



Bureau of Planning and Sustainability

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MEMORANDUM

DATE: September 8, 2015
TO: Portland Planning and Sustainability Commission
FROM: Al Burns, AICP, Senior City Planner
SUBJECT: The Urban Services Boundary Update Project

SUMMARY

The Urban Service Boundary is a feature on the Comprehensive Plan Map. The update of the plan map is a requirement of Tasks III and IV of the Portland's state-mandated periodic review of the Comprehensive Plan.

The Bureau asks for the Commission's review and advice on a three stepped process to update Portland's Urban Services Boundary:

1. Commission recommends new boundary as part of the new Comprehensive Plan map (completed).
2. City Council adopts recommended boundary with possible adjustments based on testimony received (first hearing in November).
3. Adjoining cities and Metro concurrence with the new boundary documented in a series of new Interagency Agreements (ideally before Council adopts Plan Map, required before effective date of new Plan Map).

The Bureau also asks the Commission to review the final draft of a proposed three-party agreement with the City of Beaverton and Metro, and provide comments.



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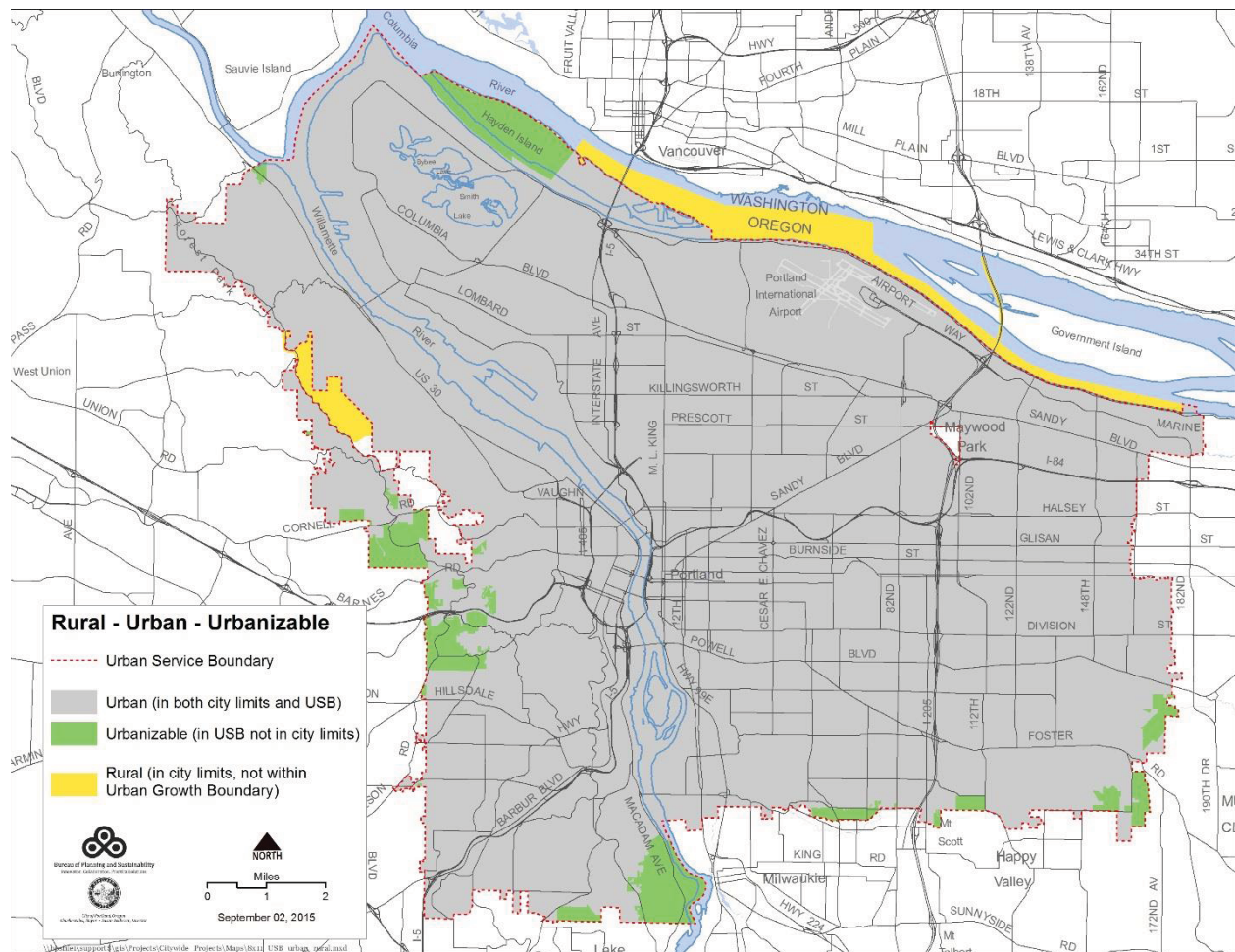
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BACKGROUND

I. Rural, Urban and Urbanizable Land

The three basic types of land under Oregon Land Use Law are Rural, Urban and Urbanizable.

