVE PLAN:** VLDR Very Low Density Residential/Urban Reserve Area

**ZONE:** VLDR 2.5 Very Low Density Residential

**CRITERIA:** Section 908 of the Yamhill County Zoning Ordinance, Newberg Urban Area Management Agreement, Statewide Planning Goals, Yamhill County Comprehensive Plan Goals and Policies and the Oregon Administrative Rules, including OAR 660-021 and OAR 660-012-0060.

**COMMENTS RECEIVED:** *Newberg Rural Fire Dept.:* This is acceptable to the fire department.  
*Yamhill County Public Works:* No response to date.  
*Soil and Water Conservation District:* No response to date.  
*ODOT:* No response to date.  
*Watermaster:* No response to date.  
*Newberg City Council:* See Resolution No. 2009-2867

**FINDINGS:**

*A. Background Facts*

1. *Size:* Approximately 1.24 acres.
2. *Access:* Wynooski Road

3. *On-site Land Use:* The subject parcel is bordered by trees along the western and southern property lines. The property contains a pump house.
4. *Current Zoning:* VLDR 2.5 Very Low Density Residential. On September 30, 2004 the property was designated as part of the Interchange Overlay District. While this property is within the Interchange Overlay District, it is not within the planned bypass corridor. The Interchange Overlay District is subject to Section 908 of the Yamhill County Zoning Ordinance and the amended provisions of the Yamhill County Comprehensive Plan. On June 17, 2009, the Yamhill County Board of Commissioners amended the overlay district to allow for Urban Growth Boundary expansions, subject to coordination with ODOT and the local jurisdictions.
5. *Surrounding Land Use:* Property to the north, across Wynooski Road, contains industrial uses including a mattress factory. The property adjacent to the south and west is owned by Smurfit Paper Plant. Property to the east is owned by the applicant and is subject to a zone change request to go from HI Heavy Industrial to LI Light Industrial.
6. *Surrounding Zoning:* The surrounding properties to the north are in the city limits of Newberg and are zoned M-2. The other adjacent lots to the south, east and west are zoned HI Heavy Industrial. Property to the south and west is within the Newberg Urban Reserve Area. Land to the east is within Newberg's Urban Growth Boundary and is owned by the applicant.
7. *Water:* The property contains a well and old pump house.
8. *Sewage Disposal:* The property contains a septic system.
9. *Fire Protection:* Newberg Rural Fire District
10. *Soils:* One-third of the parcel is classified as Aloha silt loam, one-third is Dayton silt loam and the remainder is Terrace Escarpment. (Note: While the property does contain soils that are rated as "high-value" agricultural soils, in 1979 the property had an exception to the farm and forest preservation goals.)
11. *Exception:* The subject parcel and area to the north, south, east and west were all granted a "committed" exception from the statewide planning goals protecting farm and forestry uses (goals 3 and 4). The area was granted an exception and plan designated VLDR Very Low Density Residential by Exceptions Statement I. This document was adopted by the Board of Commissioners May 3, 1979. In 1995 Yamhill County and the City of Newberg adopted the Urban Reserve Area. Yamhill County adopted Ordinance 596 on July 19, 1995 which identified the subject parcel as part of the Newberg Urban Reserve Area.

12. *Fish and Wildlife:* The property is not identified as being on any county adopted fish and wildlife habitat plan.
13. *Coordinated Population Projection:* Under ORS 195.036 cities are required to coordinate their population projections with the counties. The last coordinated population projection for Newberg is 54,097 citizens for the year 2040.
14. *Urban Reserve Area:* While the property is within the Urban Reserve Area the addendum to the Urban Area Management Agreement states that: "The County shall prohibit zone amendments allowing more intensive uses, including higher residential density, than permitted at the date of this agreement." This requirement is taken from the Oregon Administrative Rule 660-021-0040(3), which governs Urban Reserve Areas. The zone change portion of this application would only be approved subsequent to the urban growth boundary amendment.

B. Interchange Overlay District

1. On June 17, 2009 the Board of Commissioners adopted Ordinance No. 838 which modified the regulations that applied to the Interchange Overlay District as detailed in Section 908 of the Yamhill County Zoning Ordinance. Subsection 908.06(B and C) lists processes for expansion of the Urban Growth Boundary (UGB). It states:
  - B. *Proposed amendments to the UGBs are governed by the criteria in Statewide Planning Goal 14 (Urbanization) and acknowledged UGB management agreements between Yamhill County and the respective cities. A decision to expand the UGB must be approved by the Yamhill County*
  - C. *The 1999 OHP (Action 1B.3) directs ODOT to avoid expansions of UGBs along Interstate and State Highways and around interchanges unless ODOT and the appropriate local governments agree to an interchange area management plan to protect interchange operation.*

As stated above, Section 908 of the Yamhill County Zoning Ordinance allows UGB expansion within the Interchange Overlay District.

C. Urban Growth Boundary Amendment Criteria

1. Criteria to be addressed in UGB amendment requests include the *Newberg Urban Area Growth Management Agreement*, the statewide planning goals, and the city and county Comprehensive Plans. The review standards from the first three of these are detailed in the

city's staff report. The application did consider Newberg's Comprehensive Plan and much of the justification of Newberg's Comprehensive Plan criteria follows similar reasoning for justification of the Yamhill County Comprehensive Plan Criteria. It should be noted that if this property were brought into the Urban Growth Boundary of the City of Newberg, the Comprehensive Plan designation would be the city's IND Industrial plan designation.

Even though the majority of the Yamhill County Goals and Policies are aspirational and not to be mistaken for, or treated as, approval criteria it is required that they be considered. It is a fact that some of the goals and policies conflict with one another. They are simply to be used as a guide to aid decision makers. For example, where goals or policies conflict the decision makers need to weigh the evidence and decide which goal or policy the request satisfies. Therefore, the NUAMC and Board of Commissioners would need to decide whether the parcel is more appropriate to be preserved for rural residential use or it is better suited for urban development.

2. The Yamhill County Comprehensive Plan, Section I.A., Goal 1, directs County:

*To encourage the containment of growth within existing urban centers, provide for the orderly, staged, diversified and compatible development of all of the cities of Yamhill County, and assure an efficient transition from rural to urban land use.*

In 1995 the urban reserve area project was completed. The Newberg Urban Reserve Area (URA) land supply was intended to provide adequate land for the City of Newberg needs to 2020.<sup>1</sup> The subject parcel was included in the URA. The urban reserve anticipated to fulfill the need for urban development 10-years beyond the adopted UGB. At that time, the reserve was to fulfill the needed land for urban development until 2020. In the past, one of the main issues for expansion of the UGB has been the transfer of jurisdiction of roadways. Prior to the completion of this application, the Board and City Council will need to decide the status of that portion of Wyooski Road.

3. The Yamhill County Comprehensive Plan, Section I.A., Goal 2, directs Yamhill County:

*To encourage the containment of urban services and facilities and other public capital improvements within existing urbanizing areas in order to achieve an orderly pattern of urban growth.*

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<sup>1</sup>The city and the County have adopted an expansion to the Urban Reserve Area, however, this expansion is still being reviewed by the Land Conservation and Development Commission.

The expansion is proposed for property that was designated in 1995 as being part of the Newberg Urban Reserve Area. Recently, the city has undertaken a study to develop the South Industrial Area Master Plan. The preliminary results of that study have identified a portion of this property as being appropriate for some level of industrial development. Based on the available urban improvements to the property, it appears that approval would result in an orderly pattern of urban growth.

4. The Yamhill County Comprehensive Plan, Section I.H., Goal 1, directs Yamhill County:

*To concentrate industries of similar types, service needs, and performance characteristics within designated areas of each of the existing urban centers; to encourage adequate land for new industrial development within urban growth boundaries; to encourage the relocation of existing industries from undesirable locations in order to eliminate land use conflicts; to attract new industries in accordance with the need to achieve a more balanced local property tax and employment base, while maintaining a high standard of environmental quality; and to protect the stability and functional aspect of industrial areas by protecting them from incompatible uses.*

Approval of this request would move the property up the priority list from the Urban Reserve Area to the Urban Growth Boundary. An appropriate amount of land, properly located in the community, will help to assure a long term diversified employment base. The applicant is proposing to sell the property and have the new owners use the property for a few years for light industrial uses that do not require the extension of services. Ultimately, the property would be annexed into the Newberg city limits and developed with some type of appropriate light industrial business. Interim development of the property should be done with the thought in mind that the property will be within the city. The City has requested conditions to be placed on a limited use overlay zone to require the interim development be done to city standards. The majority of these requirements will be recommended by County staff.

5. The Yamhill County Comprehensive Plan, Section I.H., Goal 1, Policy h., directs Yamhill County:

*Established industrial areas may be extended and new industrial areas designated by plan amendment where development trends warrant such extension or designation and full urban services are extended into the area, if appropriate, and the extension or designation of land use and services is consistent with all other goals and policies of the comprehensive plan.*

As indicated by the City of Newberg's draft South Industrial Area Master Plan, this area is suitable for industrial development based on the past development trends. Both Heavy

Industrial and Light Industrial uses exist on neighboring properties. This is perhaps the strongest argument for the urban growth boundary amendment and the zone change, the simple fact that all of the surrounding area is either zoned for or in industrial uses. A spot zone of residential in the middle of industrial uses could set up a conflict between neighboring uses. A zone change to light industrial would minimize this possibility.

6. The Yamhill County Comprehensive Plan, Section II, Goal 2, Policy a. states:

*Yamhill County will continue to preserve those areas for farm use which exhibit Class I through IV soils as identified in the Capability Classification System of the U.S. Soil Conservation Service.*

The majority of the property is made up of high-value farmland which consists of agricultural Class I-IV soils. However, as noted above an exception to Goal 3, related to the protection of agricultural land was taken in 1980. The exception was based on the subject parcel and surrounding area being irrevocably committed to rural residential use. Therefore the goals and policies related to the protection of farm land do not apply to the subject parcel.

D. Zone Change Review Criteria and Analysis

1. The zone change must comply with the standards and criteria in YCZO Section 1208.02. These provisions are:

- A. *The proposed change is consistent with the goals, policies and any other applicable provisions of the Comprehensive Plan.*
- B. *There is an existing, demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.*
- C. *The proposed change is appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district.*
- D. *Other lands in the County already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size or other factors.*

*E. The amendment is consistent with the current Oregon Administrative Rules (OAR's) for exceptions, if applicable.*

2. Regarding criterion (A) above, see Section C above. It should be noted that both Heavy Industrial and Light Industrial uses exist on neighboring properties, both in the County and in the city limits. The simple fact that all of the surrounding area is either zoned for or in industrial use is perhaps the strongest argument for zoning this property to industrial use. A spot zone of residential in the middle of industrial uses could set up a conflict between neighboring uses. A zone change to light industrial would minimize this possibility.
3. Criterion (B) requires a finding that there is an existing, demonstrable need for the uses allowed in a light industrial zone. The applicant has indicated that they wish to sell this property to provide capital for their other business and believes the best use would be some type of light industrial use. The availability and suitability of other Industrial zoned lands will be discussed in Finding D.5.
4. Regarding criterion (C), as discussed earlier in the report, the surrounding land uses are primarily industrial, with light manufacturing businesses on the parcels adjacent to the north and east. The application does not contain any specific development proposal however certain light industrial uses would be compatible with this area. The city has an interest in narrowing down some of the uses and they have requested a limited use overlay zone to specify what could occur on the property. Specifically, the Newberg City Council has requested to limit the permitted, conditional or similar uses to those that are allowed in the LI Light Industrial zone (excluding a Refuse Derived Fuel plant).

Regarding the availability of utilities and services, an on-site well and septic system exist on the property but even the applicant acknowledges that their present condition is unknown. Other utilities likely to be needed are available to the site. Fire service is available and no objection was voiced by the Newberg Fire District.

