

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS

Study Session Worksheet

Presentation Date: October 21, 2015 **Approx Start Time:** 9:30 am **Approx Length:** 1.0 hours

Presentation Title: Creating a Vibrant Economy
Employment Land Need – Work Program

Department: Admin, Planning

Presenters: Dan Chandler, Martha Fritzie

Other Invitees: Barb Cartmill, Mike McCallister

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD?

Review and discussion of work plan to evaluate potential changes to Urban and Rural Reserves in Clackamas County.

EXECUTIVE SUMMARY:

At a policy session, the Commission reviewed a number of areas from which the County might meet its employment land needs, both short and long-term. The Commission found that the following areas could reasonably contribute to meeting the County's 20 year need for approximately 1,100 acres of non-retail employment land, when developed or redeveloped by cities:

Existing Urban Reserves		Inside the UGB	
<u>Borland Road</u>	260 ac.	<u>Damascus</u>	400 ac.
<u>Oregon City</u>	70 ac.	<u>North Milwaukie</u>	300 ac.
<u>NW Wilsonville</u>	125 ac.		
TOTALS BY CATEGORY	455 ac.		700 ac.

At a subsequent policy session September 8, 2015, the Commission voted to consider the following changes:

1. **Rural Reserves to Undesignated.**
 - a. approximately 800 acres south of Wilsonville;
 - b. approximately 400 acres east of Canby; and
 - c. approximately 425 acres south of the Clackamas River along Springwater Road.

2. **Urban Reserve to Undesignated.** Approximately 3,400 acres in the Damascus/Boring Urban Reserve area - or a portion of that area.

The Commission directed staff to come back with a work plan to evaluate the potential changes. Planning Staff have prepared a proposed work plan, attached to this staff report.

FINANCIAL IMPLICATIONS (current year and ongoing):

See attached memorandum.

LEGAL/POLICY REQUIREMENTS:

As noted in the August 17 staff report, changes would necessitate a significant public process as follows:

Process steps for significant changes to Reserves

1. A revised intergovernmental agreement between Metro and Clackamas County.
2. A new joint county/metro public process.
3. Reconsideration and re-application of the Urban and Rural Reserves factors by the County and Metro.
4. A full County comprehensive plan amendment process, including pre-hearing notices, and a planning commission process.
5. Consultation and coordination with Multnomah and Washington Counties for urban reserves changes.

6. For new urban reserves, coordination "with cities, specials districts and school districts that might be expected to provide urban services . . ." OAR 660-027-0040(8)
7. A new joint submittal to the Land Conservation and Development Commission.
8. Potential appeals to the Court of Appeals.

Metro has indicated that it is not interested in changes to the reserves map at this time.

PUBLIC/GOVERNMENTAL PARTICIPATION:

OPTIONS AND RECOMMENDATIONS:

Options

1. Direct staff to proceed with the work plan described in the attached memorandum.
2. Direct staff to proceed with portions of the work plan.
3. Direct staff to focus on land within existing reserves and the Urban Growth Boundary.

ATTACHMENTS:

- a. Memorandum from Martha Fritzie to BCC.
- b. Maps of potential areas.
- c. Metro staff report from October 8, 2015 hearing.

SUBMITTED BY:

Division Director/Head Approval _____
Department Director/Head Approval  _____
County Administrator Approval _____

For information on this issue or copies of attachments, please contact Dan Chandler @
503-742-5394

Fiscal Impact Form

RESOURCES:

Is this item in your current work plan and budget?

- YES
 NO

START-UP EXPENSES AND STAFFING (if applicable):

ONGOING OPERATING EXPENSES/SAVINGS AND STAFFING (if applicable):

See discussion under financial implications, above.

ANTICIPATED RESULTS:

Availability of future land supply for housing and employment.

COSTS & BENEFITS:

Costs:							
	Item	Hours	Start-up Capital	Other Start-up	Annual Operations	Annual Capital	TOTAL
	Planning Staff time	3.0 FTE		330,000			330,000
	Counsel/Admin			40,000			40,000
	PGA	.5 FTE		50,000			50,000
	Total Start-up Costs						
	Ongoing Annual Costs						190,000 – 450,000
Benefits/Savings:							
	Item	Hours	Start-up Capital	Other Start-up	Annual Operations	Annual Capital	TOTAL
	Total Start-up Benefit/Savings						
	Ongoing Annual Benefit/Savings						

To: Board of County Commissioners
From: Martha Fritzie; Senior Planner, Clackamas County Planning and Zoning Division
Date: October 13, 2015
RE: **Draft General Work Program for Limited Reserves Re-Look, 2015**

The following outlines the expected major tasks that would be needed for the County to amend the Urban/Rural Reserves designations that were adopted by the County in April 2010. The expected scope is limited to consideration of only the following changes that the BCC voted to pursue a change for in their August 18, 2015 and September 8, 2015 meetings:

1. **Rural Reserves to Undesignated.**
 - a. approximately 800 acres south of Wilsonville;
 - b. approximately 400 acres east of Canby, and
 - c. approximately 425 acres south of the Clackamas River along Springwater Road.
2. **Urban Reserve to Undesignated.** Approximately 3,400 acres in the Damascus/Boring Urban Reserve area - or a portion of that area.

It should be noted that due to the large number of acres in the Damascus/Boring Urban Reserve area, combined with the removal of approximately 2,000 acres of Urban Reserve in Washington County's 2014 "grand bargain," any action in the Damascus/Boring urban reserve could trigger a need to identify additional Urban Reserve areas elsewhere the Portland Metropolitan region to meet the statutory requirement to provide at least 40 years of land for potential urban development. If that occurs, the work program to accomplish that project would be substantially more robust.

Costs below are estimated based on the expected number of months for each major task and expected staffing, expressed as an FTE equivalent. The rate used for the calculation is that of a Senior Planner (including benefits and overhead). It is likely we would need to hire a consultant to assist with several of the major tasks, as noted. Consultant costs are **not** figured into the cost numbers below. *NOTE: Tasks under #3 and #4 would run concurrently and comprise the bulk of the work needed for these projects; which means the County would need to commit the equivalent of 1.0 FTE from the Public & Government Affairs (PGA) staff (and/or consultant) and 2.5 FTE from Planning (or equivalent from a consultant) for those tasks.*

Expected Major Work Tasks for Limited Reserves Re-Look (Draft Oct. 13, 2015)

