



Dorothy S. Cofield,  
Attorney at Law

Exhibit HH

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AUG 06 2015  
PLANNING DEPT.

VIA ELECTRONIC MAIL & HAND DELIVERY

August 6, 2015

The Medford City Council  
C/O Joe Slaughter,  
411 West 8<sup>th</sup> Street  
Medford, OR 97051

Re: *Medford Urban Growth Boundary Amendment  
CP-14-114*

Dear Honorable Members of the City Council:

I represent Dunbar Carpenter who owns property in MD-3. A plat showing the location of Mr. Carpenter's property is attached as Exhibit "A". Mr. Carpenter's property consists of 73 acres of land in rectangular form bordered on the north by Coker Butte Road and on the south by the planned extension of Owen Drive. Mr. Carpenter submitted written testimony to the Planning Commission and the City Council explaining why his property should be included in the urban growth boundary (UGB) expansion. Rec. Exhibit Y.

#### SUMMARY OF THE PLANNING COMMISSION DECISION

Until the Planning Commission deliberations of May 21, 2015, the city planning staff had recommended the inclusion of Mr. Carpenter's 73 acres into the proposed UGB. See Attached Exhibit "G." The recommendation for the inclusion of MD-3 was based on MD-3's high scores on the external study area (ESA) matrix. In terms of traffic, water, sewer, parcel size and proximity to the UGB, Mr. Carpenter's property received scores of 3-5 in all the categories. See Attached Exhibit "B." After staff was directed to remove 175 acres from the proposed UGB expansion due to a "needs" error, staff recommended three alternatives to the planning commission. Mr. Carpenter's property was recommended for inclusion in Alternatives 1 and 3. See Attached Exhibit "C."

The Planning Commission chose Alternative 2 which did not include Mr. Carpenter's property and added approximately 180 gross acres south of Cherry Lane, north of Barnett Road, and east of the current UGB, to the recommendation (hereinafter "New MD-5") even though this property received

such low scores for water and sewer that the planning staff did not recommend it for inclusion. See Attached Exhibit "F"; Rec. p. 38.

#### INADEQUATE FINDINGS FOR PLANNING COMMISSION DECISION

The Planning Commission's reasons for including the New MD-5 and excluding the MD-3 land were (1) to add a trail system for the City and (2) to provide gravity sewer to land within the UGB (Southeast Plan) that is presently unserved but the New MD-5 scored so low on the water and sewer factors that staff never recommended it for inclusion in the three alternatives. July 21, 2015 Commission Report, p. 2-3. For that reason alone, the City Council should remove New MD-5 and add back in the Carpenter Property, which has all the essential public facilities. The Planning Commission's recommendation does not meet the Goal 14 Boundary Location criteria and the City Council should not accept its recommendation to add New MD-5 and exclude the Carpenter Property. OAR 660-015-0000(14); Goal 14 (2) Orderly and economic provision of public facilities and services.

#### WHAT THE URBAN GROWTH BOUNDARY LAW UNDER GOAL 14 REQUIRES

The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages with respect to the provision of public facilities and services. While the Planning Commission provided reasons why the New MD-5 will have adequate public facilities in the future, those reasons are not supported by an adequate factual basis, and in fact conflict with the staff's ESAs and Alternative Analysis.

The results of the scoring for all five factors that made up the alternatives analysis – proximity, parcelization, water, sewer and transportation were used to guide staff's recommendation on where to expand the City's UGB. MD-3 had higher scores than MD-5 on all of the public facilities factors.

The Planning Commission did not rely on the alternative Analysis but instead adopted two new factors: (1) providing service to land within the UGB adjacent to MD-5 on the mistaken assumption that system development charges ("SDCs") raised when MD-5 developed could be used to bring sewer to land within the UGB and (2) getting a "free" recreational trail system that could hook up the City's trail system to the east. Both of these two new factors have no factual underpinnings and therefore lack an adequate factual base. *Friends of Prairie v. Marion County*, LUBA No. 2008-188 (Or. LUBA 2/18/2009). While the city may balance the locational factors as it sees fit, it may not ignore the evidence it has collected in determining which properties meet the locational factors. ORS 197.850(9) (\*\*\*) The Court shall reverse or remand \*\*\* if the order is not supported by substantial evidence in the whole record\*\*\*."

By ignoring the three public facility scores for water and sewer that were the basis of the alternative Analysis, and choosing to offset MD-5's lower relative score for public facilities and services, the Planning Commission erred. The Planning Commission over-weighted the ESEE factors without having adequate facts and under-weighted the "orderly and economic provision of public facilities" factor in Goal 14. OAR 660-024-0060 "Boundary Location Alternative Analysis."

The administrative rules set forth the process of evaluating and comparing the impacts to existing water, sanitary sewer, storm water and transportation facilities. "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.” The Planning Commission decision ignores the ESA analysis and does not meet state law. The City Council should not accept the Planning Commission’s recommendation and the Council should choose Alternatives 1 or 3.

#### UNKNOWN COST OF SANITARY SEWER UPGRADES FOR MD-5 AND DOWNSTREAM PROPERTIES

Regarding the sanitary sewer, the city has not provided a comparison of the relative costs of providing sanitary sewer to New MD-5. It appears the Planning Commission’s decision was based on a sparse memo from Public Works to Planning.<sup>1</sup> See Attached Exhibit “D”

The public works memo to the planning department finds that the Northeast Area, which contains the Carpenter Property, is the least costly area to serve; the Hillcrest area (MD-4) is next; and the Southeast Area is the highest. Even using this minimal evaluation and comparison of the relative sewer costs to serve the different ESAs, the planning commission erred by not choosing MD-3 over MD-5. Instead, the Planning Commission determined that: “\*\*\*[t]he comparative environmental, social, economic and energy (ESEE) consequences between this particular portion of MD-5 and the applicable portions of MD-4 and MD-3 were strongly enough in favor of MD-5 to offset its lower relative score for public facilities and services.” Exhibit “B” Findings, p. 14. This determination was made without an investigation of sewer costs for New MD-5 and placing those facts in the record.