5. Criterion (D) requires the consideration of whether there are other available lands in the county that are zoned for light industrial uses. Location, size and suitability are factors that may be considered. The applicant has put forth the argument that the Newberg Planning and Building Department Report 08-09 shows that the current access to available, buildable, industrially zoned property is very low compared to the need. The availability of other county LI zoned properties was not discussed in the application.
6. Regarding criterion (E), an exception to Goals 3 and 4 is not required. As noted in the above Finding A.11 this area was granted an exception to State Planning Goals 3 and 4.

E. Limited Use Overlay Provisions

The purpose of the Limited Use Overlay District is to limit permitted use(s) and activities in a specific location to only those uses and activities which are justified and approved through a Comprehensive Plan Amendment or a zone change. The application does not exactly specify what uses are being requested. The City has an interest in limiting the uses to those that are appropriate to border the city limits. In addition, the city and County both have an interest in the development being compatible with the neighboring development the property is planned to eventually go into the city limits. The Newberg City Council has requested twelve conditions to be placed on a limited use overlay zone. These are detailed in the attached Resolution No. 2009-2867. Item (E) on this list is "No land divisions are permitted." The minimum lot size in the County's Light Industrial zone is one acre. Since the property is 1.24 acres it does not appear that this limitation is necessary. In addition, conditions (J), (K) and (L) appear to go beyond what can be enforced through the Limited Use Overlay zone. Conditions (J) and (K) are to have the owners sign a consent to annex and file for a zone change respectively. Condition (L) would require that the failure to meet conditions (J) and (K) would "... nullify the zone change." Since zone changes require action by the Yamhill County Board of Commissioners, there is not a mechanism whereby a zone change can be nullified by not fulfilling a condition of approval. The County Planning Department would propose to replace conditions (J), (K) and (L) with the following requirement:

*Prior to site design review approval the property owner shall sign and record a waiver of remonstrance against the property being annexed into the city limits.*

F. Other Ordinance Considerations

Site design review is required for any development in a LI district. Since the applicant is not presently proposing any use it is not possible to do a site design review at this time. Setbacks, landscaping, signs, building size and location, parking, access, and other requirements of the YCZO will be reviewed as part of the site design review. Since the property will be within the City's UGB, it would be appropriate to apply city development standards.

G. Goal 12 (Transportation Rule) Provisions and Analysis

1. Transportation Planning Rule, implementing Goal 12, as being required to be addressed. OAR 660-12-0060 states:

*(1) Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. (Underline added)*

2. As noted above, amendments to functional plans, comprehensive plans, or land use regulation amendments are required to address OAR 660-12-0060. The Urban Reserve Area is part of both the City and County comprehensive plans. The URA identifies areas for eventual inclusion in the UGB. Therefore, the request to move a property from the URA to the UGB is consistent with the comprehensive plans of the City and the County.

**CONCLUSIONS FOR APPROVAL:**

1. The request is to amend Newberg's Urban Growth Boundary to take in an additional 1.24 acres. The application includes a request for a comprehensive plan designation from VLDR Very Low Density Residential to the city plan designation of Industrial and a zone change from VLDR 2.5 Very Low Density Residential to LI Light Industrial.
2. The applicant has demonstrated that the request satisfies the Yamhill County Comprehensive Plan goals and policies for inclusion in the Newberg Urban Growth Boundary.
3. The applicant has demonstrated that the request satisfies the Yamhill County Comprehensive Plan goals and policies related to industrial development.
4. The applicant has demonstrated that the request satisfies the zone change provisions of Section 1208.02 of the Yamhill County Zoning Ordinance.

**CONCLUSION FOR DENIAL:**

1. The applicant has not shown that there is an existing, demonstrable need for the zoning that could not be satisfied by other Light Industrial zones in the County.

**STAFF RECOMMENDATION:**

*The following recommendation is given prior to the public hearing and may be modified after the receipt of testimony.*

Based upon the evidence in the record, Yamhill County Planning Staff recommends that the request by Elizabeth Fettig for expansion of the Urban Growth Boundary to include 1.24 acres of land identified as Tax Lot 3229-300, and a zone change from VLDR 2.5 to LI Light Industrial be approved with a limited use overlay zone with the following conditions:

(A) The Limited Use Overlay shall only allow those permitted, conditional, or similar uses in the Yamhill County Light/General Industrial District (LI).

(B) The (RDF) Refuse Derived Fuel plant, similar use or any use that is accessory or incidental to such use is specifically not permitted.

(C) No city sewer or water facilities shall be authorized for any use permitted outside the City Limit boundary.

(D) One septic system may be authorized for the entire property which is the subject to this application. The septic system shall not exceed a capacity equal to three dwelling units or 15 people. No alternative forms of sewage disposal shall be permitted.

(E) Any application for development shall be referred to and reviewed by the City of Newberg.

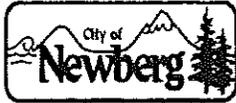
(F) Site development shall be restricted in the area of the existing stream corridor and shall comply with the City of Newberg Stream Corridor Sub-District overlay (151.465). The stream corridor boundary is typically defined as being either at the logical top of bank or 50 feet from the edge of the wetland.

(G) The Division of State Lands has identified hydric soils on the site and potential wetland areas. A wetland delineation is required prior to any site development.

(H) In addition to any other conditions of site design review, any development on the site requiring site design review shall be conditioned upon the following:

1. Either construction of half-street improvements on Wyooski Road or making a payment-in-lieu for future street improvements.
2. Either extending sewer lines and other needed utilities along the frontage of the property, or making a payment-in-lieu for sewer extension to the site.
3. Complying with City of Newberg front yard landscaping requirements.
4. Paving the driveway with asphalt or concrete for a minimum distance of 100 feet from Wyooski Road to minimize rocks and gravel carrying onto the street.

(I) Prior to site design review approval the property owner shall sign and record a waiver of remonstrance against the property being annexed into the city limits.



## **RESOLUTION No. 2009-2867**

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**A RESOLUTION RECOMMENDING APPROVAL OF THE REQUESTED ZONE CHANGE FROM YAMHILL COUNTY VERY LOW DENSITY RESIDENTIAL (VLDR 2.5) TO YAMHILL COUNTY LIGHT INDUSTRIAL (LI) FOR PROPERTY LOCATED AT 2716 WYNOOSKI ROAD, YAMHILL COUNTY TAX LOT 3229-300, WITH CONDITIONS**

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### **RECITALS:**

1. The property at 2716 Wynooski Road, Yamhill County Tax Lot 3229-300, is currently zoned County Very Low Density Residential 2.5 acre minimum (VLDR 2.5). The property is located within the Newberg Urban Reserve Area.
2. On June 17, 2009, Elizabeth Fettig applied to Yamhill County for a zone change to County Light Industrial (LI). Yamhill County forwarded the application to the City of Newberg for review and a recommendation per the terms of the Newberg Urban Area Growth Management Agreement.
3. The subject property was included in Newberg's Urban Reserve Area in 1995, through Newberg Ordinance 95-2370. The property is located adjacent to the current Urban Growth Boundary and City Limits. Surrounding properties are all have industrial zoning designations (properties east and west are in the County; properties north are in the City).
4. The requested zone change would be consistent with the City's vision for the area as a future industrial park. However, development of the property should be consistent with City standards for site development and should be served with City utilities. Ultimately, due to the location of the site and its proximity to the Newberg city limits, development should be constrained on the property until it is annexed into the City. In addition, the Newberg Urban Area Growth Management Agreement states that the City and County agree that "The County shall prohibit zone amendments allowing more intensive uses, including higher residential density, than permitted at the date of this agreement." This is in compliance with the Oregon Administrative Rules (OAR 660-021-0040(3)). Therefore, approval of the requested zone change should only be permitted contingent upon bringing the property into the Urban Growth Boundary. The applicants have filed an application to include this property within the Urban Growth Boundary; the application is pending review and is expected to be heard by NUAMC in the near future.

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

The Council recommends to the Newberg Urban Area Management Commission and Yamhill County Commission that they approve the requested zoning amendment from Yamhill County Very Low Density Residential 2.5 acre minimum (VLDR 2.5) to Yamhill County Light Industrial (LI) for property located at 2716 Wynooski Road, Tax Lot 3229-300, contingent upon inclusion into the Newberg Urban Growth Boundary, and provided that the zoning amendment is approved with the following Limited Use Overlay:

(A) The Limited Use Overlay shall only allow those permitted, conditional, or similar uses in the Yamhill County Light/General Industrial District (LI).

(B) The (RDF) Refuse Derived Fuel plant, similar use or any use that is accessory or incidental to such use is specifically not permitted.

(C) No city sewer or water facilities shall be authorized for any use permitted outside the City Limit boundary.

(D) One septic system may be authorized for the entire property which is the subject to this application. The septic system shall not exceed a capacity equal to three dwelling units or 15 people. No alternative forms of sewerage disposal shall be permitted.

(E) No land divisions are permitted.

(F) Any application for development shall be referred to and reviewed by the City of Newberg.

(G) Site development shall be restricted in the area of the existing stream corridor and shall comply with the City of Newberg Stream Corridor Sub-District overlay (§ 151.465). The stream corridor boundary is typically defined as being either at the logical top of bank or 50 feet from the edge of the wetland.

(H) The Division of State Lands has identified hydric soils on the site and potential wetland areas. A wetland delineation is required prior to any site development.

(I) In addition to any other conditions of site design review, any development on the site requiring site design review shall be conditioned upon the following:

1. Either construction of half-street improvements on Wynooski Road or making a payment-in-lieu for future street improvements.
2. Either extending sewer lines and other needed utilities along the frontage of the property, or making a payment-in-lieu for sewer extension to the site.
3. Complying with City of Newberg front yard landscaping requirements.
4. Paving the driveway with asphalt or concrete for a minimum distance of 100 feet from Wynooski Road to minimize rocks and gravel carrying onto the street.

(J) As a condition to the plan amendment and zone change, the owners of the subject property shall sign a consent to annexation on forms supplied by the City of Newberg within 90 days of the effective date of zone change decision.

(K) As a condition to the plan amendment and zone change, the applicants shall initiate a new annexation request to the City of Newberg prior to applying for site design review or prior to October 1, 2011, whichever comes first.

(L) Failure to meet conditions (J) or (K) above will nullify the zone change.

➤ EFFECTIVE DATE of this resolution is the day after the adoption date, which is: September 9, 2009.

ADOPTED by the City Council of the City of Newberg, Oregon, this 8<sup>th</sup> day of September, 2009.

Norma I. Alley  
Norma I. Alley, City Recorder

ATTEST by the Mayor this 10<sup>th</sup> day of September, 2009.

