

1600 SE 190<sup>th</sup> Ave, Portland OR 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

# Staff Report

**Case File:** T4-2018-10415

**Hearing Date, Time, & Location:**

**Monday, March 4, 2019, at 6:30 p.m.** or soon thereafter, in the Multnomah Building Room 100 at 501 SE Hawthorne Blvd., Portland 97214

**Proposal:** The applicant has submitted a request for an exception to **Statewide Planning Goal 11 (Public Facilities and Services)** to extend public sewer service from the City of Gresham to the **Sam Barlow High-School**, located outside of the **Urban Growth Boundary at 5105 SE 302<sup>nd</sup> Ave.** The sewer line is proposed to be placed within the **SE Lusted Road right-of-way**, on **Multiple Use Agriculture-20** zoned land, and will only serve the high school.

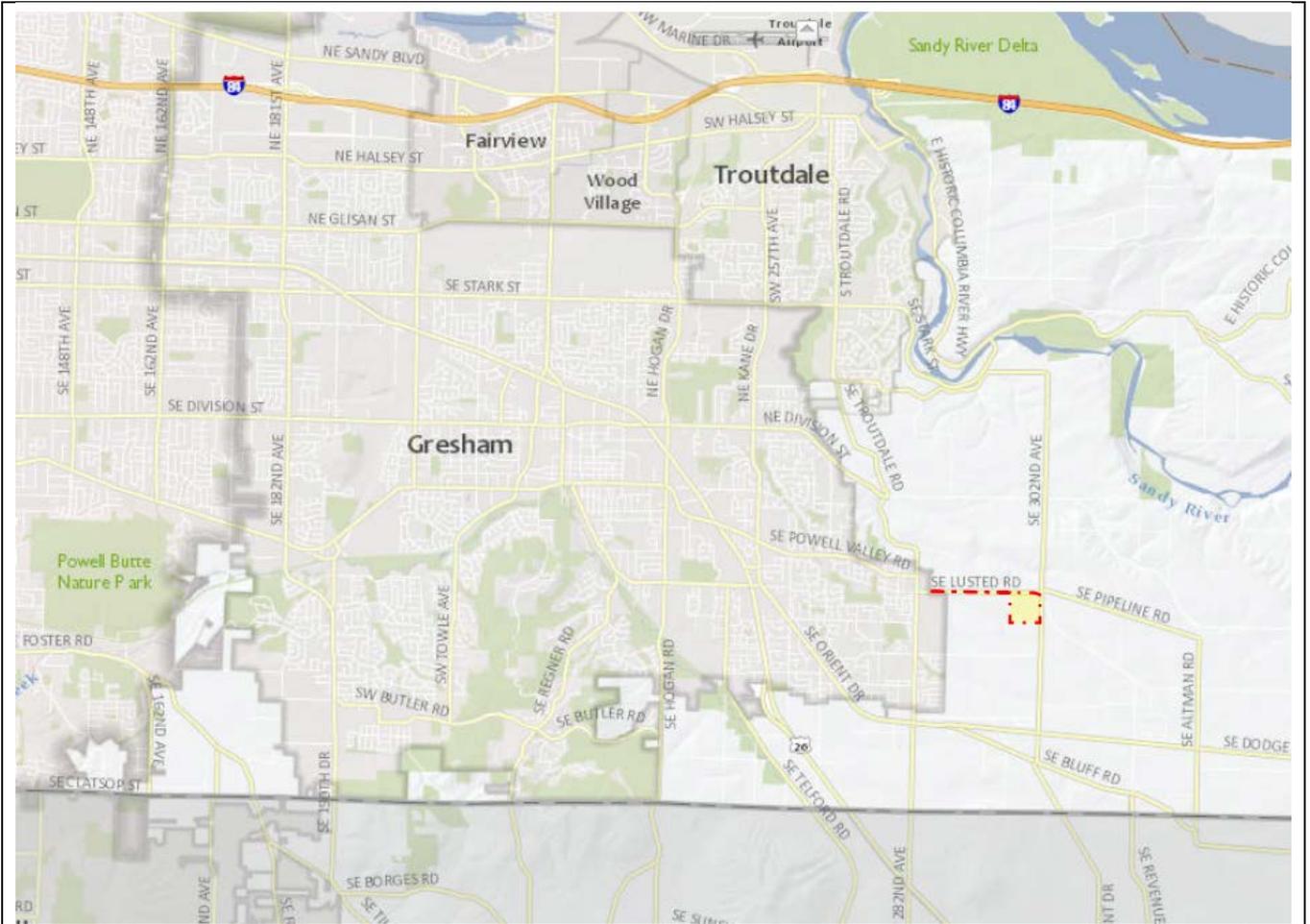
**Location:**

<p><u>Property proposed to be served:</u>                  Sam Barlow High School (School Dist. No. U2-20 JT)                  5105 SE 302<sup>nd</sup> Ave, Gresham, OR 97080                  T1S, R4E, Sec. 18, T.L. 100;                  R994180780                  37.27 acres</p>	<p><u>Proposed location of sewer line:</u>                  Property within the SE Lusted Road right-of way between the Urban Growth Boundary and the Sam Barlow High School (roughly 4.5 acres of right-of-way)</p>
<b>Owners:</b>	<p>Mike Schofield, CFO                  Gresham Barlow School District                  1331 NW Eastman Parkway                  Gresham, OR 97030</p> <p>Multnomah County (SE Lusted Road right-of-way)</p>

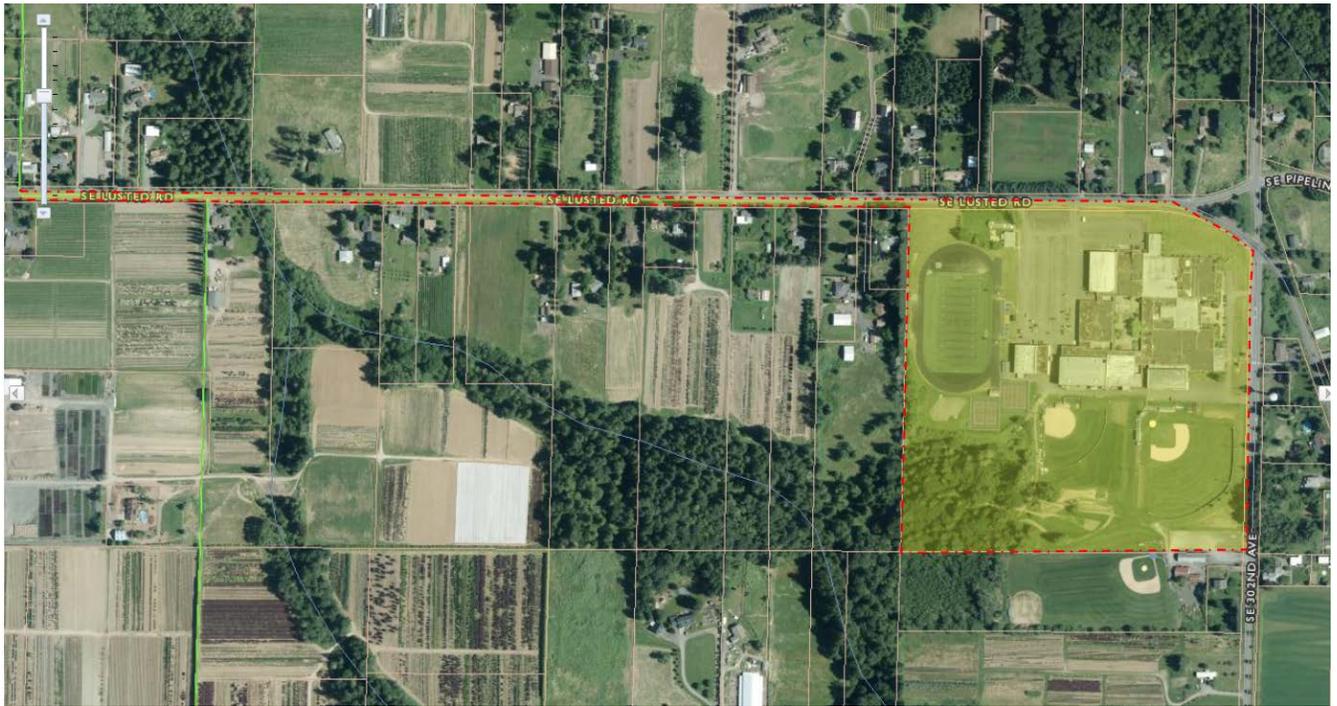
**Applicant:** Ben Schonberger  
 Winterbrook Planning  
 610 SW Alder St., Suite 810  
 Portland, OR 97205