We have not been able to find in the Planning Commission’s record a concrete financial estimate on the cost of providing sewer to the New MD-5. Our review of the city’s Sewer Master Plan (2005) and the Public Facilities Element of the Comprehensive Plan do not have any reliable estimate of these two calculations. For instance, the Public Facilities Element adopted in 2003 indicates that required sanitary system capital improvements for the region will be \$52,689,772.

There is no breakdown in the record of the sanitary sewer costs to serve the Southeast Plan Area and New MD-5. The city’s current SDC for sewer is \$600 per building permit. Whether the SDCs from the Southeast Plan Area and New MD-5 will finance the necessary improvements to the city sewer system, and especially the effect of UGB expansion on the downstream properties has not been evaluated in any meaningful fashion that would survive judicial review based on a substantial evidence standard. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372 (1994).

The Damascus area in the Portland Metro 2002 UGB amendment process was never developed due to the prohibited cost of public facilities such as sewer, water, roads and the like. The result for Damascus was the UGB expansion land put major burdens on the citizens of Damascus to the extent that the expansion was referred to the voters to remove it from the UGB because it couldn’t be developed for lack of services. Unfortunately, the property owners paid property taxes at the inflated UGB values but never received any benefit. Medford should not make the same mistake under the guise of getting a “free” trail system. See Attached Exhibit “E.”

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<sup>1</sup> Preliminary indications from the public works department indicate that serving New MD-5 could cost over \$7.5 million. However based on our brief phone call with public works, we are not sure what underlying studies were done to come up with that figure, or what sewer improvements it would cover.

CONCLUSION

When the City started this UGB amendment process, it decided to use an objective filtering system that provided scoring for parcels within the urban reserve based on five factors. The scoring meets the Goal 14 administrative rule and goal to add land to the UGB that will provide efficient accommodation of identified land needs; the orderly and economic provision of public facilities and services; the comparative environmental, energy, economic and social consequences and the compatibility of urban uses with nearby agricultural and forest activities outside the UGB.

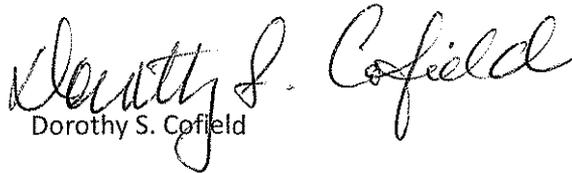
Instead of using the objective data from the alternative analysis, the Planning Commission instead chose New MD-5 with an ESEE analysis that is based on a developer's conceptual plan and future promises that may not be realized.

The City Council should use the data its staff has spent many years developing and determine that Mr. Carpenter's 73 acres within MD-3 should be added to the UGB because it is essentially a shovel ready site in terms of public facilities, proximity and parcel size.

Mr. Carpenter will be testifying at the August 6, 2015 council hearing and be available for the Council's questions and comments.

Very truly yours,

COFIELD LAW OFFICE

  
Dorothy S. Cofield

DSC:dsc

Enclosures: Exhibits A-G

# Coker Butte Properties



**Legend**

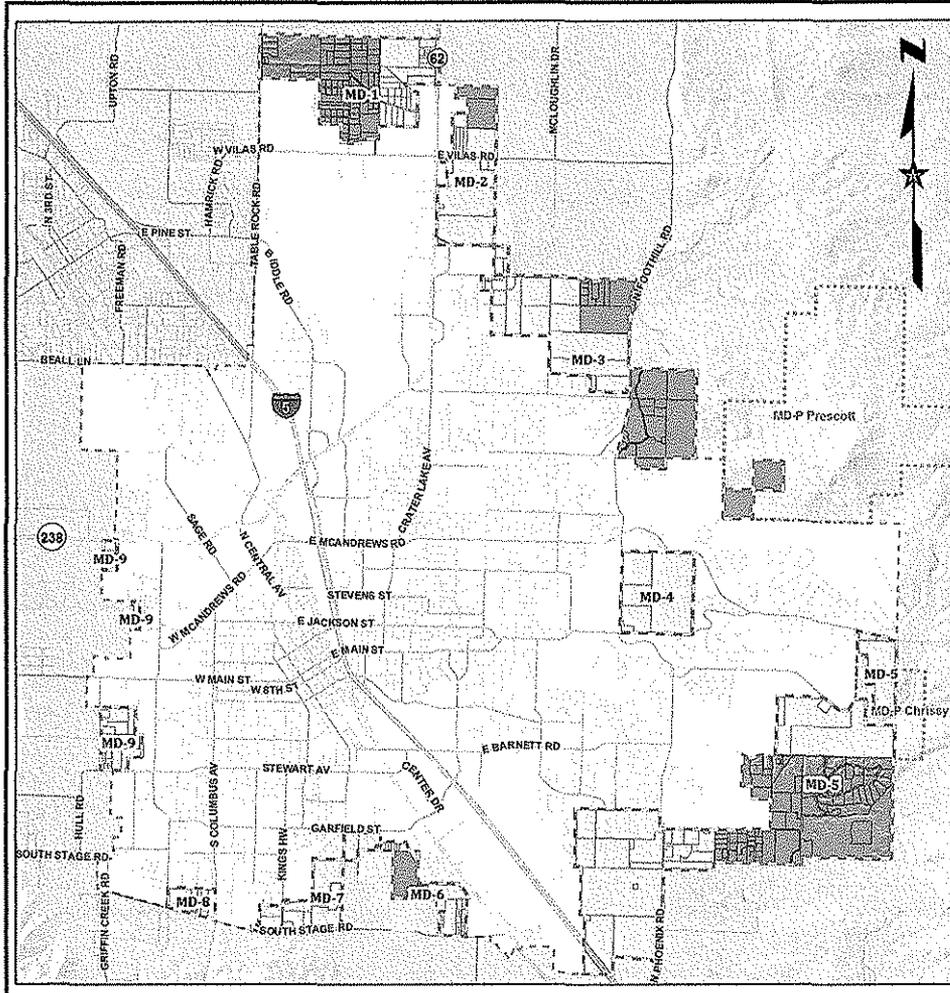
- Subject Lots
- Constrained Areas
- 10-Foot Contours
- Tax Lots
- Urban Growth Boundary
- Urban Reserves