Bob Larson  
Bob Larson, Council President

Exhibits: "A" Map and Findings

**LEGISLATIVE HISTORY**

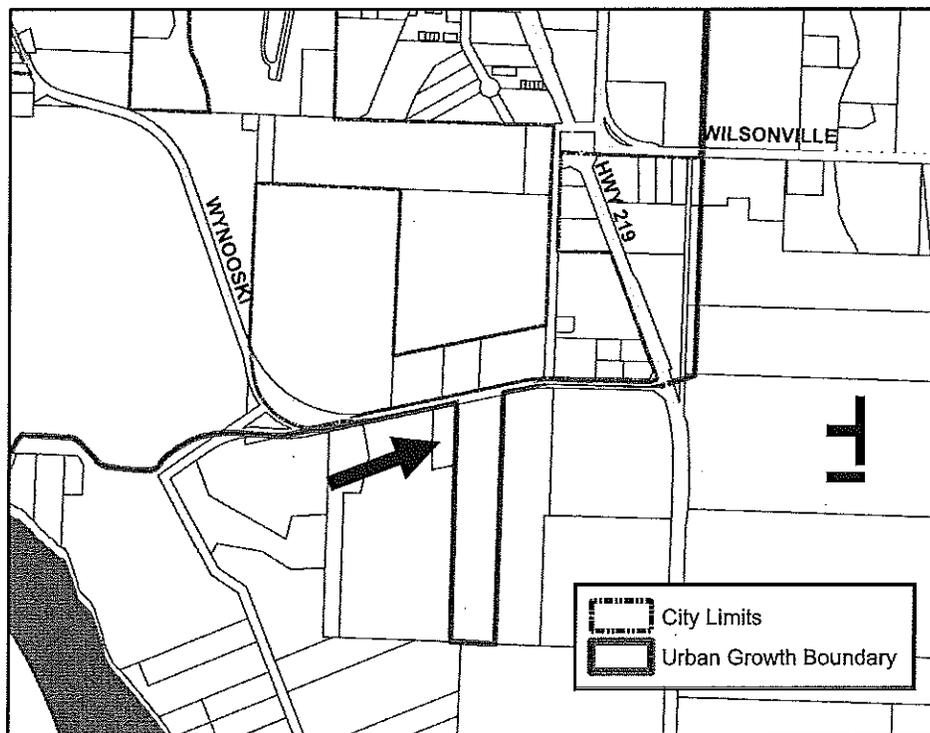
By and through \_\_\_\_\_ Committee at \_\_\_\_/\_\_\_\_/200x meeting. Or,  None.  
(committee name) (date) (check if applicable)

**Exhibit "A" to  
Resolution 2009-2867:**

**Applicant:** Elizabeth Fettig  
**Tax Lot:** 3229-300  
**Request:** Amend the Yamhill County zoning on tax lot 3229-300 from Very Low Density Residential 2.5 acre minimum (VLDR 2.5) to Light Industrial (LI). The tax lot is outside the City limits but within the Urban Reserve Area.  
**File No:** G-09-010

**City Council  
Hearing Date:** September 8, 2009

**Summary:** On June 17, 2009, Elizabeth Fettig applied to Yamhill County for a zone change from Very Low Density Residential 2.5 acre minimum (VLDR 2.5) to Light Industrial (LI). The Fettig property is located at 2716 Wynooski Rd, tax lot 3229-300. The property is not located within Newberg city limits, but is within Newberg's Urban Reserve Area (URA) and is therefore subject to the terms of the Newberg Urban Area Growth Management Agreement between Newberg and Yamhill County. According to the Agreement, any zone change requests within the URA shall receive a recommendation from the Newberg City Council to Yamhill County. Yamhill County will then process the application and the request will be heard by the Newberg Urban Area Management Commission (NUAMC).



**Process:** The applicant's request for approval of a zone change is being processed through the provisions of the Newberg Urban Area Growth Management Agreement as follows:

- June 17, 2009: The applicant submitted an application to Yamhill County to request a zoning amendment
- August 4, 2009: Yamhill County Planning Department notified the City of the zone change application and sent over the materials for review.
- September 8, 2009: City Council hearing on Resolution 2009-2867.

**A. Background:** The subject property was included in Newberg's Urban Reserve Area in 1995, through Newberg Ordinance 95-2370. The current zoning for the property is Very Low Density Residential 2.5 acre minimum (VLDR 2.5). The property is located adjacent to the current Urban Growth Boundary. Surrounding properties are all have industrial zoning designations (properties east and west are in the County; properties north are in the City).

**B. Applicable Review Criteria:** There are several documents to consider when reviewing this application for a zone change, including the Newberg Urban Area Growth Management Agreement, Oregon Administrative Rule 660-021-0040, Yamhill County Comprehensive Plan, and Newberg Comprehensive Plan. Each of these is discussed in further detail below.

**I. Newberg Urban Area Growth Management Agreement & Oregon Administrative Rule 660-021-0040(3)**

The Newberg Urban Area Growth Management Agreement (NUAGMA) establishes a process for ongoing planning efforts and intergovernmental coordination. The addendum to the NUAGMA includes the following recital:

(C) The Urban Reserve Area is intended over time to be incorporated into an urban growth boundary. Because full urban services are not yet available in the area, urban level development is not permitted. Very limited rural development of property can occur in the area, but only when such usage is consistent with and does not impede the future urbanization of property.

In addition, the NUAGMA states that the City and County agree that "The County shall prohibit zone amendments allowing more intensive uses, including higher residential density, than permitted at the date of this agreement". This provision is meant to be in accordance with the Oregon Administrative Rule (OAR) 660-021-0040(3).

OAR 660-021-0040 covers Urban Reserve Area Planning and Zoning. Subsection (3) states, "For exception areas and nonresource land in urban reserves, land use regulations shall prohibit zone amendments allowing more intensive uses, including higher residential density, than permitted by acknowledged zoning in effect as of the date of establishment of the urban reserves. Such regulations shall remain in effect until such time as the land is included in the urban growth boundary". This rule is also stated as a requirement in the Newberg Urban Area Growth Management Agreement between the City of Newberg and Yamhill County.

The proposed industrial zoning would allow a number of uses that are more intensive than the current residential zoning would allow. Thus, the proposed zone change would violate the OAR

and the NUAGMA. Even if the zone were changed while the property was in the URA, the state rules say that local jurisdictions must allow construction of a single family residence. If the property was sold in the future and a residence was built, it would destroy the industrial potential of the property. Therefore, bringing the property into the Urban Growth Boundary prior to the zone change nullifies that requirement and makes it a better fit for the area.

The proposed industrial zoning of the property makes sense in the context of its location and proximity to other industrially zoned properties. However, the industrial zoning only makes sense for the property if it is within the Urban Growth Boundary, will be annexed, and will be considered "urbanizable" for future development to City standards. Therefore, it would be appropriate to recommend approval of the proposed zone change only if it is contingent upon the property coming into the Urban Growth Boundary. It is important that the urbanizable character of the property is protected in the event that the property is included in the Urban Growth Boundary and the zone change is completed. In order to meet the criteria stated above, a limited use overlay should be placed on the property that ensures that "Very limited rural development of the property can occur...but only when such usage is consistent with and does not impeded the future urbanization of the property". Any actual development on the site should be to City standards and with City utilities.

## II. Yamhill County Comprehensive Plan

### **SECTION I.: Urban Growth and Change and Economic Development**

#### **B.Rural Area Development**

##### **GOAL STATEMENT**

1. To provide an adequate amount of land, development areas and sites to accommodate those uses which are customarily found in rural areas or require or are better suited to rural locations, without compromising the basic goal relating to urban containment and orderly urban development. (66)

##### **POLICIES**

- E. Proposed rural development within acknowledged urban growth boundaries or designated urban reserve areas shall be reviewed by the affected city to ensure that long-term options for development to urban densities with full urban services are protected. (Ord 596)

The property is located within the Newberg Urban Reserve Area. The City has recently been working on an industrial master plan (South Industrial Master Plan) for the area south of Newberg, on either side of Hwy 219 and along the south side of Wynooski Rd. This tax lot is included within the plan area. Therefore, it is in the City's interest that any development occurring within the South Industrial Plan study area be done in accordance with City standards. This will allow the subject property to be a fully functioning part of the future industrial park area upon future annexation.

In accordance with this Yamhill County Comprehensive Plan Policy, the City is reviewing the request and would like the County to place conditions on any future development of the property to ensure that "long-term options for development to urban densities with full urban services are protected".

## H. Industrial Development

### GOAL STATEMENT

1. To concentrate industries of similar types, service needs, and performance characteristics within designated areas of each of the existing urban centers; to encourage adequate land for new industrial development within urban growth boundaries; to encourage the relocation of existing industries from undesirable locations in order to eliminate land use conflicts; to attract new industries in accordance with the need to achieve a more balanced local property tax and employment base, while maintaining a high standard of environmental quality; and to protect the stability and functional aspect of industrial areas by protecting them from incompatible uses.

### POLICIES

- B. To the greatest extent possible, industrial areas will be located within urban growth boundaries. Those industrial areas located outside urban growth boundaries will be compatible with the industrial development goal and will be located where they can be adequately served by necessary major utility lines, including electric power substations and transmission lines, trunk sewer lines, trunk water lines, and where appropriate, trunk gas lines.

The subject property is currently located adjacent to other industrial properties, both outside and inside the City limits. The area is a good fit for industrial land as it has good transportation access and natural buffers from other nearby uses. However, properties may not connect to City utilities, including water and sanitary sewer, until they are annexed into the City. Therefore, it is difficult to meet this Policy as industrial developments outside City limits, even within Urban Growth Boundaries or Urban Reserve Areas, may not be adequately served by necessary utility lines. Until this property is located within the Urban Growth Boundary, it is not an appropriate location for industrial zoning.

## II. Newberg Comprehensive Plan

### N. Urbanization

#### Goal:

1. To provide for the orderly and efficient transition from rural to urban land uses.

#### Policies:

##### 1. Urban Growth Boundary and Urban Reserve Area Policies

- a. The conversion of lands from rural to urban uses within the Urban Growth Boundary will be based on a specific plan for the extension of urban services.
- b. The City shall oppose urban development outside the City limits but within the Newberg Area of Influence.
- c. The City shall encourage urban development within the City limits.
- d. The Urban Growth Boundary shall designate urbanizable land.
- e. The City will support development within the areas outside the City limits but within the Newberg Urban Growth Boundary or Urban Reserve Area based on the following standards or restrictions:
  - Residential development will be allowed on the basis of one house per 10 acres, or any lot of record created prior to January 1, 1989.
  - New commercial and industrial uses will generally be discouraged within the UGB and Urban Reserve Area.**
  - Agricultural uses will be in accordance with the Yamhill County Comprehensive Plan.
  - The City and County shall coordinate plans for interim rural residential development within the designated Urban Reserve Area.

After street and utility corridor plans are adopted, overall rural residential densities shall be limited to one dwelling per five acres.

The following strategies will be used to ensure that interim rural development does not inhibit long-term urbanization of lands within the Newberg UGB and Urban Reserve Area (these include but are not limited to):

1) shadow plats

2) cluster development

3) redevelopment plans

4) **non-remonstrance agreements for annexation and provision of urban facilities**

**Development not meeting the standards may be opposed by the City. [Emphasis added]**

A key part of this Policy is pointing out that lands within the Urban Growth Boundary are “urbanizable”. An important component of being urbanizable is the ability to develop properties to City standards, including having City sewer and water to serve the property. As subsection (e) states, “new commercial and industrial uses will generally be discouraged within the UGB and Urban Reserve Area”. One reason for this policy is that when development happens that is not “urbanized” (i.e. up to City standards and served by City utilities), it takes away the long term options for development that is up to City standards. This property is not yet within the Urban Growth Boundary so it is even more important that the “urbanizable” character of the property be preserved for the future. A zone change on the subject property does not constitute new development; however, prior to any development on the property the City would request that provisions are made to ensure eventual connection to City utility services and that development is according to City standards.

**YAMHILL COUNTY STAFF REPORT**  
**NEWBERG URBAN AREA MANAGEMENT COMMISSION**

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**HEARING DATE:** Newberg Urban Area Management Commission - September 30, 2009

**DOCKET NO.:** Z-02-09

**REQUEST:** For a zone change from HI Heavy Industrial to LI Light Industrial on a 9.61 acre parcel. Approval of the request would necessitate some modification of the Limited Use Overlay Zone restrictions (A) thru (H), as applied by Yamhill County Ordinance 638.