EXPECTED MAJOR TASKS		Estimated Timing	Estimated Staff Cost and Time*	Comments
1	Review and summarize record, existing information and analysis	1 month	\$20,100 1.0 FTE, Planning	The existing record will be reviewed exhaustively to determine what, if any, analyses can be used for this project, to try to maximize efficiency.
2	Finalize work plan and budget <ul style="list-style-type: none"> • Create detailed Work Plan • Identify staffing/project management • Issue RFP & hire consultant(s) 	2-3 months	\$30,200-\$45,200 0.5 FTE, Planning 0.25 FTE, PGA	
3	Establish & manage public involvement program** <ul style="list-style-type: none"> • Create detailed Public Involvement (PI) Plan • Open houses • Service provider coordination, as needed • Other PI activities (website, mailings, new releases, etc) 	2-3 months	\$60,300-\$90,500 0.5 FTE, Planning 1.0 FTE, PGA	Coordination limited to conversations with affected cities, citizens, and agencies in specific project areas. Would include an open house in each affected Rural Reserve Area and a more robust public outreach/open house schedule in the Urban Reserve area, including coordination with potential service providers. No PAC, TAC or regional committees would be needed if no other potential Urban Reserve areas would be analyzed.
4	Analysis & Mapping	2-3 months	\$80,400-\$120,600 2.0 FTE, Planning	Would run concurrently with and inform coordination and PI work. The majority of this work would be related to the analysis of the Urban Reserve.
SUBTOTAL		7-10 months	\$191,000-\$276,400	Decision Point – BCC will need to determine whether to move forward with adoption process in coordination with Metro.
5	Produce Revised Findings; Coordinate with Metro's Findings	2-3 months	\$40,200-\$60,300 0.75 FTE, Planning 0.25 FTE PGA	

6	Adoption <ul style="list-style-type: none"> • PC recommendation - public hearing(s) • BCC adoption - public hearing(s) • Metro adoption • IGA adoption 	5-6 months	\$100,500-\$120,600 0.75 FTE, Planning 0.25 FTE PGA	Adoption process is somewhat lengthy because of required notifications and timing needed between hearings to prepare materials and the record.
7	Acknowledgement & Appeals <ul style="list-style-type: none"> • LCDC Decision • Court of Appeals Decision 	unknown	unknown	Appeals likely for area south of Wilsonville and any changed urban reserve
TOTAL (pre-acknowledgement and appeal)		14-19 months	\$331,700-\$457,300	

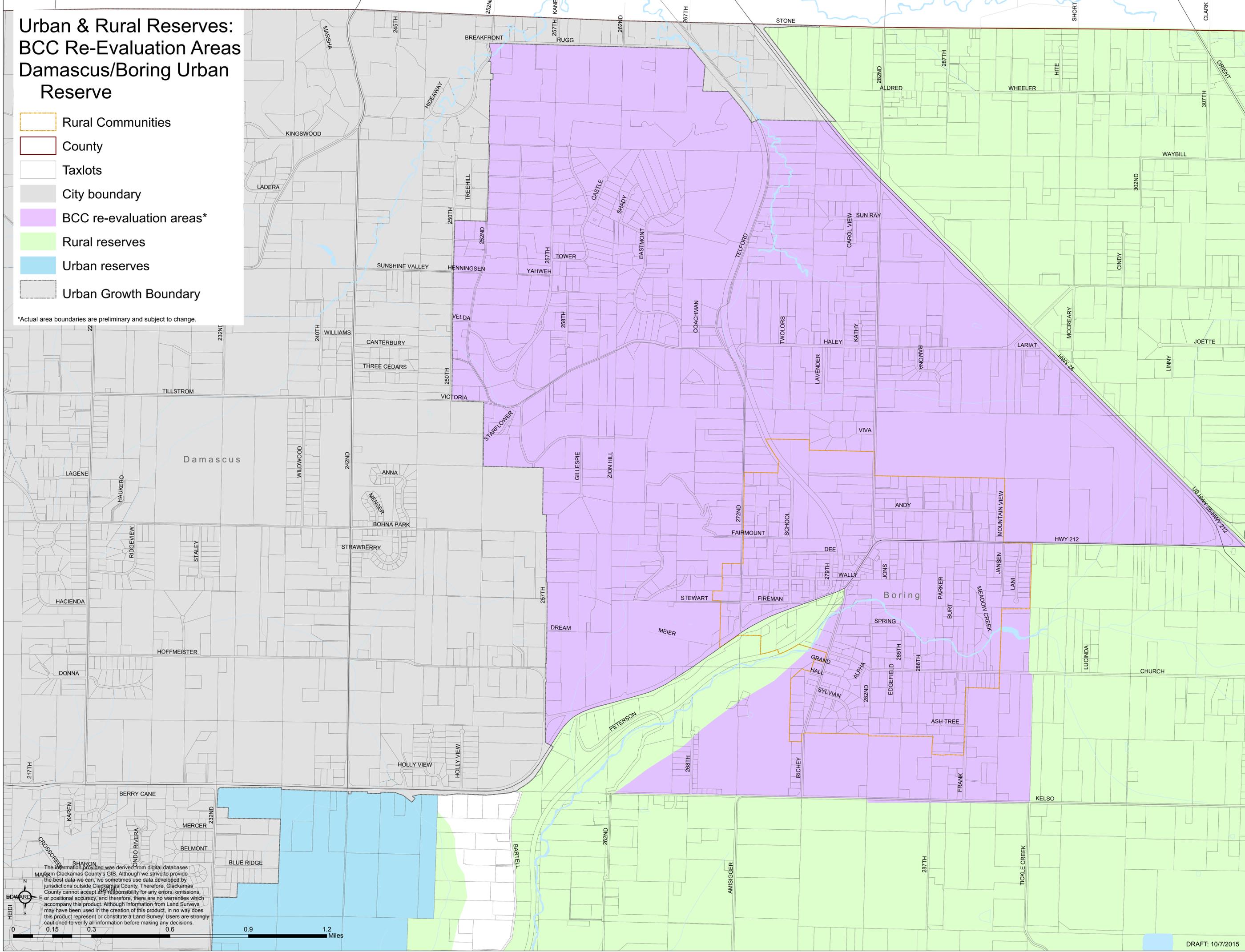
**Estimates are rough and subject to change as more detailed scoping of the project occurs. Cost figures reflect only staff time, not consultant time. If a consultant is selected to assist in any of the tasks, staff time/cost may be reduced but would be replaced by consultant costs, which are generally higher.*

***As noted previously, this work scope assumes no additional areas will be analyzed for inclusion in a new Urban Reserve. If it becomes necessary to include that type of analysis the scope and timing both for the general project and for the PI Plan would increase substantially, in part, due to the need for significantly more regional coordination.*

Urban & Rural Reserves: BCC Re-Evaluation Areas Damascus/Boring Urban Reserve

-  Rural Communities
-  County
-  Taxlots
-  City boundary
-  BCC re-evaluation areas*
-  Rural reserves
-  Urban reserves
-  Urban Growth Boundary

*Actual area boundaries are preliminary and subject to change.