Rural Land is outside urban growth boundaries, while urban and urbanizable land lies within urban services boundaries. Urban land is already developed, or ready to be developed or redeveloped at urban densities. Urbanizable land is land that lies within an urban growth boundary, but because it does not yet have a full range of urban services (adequate sanitary sewers in particular), it is not yet ready to develop at planned urban densities.



II. Portland Has All Three Types of Land.

There are two places where Portland's boundaries of municipal incorporation extent beyond the regional Urban Growth Boundary, along NW Skyline Drive and submerged Columbia River land north East Hayden Island and extending to Government Island. Farm and Forest and Open Space are appropriate designations for rural land. Rural land along Skyline is appropriately zoned. An "f" overlay zone is also applied to rural lands outside the UGB, which requires any land division to result in no parcel smaller than 20 acres. When the rural and urban reserve designation process is completed for Multnomah County, the City may, based on the carrying capacity of the land, make a policy decision to reduce the minimum lot size to ten, five or two acres.

The submerged Columbia River land carries the same urban zoning as the adjoining urban parcels, and many of these zones are unsuitable designations for rural land. If Metro does not adjust the Urban Growth Boundary to include these lands, suitable rural zones will have to be assigned as part of a Periodic Review, Task V zoning project.

Portland considers almost all land that is both within the City Limits and the Regional Urban Growth Boundary to be "Urban" within the meaning of the Statewide Planning Goals, and thus developable at planned urban densities within a twenty-year plan horizon. The exception is land that would be too cost prohibitive or too environmentally damaging to provide urban services (sanitary sewers, streets, etc.). These areas are zoned R20, RF, or have the "f" overlay.

Portland and our neighboring cities consider "Urbanizable" land to be land that is within the Regional Urban Growth Boundary but beyond the present boundaries of any municipal incorporation. In other words, all the gaps between city-limits within the UGB. Public facility service levels for this land range from almost none to nearly urban. It is the policy of Portland and many other cities to not allow the upgrade of existing service levels before annexation. This, and other policy objectives, is accomplished by the establishment and maintenance of Urban Service Boundaries. These boundaries are established by agreement between two nearly adjoining cities, and once established, the common boundary is depicted on the Comprehensive Plan Maps of both cities. If an agreement cannot be reached, a service boundary can be established between two cities by Metro.



III. What Does an Urban Services Boundary Describe?

Once an Urban Service Boundary is established it describes five things while providing one additional benefit.

- A. An Urban Services Boundary describes an area in which:
1. A county may, but is not required to, delegate its urban planning authority to a city (In this case an urban service boundary would also be serving as an urban planning boundary).
 2. A city must exercise either actual or contingency planning authority. Actual means the city comprehensive is effective now, while contingency means the city plan will become effective automatically upon annexation.
 3. A city may, but is not required to, provide extraterritorial extensions of urban services.
 4. A city may, but is not required to, exclude or control the provision or upgrade of urban services by any other city, any county, or any special service district.
 5. A city may annex territory. Since a city may not annex beyond its urban services boundary, the boundary sets the ultimate future extent of a city.
- B. In addition to describing the above, an Urban Services Boundary also provides evidence that two adjoining city comprehensive plans are coordinated within the meaning of Statewide Planning Goal 2 and ORS 197.015, which states, “A plan is ‘coordinated’ when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible.”