**APPLICANT:** Elizabeth Fettig

**TAX LOT:** 3228-1800

**LOCATION:** 2808 NE Wynooski Road, Newberg, Oregon 97132

**PARCEL SIZE:** Approximately 7.5 acres

**COMPREHENSIVE PLAN:** IND Industrial (The parcel is within the City of Newberg Urban Growth Boundary)

**ZONE:** HI Heavy Industrial

**CRITERIA:** Yamhill County Comprehensive Plan Goals and Policies, Newberg Urban Area Management Agreement, Ordinance 638 and Sections 904 and 1208.02 of the Yamhill County Zoning Ordinance

**COMMENTS RECEIVED:** *Newberg Rural Fire Dept.:* This is acceptable to the fire department.  
*Yamhill County Public Works:* No response to date.  
*Soil and Water Conservation District:* No response to date.  
*ODOT:* No response to date.  
*Watermaster:* No response to date.  
*Newberg City Council:* See Resolution No. 2009-2862

**EXHIBITS:** Ordinance 638

**FINDINGS:**

**A. Background Facts:**

1. Property size: 9.61 acres.
2. *Access:* Wynooski Road

Staff Report

Docket Z-02-09 (Elizabeth Fettig)

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3. On-site Land Use: The property contains two barns and a homesite. A portion of the southern end of the parcel is within the 100-year floodplain of Hess Creek.
4. Surrounding Land Use and Zoning: Property to the west is zoned HI and contains a paper mill. One parcel to the northwest is zoned VLDR-2.5, Very Low Density Residential. The property to the east is zoned PWS, Public Works/Safety district and contains Newberg Garbage Service. Property to the south, across Hess Creek, is zoned VLDR-2.5 and EF-40, Exclusive Farm use and contains rural residences and farm uses. To the north, across Wynooski Road, the area is within the city limits of Newberg.
5. Soils: The Yamhill County Soil Survey shows approximately 47% of the parcel is composed of Aloha (Ah) and Woodburn (WuB) soils. Approximately 47% of the property is composed of Terrace escarpments (Te) and Wapato (Wc).
6. Water: On-site well.
7. Sewage Disposal: On-site septic system
8. Fire Protection: Newberg Rural Fire District.
9. Previous Actions: In 1993, the property was designated as future urbanizable land through Docket # PA-02-93. Subsequently, an application was made for annexation and a zone change to a city designation of M-3 Heavy Industrial. This request was approved by the Newberg City Council on December 4, 1995, with a requirement to enter into a development agreement. That development was drawn up and sent to the City Council. The Council needed five affirmative votes to pass the development agreement. The development agreement failed to receive the five votes so the annexation could not be finalized.

After the property failed to be brought into the City in the Heavy Industrial zone, the owner applied to the County. In 1996, the property was approved for a plan amendment and zone change to Heavy Industrial through Docket PAZ-02-96. In that process, a limited use overlay zone was applied to the property which placed eight conditions of approval on the rezoning.

In 2005, a lot-line adjustment was approved through Docket # L-09-05. A similar use was processed in 2008 through Docket SU-01-08/SDR-09-08.

10. Floodplain: FIRM 4102490187C shows the southern portion of the property as being within the 100-year floodplain.
11. Urban Growth Boundary: The property is within the Urban Growth Boundary (UGB) of the City of Newberg. The Newberg Urban Area Management Agreement requires review of the zone change application by the Newberg Urban Area Management Commission.

12. Exceptions: The subject parcel and area to the north, east and west were all granted a "committed" exception from the statewide planning goals protecting farm and forestry uses (Goals 3 and 4). The area was granted an exception and plan designated VLDR Very Low Density Residential by Exceptions Statement I. This document was adopted by the Board of Commissioners on May 3, 1979.

**B. Zone Change and Plan Amendment Provisions and Analysis**

1. The zone change portion of the request must comply with the standards and criteria in YCZO Section 1208.02. These provisions are:
  - (A) *The proposed change is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan.*
  - (B) *There is an existing demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.*
  - (C) *The proposed change is appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district.*
  - (D) *Other lands in the county already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors.*
  - (E) *The amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable.*
2. Regarding criterion (A) above, Comprehensive Plan goals and policies which may be pertinent are:

*Industrial Development Goal Statement I.H.1: To concentrate industries of similar types, service needs, and performance characteristics within designated areas of each of the existing urban centers; to encourage adequate land for new industrial development within urban growth boundaries; to encourage the relocation of existing industries from undesirable locations in order to eliminate land use conflicts; to attract new industries in accordance with the need to achieve a more balanced local property tax and employment*

*base, while maintaining a high standard of environmental quality; and to protect the stability and functional aspect of industrial areas by protecting them from incompatible uses.*

*Policy I.H.1.b: To the greatest extent possible, industrial areas will be located within urban growth boundaries. Those industrial areas located outside urban growth boundaries will be compatible with the industrial development goal and will be located where they can be adequately served by necessary major utility lines, including electric power substations and transmission lines, trunk sewer lines, trunk water lines, and where appropriate, trunk gas lines.*

The above goal and policy encourage the location of industrial uses within existing urban areas and urban growth boundaries. Traditionally, Yamhill County has encouraged applicants to look to industrial property inside the boundary prior to making application for rezoning property outside of the Urban Growth Boundary. The property is within the UGB. The land in the immediate area is zoned Heavy Industrial, Public Works Safety and Very Low Density Residential. The VLDR 2.5 zoned property is owned by the applicant and they have requested that it also be rezoned to Light Industrial. The applicant is proposing to use the property for a few years for light industrial uses that do not require the extension of services. Ultimately, the property would be annexed into the Newberg city limits and developed with some type of appropriate light industrial business. Interim development of the property should be done with the thought in mind that the property will be within the city. The City has requested conditions to be placed on a limited use overlay zone to require the interim development be done to city standards. The majority of these requirements will be recommended by County staff.

*Policy I.H.1.b states in part that industrial uses : . . . will be located where they can be adequately served by necessary major utility lines, including electric power substations and transmission lines, trunk sewer lines, trunk water lines, and where appropriate, trunk gas lines.*

The purpose of this policy is to assure that industrial users which are expected to utilize large amounts of water or electricity will be located within close proximity to places where those utilities are located. In this case the proposed use is not anticipated to require major utility lines, or major sewer or water lines. The need is only anticipated to be basic power and water services. At this point, no additional public services are needed.

4. Criterion (B) requires a finding that there is an existing, demonstrable need for the uses allowed in a light industrial zone. The applicant has indicated that they wish to develop a light industrial use that would not require the extension of city services. The applicant has submitted a draft report of the "South Industrial Area Master Plan" along with a letter of support from the Newberg Planning Director and a local realtor. The applicant maintains that the testimony in support of the "South Industrial Area Master Plan" demonstrates that Light Industrial zoning is

hard to find in Newberg. The availability and suitability of other Industrial zoned lands will be discussed in Finding D.5.

5. Regarding criterion (C), as discussed earlier in the report, the surrounding land uses are primarily industrial, with light manufacturing businesses on the parcels adjacent to the north and east. The application does not contain any specific development proposal however certain light industrial uses would be compatible with this area. The city has an interest in narrowing down some of the uses and they have requested a limited use overlay zone to specify what could occur on the property. Specifically, the Newberg City Council has requested to limit the permitted, conditional or similar uses to those that are allowed in the LI Light Industrial zone (excluding a Refuse Derived Fuel plant).

Regarding the availability of utilities and services, an on-site well and septic system exist on the property. Other utilities likely to be needed are available to the site. Fire service is available and no objection was voiced by the Newberg Rural Fire Department.

6. Criterion (D) requires the consideration of whether there are other available lands in the county that are zoned for light industrial uses. Location, size and suitability are factors that may be considered. The applicant has put forth the argument that the Newberg Planning and Building Department Report 08-09 shows that the current access to available, buildable, industrially zoned property is very low compared to the need. The availability of other county LI zoned properties was not discussed in the application.
7. Regarding criterion (E), as noted in Finding A.12, a “committed” exception has already been taken on this property. Resolution No. 2009-2862, identified the area as having a “reasons” exception. The resolution further indicated that the property would need a new “reasons” exception. On page 8 of Ordinance 638 (which changed the property from VLDR 2.5 Very Low Density Residential to HI Heavy Industrial), it stated that:

“Although it may be argued that a new exception is required if there is a change in use, the Board Finds that a new exception is not required on the subject property because the property was the subject of a “committed exception” to Goals 3 and 4, and the committed exception was taken before the 3/20/86 effective date of the administrative rule, current OAR 660-04-018(2). OAR 660-04-018(4) state that the rule applies to only plan and zoning designations and exceptions adopted following the effective date of the rule. Additionally, even if an exception were required, an exception was taken in 1993 when the property was taken into Newberg’s Urban Growth Boundary. Therefore the request is consistent with YCZO 1208.02(E).

Based on the property having a “committed” exception in 1979, an exception again when it was taken into the UGB, and the fact that the present request is to go to a less intensive use (Heavy Industrial to Light Industrial), an additional reasons exception will not be required.

**C. Goal 12 (Transportation Rule) Provisions and Analysis**

The provisions of the Transportation Planning Rule, implementing Goal 12, must be addressed. OAR 660-12-060 contains the provisions that must be met:

*(1) Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility.*

1. The property is already zoned for Heavy Industrial use. The property is served by Wynooski Road. Going from a Heavy Industrial to a Light Industrial zone would not change or amend the functional plan because the Comprehensive Plan designation of the property remains Industrial. Therefore, it appears that the proposed use is consistent with the identified function, capacity, and level of service of the local roads.

**D. Limited Use Overlay Provisions**

The purpose of the Limited Use Overlay District is to limit permitted use(s) and activities in a specific location to only those uses and activities which are justified and approved through a Comprehensive Plan Amendment or a zone change. The application does not exactly specify what uses are being requested. The City has an interest in limiting the uses to those that are appropriate to border the city limits. In addition, the city and County both have an interest in the development being compatible with the neighboring development the property is planned to eventually go into the city limits. There is an existing list of development requirements that were placed on the Limited Use Overlay zone through Ordinance 638 (see attached). The Newberg City Council has requested twelve conditions to be placed on a limited use overlay zone. These are detailed in the attached Resolution No. 2009-2862. Conditions (J), (K) and (L) appear to go beyond what can be enforced through the Limited Use Overlay zone. Conditions (J) and (K) are to have the owners sign a consent to annex and file for a zone change respectively. Condition (L) would require that the failure to meet conditions (J) and (K) would "... nullify the zone change." Since zone changes require action by the Yamhill County Board of Commissioners, there is not a mechanism whereby a zone change can be nullified by not fulfilling a condition of approval. The County Planning Department would propose to replace conditions (J), (K) and (L) with the following requirement:

*Prior to site design review approval the property owner shall sign and record a waiver of remonstrance against the property being annexed into the city limits.*

**CONCLUSIONS FOR APPROVAL:**

1. The request is for a zone change from HI Heavy Industrial to LI Light Industrial on a 9.61 acre parcel. Approval of the request requires modification of the Limited Use Overlay Zone restrictions (A) thru (H), as applied by Yamhill County Ordinance 638.

2. The applicant has demonstrated that the request satisfies the Yamhill County Comprehensive Plan goals and policies for inclusion in the Newberg Urban Growth Boundary.
3. The applicant has demonstrated that the request satisfies the Yamhill County Comprehensive Plan goals and policies related to industrial development.
10. The applicant has demonstrated that the request satisfies the zone change provisions of Section 1208.02 of the Yamhill County Zoning Ordinance.

**CONCLUSION FOR DENIAL:**

1. The applicant has not shown that there is an existing, demonstrable need for the zoning that could not be satisfied by other Light Industrial zones in the County.

**RECOMMENDATION:**

*The following recommendation is given prior to the public hearing and may be modified after the receipt of testimony.*

Based upon the evidence in the record, Yamhill County Planning Staff recommends that the request by Elizabeth Fettig for a zone change from HI Heavy Industrial to LI Light Industrial on 9.61 acres of land identified as Tax Lot 3228-1800, be approved with a limited use overlay zone with the following conditions:

(A) The Limited Use Overlay shall only allow those permitted, conditional, or similar uses in the Yamhill County Light/General Industrial District (LI).

(B) The (RDF) Refuse Derived Fuel plant, similar use or any use that is accessory or incidental to such use is specifically not permitted.

(C) No city sewer or water facilities shall be authorized for any use permitted outside the City Limit boundary.

(D) One septic system may be authorized for the entire property which is the subject to this application. The septic system shall not exceed a capacity equal to three dwelling units or 15 people. No alternative forms of sewage disposal shall be permitted.