Exhibit A

2012 aerial



0 400 Feet



CITY OF MEDFORD  
**UGS Amendment Project**

# ESA Scoring Filters

**LEGEND**

**Taxlots**

-  Eliminated through coarse filter
-  Inside Study Area
-  Urban Reserves
-  Urban Reserve Parks
-  Urban Growth Boundary

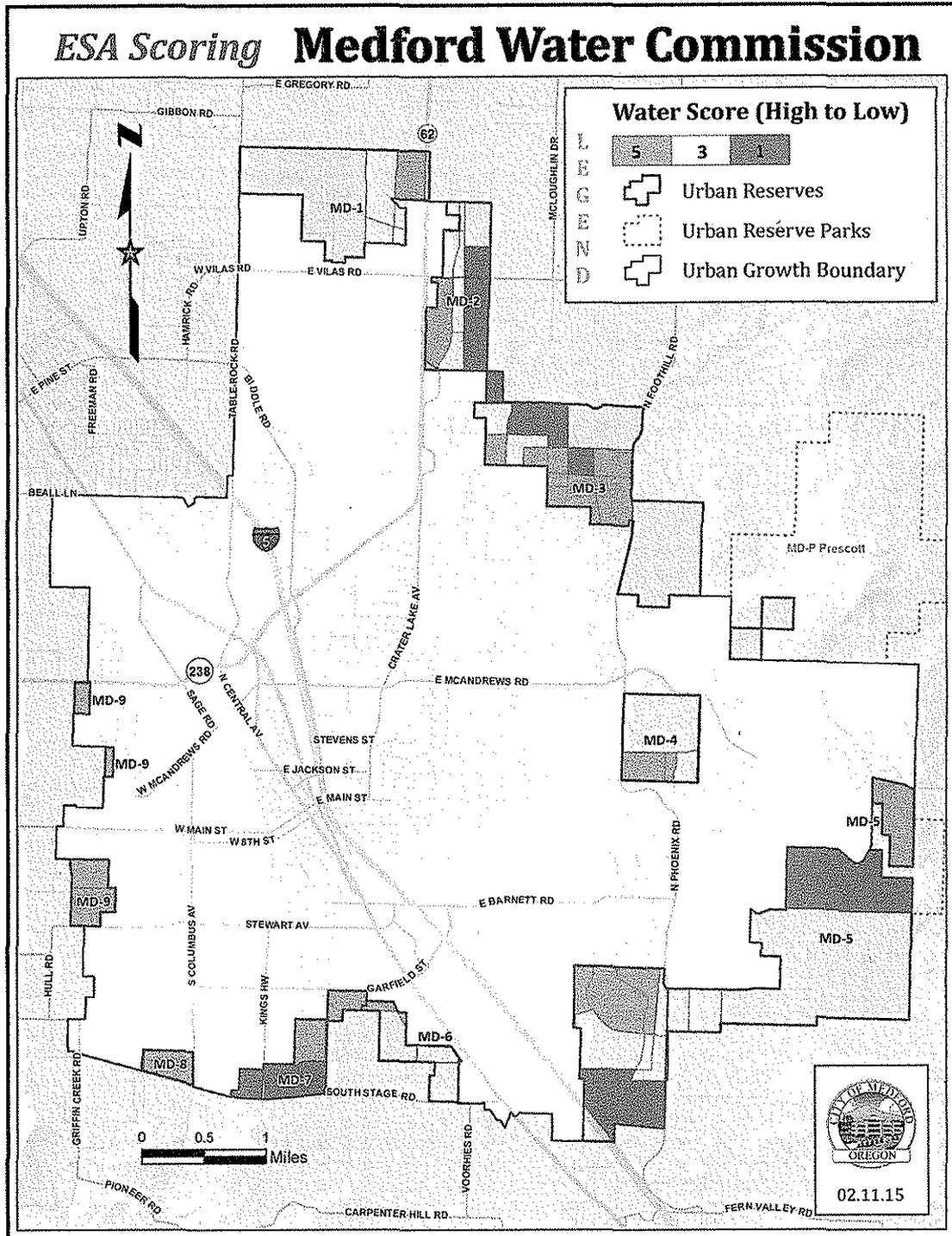


0 0.5 1  
Miles

10.14.14

**EXHIBIT**  
 B

Map 7.2. Water



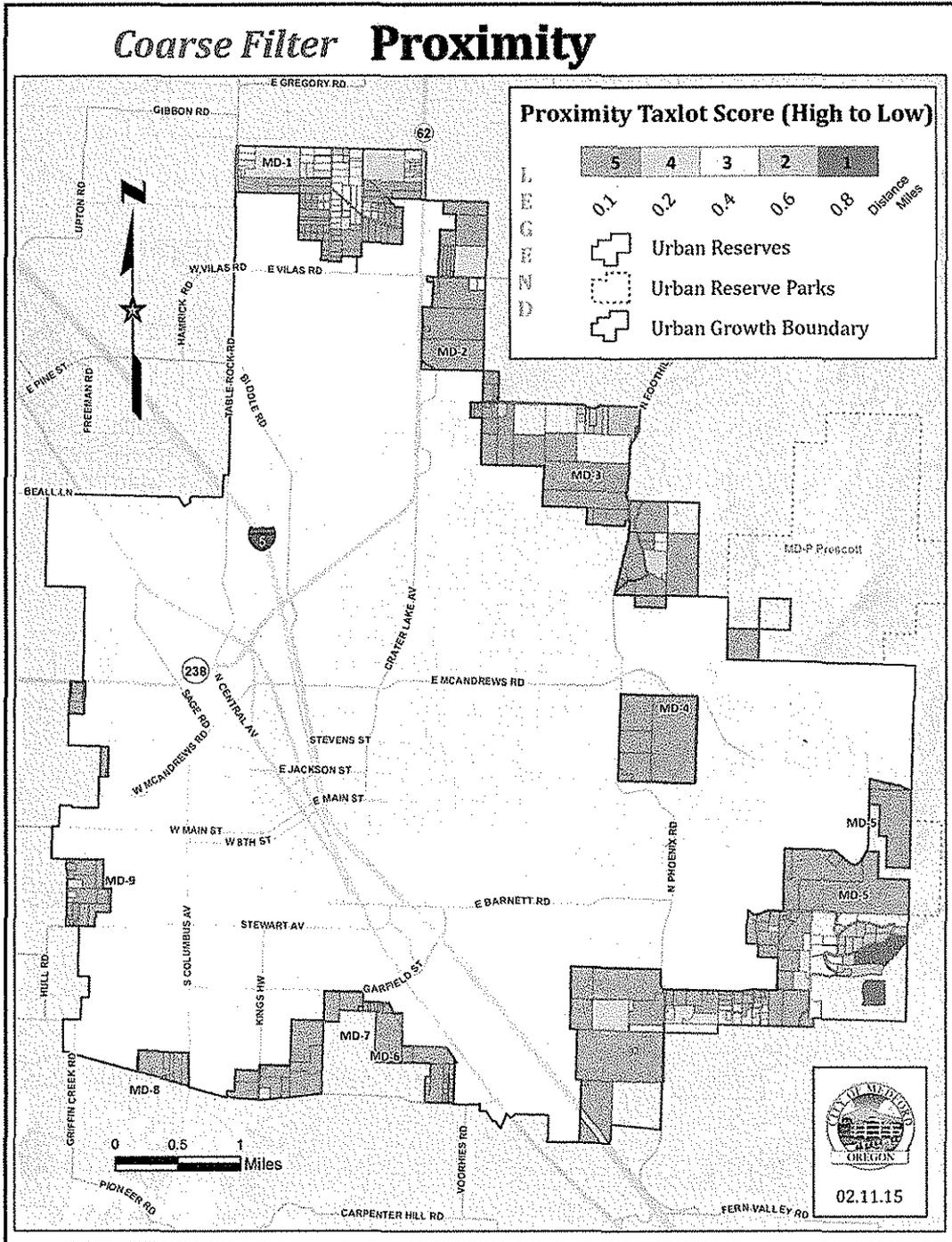




Appendix F: Coarse Filter Maps

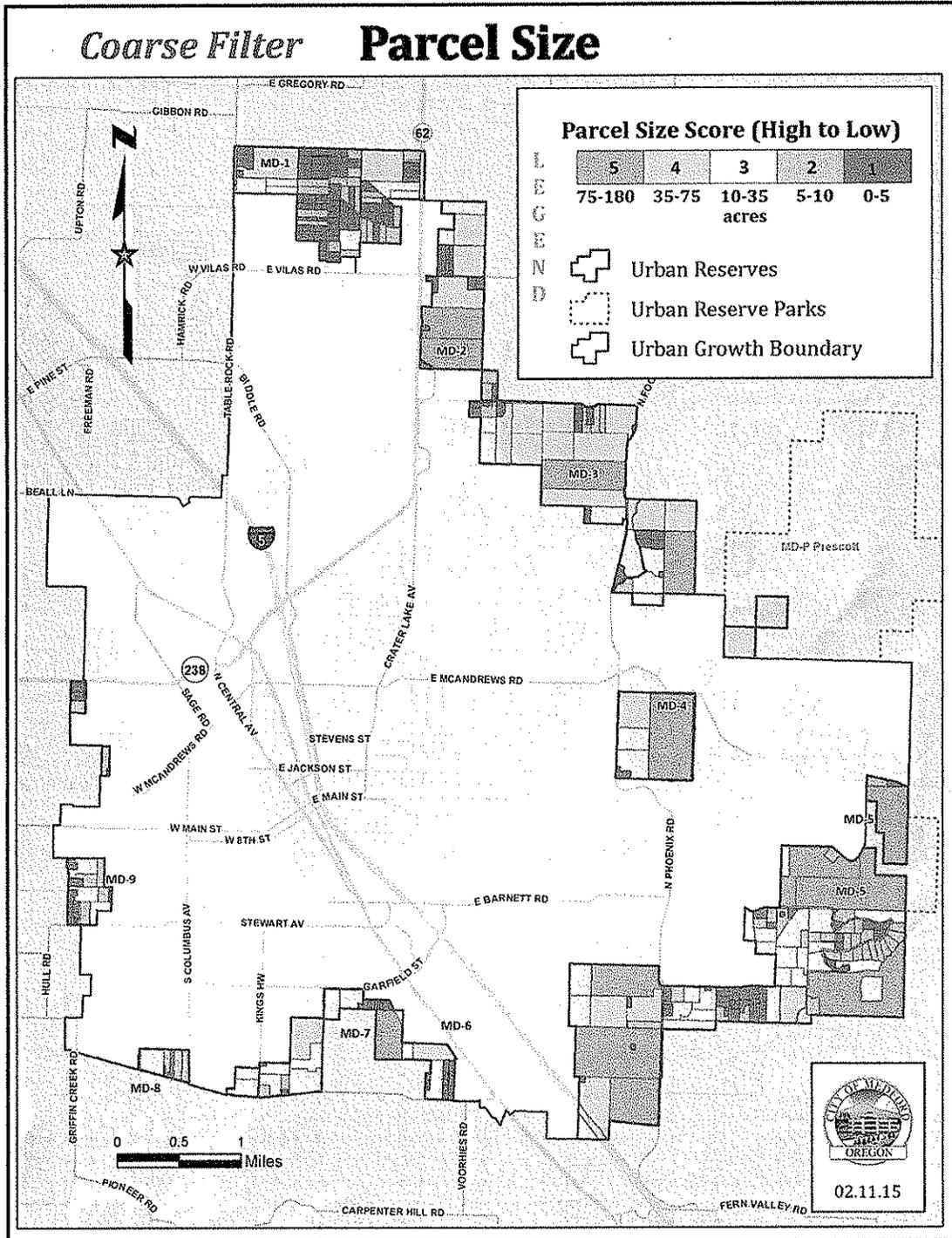
**APPENDIX F. Coarse Filter Maps**

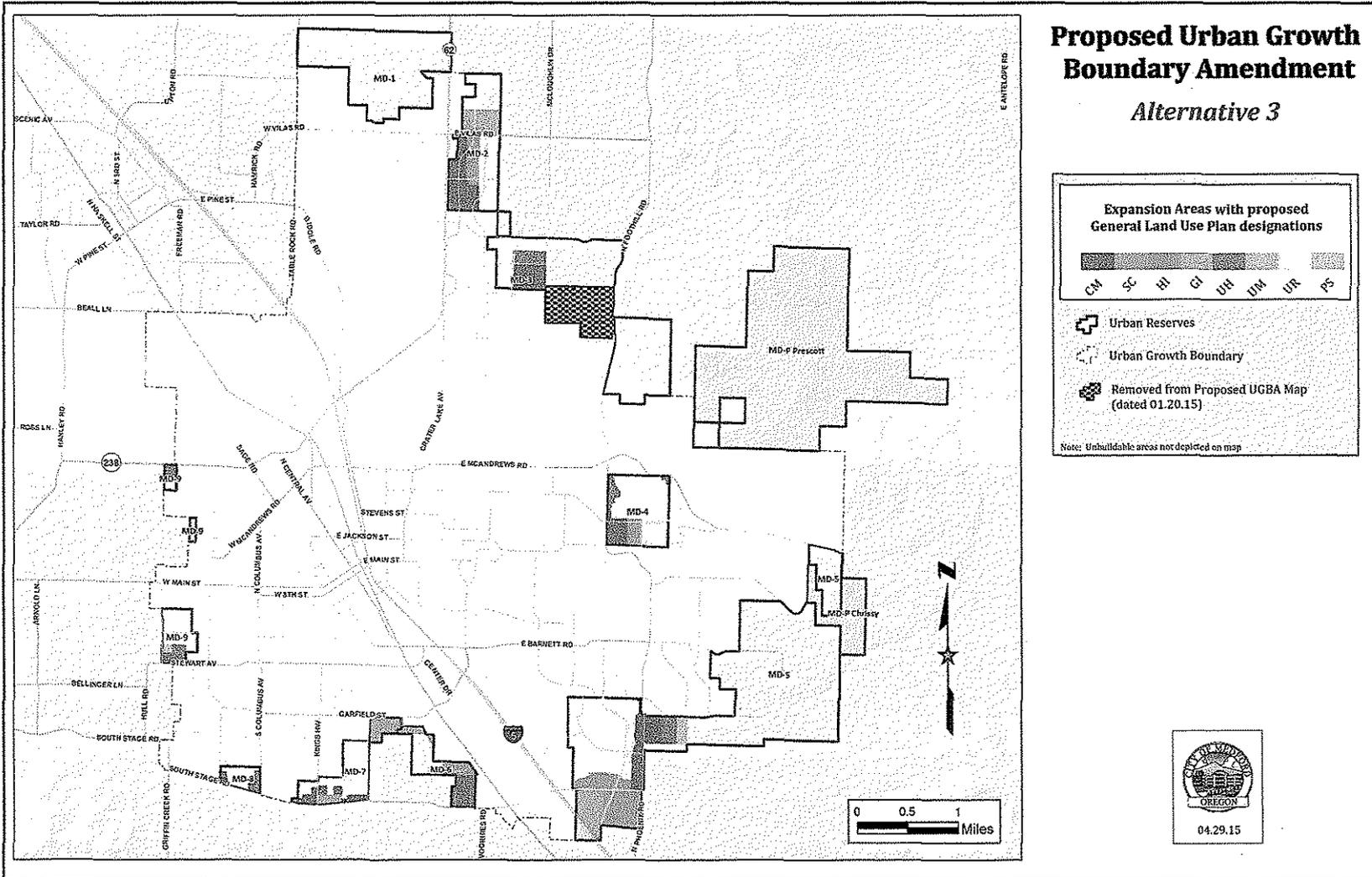
Map 5.1. Proximity



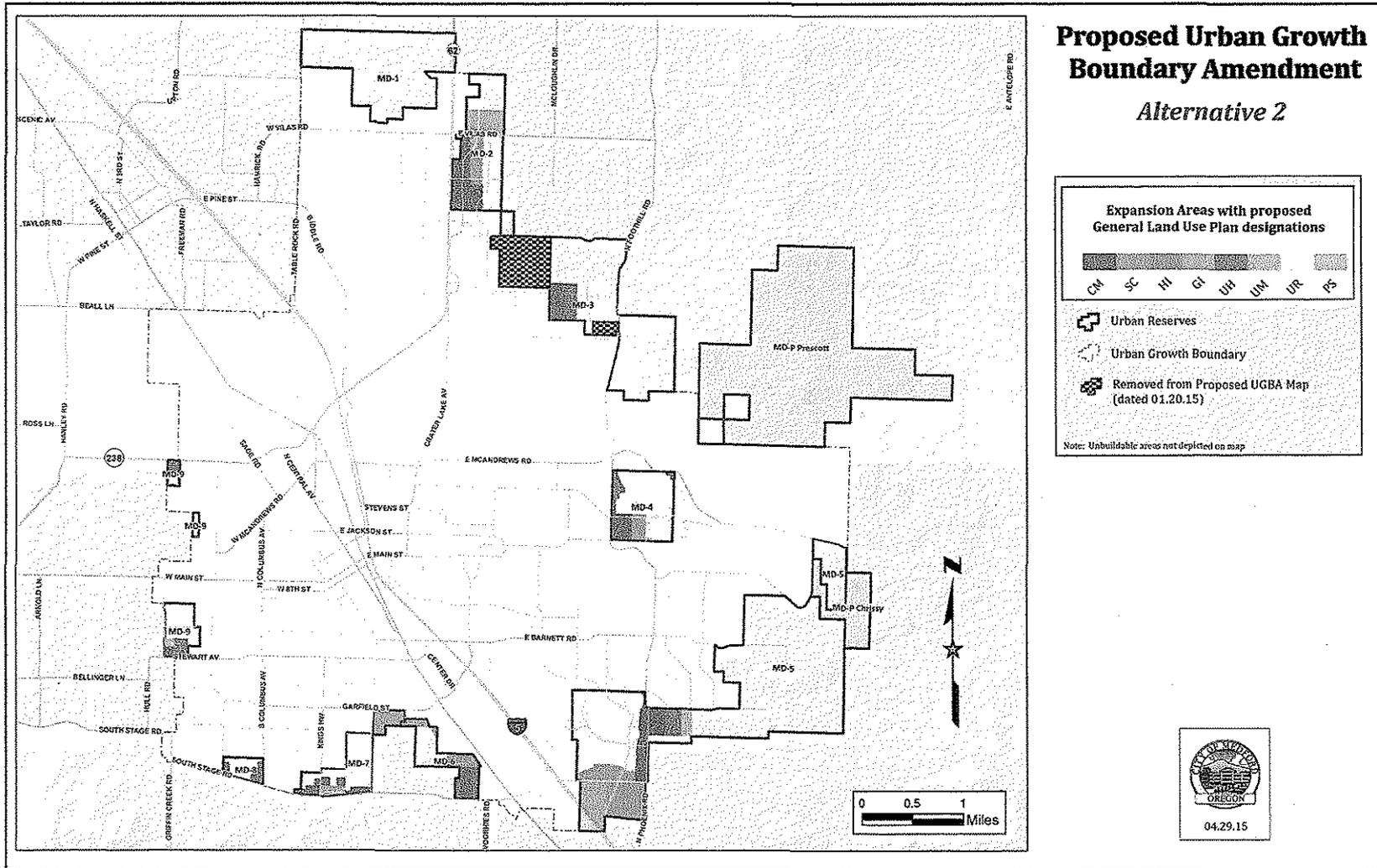
Appendix F: Coarse Filter Maps

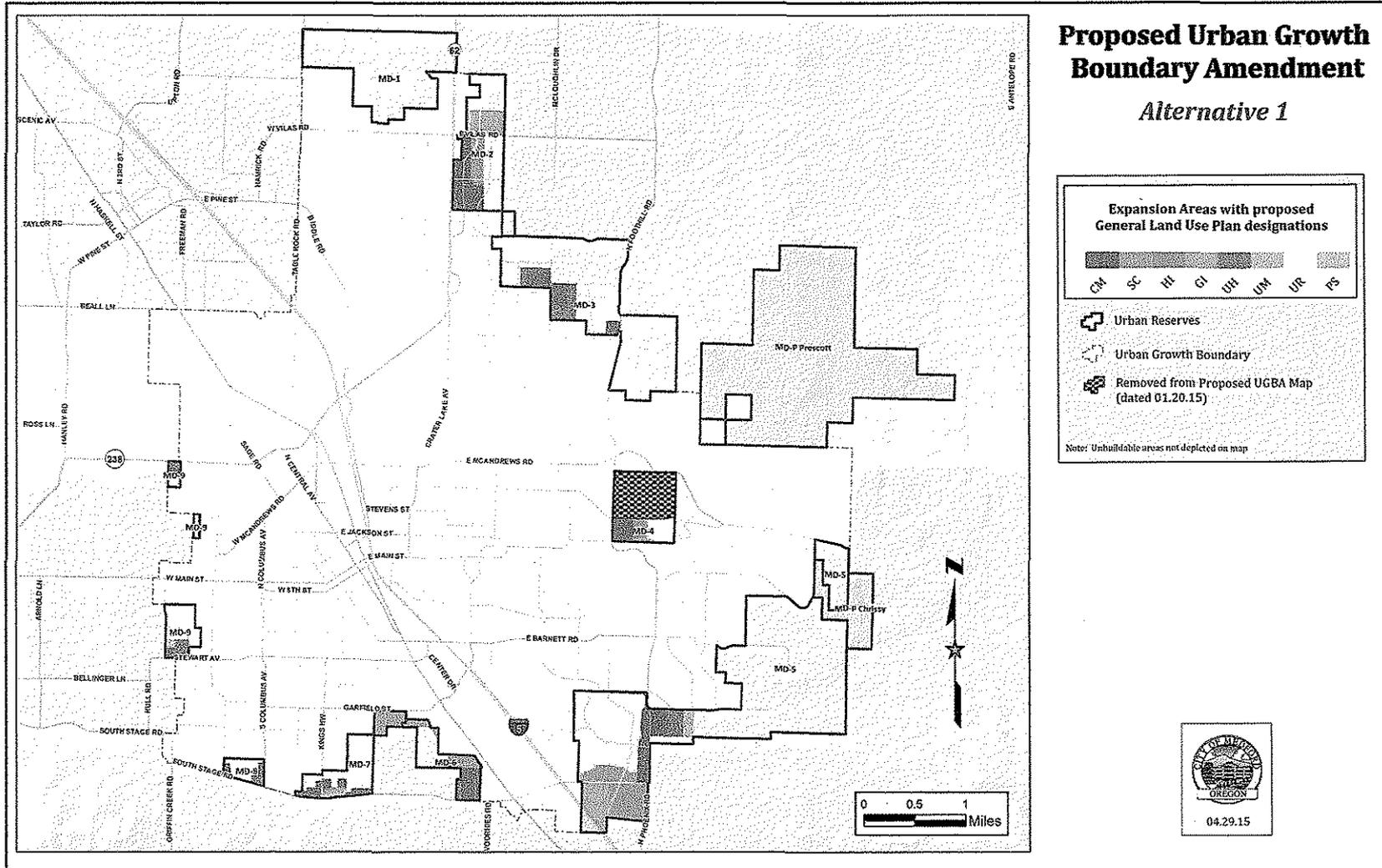
Map 5.2. Parcel Size





X





**CITY OF MEDFORD**  
**Interoffice Memorandum**

August 20, 2014

TO: Joe Slaughter

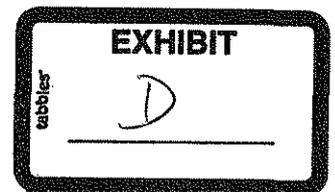
FROM: Roger Thom

SUBJECT: UGB – ESA Sanitary Sewer Study

Public Works has reviewed our sanitary sewer system with consideration to impacts from development under the current proposal for UGB – ESA. Within the ESA, there are three primary areas served by the City; Northeast, 435 acres with ID#'s 3101 to 3103, and 3202 to 3212, Hillcrest/Vista Point, 353 acres with ID#'s 4101, 4102, 4201, 4202, 3213, 3214, Southeast, 379 acres with ID#'s 5101, and 5201 to 5206.

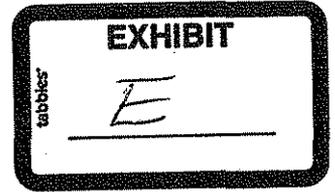