The information provided was derived from digital databases maintained by Clackamas County's GIS. Although we strive to provide the best data we can, we sometimes use data developed by jurisdictions outside Clackamas County. Therefore, Clackamas County cannot accept any responsibility for any errors, omissions, or positional accuracy, and therefore, there are no warranties which accompany this product. Although information from Land Surveys may have been used in the creation of this product, in no way does this product represent or constitute a Land Survey. Users are strongly cautioned to verify all information before making any decisions.

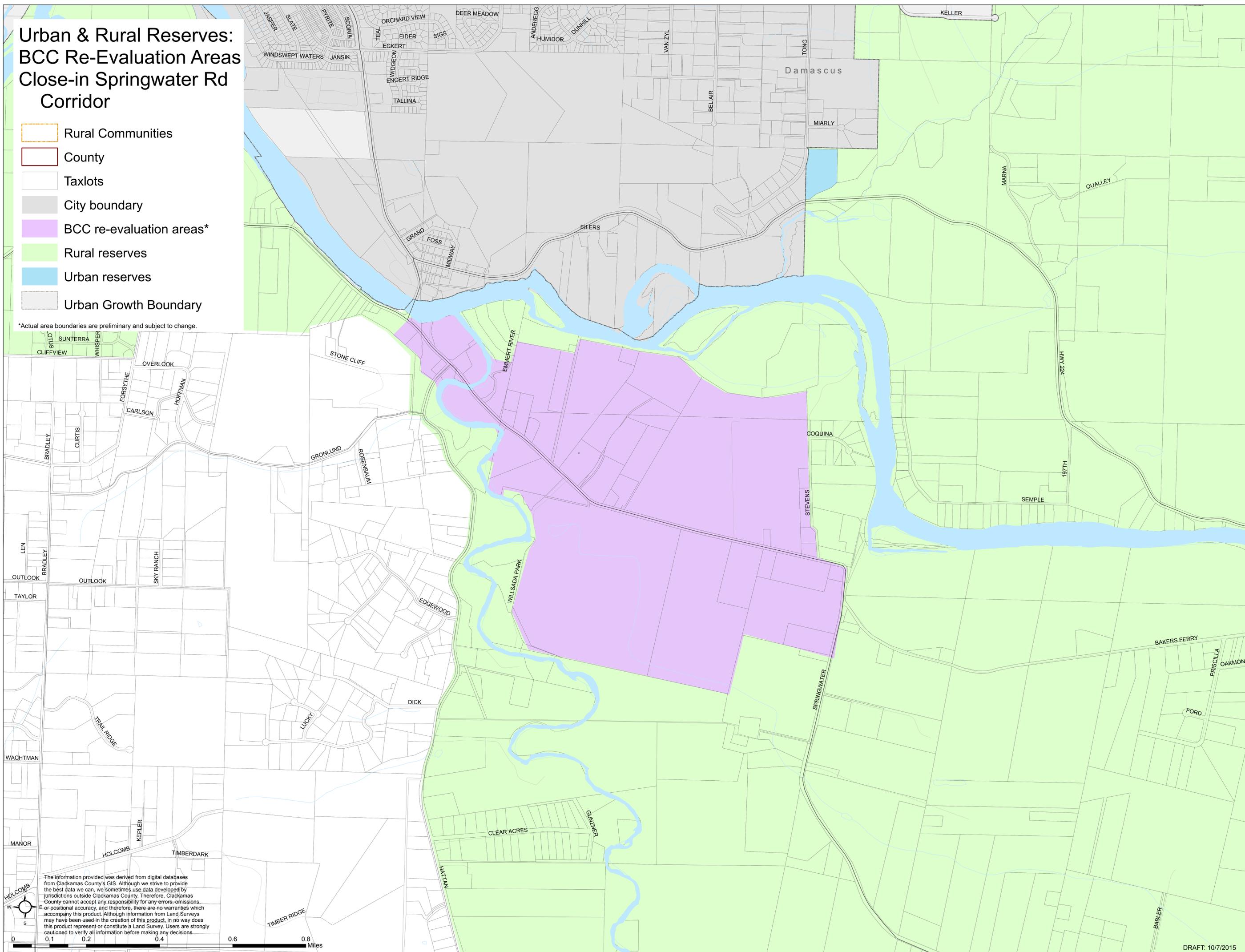
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DRAFT: 10/7/2015

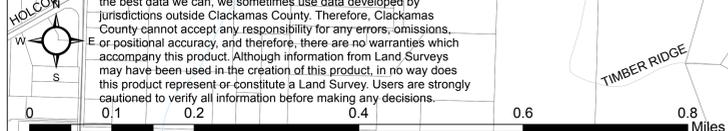
Urban & Rural Reserves: BCC Re-Evaluation Areas Close-in Springwater Rd Corridor

-  Rural Communities
-  County
-  Taxlots
-  City boundary
-  BCC re-evaluation areas*
-  Rural reserves
-  Urban reserves
-  Urban Growth Boundary

*Actual area boundaries are preliminary and subject to change.