**Base Zone:** Multiple Use Agriculture-20 (MUA-20)

**Overlay Zones:** Significant Environmental Concern for Wildlife Habitat (SEC-h), Slope Hazard (HD), and Goal 14.



General Vicinity Map (Subject Property Highlighted in Yellow) N↑



Detailed Vicinity Map (Subject Property Highlighted in Yellow) N↑

**Applicable Approval Standards:**

1. Oregon Administrative Rules (OAR)
  - a. OAR-660-015-0000(11); Authority for Oregon Goal 11 (Public Facilities and Services)
  - b. OAR-660 Division 4; Explains three types of goal exceptions. Establishes requirements and limitations.
    - i. 660-004-0000(1)(a); Establishes authority for OAR 660-011-0060(9) to apply to a ‘reasons’ exception to extend sewer service to rural lands.
    - ii. 660-004-0000(2); Documentation for exception must be set forth in local government comprehensive plan.
    - iii. 660-004-0018(3); Identifies the following rules applicable to public facilities on rural land not approved through a ‘physically developed’ or ‘irrevocably committed’ exception: 660-004-0018(4); 660-004-0020 through 660-004-0022; and 660-011-0060.
    - iv. 660-004-0018(4); Prohibits other uses from connecting to facility authorized through goal exception. Requires new exception for certain future changes in use.
    - v. 660-004-0020 through 660-004-022; Provides standards of approval for reasons exception, requires 660-011-0060(9) to be met.
    - vi. 660-004-0030; Notice and adoption of an exception
  - c. OAR Division 11; Applies to sewer service on rural lands
    - i. 660-011-0060(9); Lists additional standards of approval for sewer extension
2. Oregon Revised Statutes (ORS); Defines “exception” and provides authority for local government to adopt goal exception through one of three options; Defines intent of exceptions process.
  - a. 197.732(1); Provides definitions
  - b. 197.732(2)(a)-(c); Establishes exception provisions of Goal 2 (Part II – Exceptions) implemented by OAR 660-015-0000(2).
  - c. 197.763; Procedures
3. Multnomah County Land Use and Transportation Regulations
  - a. *Former* Multnomah County Code (MCC) 37.0510 – 37.0970; Type IV Procedures, Code Compliance
  - b. *Former* MCC 37.0705(A); Type IV quasi-judicial plan and zone change approval standards.
  - c. Multnomah County Road Rules (MCRR): 1.000 – 26.000
4. Relevant Multnomah County Comprehensive Plan Policies
  - a. Chapter 2 (Land Use); Community Facilities
  - b. Chapter 3 (Farm Land); Multiple Use Agricultural Land
  - c. Chapter 11 (Public Facilities and Services); General Policies & Strategies, Wastewater Treatment Systems
  - d. Chapter 12 (Transportation)

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**Recommended Decision:**

It is staff’s opinion that the Planning Commission should recommend approval of the Goal 11 Exception request to the Board of County Commissioners, including adopting the text revisions to the Multnomah County Comprehensive Plan outlined in Section 7.0 of this report.

**Recommended Conditions of Approval:**

If the Planning Commission recommends approval, staff offers the following Conditions of Approval for the Commission’s consideration:

1. The only use located outside of the Urban Growth Boundary authorized to be served by the proposed sewer facility is the Sam Barlow High School located at 5105 SE 302<sup>nd</sup> Ave. No other use located outside of the Urban Growth Boundary can connect to the proposed sewer facility until such time the use is annexed into a city or authorization to connect is granted through a new Goal 11 exception (OAR 660-004-0018(4)(a); OAR 660-011-0060(9); OAR 660-015-0000(11)).

2. When a change occurs to 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 (OAR 660-004-0018(4)(b)).

### **Findings of Fact:**

**FINDINGS:** Written findings are contained herein. The Multnomah County Code (MCC) standards, Comprehensive Plan Policies, Rules and Statutes are in **bold** font. Applicant's responses submitted in the application have been italicized and are identified as '*Applicant Response.*' Staff analysis and comments are identified as '**Staff Finding:**' and address the applicable standards. The notation (\* \* \*) indicates a gap where non-applicable rules, statutes or codes have been skipped to reduce staff report length and improve readability.

### **1.00 Summary of the Statewide Land Use Planning Goals and the Exceptions Process:**

This staff report considers a request from the Gresham-Barlow School District for a 'reasons' exception to statewide planning Goal 11 (Public Facilities and Services). In general, the proposal is to extend sewer service outside an Urban Growth Boundary (UGB) to serve the existing Sam Barlow high school located on rural land at the intersection of SE Lusted Road and SE 302<sup>nd</sup> Avenue in eastern Multnomah County. Section 2.00 of this report describes the proposal in more detail and Sections 3.00 – 5.00 evaluate the approval standards.

Oregon land use rules are established at the highest level within Oregon's 19 Statewide Planning Goals (OAR 660-0015-0000). These 19 goals express statewide policy on a range of land use topics including but not limited to citizen involvement, protection of air and water quality, protection of farm and forestland, and urbanization including the establishment of public facilities needed to serve development. These policies are codified as law within various sections of the Oregon Administrative Rule and Oregon Revised Statutes. Local county and city comprehensive plans and development regulations must be consistent with these the applicable goals, rules and statutes.

The statewide land use planning system offers a process to excuse a proposed action from strict compliance with the specific language of the statewide planning goals in order to permit necessary flexibility where justifiable. This is called the goal exception process and a land use goal exception request can involve one or more than one of the 19 statewide planning goals. Oregon Administrative Rule 660-0015-0000(2) provides three different types of goal exceptions informally referred to as 1) physically developed, 2) irrevocably committed, and 3) a reasons exception. An approved goal exception application must qualify under at least one of these types of exceptions.

A local government in Oregon, such as Multnomah County, must make findings that each applicable goal exception standard is met and also must document the exception within the local comprehensive plan to authorize a goal exception request. This documentation requires amendment to the Multnomah County Comprehensive Plan which is a Type IV action considered by the county Planning Commission and ultimately decided by the Multnomah County Board of Commissioners (MCC 37.0530). Amendments to a local comprehensive plan are often informally referred to as a 'comp plan amendment' or 'plan change'.

This staff report has been drafted to provide the required findings of fact to the Multnomah County Planning Commission who will prepare a recommendation for consideration by the Multnomah County Board of Commissioners. The Board of Commissioners will render the county's final decision on this goal exception request to extend sewer service outside an urban growth boundary to serve an existing school use.

## 2.00 Summary of Proposal:

The applicant has applied for a Goal 11 exception so that a public sewer line can be extended from the City of Gresham, easterly along SE Lusted Road, to an existing high school (Sam Barlow) located outside of the region's UGB. **The proposed sewer line to the high school property will be located fully within the SE Lusted Road right-of-way and will not encroach on private property.** The specific alignment of the sewer line within the road right-of-way is being considered through pending land use application T3-2019-11549. The pump station will be on the south side of the road approximately 120-feet east of a stream crossing.

The Sam Barlow High School currently serves a population of roughly 1,700 students and is located at the intersection of SE Lusted Road and SE 302<sup>nd</sup> Avenue. Sewage from the school is currently and has always been captured on-site in a holding tank and transported by truck daily to the City of Gresham wastewater treatment plant for disposal. The proposed sewer line would eliminate the need to continue to use trucks to haul sewage waste to the city for treatment. It appears the sewer line would need to extend roughly 3,300 feet east of the existing UGB (shown in purple below) to reach the school property (shown in red below). The proposed sewage connection to the school's sewer main will enter the school property at the northwest corner, north of the oval running track. No sewer work is proposed within the SE 302<sup>nd</sup> Avenue right-of-way.