(E) Any application for development shall be referred to and reviewed by the City of Newberg.

(F) In addition to any other conditions of site design review, any development on the site requiring site design review shall be conditioned upon the following:

1. Either construction of ~~Page 17 of 141~~ improvements on Wyooski Road or making a payment-in-lieu for future street improvements.

Staff Report

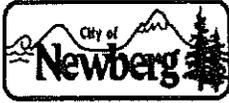
Docket Z-02-09 (Elizabeth Fettig)

Page 8

2. Either extending sewer lines and other needed utilities along the frontage of the property, or making a payment-in-lieu for sewer extension to the site.
3. Complying with City of Newberg front yard landscaping requirements.
4. Paving the driveway with asphalt or concrete for a minimum distance of 100 feet from Wynoski Road to minimize rocks and gravel carrying onto the street.

(G) Prior to site design review approval the property owner shall sign and record a waiver of remonstrance against the property being annexed into the city limits.

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## **RESOLUTION No. 2009-2862**

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**A RESOLUTION RECOMMENDING APPROVAL OF THE REQUESTED ZONE CHANGE FROM YAMHILL COUNTY HEAVY INDUSTRIAL (HI) TO YAMHILL COUNTY LIGHT INDUSTRIAL (LI) FOR PROPERTY LOCATED AT 2808 WYNOOSKI ROAD, YAMHILL COUNTY TAX LOT 3228-1800, WITH CONDITIONS**

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### **RECITALS:**

1. The property at 2808 Wynooski Road, Yamhill County Tax Lot 3228-1800, is currently zoned County Heavy Industrial (HI), with a limited use overlay that requires, that limits the uses to those allowed in the City M-3 zone, and requires that the applicant apply for annexation to the City and comply with City design review requirements.
2. On June 17, 2009, Elizabeth Fettig applied to Yamhill County for a zone change to County Light Industrial (LI). Yamhill County forwarded the application to the City of Newberg for review and a recommendation per the terms of the Newberg Urban Area Growth Management Agreement.
3. The subject property was included in Newberg's Urban Growth Boundary in 1993, through Newberg Ordinance 93-2370 and Yamhill County Ordinance 563. At that time, the proposed use of the property was a waste reduction and fuel processing facility. A "reasons" exception was taken from the Statewide Planning Goals to justify that specific use for the property. There was a subsequent application to the City in 1995 for annexation of the property. City Council approved the annexation request on December 4, 1995 through Ordinance 95-2423; however, the annexation ultimately failed due to lack of affirmative votes on the required Development Agreement for the property. Following the failure of the annexation request, the property owners applied to Yamhill County for a zoning amendment from VLDR 2.5 (Very Low Density Residential/2.5 acre minimum lot size) to HI (Heavy Industrial). This was approved through Yamhill County Ordinance 638, along with amendments to a Limited Use Overlay for the property.
4. The requested zone change would be consistent with the current Newberg Comprehensive Plan Designation of IND (Industrial) and would also align with the City's vision for the area as a future industrial park. However, development of the property should be consistent with City standards for site development and should be served with City utilities. Therefore, approval of the zone change would be appropriate with low intensity activities such as parking and storage being permitted. Any actual development of new structures on the site should require City utilities and site design standards.

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

The Council recommends to the Newberg Urban Area Management Commission and Yamhill County Commission that they approve the requested zoning amendment from Yamhill County Heavy Industrial (HI) to Yamhill County Light Industrial (LI) for property located at 2808 Wynooski Road, Tax Lot 3228-1800, provided that the zoning amendment is approved with the current Limited Use Overlay, as amended below

(deletions shown as ~~strikethrough~~, additions in double underline):

(A) The Limited Use Overlay shall only allow those permitted, conditional, or similar uses in the Yamhill County Light/General Industrial District (LI). ~~permit those uses specifically permitted in Newberg Development Code section 10.40.394 M-3 (Heavy Industrial). No other uses permitted within the Yamhill County Zoning Ordinance or Newberg Development Code shall be permitted.~~

(B) The (RDF) Refuse Derived Fuel plant, similar use or any use that is accessory or incidental to such use is specifically not permitted.

(C) No city sewer or water facilities shall be authorized for any use permitted outside the City Limit boundary.

(D) One septic system may be authorized for the entire property which is the subject to this application. The septic system shall not exceed a capacity equal to three dwelling units or 15 people. No alternative forms of sewerage disposal shall be permitted.

(E) No land divisions are permitted.

(F) Any application for development shall be referred to and reviewed by the City of Newberg through the ~~City Site Design Review process (Section 10.28 NDC)~~, and must comply with all City of Newberg Development standards.

(G) In addition to any other conditions of site design review, any development on the site requiring site design review shall be conditioned upon the following:

1. Either construction of half-street improvements on Wynooski Road or making a payment-in-lieu for future street improvements.
2. Either extending sewer lines and other needed utilities along the frontage of the property, or making a payment-in-lieu for sewer extension to the site.
3. Complying with City of Newberg front yard landscaping requirements.
4. Paving the driveway with asphalt or concrete for a minimum distance of 100 feet from Wynooski Road to minimize rocks and gravel carrying onto the street.

~~The City of Newberg may impose any conditions deemed appropriate as part of the Site Design Review. Yamhill County shall attach and enforce any and all conditions imposed by the City of Newberg on any development permit requested within the Limit Use Overlay zone.~~

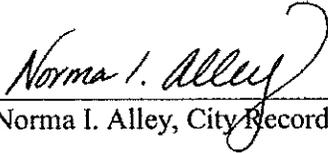
~~(G)~~ (H) As a condition to the plan amendment and zone change, the owners of the subject property shall sign a consent to annexation on forms supplied by the City of Newberg within 90 days of the effective date of zone change decision.

~~(H)~~ (I) As a condition to the plan amendment and zone change, the applicants shall initiate a new annexation request to the City of Newberg prior to applying for site design review or prior to October 1, 2011, whichever comes first.

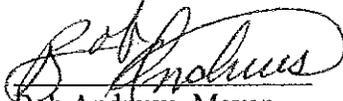
(J) Failure to meet conditions (H) or (I) above will nullify the zone change.

➤ **EFFECTIVE DATE** of this resolution is the day after the adoption date, which is: August 18, 2009.

**ADOPTED** by the City Council of the City of Newberg, Oregon, this 17<sup>th</sup> day of August, 2009.

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

**ATTEST** by the Mayor this 20<sup>th</sup> day of August, 2009.

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

Exhibits: "A" Map and Findings

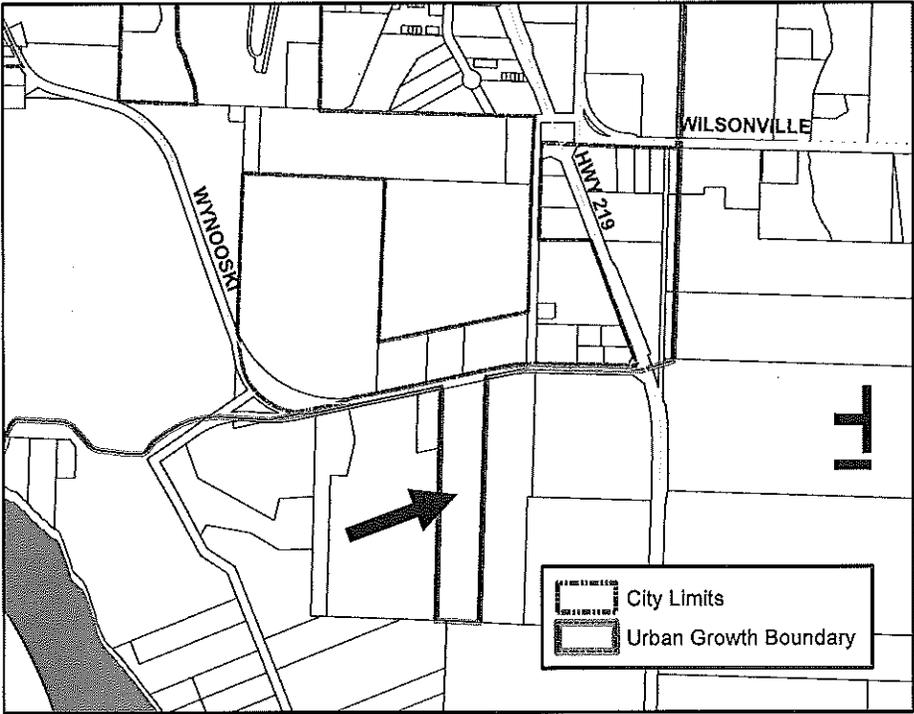
**LEGISLATIVE HISTORY**

By and through \_\_\_\_\_ Committee at \_\_\_\_ / \_\_\_\_ /200x meeting. Or,  None.  
(committee name) (date) (check if applicable)

**Exhibit "A" to  
Resolution 2009-2862:**

**Applicant:** Elizabeth Fettig  
**Owner:** Elizabeth Fettig  
**Address:** 2808 Wynooski Road  
**Tax Lot:** 3228-1800  
**Comp. Plan:** Industrial (IND)  
**Zoning:** Yamhill County Heavy Industrial (HI), with a limited use overlay that restricts the uses to those within the City M-3 zone, requires application for annexation, and other conditions.  
**Request:** Amend the Yamhill County zoning on tax lot 3228-1800 from Heavy Industrial (HI) with a limited use overlay to Light Industrial (LI). The tax lot is outside the City limits but within the Urban Growth Boundary.  
**File No:** G-09-009  
**City Council**  
**Hearing Date:** August 17, 2009

**Summary:** On June 17, 2009, Elizabeth Fettig applied to Yamhill County for a zone change from Heavy Industrial (HI) to Low Industrial (LI). The Fettig property is located at 2808 Wynooski Rd, tax lot 3228-1800. The property is not located within Newberg city limits, but is within Newberg's Urban Growth Boundary (UGB) and is therefore subject to the terms of the Newberg Urban Area Growth Management Agreement between Newberg and Yamhill County. According to the Agreement, any zone change requests within the UGB shall receive a recommendation from the Newberg City Council to Yamhill County. Yamhill County will then process the application and the request will be heard by the Newberg Urban Area Management Commission (NUAMC).



**A. Process:** The applicant's request for approval of a zone change is being processed through the provisions of the Newberg Urban Area Growth Management Agreement as follows:

June 17, 2009: The applicant submitted an application to Yamhill County to request a zoning amendment

July 17, 2009: Yamhill County Planning Department notified the City of the zone change application and sent over the materials for review.

August 17, 2009: City Council hearing on Resolution 2009-2862.

**B. Background:** The subject property was included in Newberg's Urban Growth Boundary in 1993, through Newberg Ordinance 93-2370 and Yamhill County Ordinance 563. At that time, the proposed use of the property was a waste reduction and fuel processing facility. A "reasons" exception was taken from the Statewide Planning Goals to justify that specific use for the property. There was a subsequent application to the City in 1995 for annexation of the property. City Council approved the annexation request on December 4, 1995 through Ordinance 95-2423; however, the annexation ultimately failed due to lack of affirmative votes on the required Development Agreement for the property. Following the failure of the annexation request, the property owners applied to Yamhill County for a zoning amendment from VLDR 2.5 (Very Low Density Residential/2.5 acre minimum lot size) to HI (Heavy Industrial). This was approved through Yamhill County Ordinance 638, along with amendments to a Limited Use Overlay for the property.