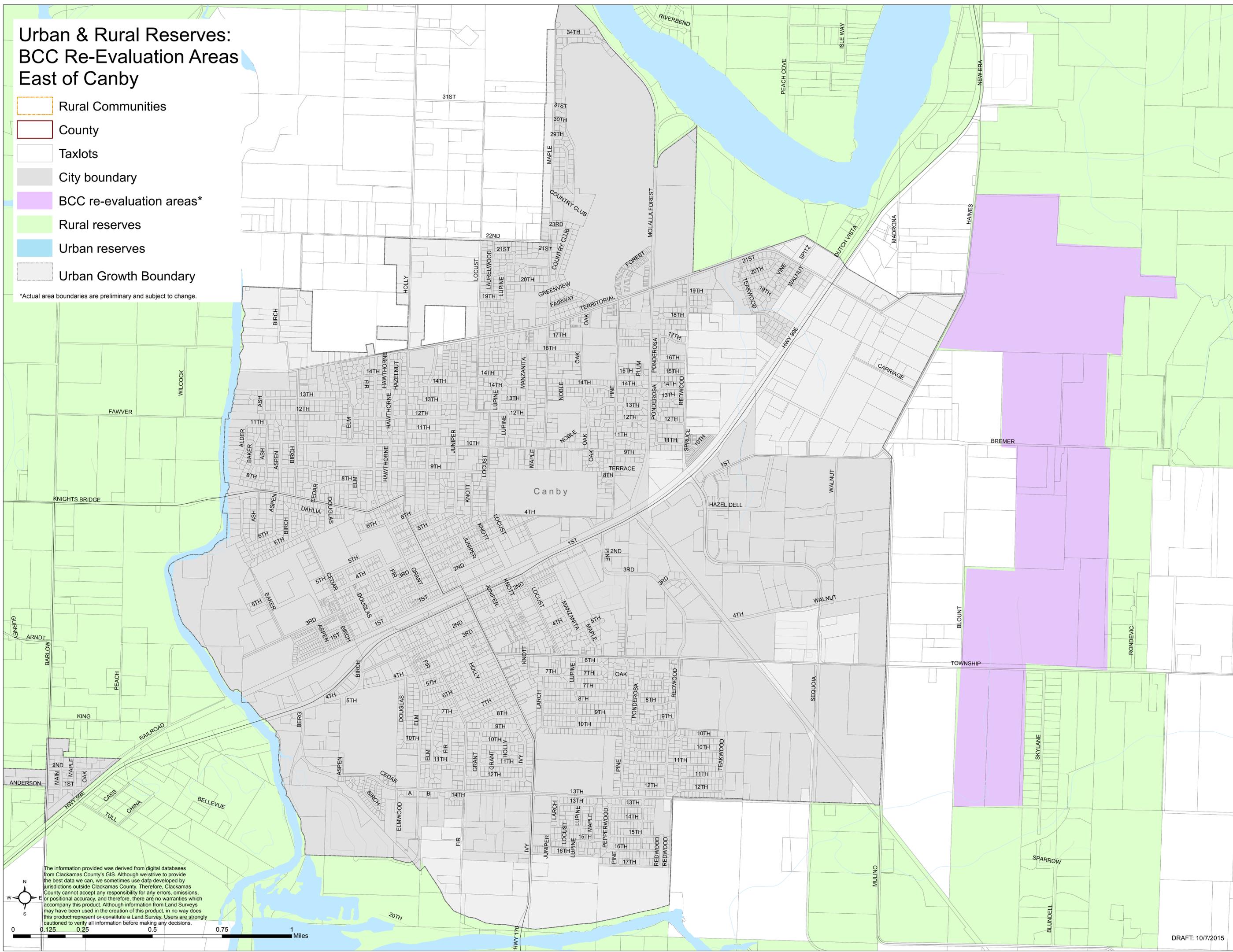
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Urban & Rural Reserves: BCC Re-Evaluation Areas East of Canby

-  Rural Communities
-  County
-  Taxlots
-  City boundary
-  BCC re-evaluation areas*
-  Rural reserves
-  Urban reserves
-  Urban Growth Boundary

*Actual area boundaries are preliminary and subject to change.

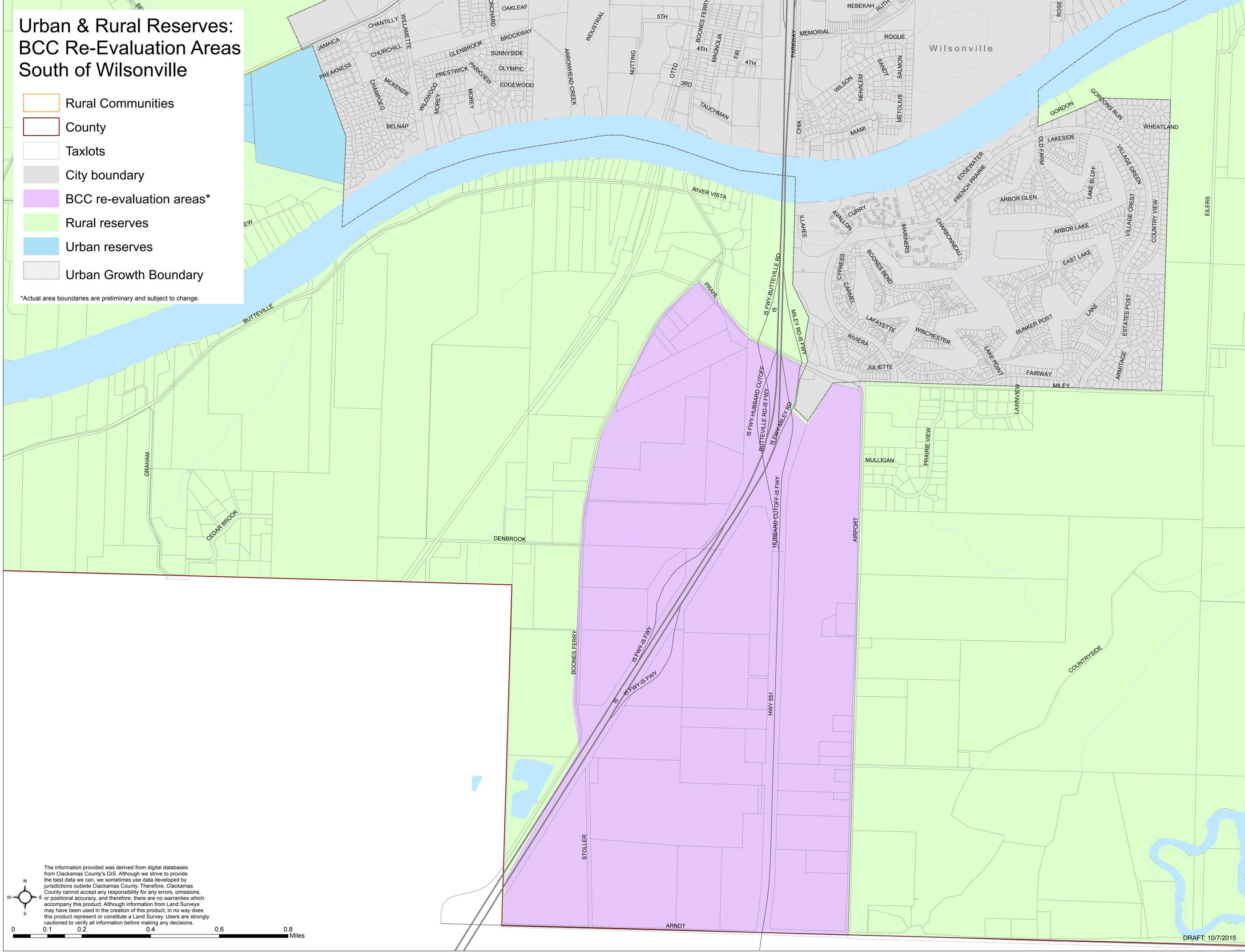


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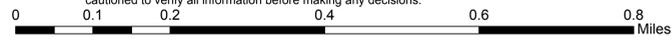
Urban & Rural Reserves: BCC Re-Evaluation Areas South of Wilsonville

-  Rural Communities
-  County
-  Taxlots
-  City boundary
-  BCC re-evaluation areas*
-  Rural reserves
-  Urban reserves
-  Urban Growth Boundary

*Actual area boundaries are preliminary and subject to change.