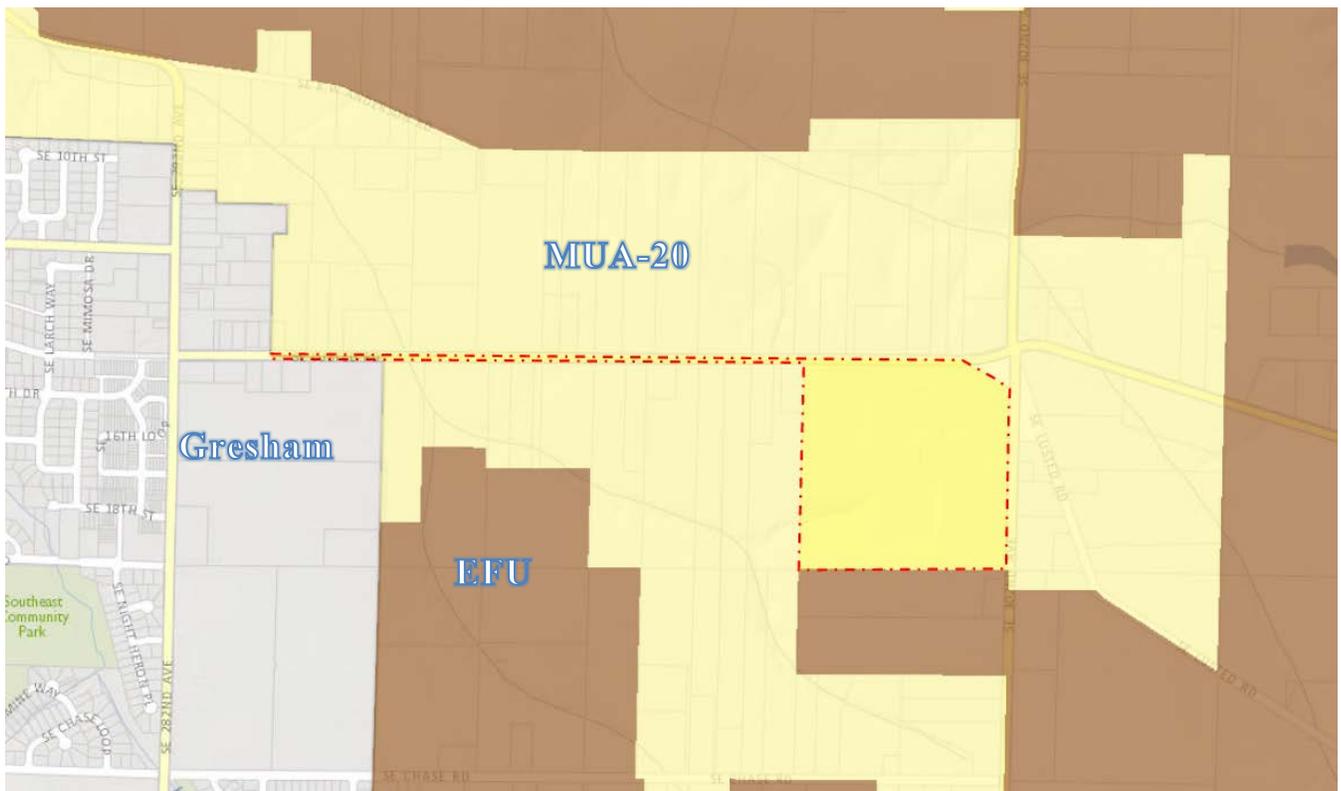


**The sewer line will only serve the Sam Barlow School.** Additional connections to the sewer line from properties located outside of the UGB could only be authorized through subsequent goal exceptions. Approval of this request would allow the school to discontinue transportation of sewage by truck which

has been the method of sewage disposal since the school opened in the 1960s. This application does not amend the scope, scale or intensity of the Sam Barlow school use and only relates to the future method of sewage disposal generated by the school use. Additionally, this application is only for the goal exception (and associated comprehensive plan amendment) and does not include any required land use and/or transportation development review applications that may be required to construct a sewer line extension. Those permits will be processed separately from this goal exception.

Multnomah County approved a Conditional Use permit for construction of the Sam Barlow High School in 1964 (Case CS-9-64). The school was opened in 1968. The most recent land use permit altering the school use was issued in 2018 with the approval a non-conforming use expansion authorizing construction of a new two-story classroom building, a new covered sports field grandstand and other smaller school facility improvements (case T2-2017-9119).

The subject property is 37.27 acres and located adjacent to SE 302<sup>nd</sup> Avenue and SE Lusted Road in the West of Sandy River rural planning area roughly 1/2-mile east of the City of Gresham. Zoning of the subject property, including along the SE Lusted Road right-of-way is Multiple Use Agriculture-20 (MUA-20) with zoning overlays on the SW corner of the property for Significant Environmental Concern Wildlife Habitat (SEC-h) and Hillside Development (HD).



A rural base zoning map of the area is shown above. Light yellow is Multiple Use-Agriculture-20 (MUA-20). Brown is Exclusive Farm Use (EFU). The majority of the property is dedicated to the school use as seen below including the high school buildings, parking areas, and areas for active recreation (football, baseball, tennis, etc.). Vehicular access to the school is provided off SE Lusted Road and 302<sup>nd</sup> Avenue.



The applicant's summary below provides more detail about the proposal.

***Applicant Response:*** “In 1964 Multnomah County approved a conditional use permit to allow a high school on 1S 4E 18, Tax Lot 100 (the subject property). Sam Barlow High School opened in 1968. For the last 50 years, the School District has transported sewage from the high school to the city of Gresham for treatment via truck. The City and the School District have a long-standing intergovernmental agreement to allow this to occur.

*In 1973 the Oregon Legislature passed Senate Bill 100 which established the Land Conservation and Development Commission. In 1975, the LCDC adopted 14 statewide planning goals. Goal 14 (Urbanization) requires cities to establish urban growth boundaries (UGBs). Goal 3 (Agricultural Lands) generally prohibits urban uses on farm land outside of urban growth boundaries. Goal 11 (Public Facilities and Services) does not allow extension of sewer systems to serve rural land outside UGBs. Goal 2 (Land Use Planning) establishes a process for taking for taking an “exception” to the policy directives found Goals 3, 11 and 14.*

*In 1980, the Multnomah County Comprehensive Plan approved a Goal 2, Part II(c) exception to Goal 3 (Agricultural Lands) that recognized the high school property as being “built and committed” to non-farm use. As a result, the school property was zoned MUA-20 (which allows schools as a community service use) rather than Exclusive Farm Use (which does not). The exception also recognized that sewerage from the school was being trucked to Gresham for treatment.*

*In 2009, Multnomah County and Metro designated the East Gresham Area (which includes Sam Barlow High School) as an “Urban Reserve.” To support this designation, the city of Gresham prepared the*

*Sewer Pump Station Master Plan which shows where and how sanitary sewer service can be extended to serve the East Gresham Urban Reserve Area. The proposed sewer line exception is consistent with this plan.*

*In 2018, Multnomah County approved a nonconforming use application to allow expansion of the school and related campus improvements (County case file T2-2017-9119). The non-conforming use review determined that there would be no significant impacts on surrounding rural properties from the school expansion. Because more efficient plumbing fixtures will be used, effluent flows from the expanded high school will be reduced.*

*The School District has determined that it would be more efficient and less expensive to construct a sewer line in the Lusted Road right-of-way to connect directly with the Gresham wastewater system – rather than trucking the sewerage to the Gresham Wastewater Treatment Plant (WTP). City of Gresham public works staff support this idea and amending the existing inter-governmental agreement to recognize the change in conveyance method.*

*However, extending a sewer line outside a UGB is not allowed by Statewide Planning Goal 11 (Public Facilities and Services) – unless there is a very good reason not to follow the Goal 11 mandate. Goal 2, Part II(c) as implemented by OAR 660-004-0020 sets forth a process and criteria for approval of Goal 11 exception. In short, there must be a very good reason to allow such an extension and the exception must be adopted by the County as part of the comprehensive plan and “acknowledged” by the LCDC...*

*... In conclusion, the proposed statewide planning goal exception is to allow the extension of a sewer pipe that will serve Sam Barlow High School. The school has been served by the municipal system, via trucking the waste into Gresham, for nearly 60 years, since the school was first constructed. This exception will allow permanent infrastructure—a pipe in the Lusted Road right of way—to perform the same activity. The purpose of the land use regulations that limit the ability of the school district to build this conveyance system without a goal exception is to protect farmland. As demonstrated in the findings above, the proposed sewer pipe, which is located entirely within road right of way and will not be available for hookup by any other user, does not have any impact on farm activities. The proposed change in conveyance method for school sewer flows is reasonable and meets all the applicable regulations.”*