The current zoning of the property is County Heavy Industrial (HI) with a Limited Use Overlay that states the following:

*(A) The Limited Use Overlay shall only permit those uses specifically permitted in Newberg Development Code section 10.40.394 M-3 (Heavy Industrial). No other uses permitted within the Yamhill County Zoning Ordinance or Newberg Development Code shall be permitted.*

*(B) The (RDF) Refuse Derived Fuel plan, similar use or any use that is accessory or incidental to such use is specifically not permitted.*

*(C) No city sewer or water facilities shall be authorized for any use permitted outside the City Limit boundary.*

*(D) One septic system may be authorized for the entire property which is the subject to this application. The septic system shall not exceed a capacity equal to three dwelling units or 15 people. No alternative forms of sewerage disposal shall be permitted.*

*(E) No land divisions are permitted.*

*(F) Any application for development shall be referred to and review by the City of Newberg through the City Site Design Review process (Section 10.28 NDC), and must comply with all City of Newberg Development standards.*

*The City of Newberg may impose any conditions deemed appropriate as part of the Site Design Review. Yamhill County shall attach and enforce any and all conditions imposed by the City of Newberg on any development permit requested within the Limit Use Overlay zone.*

*(G) As a condition to the plan amendment and zone change, the owners of the subject property shall sign a consent to annexation on forms supplied by the City of Newberg.*

*(H) As a condition to the plan amendment and zone change, the applicants shall initiate a new annexation request to the City of Newberg.*

The current Limited Use Overlay (approved through Yamhill County Ordinance 638) specifically prohibits the waste reduction and fuel processing facility type use on the property. According to OAR 660-220, a new "reasons" exception would have needed to be approved for the property due to the change of approved uses. It is unclear whether a new "reasons" exception was obtained for the property at that time; however, a new "reasons" exception would need to be taken prior to any new

development on the property.

- C. **Applicable Review Criteria:** There are several documents to consider when reviewing this application for a zone change, including the Yamhill County Comprehensive Plan, Newberg Comprehensive Plan, Ordinance 93-2370 that included this property in the Newberg Urban Growth Boundary, and Oregon Administrative Rule 660-004(4). Each of these is discussed in further detail below.

I. **Yamhill County Comprehensive Plan**

**SECTION I.: Urban Growth and Change and Economic Development**

**B.Rural Area Development**

**GOAL STATEMENT**

1. To provide an adequate amount of land, development areas and sites to accommodate those uses which are customarily found in rural areas or require or are better suited to rural locations, without compromising the basic goal relating to urban containment and orderly urban development. (66)

**POLICIES**

- E. Proposed rural development within acknowledged urban growth boundaries or designated urban reserve areas shall be reviewed by the affected city to ensure that long-term options for development to urban densities with full urban services are protected. (Ord 596)

The property is currently within the UGB and has an Industrial Comprehensive Plan designation. The City has wastewater, transportation, and other utility plans that show Wynooski being improved along the frontage of the property, a sewer line being extended in Wynsooki, and other improvements. Thus, it is critical that these improvements be made in conjunction with development of the property.

The surrounding properties are within the Newberg Urban reserve area. The City has recently been working on an industrial master plan (South Industrial Master Plan) for the area south of Newberg, on either side of Hwy 219 and along the south side of Wynooski Rd. This tax lot is included within the plan area. Therefore, it is in the City's interest that any development occurring within the South Industrial Plan study area be done in accordance with City standards. This will allow the subject property to be a fully functioning part of the future industrial park area upon future annexation.

In accordance with this Yamhill County Comprehensive Plan Policy, the City is reviewing the request and would like the County to place conditions on any future development of the property to ensure that "long-term options for development to urban densities with full urban services are protected".

**H. Industrial Development**

**GOAL STATEMENT**

1. To concentrate industries of similar types, service needs, and performance characteristics within designated areas of each of the existing urban centers; to encourage adequate land for new industrial development within urban growth boundaries; to encourage the relocation of existing industries from undesirable locations in order to eliminate land use conflicts; to attract new industries in accordance with the need to achieve a more balanced local property tax and employment base, while maintaining a high standard of environmental quality; and to protect the stability and functional aspect of industrial areas by protecting them from incompatible uses.

## POLICIES

- B. To the greatest extent possible, industrial areas will be located within urban growth boundaries. Those industrial areas located outside urban growth boundaries will be compatible with the industrial development goal and will be located where they can be adequately served by necessary major utility lines, including electric power substations and transmission lines, trunk sewer lines, trunk water lines, and where appropriate, trunk gas lines.

The subject property is currently located adjacent to other industrial properties, both outside and inside the City limits. The area is a good fit for industrial land as it has good transportation access and natural buffers from other nearby uses. However, properties may not connect to City utilities, including water and sanitary sewer, until they are annexed into the City. Therefore, it is difficult to meet this Policy as industrial developments outside City limits, even within Urban Growth Boundaries, may not be adequately served by necessary utility lines.

## II. Newberg Comprehensive Plan

### N. Urbanization

#### Goal:

1. To provide for the orderly and efficient transition from rural to urban land uses.

#### Policies:

##### 1. Urban Growth Boundary and Urban Reserve Area Policies

- a. The conversion of lands from rural to urban uses within the Urban Growth Boundary will be based on a specific plan for the extension of urban services.
- b. The City shall oppose urban development outside the City limits but within the Newberg Area of Influence.
- c. The City shall encourage urban development within the City limits.
- d. The Urban Growth Boundary shall designate urbanizable land.
- e. The City will support development within the areas outside the City limits but within the Newberg Urban Growth Boundary or Urban Reserve Area based on the following standards or restrictions:

-Residential development will be allowed on the basis of one house per 10 acres, or any lot of record created prior to January 1, 1989.

**-New commercial and industrial uses will generally be discouraged within the UGB and Urban Reserve Area.**

-Agricultural uses will be in accordance with the Yamhill County Comprehensive Plan.

-The City and County shall coordinate plans for interim rural residential development within the designated Urban Reserve Area.

After street and utility corridor plans are adopted, overall rural residential densities shall be limited to one dwelling per five acres.

The following strategies will be used to ensure that interim rural development does not inhibit long-term urbanization of lands within the Newberg UGB and Urban Reserve Area (these include but are not limited to):

- 1) shadow plats
- 2) cluster development
- 3) redevelopment plans

**4) non-remonstrance agreements for annexation and provision of urban facilities**  
**Development not meeting the standards may be opposed by the City. [Emphasis added]**

A key part of this Policy is pointing out that lands within the Urban Growth Boundary are “urbanizable”. An important component of being urbanizable is the ability to develop properties to City standards, including having City sewer and water to serve the property. As subsection (e) states, “new commercial and industrial uses will generally be discouraged within the UGB and Urban Reserve Area”. One reason for this policy is that when development happens that is not “urbanized” (i.e. up to City standards and served by City utilities), it takes away the long term options for development that is up to City standards. A zone change on the subject property does not constitute new development; however, prior to any development on the property the City would request that provisions are made to ensure eventual connection to City utility services and that development is according to City standards.

### **III. Ordinance 93-2370 (City of Newberg) & Ordinance 563 (Yamhill County)**

Ordinance 93-2370 is the City of Newberg ordinance that amended the Urban Growth Boundary to include the subject property. The ordinance has three significant sections that are applicable to this request:

Section 1. Tax lot 3228-1800 is hereby included in the Urban Growth Boundary and designated IND (Industrial) on the Comprehensive Plan and the Comprehensive Plan Map shall be amended to reflect the change. Upon annexation, the zoning attached to this site will be designated at that time. The proposed use for the site would require a M-3 (Heavy Industrial) zone and would be a conditional use.

The proposed zone change would not require an amendment to the Newberg Comprehensive Plan as IND is the general designation for all industrial zoning districts. However, the proposed zoning upon annexation to the City would change from M-3 to M-2, necessitating a new “reasons” exception.

Section 2. To comply with OAR 660-018(3)(b), the applicant will sign, prior to annexation and zone change, a development agreement with the City which will allow only waste reduction and fuel processing activities on the subject property. The purpose of this provision is to assure that any lands added to the UGB for a specific need will be used only for that need. If not, then the property will be considered for removal from the UGB.

The OAR is discussed in further detail below in section IV; however, the Ordinance requirements must be followed. A development agreement will not be required until the time of annexation and zone change. However, as discussed below, a “reasons” exception was used to include this property in the Urban Growth Boundary for a specific use. If a new use is being proposed for the subject property, a new “reasons” exception must be obtained.

Section 3. Prior to the annexation of any parcel within this area, the subject property owner must sign a nonremonstrance agreement to participate in a local improvement district (LID), for the improvement of public utilities (sewer, water, street, storm sewer, etc.).

The City has moved away from requiring nonremonstrance agreements in favor of obtaining payments-in-lieu of improvements from property owners upon development. Therefore, this section would still stand with a payment-in-lieu for street improvements and utility services being required upon development of the property.

Newberg recently has done an engineering report for a local improvement district to extend wastewater service to the area. This report could be used as an estimate for the payment-in-lieu amount, adjusted for inflation, unless/until further studies or estimates are prepared.

Ordinance 563 (Board Order 93-848) is the Yamhill County ordinance that amended the Yamhill County Comprehensive Plan Map to show the subject property as having a "Future Urbanizable" designation. This designation is made when a property becomes part of a city's Urban Growth Boundary. In the Ordinance, staff noted that DLCD commented on the proposal and stated that "the application must be shown to be consistent with the 'reasons' exception requirements of the Oregon Administrative Rules (OARs), and that use of the land must be limited to that use which is justified".

As stated above, this requested zone change would not necessarily require a new "reasons" exception as long as the property owner was planning to still use the property for what the reasons exception was for (waste reduction and fuel processing). If the property owner wishes to change the proposed use of the property, a new reasons exception must be approved.

#### **IV. Oregon Administrative Rule 660-004-0018(4)**

This rule covers Planning and Zoning for Exception Areas. Subsection (4) states the following: (a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception; and (b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required.

The original "reasons" exception was taken to permit the property to develop as a waste reduction and fuel processing facility. To accomplish this goal, the County changed the comprehensive plan designation from Very Low Density Residential (VLDR) to Future Urbanizable and the property was added to Newberg's Urban Growth Boundary. Through subsequent processes, annexation of the property ultimately failed and the County changed the zoning of the property from VLDR 2.5 to Heavy Industrial. At the time of this zone change, the Limited Use Overlay on the property was amended to prohibit "Refuse Derived Fuel" and other similar uses. Therefore, the original "reasons" exception cannot apply to the property as it cannot be developed to the justified use. The change of zoning would fall under subsection (b) above, and a new "reasons" exception must be approved.

Although the property was previously excepted from Goals 3 and 4, an exception is also required from Goal 14 (as specified by OAR 660-004, Application of the Goal 2 Exception Process to Certain Goals). In part, the justification should address "other possible impacts...on the costs of improving roads and on the costs to special service districts" (OAR 660-004-220(2)(c)). These factors must be taken into account when examining the development possibilities for this property. Wynooski Road is currently not developed to City standards and is not served by City sewer, yet it is within Newberg's "urbanizable" area. Any justification of development must address whether the proposed use can reasonably be accommodated without the provision of adequate public facilities.

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Amending Ordinance 631 )  
 to Change the Terms and Conditions )  
 of the Limited Use Overlay Zone which )  
 Accompanied the Amendments to the )  
 Yamhill County Comprehensive Plan ) **ORDINANCE 638**  
 and the Official Zoning Map Designations )  
 on a 10-Acre Parcel Known as Tax Lot )  
 3228-1800; Applicant Marvin Schneider; )  
 Docket PAZ-02-96. )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business in special session on March 19, 1998, Commissioners Ted Lopuszynski, Robert Johnstone, and Thomas E.E. Bunn being present.