Relatively, cost to upsize the sanitary sewer to accommodate ESA areas is as follows: Northeast is the least expensive, Hillcrest is next, Southeast area is the highest. Southeast area could be looked at in a different way; currently there is approximately 500 acres of land in the UGB that is not serviceable without sewer upsizing. If funding was available to upsize for the current UGB, the incremental cost to accommodate the new Southeast area would be low.

If you need further information or clarification, please contact me.





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## METRO NEWS

# Damascus City Council votes to ask residents about UGB

*By Nick Christensen* Bylined writers are Metro staff. Stories with a byline do not necessarily represent the opinions of Metro or the Metro Council. Metro News is committed to transparency, fairness and accuracy.

Submitted:

Aug 09, 2012 01:35pm

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### *Reporting from Damascus*

Voters in this Clackamas County town will get to choose this autumn whether to ask Metro for an unprecedented reduction in its urban growth boundary.

The Damascus City Council voted 6-0 Monday to send a binding measure to the November ballot. The question, approved by the council, asks: " Shall the City apply to Metro to amend the Urban Growth Boundary to remove land as warranted by population projections?"

If the voters say yes, Damascus would have to petition Metro to remove some land from the boundary.

It's the latest turn in the long and winding road for one of the most challenging expansions of Metro's urban growth boundary. The 2002 expansion to

Damascus was so widely regarded as a failure that it prompted a complete overhaul of the state's requirements for Metro's boundary expansions.

## Far out

There's little doubt that Metro bit off more than it could chew in the 2002 UGB expansion. State-mandated formulas told Metro how much land it had to add into the boundary, and forced it to annex in the worst farmland – hilly, rocky areas close to cities.

Those are also the hardest areas to develop. A decade ago, Metro brought Damascus into the boundary to help it meet its required 20-year supply of developable land. Now, halfway through that window, there's little optimism that new homes and businesses will start springing up in Damascus before 2025, and probably later in some parts.

The eastern third of the city is particularly stalled, beholden to infrastructure development in Gresham before new homes can have a sewer line to hook up to.

That's why some councilors suggested asking voters whether to pull an undetermined area – probably parts of Sunshine Valley – out of the urban growth boundary. With no urbanization coming, the Damascus City Council could de-annex those areas, alleviating property owners' tax burdens.