### **3.00 Goal Exception Standards:**

#### **3.01 OAR 660-015-0000(11) – Goal 11: Public Facilities and Services**

**To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.**

**Local Governments shall not allow the establishment or extension of sewer systems outside urban growth boundaries or unincorporated community boundaries, or allow extensions of sewer lines from within urban growth boundaries or unincorporated community boundaries to serve land outside those boundaries, except where the new or extended system is the only practicable alternative to mitigate a public health hazard and will not adversely affect farm or forest land.**

**Local governments shall not rely upon the presence, establishment, or extension of a water or sewer system to allow residential development of land outside urban growth boundaries or**

**unincorporated community boundaries at a density higher than authorized without service from such a system.**

**Staff Finding 1:** OAR 660-015-0000(11) establishes that the extension of a sewer system outside an urban growth boundary (UGB) or unincorporated community boundary shall not be allowed except where the new or extended system is the only practicable alternative to mitigate a public health hazard and the action will not adversely affect farm or forest land. This rule establishes the baseline for Goal 11 from which the applicant has requested an exception. The subject property is not located within an unincorporated community boundary but is located outside a UGB. The proposal is not in response to a public health hazard. Therefore, an exception to Goal 11 is required.

**3.02**

## **GOAL EXCEPTIONS**

**ORS 197.732 Goal exceptions; criteria; rules; review.**

**(1) As used in this section:**

**(a) “Compatible” is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.**

**(b) “Exception” means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:**

**(A) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;**

**(B) Does not comply with some or all goal requirements applicable to the subject properties or situations; and**

**(C) Complies with standards under subsection (2) of this section.**

**(2) A local government may adopt an exception to a goal if:**

**(a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;**

**(b) The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or**

**(c) The following standards are met:**

**(A) Reasons justify why the state policy embodied in the applicable goals should not apply;**

**(B) Areas that do not require a new exception cannot reasonably accommodate the use;**

**(C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and**

**(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.**

*Applicant Response: “ORS 197.732(2) identifies two types of exceptions: (1) where a site is “physically developed” or “irrevocably committed” for a use that is not allowed by (in this*

case Goal 3 – Agricultural Lands) – commonly known as a “built and committed exception”; or (2) where there are “reasons that justify why the state policy embodied in a goal” (in this case Goal 11 – Public Facilities and Services) should not apply to a specific area or activity – commonly known as a “reasons exception”.

- The high school site already has a “built and committed” exception – acknowledged by LCDC in 1980. ORS 197.732(8) recognizes that an acknowledged goal exception is not subject to ORS 197.732 provisions.<sup>1</sup> This exception was adopted as part of the comprehensive plan and justified zoning the high school site MUA-20 (an exception area zone) rather than Exclusive Farm Use (a resource zone). The “built and committed exception” also recognized that sewage would be trucked from a high school holding tank to the Gresham WTP.
- A reasons exception is required because Goal 11 (Public Facilities and Services) prohibits the extension of sewer systems, including sewer lines and pump stations, to serve rural land outside of urban growth boundaries:  
“Local Governments shall not allow the establishment or extension of sewer systems outside urban growth boundaries or unincorporated community boundaries, or allow extensions of sewer lines from within urban growth boundaries or unincorporated community boundaries to serve land outside those boundaries...”

The proposed exception would allow a change in how the high school sewerage is conveyed to the Gresham WTP – via extension of a sewer pipe rather than truck.

In this case, ORS 197.732 Goal Exceptions is implemented<sup>2</sup> by and OAR 660 Division 004 Interpretation of Goal 2 Exceptions Process<sup>3</sup> and OAR 660 Division 11 (Public Facilities and Services). These rules cross-reference one another – so it is necessary to jump back and forth between the two rules. At the end of the day, OAR 660-004-0020(2)(a)-(d) are the relevant reasons exception review criteria for the proposed sewer line extension...\*”

<sup>1</sup> (Footnote provided in applicant’s narrative): “An exception acknowledged under ORS 197.251 (Compliance acknowledgment), 197.625 (Acknowledgment of comprehensive plan or land use regulation changes) or 197.630 (1) (1981 Replacement Part) on or before August 9, 1983, continues to be valid and is not subject to this section.”

<sup>2</sup> (Footnote provided in applicant’s narrative): ORS 197.732 (3) *The commission shall adopt rules establishing: (a) That an exception may be adopted to allow a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use;*

*(b) Under what circumstances particular reasons may or may not be used to justify an exception under subsection (2)(c)(A) of this section; and (c) Which uses allowed by the applicable goal must be found impracticable under subsection (2) of this section.*

<sup>3</sup> (Footnote provided in applicant’s narrative): Statewide Planning Goal 2 (Land Use Planning) includes provisions for taking a Goal 2, Part 2(c) exception – which is also known as a “reasons exception”. The text of Goal 2, Part 2(c) is quoted below and is mirrors the text in ORS 197.732 and OAR 660-004-0020:

*A local government may adopt an exception to a goal when: ... (c) The following standards are met: (1) Reasons justify why the state policy embodied in the applicable goals should not apply; (2) Areas which do not require a new exception cannot reasonably accommodate the use; (3) The long-term environmental, economic, social and energy consequences resulting from the use of the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and (4) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.*

*Staff Comment: \*...At this point in the narrative, the applicant’s findings transition to addressing OAR 660-004-0020. The remainder of the applicant’s narrative was moved to Section 3.07 of this report addressing the exception provisions OAR 660-004-0020.*

**Staff Finding 2:** The applicant has applied for a reasons exception under the provisions of ORS 197.732(2)(c). A more thorough analysis of the reasons exception provisions of ORS 197.732(2)(c) is implemented by OAR 660-004-0020, which is addressed within Section 3.07 of this report. Staff finds that compliance with the general requirements of OAR 660-004-0020 equates to compliance with the more detailed implementing requirements of ORS 197.732(2)(c) and that the determination of compliance with the applicable provisions should and will be made through the implementing administrative rules. This approach is consistent with the direction provided in OAR 660-004-0000 where specific standards control over general standards.

**3.03 Division 4**

**INTERPRETATION OF GOAL 2 EXCEPTION PROCESS**

**OAR 660-004-0000**

**Purpose**

**(1) The purpose of this division is to interpret the requirements of Goal 2 and ORS 197.732 regarding exceptions. This division explains the three types of exceptions set forth in Goal 2 “Land Use Planning, Part II, Exceptions.” Rules in other divisions of OAR 660 provide substantive standards for some specific types of goal exceptions. Where this is the case, the specific substantive standards in the other divisions control over the more general standards of this division. However, the definitions, notice, and planning and zoning requirements of this division apply to all types of exceptions. The types of exceptions that are subject to specific standards in other divisions are:**

**(a) Standards for a demonstration of reasons for sanitary sewer service to rural lands are provided in OAR 660-011-0060(9);**

**(\* \* \*)**

*The notation (\* \* \*) indicates a gap where non-applicable rules, statutes or codes have been skipped to reduce staff report length and improve readability.*

**(2) An exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals in accordance with the process specified in Goal 2, Part II, Exceptions. The documentation for an exception must be set forth in a local government’s comprehensive plan. Such documentation must support a conclusion that the standards for an exception have been met. The conclusion shall be based on findings of fact supported by substantial evidence in the record of the local proceeding and by a statement of reasons that explains why the proposed use not allowed by the applicable goal, or a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use, should be provided for. The exceptions process is not to be used to indicate that a jurisdiction disagrees with a goal.**

**(3) The intent of the exceptions process is to permit necessary flexibility in the application of the Statewide Planning Goals. The procedural and substantive objectives of the exceptions process are to:**

- (a) Assure that citizens and governmental units have an opportunity to participate in resolving plan conflicts while the exception is being developed and reviewed; and
  - (b) Assure that findings of fact and a statement of reasons supported by substantial evidence justify an exception to a statewide goal.
- (4) When taking an exception, a local government may rely on information and documentation prepared by other groups or agencies for the purpose of the exception or for other purposes, as substantial evidence to support its findings of fact. Such information must be either included or properly incorporated by reference into the record of the local exceptions proceeding. Information included by reference must be made available to interested persons for their review prior to the last evidentiary hearing on the exception.