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Agenda Item No. 4.1

Urban Reserves Designations in Clackamas County Areas 4A,
4B, 4C, and 4D

Public Hearing

Metro Council Meeting
Thursday, October 8, 2015
Metro Regional Center, Council Chamber

STAFF REPORT

IN CONSIDERATION OF THE REMAND BY THE OREGON COURT OF APPEALS AND LCDC REGARDING THE DESIGNATION OF URBAN RESERVES IN CLACKAMAS COUNTY

Date: September 30, 2015

Prepared by: Roger Alfred, Senior Assistant Attorney

PROPOSED ACTION

Hold a public hearing regarding the remand by the Oregon Court of Appeals and the Land Conservation and Development Commission (LCDC) of Clackamas County urban reserve areas 4A, 4B, 4C, and 4D (collectively referred to as "Stafford"). A map of the four reserve areas is attached as Exhibit A to this report.

PROCEDURAL SUMMARY

In 2010, Metro and Clackamas County entered into an intergovernmental agreement (IGA) regarding the designation of specific urban and rural reserve areas in Clackamas County. That IGA designated the Stafford area as urban reserve. Metro and Clackamas County adopted ordinances in 2011 to implement the reserve designations, including joint findings in support of Stafford as an urban reserve area. Metro submitted the final decision and findings to LCDC for review in May of 2011, and LCDC issued an order approving the submittal in August of 2012. On judicial review of the order, the Court of Appeals reversed and remanded to LCDC for reconsideration of the decision to approve the Stafford designation. On March 16, 2015, LCDC issued Remand Order 14-ACK-001867, formally remanding the decision back to Metro and Clackamas County for further proceedings and action consistent with the Court of Appeals opinion.

BACKGROUND

A. Senate Bill 1011 and the Discretionary Urban Reserve "Factors"

In 2007 the Oregon Legislature enacted Senate Bill 1011, authorizing Metro and the three counties to designate urban and rural reserves. Senate Bill 1011 was proposed by agreement among a broad coalition of stakeholders in response to widespread frustration regarding the existing process for Metro-area UGB expansions. In particular, the statutory requirements for UGB decisions often fostered inefficient and inflexible decision-making, because the hierarchy of lands listed in ORS 197.298 requires Metro to first expand the UGB onto the lowest quality agricultural lands regardless of whether those lands could be cost-effectively developed. In other words, ORS 197.298 requires Metro to include land in the UGB not because it would be good for urban use but only because it is bad for farming.

Senate Bill 1011 addressed these problems by allowing Metro and the counties significant discretion to identify urban and rural reserves outside of the existing UGB as the areas where future UGB expansion will or will not occur over the next 50 years. Areas mapped as urban reserves become the first priority for future UGB expansions under ORS 197.298, while rural reserves are farms, forests, and other natural resource areas that obtain long-term protection from development.

The primary goal of Senate Bill 1011 was to provide more flexibility to allow UGB expansions into areas that would be the most appropriate for urbanization. To accomplish that goal, the legislature authorized Metro and the counties to designate urban and rural reserve areas based on discretionary "consideration" of several nonexclusive "factors" designed to help determine whether particular areas are appropriate for development or for long-term protection. The legislature purposely did *not* create a list of mandatory approval criteria requiring findings that each standard must be satisfied. Rather, the reserve statute and rules allow Metro and the counties to consider and weigh each factor in order to reach an overall conclusion regarding whether a reserve designation is appropriate. All factors must be considered, but no single factor is dispositive.

The factors that must be considered regarding the designation of urban reserves are described in the state rule as follows:

"When identifying and selecting lands for designation as urban reserves under this division, Metro shall base its decision on consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB:

- (1) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments;
- (2) Includes sufficient development capacity to support a healthy urban economy;
- (3) Can be served by public schools and other urban-level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers;
- (4) Can be designed to be walkable and served by a well-connected system of streets by appropriate service providers;
- (5) Can be designed to preserve and enhance natural ecological systems; and
- (6) Includes sufficient land suitable for a range of housing types."

In its final opinion, the Court of Appeals agreed with Metro and LCDC that these are not independent approval criteria that must all be satisfied to designate an area as urban reserve; rather, the court held that they are factors to be evaluated, weighed and balanced as a whole in reaching a conclusion regarding whether an area could be appropriate for future urbanization in the next 50 years.

B. Designation of Reserve Areas by Metro and the Counties

Senate Bill 1011 became effective in 2007 and LCDC adopted implementing rules in January of 2008. Metro and the three counties immediately began a two-year public process that included an extensive outreach effort bringing together citizens, stakeholders, local governments and agencies throughout the region. That process involved the application of the urban and rural reserve factors to land within approximately five miles of the UGB, and resulted in three IGAs being signed by Metro and each county in 2010 mapping the areas that were determined to be most appropriate as urban and rural reserves under the statutory factors. Clackamas County and Metro agreed that, under the factors, Stafford is an appropriate area for future urbanization.

Metro and the three counties then adopted ordinances including joint findings supporting the designation of a total of 28,256 acres of urban reserves in the entire Metro region. Almost half of that amount, 13,874

acres, is located in Clackamas County, and the Stafford area comprises approximately 6,230 acres, or almost half of the county's total urban reserves. Thus, when reserves were adopted in 2011, the Stafford area provided 22% of the entire 50-year supply of urban reserves for the Metro region. Since the enactment of House Bill 4078, which reduced the amount of urban reserves in Washington County by about 3,100 acres, the 6,230 acres in Stafford now comprises approximately 25% of the total urban reserve area for the entire region.

A copy of the findings adopted by Metro and Clackamas County describing the reasons why Stafford should be designated urban reserve are attached as Exhibit D, and are discussed in more detail below.

C. The Oregon Court of Appeals Decision and HB 4078

LCDC reviewed the reserve designations adopted by Metro and the counties and issued an acknowledgement order approving all reserves in August of 2012. Twenty-two parties filed appeals of LCDC's order with the Oregon Court of Appeals, including the City of West Linn and the City of Tualatin (the "cities"). The cities argued that Stafford should not have been designated as urban reserve because it cannot be efficiently and cost-effectively served by transportation facilities and other public services. In support of that argument the cities pointed to projected future traffic conditions in the Stafford area as estimated by Metro's 2035 Regional Transportation Plan (RTP).

The court issued its opinion in February of 2014, affirming LCDC's decision on the majority of the 26 assignments of error raised by the opponents, and remanding on three issues. Regarding Stafford, the court rejected the cities' argument that the urban reserve factors were mandatory criteria that had to be independently satisfied for each study area. Rather, the court held that the legislature's intent was not to create approval standards, but rather "factors" to be considered, weighed and balanced in reaching a final decision.

However, the court agreed with the cities' argument that Metro and LCDC failed to adequately respond to evidence cited by the cities in the 2035 RTP that traffic in the Stafford area was projected to exceed the capacity of certain roads by 2035. The court found that the cities had presented "weighty countervailing evidence" that transportation facilities in the Stafford area could not support urbanization, and that LCDC and Metro failed to provide any "meaningful explanation" regarding why, in light of the cities' conflicting evidence, the urban reserve designation was still appropriate for Stafford.