WHEREAS, on June 19, 1997, the Board enacted Ordinance No. 631, including findings, approving the application by Marvin Schneider ("applicant"), Planning Docket PAZ-02-96, to change the Comprehensive Plan (1974) Map from "VLDR" (Very Low Density Residential) to "I" (Industrial) and the Official Zoning Map from "VLDR 2.5" (Very Low Density Residential/2.5 acre minimum lot size) to "HI" (Heavy Industrial) and a Limited Use Overlay zone limiting the use of the property to waste reduction and fuel processing, on a 10 acre parcel known as Tax Lot 3228-1800; and

WHEREAS, the parcel is within the Urban Growth Boundary of Newberg, and therefore the matter was referred to the City of Newberg, and applicant reached an agreement with the City of Newberg to change the terms and conditions of the Limited Use Overlay which changes were adopted by the Newberg City Council as set forth in Newberg City Council Resolution No. 97-2074, and as more particularly described hereinbelow; and

WHEREAS, on October 30, 1997, the Board held a duly noticed public hearing to consider modifying Ordinance 631 to include the terms and conditions contained in Newberg City Council Resolution No. 97-2074, and following the close of the hearing, voted 2-1 (Commissioner Bunn voting no) to amend Ordinance 631 to incorporate the new terms and conditions as more specifically set forth hereinbelow and directed staff to prepare an ordinance, with supplemental findings, attached hereto as Exhibit "A" and incorporated herein by this reference;

MIX 2711  
**ORDINANCE 638**

Page 1

B.O. 98-188

WHEREAS, adoption of this ordinance and supplemental findings is in the best interests of the citizens of Yamhill County; NOW THEREFORE,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Section 1. Section 2 of Ordinance 631 is deleted and the following is inserted in lieu thereof:

"Section 2. The Official Zoning Map, as amended, is hereby amended as specified in the attached Exhibit "B" to reflect a zoning designation of "HI" (Heavy Industrial), with a Limited Use Overlay which restricts the uses and requires a Newberg Site Design Review of any proposed development as follows:

(A) The Limited Use Overlay shall only permit those uses specifically permitted in Newberg Development Code section 10.40.394 M-3 (Heavy Industrial). No other uses permitted within the Yamhill County Zoning Ordinance or Newberg Development Code shall be permitted

(B) The (RDF) Refuse Derived Fuel plan, similar use or any use that is accessory or incidental to such use is specifically not permitted.

(C) No city sewer or water facilities shall be authorized for any use permitted outside the City Limit boundary.

(D) One septic system may be authorized for the entire property which is the subject to this application. The septic system shall not exceed a capacity equal to three dwelling units or 15 people. No alternative forms of sewerage disposal shall be permitted.

(E) No land divisions are permitted.

(F) Any application for development shall be referred to and review by the City of Newberg through the City Site Design Review process (Section 10.28 NDC), and must comply with all City of Newberg Development standards.

The City of Newberg may impose any conditions deemed appropriate as part of the Site Design Review. Yamhill County shall attach and enforce any and all conditions imposed by the City of Newberg on any development permit requested within the Limit Use Overlay zone.

(G) As a condition to the plan amendment and zone change, the owners of the subject property shall sign a consent to annexation on forms supplied by the City of Newberg.

(H) As a condition to the plan amendment and zone change, the applicants shall initiate a new annexation request to the City of Newberg.

Section 2. The findings attached to Exhibit "A" part of Ordinance No. 631 are hereby deleted and the attached Findings For Approval attached hereto as Exhibit "A" to this Ordinance No. 638 and incorporated herein by reference are hereby adopted in lieu thereof and in support of this amendment to Ordinance 631.

Section 3. In all other respects Ordinance No. 631 shall remain in full force and effect.

Section 4. Effective Date. The first reading of the ordinance was March 5, 1998. The second reading was March 19, 1998. In accordance with ORS 203.045(9), 1997 replacement part, this ordinance shall become effective June 18, 1998.

Record of Vote: Ayes: Commissioners Lopuszynski and Johnstone  
Nay: Commissioner Bunn.

DONE at McMinnville, Oregon this 19th day of March, 1998.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHARLES STERN  
County Clerk

*Ted Lopuszynski*  
Chairman TED LOPUSZYNSKI

By *[Signature]*  
Deputy County Clerk Ann White

*Robert Johnstone*  
Commissioner ROBERT JOHNSTONE

FORM APPROVED BY:

*John C. Pinkstaff*  
JOHN C. PINKSTAFF  
Assistant County Counsel

*Thomas E.E. Bunn*  
Commissioner THOMAS E.E. BUNN

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Accepted by Yamhill County  
Board of Commissioners on  
3-19-98 by Board Order  
#98-188

EXHIBIT "A"

ORDINANCE 638

Findings for Approval

DATE OF NEWBERG URBAN AREA  
MANAGEMENT COMMISSION  
RECOMMENDATION:

March 20, 1997

DATE OF ADOPTION  
OF IMPLEMENTING ORDINANCE 631:

June 2, 1997

DATE OF ADOPTION OF  
ORDINANCE 638, AMENDING  
ORDINANCE 631:

March 5, 1998

DOCKET: PAZ-02-96

REQUEST: Plan amendment from VLDR Very Low Density Residential to I  
Industrial and a zone change from VLDR-2.5 Very Low Density  
Residential to HI Heavy Industrial.

PLAN DESIGNATION: VLDR Very Low Density Residential.

APPLICANT: Marvin Schneider.

TAX LOT: 3228-1800.

LOCATION: 2808 Wynooski Road, Newberg.

CRITERIA: Sections 502, 801, and 1208 of the Yamhill County Zoning  
Ordinance; Statewide Planning Goals. The application will be  
processed using the Newberg Urban Area Management Agreement.

FINDINGS:

A. Background Facts

1. Lot Size: Approximately 10 acres.
2. Access: Wynooski Road.

3. On-Site Land Use: The northern half of the parcel contains a level area. The southern end of the property slopes down to a creek. This portion contains mature trees and riparian vegetation. Approximately six of the ten acres is suitable for development.
4. Surrounding Land Use and Zoning: Property to the north is inside the city limits and zoned M2. Property to the south is zoned EF-40 Exclusive Farm Use. Property to the east contains the Newberg Transfer Station and is zoned PWS Public Works Safety. One adjacent parcel to the west and properties to the southwest are zoned VLDR 2.5 Very Low Density Residential. These properties contains rural residential and small farm/forestry uses. The majority of the adjacent land to the west is zoned HI Heavy Industrial. The City's Waste Water Transfer Plant and Smurfit pulp and paper mill are in the vicinity of this parcel.
5. Urban Reserve Area: Property to the east and west of the subject parcel is designated as an Urban Reserve Area.
6. Water and Sewage Disposal: City representative's have stated that sewer and water will not be available if the use is developed in the county.
7. Fire Protection: Newberg Rural Fire District.
8. Taxes: The property is not receiving a farm or forestry deferral.
9. Soils: Sheet 22 of the Soil Survey shows that the northern 1/3 of the property contains Woodburn (WuB) and Aloha (Ah) soils. These are rated as Agricultural Class II. The southern 2/3 of the property contains Terrace Escarpments (Class VI) and Wapato (Wc - Class III).
10. Previous Actions: In 1993 there was a request to have this property included in the Newberg Urban Growth Boundary (UGB). The application was assigned county Docket PA-2-93 and city Docket UGB-2-93. On September 14, 1993 the Newberg Urban Area Management Commission (NUAMC) reviewed the request and unanimously recommended approval. The recommendation was adopted by each jurisdiction. Subsequently there was an application made for annexation and a zone change to a city designation of M-3 Heavy Industrial. This request was approved by the Newberg City Council on December 4, 1995.

Part of the approval required completion of a Development Agreement between the city and the applicant in accordance with the requirements of the previously approved Urban Growth Boundary Amendment. An agreement was drawn up and was sent to the City Council. The Council needed five affirmative votes to pass the Development Agreement. The agreement failed to receive the five affirmative votes so the annexation could not be finalized.
11. Other Factors: FIRM map 410249 0187 shows the southern half of the property is within the 100-year floodplain.

12. Exceptions: The subject parcel and area to the north, south, east and west were all granted a "committed" exception from the statewide planning goals protecting farm and forestry uses (goals 3 and 4). The area was granted an exception and plan designated VLDR Very Low Density Residential by Exceptions Statement I. This document was adopted by the Board of Commissioners May 3, 1979.

**B. Transportation Planning Rule.**

1. OAR 660, Division 12, is the "Transportation Planning Rule." Certain land-use actions are subject to provisions of the rule. OAR 660-12-060 states:

*(1) Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:*

- (a) Limiting allowed land uses to be consistent with planned function, capacity and level of service of the transportation facility;*
- (b) Amending the TSP to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or,*
- (c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.*

*(2) A plan or land use regulation amendment significantly affects a transportation facility if it:*

- (a) Changes the functional classification of an existing or planned transportation facility;*
- (b) Changes standards implementing a functional classification system;*
- (c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or*
- (d) Would reduce the level of service of the facility below the minimum acceptable level identified in the TSP.*

*(3) Determinations under subsection (1) and (2) of this section shall be coordinated with affected transportation facility and service providers and other affected local or state governments.*

2. The applicant has provided a study prepared by Kittelson and Associates, dated February, 1995 and updated traffic impact analysis dated December 21, 1995 to address concerns regarding potential traffic impacts to Highway 219 (Villa Road)/Highway 99W, Springbrook Street/Highway 99W and Highway 219/Wilsonville Road intersections and Wyooski Road ("Kittelson traffic impact analysis"). The study analyzed the impact a refuse derived fuel facility would have on the adjacent roads. While the fuel facility was not approved for this site, this type of facility, with frequent deliveries, is indicative of traffic expected in the Heavy Industrial zone. The study examines the level of service on nearby roads and concludes that the facility will not significantly impact the level-of-service on the road system.

The Kittelson traffic impact analysis was sent to the Oregon Department of Transportation and the Yamhill County Public Works Department for referral. The Kittelson traffic impact analysis was reviewed by the Director of Yamhill County Public Works Department, Bill Gille, who testified that he concurs with the analysis. Therefore, the Board adopts and incorporates herein the Kettelson traffic impact analysis as part of these findings. For the reasons contained in the Kittelson traffic impact analysis, the Board finds that the proposed amendment to the comprehensive plan and zoning district will not "significantly affect any transportation facility" as defined in OAR 660-12-060.

### **C. Zone Change and Plan Amendment Provisions and Analysis.**

1. This request is for a zone change from VLDR 2.5 Very Low Density Residential to HI Heavy Industrial and a Plan amendment from VLDR to I Industrial for 10 acres.

2. The zone change portion of the request must comply with the standards and criteria in YCZO Section 1208.02. These provisions are:

- (a) That the proposed change is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan.*
- (b) That there is an existing demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.*
- (c) That the proposed change is appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and*

*the availability of utilities and services likely to be needed by the anticipated uses in the proposed district.*

- (d) *That other lands in the county already designated for the proposed use are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors.*
- (e) *That the amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable.*

The findings regarding these criteria are provided in subsections C.3 through C.7 below.

3. The Board finds that the proposed change is consistent with the goals, policies, and any other applicable provisions of the Comprehensive Plan, as required by YCZO 1208.02 (a). There are several references in the *Yamhill County Comprehensive Plan* to industrial uses. Yamhill County Comprehensive Plan ("YCCP") Section I.H. Industrial Development notes in the summary that "The provision of adequate urban services is a major concern in an industry's location and operation." Goal Statement 1 of this section directs the county:

*To concentrate industries of similar types, service needs, and performance characteristics within designated areas of each of the existing urban centers; to encourage adequate land for new industrial development within urban growth boundaries; to encourage the relocation of existing industries from undesirable locations in order to eliminate land use conflicts; to attract new industries in accordance with the need to achieve a more balanced local property tax and employment base, while maintaining a high standard of environmental quality; and to protect the stability and functional aspect of industrial areas by protecting them from incompatible uses.*

Policy statement b. of this goal states:

*To the greatest extent possible, industrial areas will be located within urban growth boundaries. Those industrial areas located outside urban growth boundaries will be compatible with the industrial development goal and will be located where they can be adequately served by necessary major utility lines, including electric power substations and transmission lines, trunk sewer lines, trunk water lines, and where appropriate, trunk gas lines.*

The Goals and Policies cited above direct the county to encourage the clustering of industrial development in areas appropriate to handle the use. In accomplishing these goals, the county must also be sensitive to the concerns of Newberg. YCCP Section V Goal Statement 2 directs the county to:

*To preserve and enhance the charm and amenity values of the county, while accommodating change, through ensuring harmony between urban development and the natural environment, at the same time cultivating more attractive urban environments in which to live, work and play.*

To assure that the development satisfies this Goal, a Site Design Review and Similar Use approval will be required.