**Staff Finding 3:** Section 3.09 of this report addresses specific standards (OAR 660-011-0060(9)) related to the demonstration of reasons for sanitary sewer service to rural lands as required by OAR 660-004-0000(1)(a). OAR 660-004-0000(2)-(4) explain the goal exception process. An explanation of process does not require staff findings. Compliance with OAR 660-004-0001(1)(a) will be made through an assessment of the more specific OAR 660-011-0060(9) findings in Section 3.09. The recommended text amendment to the Multnomah County Comprehensive Plan, as required by OAR 660-004-0000(2) is addressed within Section 7.00 of this report.

3.04

**660-004-0010**

**Application of the Goal 2 Exception Process to Certain Goals**

(1) The exceptions process is not applicable to Statewide Goal 1 "Citizen Involvement" and Goal 2 "Land Use Planning." The exceptions process is generally applicable to all or part of those statewide goals that prescribe or restrict certain uses of resource land, restrict urban uses on rural land, or limit the provision of certain public facilities and services. These statewide goals include but are not limited to:

(\* \* \*)

(c) Goal 11 "Public Facilities and Services" as provided in OAR 660-011-0060(9);

**Staff Finding 4:** OAR 660-004-0010(1)(c) reiterates that OAR 660-011-0060(9) must be addressed in a Goal 11 Exception request. The required findings are provided in Section 3.09.

3.05

**660-004-0015**

**Inclusion as Part of the Plan**

(1) A local government approving a proposed exception shall adopt, as part of its comprehensive plan, findings of fact and a statement of reasons that demonstrate that the standards for an exception have been met. The reasons and facts shall be supported by substantial evidence that the standard has been met.

(2) A local government denying a proposed exception shall adopt findings of fact and a statement of reasons that demonstrate that the standards for an exception have not been met. However, the findings need not be incorporated into the local comprehensive plan.

**Staff Finding 5:** This staff report for case T4-2018-10415 provides findings of fact and statements of reasons which, if approved, will be adopted within in the Comprehensive Plan.

**660-004-0018****Planning and Zoning for Exception Areas**

**(1) Purpose.** This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-004-0025 and 660-004-0028 and 660-014-0030 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.

**(2) For "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those that satisfy (a) or (b) or (c) and, if applicable, (d):**

**(a) That are the same as the existing land uses on the exception site;**

**(b) That meet the following requirements:**

**(A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals, and are consistent with all other applicable goal requirements;**

**(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028; and**

**(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;**

**(c) For uses in unincorporated communities, the uses are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if the county chooses to designate the community under the applicable provisions of OAR chapter 660, division 22;**

**(d) For industrial development uses and accessory uses subordinate to the industrial development, the industrial uses may occur in buildings of any size and type provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.**

**(3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved on rural land only under provisions for a reasons exception as outlined in section (4) of this rule and applicable requirements of OAR 660-004-0020 through 660-004-0022, 660-011-0060 with regard to sewer service on rural lands, OAR 660-012-0070 with regard to transportation improvements on rural land, or OAR 660-014-0030 or 660-014-0040 with regard to urban development on rural land.**

**(4) "Reasons" Exceptions:**

**(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.**

**(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.**

**Staff Finding 6:** OAR 660-004-0018(1) provides a purpose statement for general orientation. Sub (2) applies to physically developed and irrevocably committed exception requests which are not applicable to this application. Findings of fact are required for OAR 660-004-0018(3) & (4). Sub (3) requires applicable provisions of OAR 660-004-0020 through 660-004-0022 and 660-011-0060 to be met. Those findings of fact are provided in Sections 3.07, 3.08 & 3.09. Sub (4) limitations have been made recommended conditions of approval.

*As conditioned, the applicable standards are met.*

**3.07**

**660-004-0020**

**Goal 2, Part II(c), Exception Requirements**

**(1) If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception. As provided in OAR 660-004-0000(1), rules in other divisions may also apply.**

*Applicant Response: ...OAR 660-004-0020(1) states that:*

*(1) If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception. As provided in OAR 660-004-0000(1), rules in other divisions may also apply.*

*OAR 660-004-0000(1)(a) states that:*

*(a) Standards for a demonstration of reasons for sanitary sewer service to rural lands are provided in OAR 660-011-0060(9);*

*660-004-0010(c) Application of the Goal 2 Exception Process to Certain Goals references OAR 660-011-0060(9) regarding a Goal 11 reasons exception (in this case to extend a sewer system to serve a rural use):*

*(1) ... The exceptions process is generally applicable to all or part of those statewide goals that prescribe or restrict certain uses of resource land, restrict urban uses on rural land, or limit the provision of certain public facilities and services. These statewide goals include but are not limited to: ... (c) Goal 11 "Public Facilities and Services" as provided in OAR 660-011-0060(9);*

*OAR 660-011-0060(9) identifies two specific reasons for justifying a Goal 11 exception. It also allows for other rationales to justify a Goal 11 exception:*

*Appropriate reasons and facts for an exception to Goal 11 include but are not limited to the following: (a) The new system, or extension of an existing system, is necessary to avoid an imminent and significant public health hazard that would otherwise result if the sewer service*

*is not provided; and, there is no practicable alternative to the sewer system in order to avoid the imminent public health hazard, or (b) The extension of an existing sewer system will serve land that, by operation of federal law, is not subject to statewide planning Goal 11 and, if necessary, Goal 14.*

*Neither of the two explicitly listed reasons applies to Sam Barlow High School situation. There is no "imminent and significant public health hazard," nor is the subject site subject to a federal law exemption. Instead, the District's proposed Goal 11 exceptions falls into the "not limited to" category.*

*Since the Goal 11 rule provides a path for a reasons exception that is not specifically listed in Section (9), but presents no specific standards for this path, the exception must be based on a more general rationale found in OAR 660-004-0020 related to reasons exceptions.*

**OAR 660-004-0020(1)-(4)** interprets the text of ORS 197.732(2)(c) with respect to reasons exceptions. Subsection (1) reads as follows:

*(1) If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception. As provided in OAR 660-004-0000(1), rules in other divisions may also apply.*

**OAR 660-004-0022** states in relevant part that:

*Reasons that may allow an exception to Goal 11 to provide sewer service to rural lands are described in OAR 660-011-0060.*

*But, it has been shown that OAR 660-011-0060(9) provides no specific standards for an exception that merely changes the method of conveyance of wastewater from a high school in a rural area to a municipal treatment system.*

**OAR 660-004-0020(2)** interprets the four standards found in Goal 2, Part 2(c) and ORS 197.732(2)(c):

*(2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:*

*(a) "Reasons justify why the state policy embodied in the applicable goals should not apply." The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;*

*(b) "Areas that do not require a new exception cannot reasonably accommodate the use". The exception must meet the following requirements: (A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use that do not require a new exception. The area for which the exception is taken shall be identified; (B) To show why the particular site is*

*justified, it is necessary to discuss why other areas that do not require a new exception cannot reasonably accommodate the proposed use. Economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under this test the following questions shall be addressed: (i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not? (ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses not allowed by the applicable Goal, including resource land in existing unincorporated communities, or by increasing the density of uses on committed lands? If not, why not? (iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not? (iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not? (C) The “alternative areas” standard in paragraph B may be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception unless another party to the local proceeding describes specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described, with facts to support the assertion that the sites are more reasonable, by another party during the local exceptions proceeding.*

***(c) “The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site.”*** *The exception shall describe: the characteristics of each alternative area considered by the jurisdiction in which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to a description of: the facts used to determine which resource land is least productive, the ability to sustain resource uses near the proposed use, and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts to be addressed include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;*

*(d) "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses."*

**Staff Finding 7:** The subject property, including the school site and the SE Lusted Road right-of-way, is zoned Multiple Use Agriculture-20 (MUA-20) which is not resource land as defined by OAR 660-004-0005(2). However, public services not allowed by the applicable Goal are contemplated which require justification set forth in this staff report and referenced within the comprehensive plan text revisions.