IV. How was Portland’s Existing Urban Growth Boundary first Drawn?

Portland’s Urban Services Boundary was derived from decades-old urban planning agreements with Clackamas, Multnomah and Washington County. In the late 1970’s and early 1980’s the Oregon Land Conservation and Development Commission required these agreements, not as part of a comprehensive plan, but as an additional submission requirement for initial state compliance review of the then newly-adopted local comprehensive plans. The agreements were supposed to designate what government, city or county, was responsible for planning unincorporated areas within urban growth boundaries, and in many cases the state encouraged counties to delegate this authority to cities. This was not possible for Portland because Multnomah and Washington Counties had become home rule counties with charters prohibiting the delegation of legislative authority. So, each of these three “planning” agreements was actually just a notification agreement requiring advanced notice of pending planning decisions of one party to the other for any decision affecting mapped “dual interest



areas.” Each agreement did, however, require the initiation of further proceedings to establish an Urban Services Boundary. The following is a summary of the results of these three proceedings.

A. In **Clackamas County** the urban planning agreement was amended to become an urban service agreement with a mapped boundary separating Portland’s urban service boundary from similar boundaries for Lake Oswego, Milwaukie, and Happy Valley. Clackamas County, being a general law county with no restriction on delegation, chose to delegate authority to adopt a public facilities plan for the unincorporated area to Portland, but unincorporated land in Clackamas County within Portland’s Urban Services Boundary is still subject to the regulation under the Clackamas County zoning code. Portland zoning for this area is actually “shadow zoning,” which only becomes effective upon annexation. The Clackamas County agreement was last amended in 1986 to both add and remove some territory from Portland’s Urban Service Boundary. The original five-year expiration date was amended out of this agreement, so it remains in effect indefinitely, subject to termination by either party by advanced notice.

B. In **Multnomah County** the urban planning agreement, through multiple amendments, became a combined planning and urban service agreement, with the planning and service boundaries becoming the same line. This agreement set the Urban Services Boundary between Portland and Gresham, and granted the cities the authority to change the boundary, by distances of 400 feet or less, by mutual agreement without having to seek further county approval. Multnomah County kept faith with the non-delegation provision of its charter by only agreeing to consider Portland plan and zone proposals for unincorporated Multnomah County land within Portland’s Urban Service Boundary. So far, the county has chosen to adopt every city proposal to date. If the county chose not adopt a city proposal, the city would then be entitled, but not required, to terminate the agreement and Multnomah County would fully assume planning, zoning, and development review responsibilities (both legislative and administrative) for the unincorporated urbanizable areas. Unlike Portland zoning in unincorporated Clackamas and Washington Counties, which is a “shadow” only taking effect upon annexation, Portland zoning in unincorporated Multnomah County is in effect because Title 33 of the Portland City Code and the Portland Comprehensive Plan have been adopted by both the Portland City Council and the Multnomah County Board of Commissioners. The Multnomah County agreement remains in effect indefinitely, subject to termination by advanced notice of one party to the other.

C. In **Washington County** urban service boundary discussions were initiated in accord with the 1981 urban planning agreement, but the parties could not reach agreement. When the City of Beaverton unilaterally adopted an urban service boundary and when that boundary was affirmed by Washington County’s adoption of the same boundary, Portland responded unilaterally adopted a different boundary. Since the boundaries were all adopted as comprehensive plan amendments they were land use decisions and the Oregon Land Use Board of Appeals had jurisdiction to review the ensuing dispute. LUBA remanded all three boundaries because they were not “coordinated” within the meaning of Statewide Planning



Goal 2. On further review the Oregon Court of Appeals affirmed LUBA's decision in its entirety.

As a result of this litigation the parties learned:

1. An urban service boundary is uncoordinated if it contains overlaps or gaps. An overlap is an area within in the urban service boundary of two or more cities, or there is an area which has been inexplicably excluded from two or more otherwise adjoining urban service boundaries.
2. Any county within the Portland metropolitan area that attempts to resolve urban service boundary disputes between cities, or between cities and counties, improperly usurps the exclusive authority of Metro under ORS 195 and 268 to coordinate comprehensive plans within the regional Urban Growth Boundary.
3. Metro's coordination authority may not be delegated to a mediator or hearings officer. The final Metro coordination decision must be made by the Metro Council itself.

After the litigation concluded, the Metro Council adopted a 1996 ordinance adding urban service areas to either Portland or Beaverton, and Portland, Beaverton and Washington County all amended their comprehensive plans to conform to Metro's decision.

The part original 1981 agreement with Washington County requiring notification of one party to the other of pending planning decisions within mapped dual interest areas remains in effect indefinitely, subject to termination by advanced notice of one party to the other.