If the application goes forward, said Councilor Randy Shannon, the city could have some say in what areas are urbanized.

As for everything else? " This is the area that should not be in the urban growth boundary because it's not needed to meet the population forecasts and we're going to have trouble urbanizing those," he said.

" A lot of the conflict we're seeing is over the idea of urbanization, because it is

different than what most of us moved out here for. "

## A modest proposal?

In an interview Tuesday, Damascus Mayor Steve Spinnett said he doesn't understand how his city or its residents would benefit from a reduced urban growth boundary. He thinks large property owners should be able to sell three or four lots on their property as a stop-gap until larger-scale development can happen.

He also thinks development should be allowed on hillsides, such as the lot he owns on a bluff in the northern part of the city.

"I think one house per two acres makes a lot of sense," he said. On a recent trip to Europe, Spinnett said he noticed that most development was on hillsides, leaving valley bottoms for agriculture. "This whole notion that you have to build your homes on the flats and not allow development on a slope, it's inconsistent with how things are done worldwide."

At Monday's council meeting, Spinnett wondered about gerrymandering, and pointed out Tuesday that he lives in an area that would likely be proposed for removal from Damascus if the November initiative passes.

Political consequences aside, though, he said he'd rather see the city finish its comprehensive plan instead of fighting for a UGB adjustment. Without a plan approved by Damascus voters and state regulators, development in the city is severely limited.

A change to the urban growth boundary, Spinnett said, would be a waste for those who were removed. "They paid eight years of property taxes (to the city of Damascus) for nothing," he said.

But Damascus City Councilor Diana Helm, a proponent of putting the measure on the ballot, looks at it differently.

"Quite a few people on the east side of the city should not be paying for growth that they probably won't ever see in their lifetime," she said.

## Why things went wrong

The core of Damascus' problems aren't unique to that city – they're scenes that play out in once-bedroom communities all over America.

What separates Damascus from Pahrump, Nev., or McKinney, Texas, though, is Oregon's land use planning system. Cities in Oregon can make decisions about how they want to grow, but those decisions have to be approved by state regulators.