*This approval, as conditioned, is consistent with the requirements of OAR 660-004-0020(1).*

**(2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:**

**(a) "Reasons justify why the state policy embodied in the applicable goals should not apply." The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;**

*Applicant Response: "The state policy embodied in Goal 11 is that sewer services – including sewer lines and pump stations – shall not be extended to rural areas. This policy should not apply in this case because the high school is already served by Gresham's municipal treatment system – and has been since 1968. Only the method of conveying sewage from the high school to the existing system will change. No other rural properties will be allowed to connect to this dedicated sewer line.*

*A Goal 2 "built and committed" exception was approved by Multnomah County as part of the 1980 comprehensive plan, and subsequently acknowledged by the Land Conservation and Development Commission. The school is currently served by Gresham's sewer system; waste from the school is trucked a sewer line inside the city of Gresham and treated at the Gresham WTP. The original exception recognized that sewer service is provided by the city of Gresham. For the last 50 years, site-generated sewage has been held in a tank, pumped out into trucks, transported to the city of Gresham each weekday, and then deposited into the city's municipal system.*

*From an engineering and environmental perspective, connecting to a public sewer system is the most reliable and tested method for managing wastewater flow. DEQ generally prefers connecting to municipal systems over on-site treatment.<sup>4</sup> On-site systems are more prone to*

<sup>4</sup> (Footnote provided in applicant's narrative): See, for example, OAR 340-071-013(10) which states that:

*"Future connection to sewerage system. DEQ encourages placing plumbing in buildings to facilitate connection to a sewerage system in areas where a district has been formed to provide sewerage facilities."* Similarly, OAR 340-071-160(4) authorizes denial of on-site treatment systems if, under subsection (f):

*failure and (in the case of the school) trucking sewage could result in spills and environmental problems.*

*Practically, Gresham is already accepting the school's sewage, so a pipe is nothing more than a change in the method of conveyance. Finally, the school has been in this location for 50 years and is not going to move. Indeed, voters recently approved a bond measure supporting improvements at this location. Other properties are prohibited from connecting to the new sewer line until the UGB is expanded, thus removing the potential for it to facilitate urban levels of development in this rural area.*

*Coordination with the city of Gresham has occurred and the city has expressed a willingness to allow the extension of a new sewer main to with the city's wastewater system. Gresham has been consulted regarding the proposed Goal 11 exception, consistent with the city's Urban Growth Management Agreement with Multnomah County. Appendix A includes the intergovernmental agreement between the City and the District to treat high school wastewater that is trucked to a designated manhole within the city limits. If Multnomah County approves the Goal 11 exception, the intergovernmental agreement will be changed to address the method of conveyance."*

**Staff Finding 8:** Staff agrees with the applicant's assessment of the proposal in light of this standard. The intent of Goal 11 is to plan and develop orderly and efficient public services for urban and rural development. Piped sewage conveyance to a treatment plant is the most common method of service to urban scale uses. The set of facts in this application are unusual. The school district has collected wastewater in an on-site holding tank and transported sewage by truck to the City of Gresham for treatment and disposal since the school use opened in 1968 which is a less than ideal disposal arrangement for a use serving a roughly 1,700 person student population. The Sam Barlow school is more similar to an urban than a rural use from a student population standpoint. The proposed sewer line will connect sewer service directly to the City of Gresham and alleviate the need for vehicular disposal which is a much more dependable long-term utility facility solution. Therefore, as the applicant argues, the proposal only modifies the method of conveyance of an existing service to an existing use at 5105 SE 302<sup>nd</sup> Avenue. Establishing a hard line sewer connection is a more orderly and efficient arrangement for the school and local community over the long term and will eliminate the potential for vehicular accidents, and associated public health concerns associated with the possibility of a sewage transport truck spill.

*Staff finds that reasons, unique to this proposal, justify that the goal should no longer apply.*

**(b) "Areas that do not require a new exception cannot reasonably accommodate the use". The exception must meet the following requirements:**

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*"A sewerage system that can serve the proposed sewage flow is both legally and physically available, as described in paragraphs (A) and (B) of this subsection. (A) Physical availability. A sewerage system is considered available if topographic or man-made features do not make connection physically impractical and one of the following applies: (i) For a single family dwelling or other establishment with a maximum projected daily sewage flow not exceeding 899 gallons, the nearest sewerage connection point from the property to be served is within 300 feet. (ii) For a proposed subdivision or group of two to five single family dwellings or other establishment with the equivalent projected daily sewage flow, the nearest sewerage connection point from the property to be served is not further than 200 feet multiplied by the number of dwellings or dwelling equivalents. (iii) For proposed subdivisions or other developments with more than five single family dwellings or equivalent flows, the agent will determine sewerage availability. (B) Legal availability. A sewerage system is deemed legally available if the system is not under a DEQ connection permit moratorium and the sewerage system owner is willing or obligated to provide sewer service.*

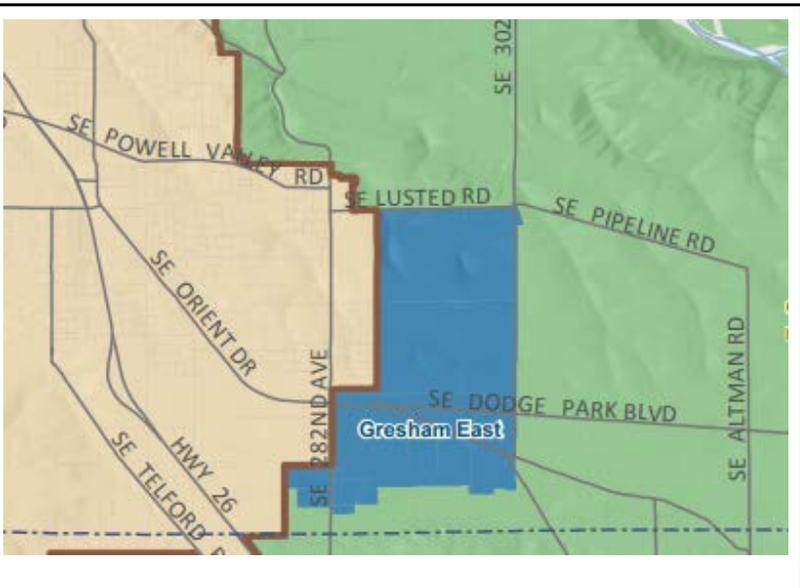
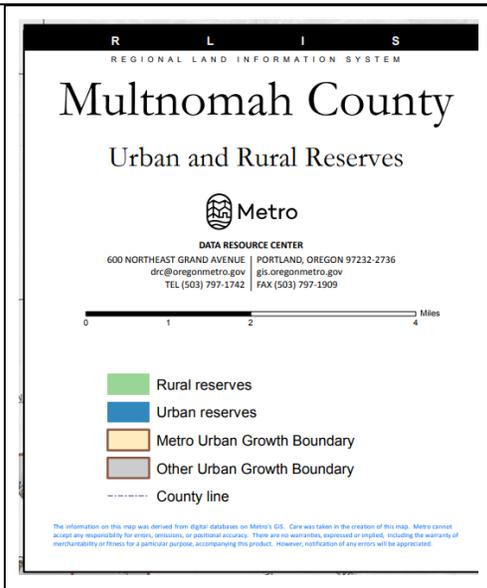
**Applicant Response:** *“This criterion is intended to protect resource land and places a heavy burden on a property owner who wishes to use farm or forest land for non-resource uses. For example, if a new industrial use requested a location on EFU or CFU land, the applicant would need to explain why the proposed use could not reasonably be sited within an urban growth boundary, in an exception area, or on non-resource land.*

*In this case, the high school is located on a site that already has an approved and acknowledged “built and committed” exception. This exception recognizes the existing method of school wastewater conveyance (by truck) to be treated by Gresham’s municipal system. The extended sewer line and pump station will be constructed within the Lusted Road right-of-way and will connect the high school (located in an exception area) to Gresham’s wastewater collection system within the Metro UGB. Therefore, no farm or forest resource land will be affected by the sewer line extension.*

*Goal 11 prohibits the extension of sewer lines in rural areas to discourage urban growth (supported by sanitary sewer service) in rural area outside of UGBs. This Goal 11 reasons exception will apply to the Sam Barlow High School site only; no other rural properties will be permitted by Gresham or Multnomah County to connect to this dedicated sewer line until land is added to the Metro. Thus, extending the sewer line to serve the high school will not encourage urban development outside of the Metro UGB.”*

**Staff Finding 9:** The “use” in this application requiring the goal exception is a sewer facility that is comprised of a gravity fed and pressurized sewer line, and a pump station, physically connecting the school site to land inside the UGB. The school use is not at issue in this application. Multnomah County approved a Conditional Use permit for the Sam Barlow High School in 1964 (Case CS-9-64). The school was opened in 1968 utilizing essentially an urban on-site wastewater holding tank design as opposed to a rural septic system dispersing and treating effluent on-site. The existence of a large percentage of public land ownership in the area (the largest being the Sam Barlow school site) was used by Multnomah County to justify to DLCD a committed exception to Goal 3 on July 15, 1980 via ordinance 233 (see Map 8 note on page 15 of Exhibit B.4). This is the reason the Sam Barlow school site today is zoned Multiple Use Agriculture-20 rather than Exclusive Farm Use. In conclusion, the school use is a permitted pre-existing use which does not require a goal exception to continue operations. Regardless, relocating the school to another area outside the UGB with available sewer service is neither an available nor a feasible option. Therefore, the following staff findings address to the proposed sewer facility use rather than the school use.