In addition to their argument regarding transportation facilities, the cities also argued that they had submitted evidence to Metro and LCDC showing that sewer and water services could not be cost-effectively extended to Stafford, and that Metro and LCDC also failed to adequately respond to that evidence. The Court of Appeals did not directly address this argument, because the court's ruling regarding the transportation issues will require consideration of all the evidentiary support for designating Stafford as urban reserve as part of the remand proceedings, including water and sewer.

Thus, in order to respond to the remand from the Court of Appeals, Metro is required to consider evidence regarding application of the urban reserve factors to Stafford, including the conflicting evidence submitted by the cities and any other relevant new evidence. If the Council concludes that Stafford is appropriate for future urbanization in the next 50 years under the factors, Metro must adopt new findings in support of a decision to maintain the urban reserve designation for Stafford. Those findings must also be adopted by Clackamas County in order to be acknowledged by LCDC.

The court also remanded LCDC's order regarding rural reserve area 9D in Multnomah County. Because that designation involves a rural reserve area, public proceedings regarding that aspect of the remand will

be initiated by Multnomah County. At the conclusion of those proceedings, Metro and Multnomah County must also adopt joint findings in support of a final decision on reserves in that county. Shortly after the Court of Appeals issued its opinion, the Oregon legislature enacted HB 4078, which legislatively adopted revisions to the reserves map and UGB in Washington County. The bill added approximately 1,178 acres of urban reserves to the UGB and converted approximately 2,016 acres of urban reserve areas to rural or undesignated. Therefore, there are now approximately 3,194 fewer acres of urban reserves in the region than there were in 2011 when the reserve decisions were made. This reduction in the total amount of region-wide urban reserves will need to be addressed as part of the findings in support of decisions on remand regarding urban and rural reserves in Clackamas and Multnomah counties.

REASONS FOR STAFFORD URBAN RESERVE DESIGNATION

The designation of Stafford as an urban reserve area was the culmination of a lengthy and collaborative regional process that began as soon as LCDC adopted its reserve rules in January of 2008. Metro and the three counties formed committees, began a public involvement process, and established a Reserves Steering Committee to advise the Core 4 regarding reserves designations. The steering committee included 52 members and alternates representing interests across the region – business, agriculture, conservation groups, cities, service districts, and state agencies. Technical analysis regarding the application of the urban reserve factors to particular study areas was provided by specialized expert groups, including providers of water, sewer, transportation, education, and other urban services.

The four study areas that comprise what is collectively referred to as “Stafford” are shown on the map attached to this staff report as Exhibit A. More specifically, the four areas are known as Stafford (Area 4A), Rosemont (Area 4B), Borland (Area 4C) and Norwood (Area 4D). As shown on the map, Areas 4A, 4B, and 4C together comprise the “triangle” area that is bounded on two sides by the cities of West Linn, Lake Oswego, and Tualatin. Those three study areas consist of approximately 4,700 acres and were considered together as Area U-4 by Clackamas County in their urban reserve analysis. Area 4D contains approximately 1,530 acres and is located to the south and east of the “triangle,” adjacent to the City of Tualatin on the north and the Washington County border on the west. There are three other acknowledged Washington County urban reserve areas (Areas 4E, 4F, and 4G) that are located between Area 4D and the City of Tualatin.

In considering the designation of Stafford as an urban reserve area, it is important to keep in mind the context and purpose of the urban and rural reserves designations. Because urban reserves are intended to provide a land supply over a 50-year time horizon, the designation of urban reserve areas must be based on their physical characteristics, including development capacity and future serviceability, rather than the current desires of nearby jurisdictions or current infrastructure conditions. Although there are some impediments to development in parts of these four study areas due to slopes and natural features – as there are in most areas of our region – much of the land is suitable for urban-level development, and development concept plans have been presented for many parts of the Stafford area.

Physically, the Stafford area is very similar to the cities of West Linn and Lake Oswego, which are successfully developing at urban densities. The Stafford area is immediately adjacent to existing urban development in three cities, facilitating logical extensions of infrastructure. While development levels would not be uniform across all four urban reserve areas, the opportunity exists to create a mix of uses, housing types and densities where the natural features play a role as amenities, while complementing existing development in the adjacent neighborhoods.

It is also important to consider the designation of these areas in light of the overall regional context. The reserve statute and rules require Metro to designate an amount of urban reserves sufficient to provide a

50-year supply of land for urban growth across the entire Metro region. All four Stafford study areas are identified by the Oregon Department of Agriculture as “conflicted” agricultural land that is not suitable to sustain long-term agricultural operations. Designation of the Stafford area as urban reserves avoids designation of other areas containing more important or “foundation” agricultural land. Because the four Stafford reserve areas are identified as conflicted agricultural land, a rural reserve designation is not appropriate.

Finally, any urban reserve area is subject to Metro’s concept planning requirements prior to being included in the UGB under Title 11 of the Urban Growth Management Functional Plan. The agreement between Clackamas County and Metro to designate Stafford as an urban reserve includes specific requirements for the preparation of concept plans for future development of urban reserve areas, including participation by the three cities and citizen involvement entities such as the Stafford Hamlet. These Principles for Concept Planning of Urban Reserves are part of the IGA between the county and Metro, and require that any future concept plans must provide for governance by specific cities. The principles also recognize the need for concept plans to account for the environmental, topographic and habitat areas located within the urban reserve.

RESPONSE TO EVIDENCE SUBMITTED BY THE CITIES

In its review of the Stafford urban reserve designations, the Court of Appeals concluded that Metro and LCDC failed to adequately respond to evidence submitted by the cities regarding future traffic conditions in the Stafford area as projected in Metro’s 2035 RTP. The cities also argued that Metro and LCDC failed to respond to evidence the cities submitted regarding the feasibility of providing water and sewer services to Stafford. Although the court did not rule on the cities’ arguments regarding water and sewer, those issues should also be considered as part of this remand proceeding. Therefore, this section of the staff report provides preliminary responses to the evidence that has been submitted by the cities to date regarding the future provision of (1) transportation facilities, and (2) water and sewer services.

1. Transportation Facilities

During the proceedings in 2011 the cities contended that Stafford should not be designated as an urban reserve because traffic projections in Metro’s 2035 RTP (adopted in 2010) indicate that four principal roads in the Stafford area will be “failing” under Metro’s mobility policies in the RTP. The four facilities at issue are Stafford Road, Borland Road, Highway 43, and portions of Interstate 205. The cities cited the 2035 RTP as evidence that Stafford did not comply with the two urban reserve factors related to the provision of urban services, which require Metro to consider whether an area:

“(1) Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments;

“(3) Can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers.”