Those regulators, guided by court decisions and mandates from the Legislature, urge cities to avoid large lots for homes, typical sprawl and environmental impacts. That doesn't necessarily mesh with the values of a community filled with large homesteads, many in their second or third generation of ownership.

It's becoming increasingly evident that the 2002 UGB expansion won't lead to any land owners getting rich quickly, as some may have hoped when Metro voted to add Damascus at the time. The voters will decide whether to ask Metro to leave parts of the city should be left as if 2002 never happened.

But the Metro Council has to take the entire region's needs into consideration, not just one city's request. Politics have no official place at the Oregon land use table, but advocacy groups – some of which would be opposed to any move that could lead to more development on Washington County farmland – could fight any effort to take parts of Damascus out of the boundary.

## Unprecedented move

There's a lot of uncertainty around a potential ballot measure. While the Damascus City Council is bound to ask for a boundary change if the voters approve it, the Metro Council has to weigh the desires of Damascus voters against the needs of constituents from Forest Grove to Wilsonville to Portland.

It's unknown when the Metro Council would consider a potential UGB reduction – Damascus would have until March 15, 2013, to apply for an out-of-cycle amendment to the boundary – but Metro Council President Tom Hughes said in an interview Tuesday that he thinks it might be better to consider a boundary change, if the voters request it, during Metro's regular UGB review starting in 2014.

Any boundary change would have to be approved by state regulators. Metro has never tried to reduce its urban growth boundary unless compelled by the courts.

And even state approval wouldn't keep the issue out of courts. Some property owners in the areas selected for removal could sue, saying their right to develop was taken away – however remote it might be that development could happen in the near-term. While those properties have yet to be zoned for new development, property owners could argue that the expansion of the UGB was a form of re-zoning, even if construction was decades from being feasible.

*Nick Christensen can be reached at [nick.christensen@oregonmetro.gov](mailto:nick.christensen@oregonmetro.gov) or 503-813-7583. Follow Metro on Twitter [@oregonmetro](https://twitter.com/oregonmetro).*

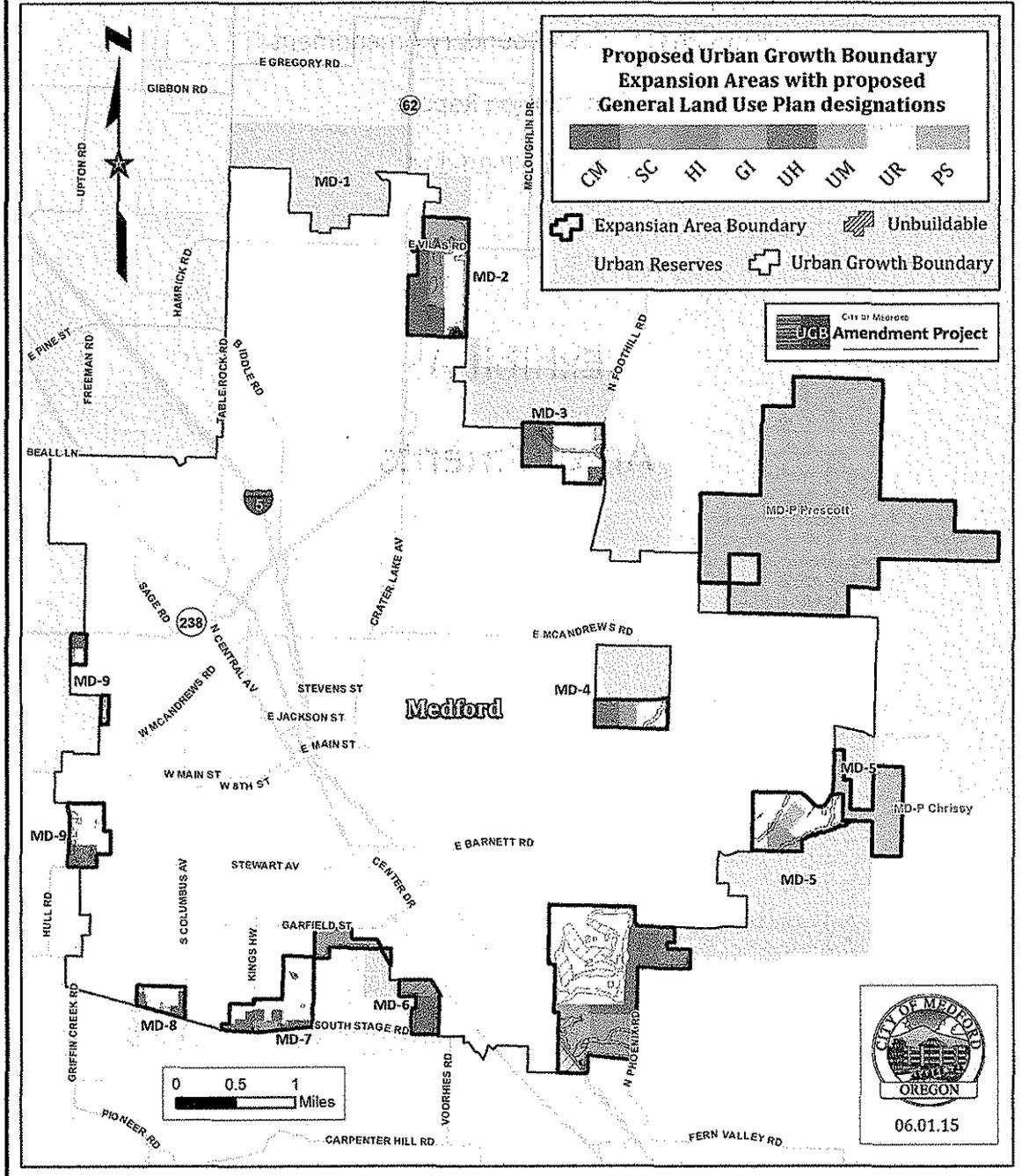
### TOPICS

Land use and development

Nature

Solid waste and recycling

# Proposed Urban Growth Boundary Amendment



# Proposed Urban Growth Boundary Amendment