The Board finds that the proposed zone change is also consistent with the following additional YCCP provisions:

*"h. Established industrial areas may be extended and new industrial areas designated by plan amendment where development trends warrant such extension or designation ...". (YCCP I. H. 1. h)*

The Board finds that zoning and industrial uses on Wynooski Road has established a trend that this area is appropriate for heavy industrial use. There is an established trend on Wynooski to locate industrial uses (Smurfit, Newberg Garbage and Transfer Services, and Newberg's waste water treatment facility)

4. The Board finds that there is an existing demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone, as required by YCZO 1208.02(b).

The City of Newberg submitted information that indicated a long term need for industrial land within the city limits. Although this property is not within their city limits, the City has taken this property into its Urban Growth Boundary. Presently the property is zoned in the county as Very Low Density Residential. The applicant stated that if this parcel were used pursuant to the existing Comprehensive Plan we would see single family residences and families living: (1) next door to a garbage collection and transfer site, (2) across the street from heavy industrial property, (3) down the street from Smurfit Pulp and Paper Mill, and (4) near Newberg's waste water transfer plant.

The Board is persuaded by the applicant's statement of need. The Board also finds that a need exists for the proposed zone change given the availability and location of other lands so zoned and their suitability for the uses allowed by the zone. Although there are other sites within the Newberg city limits zoned industrial, none of those properties are as suitable as this property because of the proximity of this property to other heavy industrial uses in the area, including the property inside the city limits to the north which is zoned M2, the city waste water treatment plant adjacent to the site within 0.3 mile, Smurfit paper plant within 0.4 mile, within 1600 feet of the Smurfit sewer lagoons, the vehicular access from Wynooski Road which was improved for industrial traffic by the County in 1989/90, and the PWS zoned Newberg Transfer Station property

to the east. The Smurfit properties are planned and zoned for heavy industrial use to the west are planned and zoned industrial property

5. The Board finds that the proposed change is appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district, as required by YCZO 1208.02(c).

The applicant stated:

"As mentioned above, the surrounding land use designation is all industrial, heavy industrial is next door and down the street. The road has been improved to accommodate industrial traffic. Because all the surrounding land use designation is industrial, this facility fits into the current pattern of development ...".

As described in Finding A.4 above, the surrounding land uses, the density and pattern of development in the surrounding area contains industrial or industrial types of uses. The city of Newberg has expressed approval of the location of this facility. On December 4, 1995 the Newberg City Council adopted Ordinance 95-2423. Exhibit "A" to Ordinance 95-242 contains reference to a comprehensive plan policy which states:

*"Heavy industrial uses should be located in the area near Smurfit Newsprint, an existing pulp and paper mill. Other designated areas should be developed to light industrial or industrial park type areas."*

The staff response to this plan policy stated:

"By zoning the proposed property M-3 (Heavy Industrial) ... will further this very specific goal. The proposed area is situated within 4/10 of a mile from Smurfit, within 3/10 of a mile from the Waste Water Treatment Plant, within 1600 feet of the Smurfit sewer lagoons and next door to the Newberg Transfer Station. ... There is no better location for M-3 (Heavy Industrial) zoning that the proposed site."

The request for a zone change to a County designation of HI Heavy Industrial is very similar to Newberg's M-3 Heavy Industrial designation. The City of Newberg did have some concerns about design standards of the initially proposed use, rather than the location of the use. The proposed use has been withdrawn so any use must satisfy the restrictions of the limited use overlay. Additionally, the design and conditions of approval for the site will be evaluated at the time an application is made for a Site Design Review.

The Board finds that utilities and services likely to be needed by the anticipated uses in the proposed district are available. The road system is adequate to handle Heavy Industrial traffic.

Water will be an on-site well and on-site sewage disposal system will be required. Electricity can be extended to the property. Fire protection will be furnished by the Newberg Rural Fire District.

6. The Board finds that other lands in the county already designated for the proposed use are either unavailable or not as well-suited for the anticipated uses due to location, size, or other factors, as required by YCZO 1208.02 (d). As discussed in finding C.4 above, location of this property is better suited for the proposed use than other industrial property in the county.

7. The Board finds that the amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable. As discussed in Finding A.12 above, this property was part of Exception Statement I which was adopted by Yamhill County in 1979, in which a "committed" exception was taken.

Although it may be argued that a new exception is required if there is a change in use, the Board finds that a new exception is not required on the subject property because the property was the subject of a "committed exception" to Goals 3 and 4, and the committed exception was taken before the 3/20/86 effective date of the administrative rule, current OAR 660-04-018(2). OAR 660-04-018(4) states that the rule applies only to plan and zoning designations and exceptions adopted following the effective date of the rule.<sup>1</sup> Additionally, even if an exception were required, an exception was taken in 1993 when the property was taken into Newberg's Urban Growth Boundary. Therefore the request is consistent with YCZO 1208.02(e).

#### D. Limited Use Overlay District.

1. An exception was taken at the time the UGB amendment was completed. However, the Department of Land Conservation and Development requested that the City include a plan policy that indicates the use of this property is limited to the described "waste reduction and fuel processing." This limitation does not appear to have been placed on the property by the City.

2. Section 904.03 of the *Yamhill County Zoning Ordinance* allows the placement of a limited use overlay to be placed on plan amendments. Section 904.03 states:

*When the Limited Use Overlay District is applied, the uses permitted in the underlying zone shall be limited to those specifically referenced in the ordinance adopting the Limited Use Overlay District.*

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<sup>1</sup> See *Murray v. Marion County*, 23 Or LUBA 268, note 10 (1992). Former OAR 660-04-018 was interpreted to require a new exception only where the original exception required consideration of impacts on adjacent uses, and since a "committed exception" standards do not require assessment of impacts whereas a "reasons" exception does include a requirement that the proposed uses will be compatible. See *Cook v. Yamhill County*, 14 Or LUBA 78 (1985) (holding that a change in use of property for which a "committed" exception is taken did not require a new exception under former OAR 660-04-018 because the standards for a "committed" exception consider impracticability of compliance, rather than compatibility and impacts).

3. On June 19, 1997, the Board enacted Ordinance No. 631, including findings, approving the application by Marvin Schneider ("applicant"), Planning Docket PAZ-02-96, to change the Comprehensive Plan (1974) Map from "VLDR" (Very Low Density Residential) to "I" (Industrial) and the Official Zoning Map from "VLDR 2.5" (Very Low Density Residential/2.5 acre minimum lot size) to "HI" (Heavy Industrial) and a Limited Use Overlay zone limiting the use of the property to waste reduction and fuel processing. Following adoption by the County, the Newberg City Council declined to approve the requested plan amendment and zone change, and the City advised the County that it opposed the use of the property for a waste reduction and fuel processing. The County met with the applicant and the City.

At the request of the City, the applicant changed the request from a Refuse Derived Fuel facility to simply having the property rezoned to a Heavy Industrial zone designation. The City demanded placement of conditions on the limited use overlay to prevent the use of the property for a Refuse Derived Fuel facility. Because the applicant did not object to these limitations the Board finds that based on the conditions suggested by the City, the subject property should be subject to a Limited Use Overlay which restricts the uses and requires a Newberg Site Design Review of any proposed development as follows:

(A) The Limited Use Overlay shall only permit those uses specifically permitted in Newberg Development Code section 10.40.394 M-3 (Heavy Industrial). No other uses permitted within the Yamhill County Zoning Ordinance or Newberg Development Code shall be permitted.

(B) The (RDF) Refuse Derived Fuel plan, similar use or any use that is accessory or incidental to such use is specifically not permitted.

(C) No city sewer or water facilities shall be authorized for any use permitted outside the City Limit boundary.

(D) One septic system may be authorized for the entire property which is the subject to this application. The septic system shall not exceed a capacity equal to three dwelling units or 15 people. No alternative forms of sewerage disposal shall be permitted.

(E) No land divisions are permitted.

(F) Any application for development shall be referred to and reviewed by the City of Newberg through the City Site Design Review process (Section 10.28 NDC), and must comply with all City of Newberg Development standards.

The City of Newberg may impose any conditions deemed appropriate as part of the Site Design Review. Yamhill County shall attach and enforce any and all conditions imposed by the City of Newberg on any development permit requested within the Limit Use Overlay zone.

(G) As a condition to the plan amendment and zone change, the owners of the subject property shall sign a consent to annexation on forms supplied by the City of Newberg.

(H) As a condition to the plan amendment and zone change, the applicants shall initiate a new annexation request to the City of Newberg.

Any other use allowed by the HI zone will require amendment to the overlay zone and taking of an exception pursuant to OAR 660-04.

#### CONCLUSIONS FOR APPROVAL:

1. The request is for a plan amendment from VLDR Very Low Density Residential to I Industrial and a zone change from VLDR-2.5 Very Low Density Residential to HI Heavy Industrial.
2. The request complies with Section 1208.02(a) of the YCZO because the proposal appears to be consistent with the goals and policies of the Yamhill County Comprehensive Plan concerning rural residential zoning.
3. The request complies with Section 1208.02(b) of the YCZO because there is an existing demonstratable need for heavy industrial zoning in the Newberg Area.
4. The request complies with Section 1208.02(c) of the YCZO because the proposal would be appropriate, considering surrounding zoning.
5. The request complies with Section 1208.02(d) because the NUAMC previously determined in a related UGB amendment that there was a demonstrated lack of other nearby locations that could accommodate Heavy Industrial use.
6. The request complies with Section 1208.02(e) of the YCZO because a new exception is not required to be taken for a committed exception was taken in 1979, and even if a new exception were required, an exception for the proposed use was taken in 1993 which satisfied the requirements of OAR 660-04 for taking an exception to Statewide Planning Goals 3 and 4.

#### DECISION:

Based on the above findings, analysis and conclusions, the Board hereby approves the request by Marvin Schneider, Planning Docket PAZ-02-96, to change the Comprehensive Plan (1974) Map from "VLDR" (Very Low Density Residential) to "I" (Industrial) and the Official Zoning Map from "VLDR 2.5" (Very Low Density Residential / 2.5 acre minimum lot size) to "HI" (Heavy Industrial) on Tax lot 3228-1800, subject to the following:

1. In addition to the zoning designation of "HI" (Heavy Industrial), the subject property shall be subject to a Limited Use Overlay which restricts the uses and requires a Newberg Site Design Review of any proposed development as follows:

(A) The Limited Use Overlay shall only permit those uses specifically permitted in Newberg Development Code section 10.40.394 M-3 (Heavy Industrial). No other uses permitted within the Yamhill County Zoning Ordinance or Newberg Development Code shall be permitted

(B) The (RDF) Refuse Derived Fuel plan, similar use or any use that is accessory or incidental to such use is specifically not permitted.

(C) No city sewer or water facilities shall be authorized for any use permitted outside the city limit boundary.

(D) One septic system may be authorized for the entire property which is the subject to this application. The septic system shall not exceed a capacity equal to three dwelling units or 15 people. No alternative forms of sewerage disposal shall be permitted.

(E) No land divisions are permitted.

(F) Any application for development shall be referred to and review by the City of Newberg through the City Site Design Review process (Section 10.28 NDC), and must comply with all City of Newberg Development standards.

The City of Newberg may impose any conditions deemed appropriate as part of the Site Design Review. Yamhill County shall attach and enforce any and all conditions imposed by the City of Newberg on any development permit requested within the Limit Use Overlay zone.

(G) As a condition to the plan amendment and zone change, the owners of the subject property shall sign a consent to annexation on forms supplied by the City of Newberg.

(H) As a condition to the plan amendment and zone change, the applicants shall initiate a new annexation request to the City of Newberg.

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