Applying these two urban reserve factors, the cities argued that because the RTP forecasted the roads at issue to be above capacity in 2035, future urban development in Stafford could not be efficiently or cost-effectively served by transportation infrastructure because there is no current funding to fix the problems. Therefore the cities argued: (a) Stafford could not “comply” with the factors, and (b) the Metro and LCDC decisions were not supported by substantial evidence in the record.

The court of appeals rejected the cities' first contention, holding that the urban reserve factors are not approval criteria and therefore "compliance" with each of the factors is not required; rather, Metro's designation must only demonstrate "consideration" of each factor. However, the court went on to agree with the cities that the evidence they cited regarding transportation system forecasts in the 2035 RTP had not been adequately addressed by Metro or LCDC. Therefore, the court concluded that LCDC failed to correctly review Metro's decision for evidentiary support.

a. The 2035 RTP is not relevant evidence regarding the urban reserve factors.

The fundamental problem with the cities' argument is that the 2035 RTP traffic forecasts and related mobility policy maps are not actually relevant to the question posed by the urban reserve factors, which is whether Stafford can be efficiently and cost-effectively served with transportation facilities within a 50-year horizon. The RTP traffic forecasts are constantly evolving projections that provide a snapshot in time of the current estimates of future traffic congestion in the next 25 years. Those estimates are based on funding for system improvement projects that are *currently* listed in the RTP, and are subject to significant change over the next 25 to 50 years. New improvement projects for roads and highways are added to the RTP project list on a regular basis (sometimes even between each four-year RTP update cycle), and funding for those projects is adjusted and prioritized based on need given existing and planned levels of development. When new proposed improvement projects are added to the RTP project list, the effects of those future improvements are then applied to the 25-year traffic congestion forecast for the region as shown on the mobility policy maps in the RTP. When new road improvement projects are added, there is a corresponding decrease in projected congestion for areas that are served by those roads.

The cities argued that the 2035 RTP demonstrates that there is no money to fix the problems associated with traffic forecasts on the roads they identified. But this argument ignores how the planning process actually works for transportation projects, and the fact that new improvement projects are added to the RTP list on a regular basis. It is true that in 2010, when the snapshot was taken in the 2035 RTP of funding for the project lists and corresponding traffic forecasts, there was no identified funding for transportation projects designed to serve an urbanized Stafford. But when an area such as Stafford that is outside of the UGB is identified as a potential location for new urban development, the planning process that is required for urbanization will include identification of new and necessary transportation system improvements to serve future urban development in that area, and those improvements will then be included on the RTP project list. Adding those improvements to the RTP project list will then reduce the amount of congestion forecasted on the RTP mobility policy maps for that area.

Thus, there is a basic "chicken/egg" problem with the cities' reliance on the traffic forecasts in the 2035 RTP as evidence that Stafford cannot be served by roads and highways in the area due to a lack of funding. When the 2035 RTP was adopted in 2010, the Stafford area was simply another rural residential area outside of the UGB, and had not been specifically designated as an area for future urban development. Therefore, the 2035 RTP did not prioritize funding for improvement projects in the Stafford area that would be necessary for new urban development arising out of a UGB expansion. In the absence of an existing plan for urbanization of Stafford in 2010, there is no reason why the region would prioritize funding in the 2035 RTP for improving roads to accommodate new urban development in that area.

In 2010 Metro adopted amendments to Title 11 of the Urban Growth Management Functional Plan specifically designed to ensure that areas proposed for urbanization through a UGB expansion can and will be served with public facilities such as roads. Title 11 now requires that local governments must adopt concept plans for an urban reserve area prior to any such area being added to the UGB by Metro. Concept plans must include detailed descriptions and proposed locations of all public facilities, including transportation facilities, with estimates of cost and proposed methods of financing. Concept plans must be jointly prepared by the county, the city likely to annex the area, and appropriate service districts.

The Title 11 concept planning requirements will apply to Stafford if and when that area is proposed for inclusion in the UGB by a city, and will require detailed planning regarding how transportation services will be provided to the area, including a description of methods for financing those services. That urban planning process will require adding specific transportation improvement projects to the RTP project lists for purposes of ensuring there can be adequate capacity to serve the Stafford area. At that point, once urban development in Stafford takes some planning steps towards potential reality, the region could decide to add and prioritize improvement projects on the RTP project lists that would be necessary to facilitate new urban development in that area. But in 2010, because Stafford was not in the UGB and not even an urban reserve area, there was no reason to include or prioritize projects in the 2035 RTP to facilitate its development.

The RTP is a constantly evolving document that merely provides a periodic snapshot forecast of regional traffic congestion based on current funding priorities for improvement projects on the RTP project list. The RTP project list is amended and revised on a regular basis. If Stafford is proposed to be added to the UGB, concept planning under Title 11 must occur and necessary transportation system improvement projects would be added to the RTP project lists at that time. The Metro Council can find that the 2035 RTP does not constitute compelling evidence that the Stafford area cannot be efficiently served by transportation facilities over a 50-year horizon.

b. The cities' arguments are refuted by the 2014 RTP.

The recently adopted 2014 RTP includes updated mobility policy maps that reveal the fallacy of the cities' arguments. The 2014 RTP shows that the 2035 RTP mobility policy maps relied upon by the cities are already outdated and do not constitute substantial evidence to support a conclusion that it is not possible for Stafford to be served by roads on a 50-year planning horizon. On July 17, 2014, the Metro Council adopted amendments to the 2035 RTP via Metro Ordinance No. 14-1340, and also changed the name of the RTP to "2014 RTP."

The mobility policy maps in the 2014 RTP show significant improvement in forecasted traffic congestion on principal roads in the Stafford area for the new RTP planning horizon that ends in 2040, as compared to the mobility policy maps relied upon by the cities from the 2035 RTP. Copies of the three most relevant 2014 maps are attached as Exhibit B (these are close-up versions of the maps focused on the Stafford area and do not show the entire region).

The maps relied upon by the cities from the 2035 RTP are attached as Exhibit C. Sections of roads that are shown in red are locations that in 2010 were projected to exceed acceptable volume-to-capacity ratios in 2035, based on three different funding scenarios for improvements identified on the RTP project lists. The first scenario is the "no build" map (Figure 5.5), attached as Exhibit C-1, which essentially shows the worst case scenario in that it assumes all of the usual projected increases in population, jobs and new housing units for the region, but assumes that *none* of the improvements projects listed in the 2035 RTP will actually be built by 2035. Therefore, this is the map with the most red lines. The second scenario is the "2035 Federal Policies" map (Figure 5.7), attached as Exhibit C-2, which assumes that all improvement projects identified on the RTP "financially constrained" list are built (*i.e.*, projects using funds from existing identifiable revenue sources). This map shows decreases in projected congestion compared to the "no build" map. The third scenario is the "2035 Investment Strategy" map (Figure 5.9), attached as Exhibit C-3, which assumes availability of additional funding for improvement projects that are listed on the RTP project list and are not "financially constrained" by existing revenue sources, but could be constructed assuming that other potential funding sources become available.