CURRENT STATUS

V. Proposal to Update of Portland's Urban Service Boundary

An Urban Service Boundary must be depicted on the Comprehensive Plan Map because this boundary describes the present and future effect of Portland's Comprehensive Plan and plan implementing measures, in other words, where the plan applies. The Portland Planning and Sustainability Commission has recommended an updated Urban Service Boundary to the City Council, as part of the Comprehensive Plan map. The recommend boundary is different from the existing boundary, because the existing boundary contains some gaps and overlaps with the service boundaries of adjoining cities and thus could not meet the Statewide Planning Goal 2 coordination requirement. The changes between the existing and recommended boundary lines are not easily discernable at the scale the Comprehensive Plan Map is usually published. Attached maps show these details.

In order to validate the recommended Urban Service Boundary as coordinated within the meaning of Statewide Planning Goal 2 and ORS 197.0150 the Bureau of Planning and Sustainability has developed a model Interagency Agreement approved as to form by the Portland City Attorney, the Beaverton City Attorney and the Metro Attorney. A final draft



agreement validating the recommended service boundary changes between Portland and Beaverton is ready for consideration by both cities, and by Metro. A model agreement based on the final draft of the Beaverton agreement has been provided to other adjoining cities. These agreements need to be approved by Portland, the adjoining city, and by Metro on or before the effective date of the new Comprehensive Plan map.

As a result of the litigation in the 1990s Portland learned that its existing urban planning were with the wrong party. Our existing urban service agreements are with counties. They should be with cities, and since Metro is the exclusive regional coordinator, Metro should also be a party to these agreements. While Portland's Urban Planning Boundary and Urban Service Boundary should be the same line, agreements to receive delegated planning authority should be with the county, while agreements to provide future urban service agreements to designated unincorporated areas should be with the adjoining city. After completion of new three-party, Portland-City-Metro, agreements with adjoining cities, Portland should seek amendments to its existing agreements with the three counties to remove conflicting and unnecessary urban service language and to conform urban planning boundaries to urban service boundaries.

After completion of new urban service agreements and amended urban planning agreements separate round of agreements should be initiated with County service districts and special service districts, so that all urban service providers may become aware of one another's present and future responsibilities.

VI. The Interagency Agreements.

The Urban Service Boundary recommended by the Commission was based on the best available information and the then current state of negotiation with the adjoining cities. These negotiations were initiated for all jurisdictions, essentially complete for Beaverton, but less complete for the other cities. It is possible that reaching final agreement with the other cities may require adjustments to the boundary prior to Council action on the plan. If this happens, the draft interagency agreement requiring the adjustment will be brought to the commission's attention.

VII. The Beaverton Agreement.

The draft Beaverton agreement is attached to facilitate the Commission's discussion. The adoption of this agreement is not a land use decision, but we are providing it as an example of the form that these agreements will take. Each agreement will ultimately be approved by City Council.



VIII. Public Notice

Most public involvement related to the urban services boundary occurs when annexations actually occur. Incorporation of a property into a City's USB has no direct regulatory impact until either the property is annexed into the City, or the City seeks to apply planning or zoning designations to the property. Outreach and notice to impacted property owners is being handled differently depending on if the property is being added or removed from the Portland USB.

For each property being added to the USB, those property owners have received public notices in conjunction with the Proposed Comprehensive plan Map, explaining that a Portland Comprehensive Plan designation is being proposed, which would govern zoning of their property should they choose to annex into the City of Portland in the future. A second notice will be mailed prior to City Council hearings on the recommended land use map.

For properties being removed from the Portland USB, notices are not being provided by the City of Portland, but would be provided by the jurisdiction that is incorporating that property into its Comprehensive plan or zoning map. For example, in the case of Beaverton, if Beaverton adopts land use or zoning designations for those properties, it will notify the impacted property owners.

IV. Commission Action

No specific Commission vote is sought at this time. This is an informational briefing about one of the Comprehensive Plan Implementation projects. Most other Comprehensive Plan Implementation projects include specific land use decisions or Title 33 amendments that require a formal commission recommendation. This project does not. At this stage we seek only informal guidance and direction, and wish to use this briefing as an opportunity to provide public information about the series of USB-related agreements that will be brought to City Council over the next year, to help implement the Comprehensive Plan. The Beaverton agreement services as an example to facilitate discussion.

Attachments:

Metro Ordinance No. 96-655C Exhibit Map
Draft Interagency Agreement Between Beaverton, Portland and Metro
Insert Maps of possible IGA changes to Urban services Boundary