In 2009, Multnomah County and Metro designated the subject property, and surrounding area between the UGB and Sam Barlow School (Gresham East) as an Urban Reserve confirming the designated land is suitable for accommodating urban development over a 50 year period.



In anticipation of future urbanization, the City of Gresham prepared a Wastewater Pump Station Master Plan to consider options to provide future sewer service to low lying areas within city limits and also within the Gresham East urban reserve including the Sam Barlow High School (Exhibit A.3). That plan evaluated two alignment options to the school site and the proposed SE Lusted Road sewer alignment required the shortest sewer line.

The area considered for the public facility exception will fully be contained within the SE Lusted Road right-of-way providing a direct linear connection east-west between the UGB and school property. No point of the school property abuts the UGB. Therefore there is no other sewer alignment (no other feasible area) which could host the sewer facility and still connect the school and the UGB without occupying land outside the UGB.

*Staff finds there is no other area that could reasonably accommodate the sewer facility.*

**(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use that do not require a new exception. The area for which the exception is taken shall be identified;**

*Applicant Response: “The area for which the exception is taken is entirely within the right of way of Lusted Road, between Sam Barlow High School and the Gresham city limits. This is identified on Figure 1 of this document. Because the source (the high school) is completely surrounded by resource lands, there are no alternatives that do not require a new exception, if they also provide a sewer connection to the school.”*

**Staff Finding 10:** As explained in the finding above, there is no other area outside the UGB where a sewer facility can be extended without the need for a goal exception. The City of Gresham Wastewater Pump Station Master Plan (Exhibit A.3) assessed options for extending sewer service to the Sam Barlow High School to alleviate costly wastewater pumping requirements. Options were heavily informed by ground elevations, which are paramount to the engineering design of a largely gravity fed sewer system. That plan contains a number of maps showing alternative areas considered by the applicant.

*Staff finds the maps presented in Exhibit A.3 meet this requirement.*

**(B) To show why the particular site is justified, it is necessary to discuss why other areas that do not require a new exception cannot reasonably accommodate the proposed use. Economic**

**factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under this test the following questions shall be addressed:**

***Applicant Response:** “The school site already has a “built and committed” exception, therefore subsection B is not applicable to that site. For the land that will accommodate the proposed sewer pipe in Lusted Road, there is no more direct route between the school and the municipal sewer system than the one selected. A new exception would be necessary for any alignment of a sewer connection between the school and Gresham’s system, since the school is surrounded by resource land.”*

**Staff Finding 11:** The shortest, most direct path via publicly owned land between the City of Gresham and the Sam Barlow High School is within the SE Lusted Road right-of-way making this alignment the most obvious candidate for a future sewer line. As previously discussed, no other alignment is possible that would avoid a sewer line extending outside of the urban growth boundary because the use to be served is located outside of the UGB and because no other sewer facility exists outside of the UGB that can serve the school. Therefore, there is no reasonable alternative area that could be selected for the sewer extension that would avoid the need for a goal exception. It is also likely a certainty that any alternative sewer alignments between the city and school would require a longer extension of public facilities due to a less direct path between points.

A lower elevation dip, where SE Lusted Road crosses the Middle Fork tributary of Beaver Creek, necessitates a sewer pump station to raise the elevation of the sewage after the creek crossing so that the gravity fed system towards the city can function as needed. The city considered two pump station options, one north of Lusted Road and one near the creek crossing shown as Figures 6 and 7 in Exhibit A.3. The most appropriate pump station location was determined by the City of Gresham from an engineering perspective to be approximately 120-foot east of the stream crossing at SE Lusted Road. The pump station is a necessary component of the sewer facility and considered together for purposes of this exception request.

Table 6 in Exhibit A.3 provides cost comparisons of continuing to haul wastewater from the Sam Barlow High School with constructing the proposed public sewer facility. The main finding of Table 6 is that continuing to haul wastewater for the next 50-years has a 43% higher 50-year cost than installing and operating the proposed sewer system. (\$1,329,000 for continued hauling vs. \$931,000 for sewer facility).

*Staff finds the standard is met.*

**(i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?**

***Applicant Response:** “No. The school is located on a site that already has an exception. The land for the sewer pipe itself is in Lusted Road right of way, the least-impact, most direct path to the nearest point of connection within Gresham city limits.”*

**Staff Finding 12:** Staff agrees with the applicant. Pursuant to OAR 660-015-0000(11); there is no legal way to provide a new sewer use to Sam Barlow High School without a goal exception until such time as a public health hazard arises that requires mitigation. The proposed sewer facility cannot be reasonably accommodated on land that would not require an exception. Approximately ½ mile of rural zoned land that is outside the urban growth boundary separates the City of Gresham City Limits

and the rural school. The region has no immediate plans to expand the urban growth boundary to include the school property therefore a goal exception is required to permit the proposed facility.

*Staff finds the standard is met.*

**(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses not allowed by the applicable Goal, including resource land in existing unincorporated communities, or by increasing the density of uses on committed lands? If not, why not?**

*Applicant Response: “No. The school is located on a site that already has an exception. The proposed sewer line connection is within Lusted Road right of way, which is not itself committed to resource uses. There is no more direct, less impactful path for the sewer line than the one proposed.”*

**Staff Finding 13:** There is no intervening urban land connecting the school and a city already committed to non-resource uses not allowed by Goal 11. Converting intervening land to urban uses would first require a goal exception.

*Staff finds the standard is met.*

**(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?**

*Applicant Response: “No. That sewer service must extend outside the UGB is entirely the point. Sewer service to the long-established, already-approved school use must connect to a municipal treatment system. A municipal treatment system does not exist outside the urban growth boundary. The school is located on a site that already has an exception. The proposed sewer line use needs to exist outside the UGB to connect the existing Gresham sewer system to the existing school.”*

**Staff Finding 14:** No the proposed use cannot be accommodated inside a UGB. Containing the sewer use to lands inside the urban growth boundary would prevent the line from connecting to and serving the school which is the heart of this application. In order to avoid the need for the exception the existing school use would need to be relocated inside the UGB, which is neither feasible nor necessary since the school use does not need to meet the goal exception criteria.

*Staff finds the standard is met.*

**(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?**

*Applicant Response: “The existing school is already served by Gresham’s municipal wastewater treatment system. The proposed goal exception simply changes the manner of conveyance. The most reasonable, economically rational, and environmentally safe method for conveying the sewer flows from the school requires a piped, public facility connection to Gresham’s treatment facility.”*

**Staff Finding 15:** Piped conveyance of sewage disposal to a treatment facility is the most common, most reasonable, safest and most efficient method of sewage conveyance in and around urban areas worldwide. The only viable option for eliminating daily truck transport of sewage to the city is by sewer line.