Comparing the 2014 RTP mobility policy maps to the 2035 RTP maps reveals significant improvements in projected traffic congestion levels in the Stafford area. The 2035 Investment Strategy map shows all of Interstate 205, all of Highway 23, and most of Borland Road and Stafford Road in red, meaning that they are projected to exceed Metro's mobility policy standard of 0.99 v/c in 2035. Exhibit C-3. However, the corresponding 2040 Investment Strategy map from the 2014 RTP shows no portion of Interstate 205 or Borland Road in red, and much smaller portions of Highway 43 and Stafford Road in red. Exhibit B-3. Therefore, to borrow the imprecise language employed by the cities, these facilities are no longer projected to be "failing" as the cities previously claimed. The dramatic change regarding the forecast for Interstate 205 in this area is due in part to new project assumptions for the I-205 and I-5 system that had not been included in the 2035 RTP. One of the specific investment strategies included in the 2014 RTP is to "address congestion bottleneck along I-205." (2014 RTP Appendix 3.1, page 302).

The significant improvements in projected traffic congestion in the Stafford area in just four years between Metro's adoption of the 2035 RTP and the 2014 RTP may be relied upon by the Metro Council as evidence that refutes the cities' arguments and supports a conclusion that Stafford may be efficiently and cost-effectively served by transportation facilities under the relevant urban reserve factors. This evidence provides the "meaningful response" to the evidence cited by the cities from the 2035 RTP that the court of appeals found was lacking. At the same time, this evidence illuminates the fundamental problem with the cities' arguments that were based on the 2035 RTP mobility policy maps. As explained above, the RTP mobility policy maps reflect a constantly changing set of projects and related funding assumptions that do not constitute substantial evidence for purposes of determining whether Stafford may be efficiently and cost effectively served by transportation facilities on a 50-year planning horizon.

2. Water and Sewer Services

At the Court of Appeals, the cities also challenged the evidentiary support for Metro's findings regarding the provision of water and sewer service to Stafford under urban reserve factors 1 and 3. The court did not specifically consider these arguments, but instead remanded the entire Stafford reserve designation for further evidentiary review based on its ruling regarding transportation issues.

The evidentiary record supporting Metro's consideration of each urban reserve factor is extensive. Regarding provision of water and sewer to Stafford under urban reserve factors 1 and 3, Metro adopted detailed findings citing specific evidence supporting an urban reserve designation under the factors. Exhibit D. Those findings note that technical assessments provided to the Core 4 Reserves Steering Committee by working groups consisting of experts and actual service providers rated the Stafford area as being "highly suitable" for both water and sewer service.

A summary of the analysis regarding water service suitability is attached as Exhibit E, which is a memorandum from the Core 4 Technical Team to the Core 4 Reserves Steering Committee dated February 9, 2009. The water service analysis was coordinated by the Regional Water Providers Consortium, and involved review of specific reserve study areas by a large group of water service providers, who applied specific criteria to each area including: (a) proximity to a current service provider; (b) topography; (c) use of existing resources; and (d) source of water. Each area was analyzed by the group of experts, ranked as high, medium, or low suitability for providing water services, and mapped. The results of the group's analysis were presented at a meeting of the technical committee of the Regional Water Providers Consortium and the proposed map was provided to all members of the committee for review and comment. As shown on the map attached to the Core 4 memo, the Stafford area was ranked as being "highly suitable" for water service.

A summary of the analysis regarding sewer service suitability is attached as Exhibit F, which is also a memorandum from the Core 4 Technical Team dated February 9, 2009. The sewer service analysis was

the result of work done by a “sanitary sewers expert group” of engineers and key staff from potentially impacted service providers, who applied their professional expertise and knowledge of nearby areas and facilities. The expert group applied a set of criteria to each reserve study area, including (a) topography; (b) proximity to a current waste water treatment plant; (c) existing capacity of that plant; and (d) the ability to expand the treatment plant. Each area was analyzed by the group of experts, ranked as high, medium, or low suitability for providing sewer services, and mapped. The results of the group’s analysis were digitized and sent to all participating service providers for comment. As shown on the map attached to the Core 4 memo, the Stafford area was ranked by the expert group as being “highly suitable” for sewer service.

Further analysis regarding water and sewer services in urban reserve areas was undertaken by Clackamas County and provided in a technical memorandum dated July 8, 2009, attached as Exhibit G. That memorandum provides a detailed analysis of each reserve study area under the urban reserve factors and makes recommendations for each study area. Regarding Stafford, the county analysis recommends designating Stafford as urban reserve, based in part on the fact that it ranks “high” for both water and sewer serviceability. As concluded by the county, the area can be relatively easily served because of proximity to existing conveyance systems and pump stations.

The City of Tualatin submitted evidence challenging the Clackamas County analysis regarding water and sewer based on a report prepared by engineering firm CH2M Hill, which was forwarded to the Core 4 Reserves Steering Committee on October 13, 2009. A copy of the city’s letter is attached as Exhibit H. In that letter, the city expresses disagreement with many of the county’s conclusions regarding the suitability rankings, and provided its own cost estimates regarding future provision of water and sewer services.

Metro staff has reviewed the analysis in the City of Tualatin’s letter and the CH2M Hill materials and prepared a responsive memorandum dated September 17, 2015, which is attached as Exhibit I. As described in that memo, the fundamental flaw in the city’s argument is that the city’s analysis and cost estimates do not consider the same geographic area that was studied by Clackamas County and Metro, and therefore the comparisons provided by the city are not accurate. The map attached to Exhibit I illustrates the significant differences between the two study areas. The county’s analysis was for its urban reserve study area U-4, which consisted primarily of the area that became areas 4A and 4B – land between the existing UGB and Interstate 205 – plus the portion of area 4C located north of I-205. However, the city’s analysis considers only the area proximate to the City of Tualatin, bounded by the Tualatin River to the north and Stafford Road to the east, thereby excluding all of areas 4A and 4B, which comprised the vast majority of the land analyzed by the county in its analysis. The flaws resulting from this approach regarding application of the urban reserve factors are described in the staff memorandum attached as Exhibit I.

CONCLUSION

Staff’s analysis of the existing evidence in the record continues to support the decision by Metro and Clackamas County to designate the Stafford area as urban reserve under the applicable factors. The Metro Council will take additional evidence and testimony at the public hearing on October 8, 2015; at the close of the hearing the Council should continue the hearing to November 19, 2015 in order to allow sufficient time to accept and consider additional evidence submitted by interested parties and staff. If the Council is inclined to support the existing urban reserve designation for Stafford, the Council may direct staff to prepare proposed findings of fact and conclusions of law in support of that designation.