*Staff finds the standard is met.*

**(C) The “alternative areas” standard in paragraph B may be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception unless another party to the local proceeding describes specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described, with facts to support the assertion that the sites are more reasonable, by another party during the local exceptions proceeding.**

*Applicant Response: “The school district reviewed alternatives for methods of treatment. This analysis looked at different alignments for a pipe and also maintaining the status quo. Details are discussed later in this document. Looking at alternative locations for the school itself is unnecessary because school already exists where it was approved by the County in 1964. The school site has a built and committed exception.*

*Conclusion: In this case, areas that do not require a new exception cannot reasonably accommodate the use. The new reasons exception applies to construction of a sewer line and pump station from a site that already has a built and committed exception and within the Lusted Road right-of-way.”*

**Staff Finding 16:** Staff agrees with the applicant’s conclusion above and finds detailed evaluation of specific alternatives is not required. Whether viewed in the specific or broad sense; there are no other alternative areas to site a linear urban public facility which could still serve a use outside an urban growth boundary. A more detailed assessment of alternatives is provided below.

*Staff finds the standard is met.*

**(c) “The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site.” The exception shall describe: the characteristics of each alternative area considered by the jurisdiction in which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to a description of: the facts used to determine which resource land is least productive, the ability to sustain resource uses near the proposed use, and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts to be addressed include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;**

*Applicant Response: “This criterion also focuses on resource land protection and places a heavy burden on proposals to place urban uses on farm or forest land through the reasons*

exception process. In most cases, the ESEE consequences analysis is intended to evaluate the relative impacts of locating a non-resource use on farm or forest land, when compared with locating the same use in an exception area.

In this case, the high school site is already located in an exception area, so that (in this respect) this criterion is not applicable to extension of a sewer line within a public right-of-way. Nevertheless, both the City's decision to locate a future sewer trunk line in the Lusted Road right-of-way and the school district's decision to seek this Goal 11 exception are based on alternatives analyses that considered economic, social, environmental, and energy consequences.

### **Sewer Line and Pump Station Location**

The Gresham Wastewater Pump Station Master Plan (2008, Carollo Engineers) shows the preferred location of the sewer line within the Lusted Road right-of-way to serve the school and/or future urban development (after land has been added to the UGB).

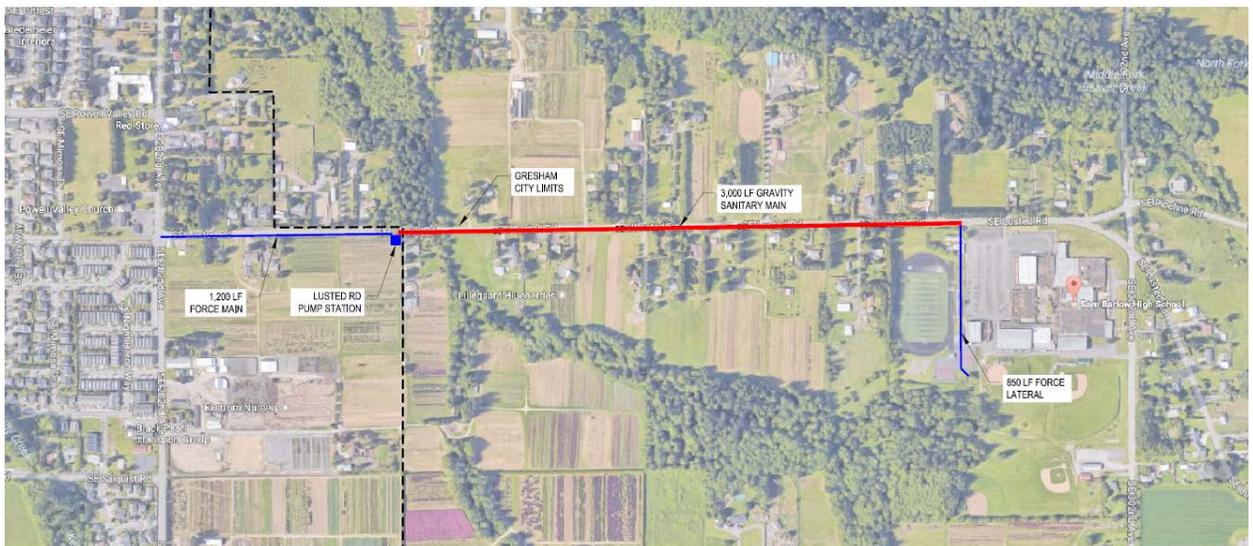


Figure 1. Detail from Gresham Wastewater Pump Station Master Plan

The Gresham Wastewater Pump Station Master Plan (pp. 8-14) considered three options for sewer line construction and pump stations:

Given the topography of Lusted Road, based on the City's GIS data, the school will be unable to pump from the school all the way to the City system due to a natural low point in Lusted Road at its crossing of Beaver Creek. A force main crossing a natural low point such as this will result in ponding of wastewater in the force main, which can lead to odors and pipe corrosion. Two alternatives were developed to identify the best option for extending the school sewer system to the City sewer once the school flows have reached this low point at Beaver Creek.

One option relies on a new gravity sewer main along Beaver Creek north of Lusted Road to the proposed pump station in 282nd Avenue, as discussed above. If this gravity line were installed to serve the 17-acre area, the school

could also discharge wastewater to this line. Figure 6 depicts this option. The potential pump station on 282nd Avenue, summarized above as Option 1 and Option 2 to serve the areas within the City Limits, would need to be appropriately sized to handle the school flows.

The second option is to construct a second pump station near the Beaver Creek crossing as presented in Figure 7. A pump station with the ability to pump 120 gpm @ 44 feet TDH. is calculated to be adequate for this location (if serving only the school). ...The force main would need to extend from Lusted Road to the nearest manhole in 282nd Avenue (Manhole 3558-6-108) with an invert elevation of 481.15 feet.

The Master Plan considered the relative long-term cost of each option (economic consequences). It considered the environmental impacts of each option, in terms of impacts to Beaver Creek. It considered the social costs, in terms of how best to provide sewer service to anticipated residential and institutional development in the Urban Reserve Area. Finally, it considered energy costs, in terms of fuel consumed by trucks vs. relying primarily on gravity to convey sewage. Based on this analysis, the Master Plan concludes (p. 15) that:

As seen on Table 6, the 50-year NPW cost comparison results in a lower cost to construct a [sewer line and] pump station at the Sam Barlow High School than continuing hauling sewage. The cost to haul wastewater may also significantly increase due to higher fuel prices, as experienced in the last few years.

Pump Station Option	Annual O&M	Capital Expenditures (Present Worth)			Net Present Worth
		2010	2035	2055	
Continue Hauling Wastewater (\$50k/year)	-	-	-	-	\$1,329,000
Construct PS at School	\$150,000	\$649,000	\$22,000	\$12,000	\$931,000 <sup>(1)</sup>

<sup>(1)</sup> Table does not show costs to continue pumping for 2008 and 2009, as included in total NPW

Implementation of this option outlined in the master plan depends on approval of this Goal 11 exception, or expansion of the UGB to include the designated Urban Reserve that includes the high school property. Gresham Public Works staff strongly support a permanent piped connection between Sam Barlow High School and the municipal treatment system and have begun work on amending the IGA to address the proposed sewer line extension and pump station.

**Sewage Treatment Alternatives Analysis**

The District considered three alternatives to for sewerage treatment in 2017 prior to making its decision to pursue extension of a sewer line from the Gresham to the high school site:

- A. **Status Quo:** Continue to collect high school sewerage in a holding tank and truck the sewerage daily into Gresham.

- B. **Option 1:** *Extend a new sewer line 4,200 feet beneath Lusted Road from the northwest corner of school property to the existing system at SE 282<sup>nd</sup> Avenue. This would connect Sam Barlow High School to the Gresham sewage collection system via a pump station. This approach is also consistent with the Gresham Wastewater Pump Station Master Plan.*
- C. **Option 2:** *Design and build an on-site sewage treatment system that meets County and DEQ requirements.*

**Status Quo**

*The District would continue to collect high school sewerage in a holding tank and truck sewerage daily to Gresham High School – which is connected to the Gresham sewerage treatment system. The city of Gresham has treated Sam Barlow’s sewerage since the high school opened in 1968.*

*Figure 2. Truck routes from Sam Barlow site*

- Advantages:** *This approach continues an established practice and does not require a statewide goal exception.*
- Disadvantages:** *The process requires daily pumping from the school’s holding tank to a truck, and transport (~ five miles) to a manhole near Gresham High School. By intergovernmental agreement, the District pays the city of Gresham as if Sam Barlow High School were inside the City Limits.*

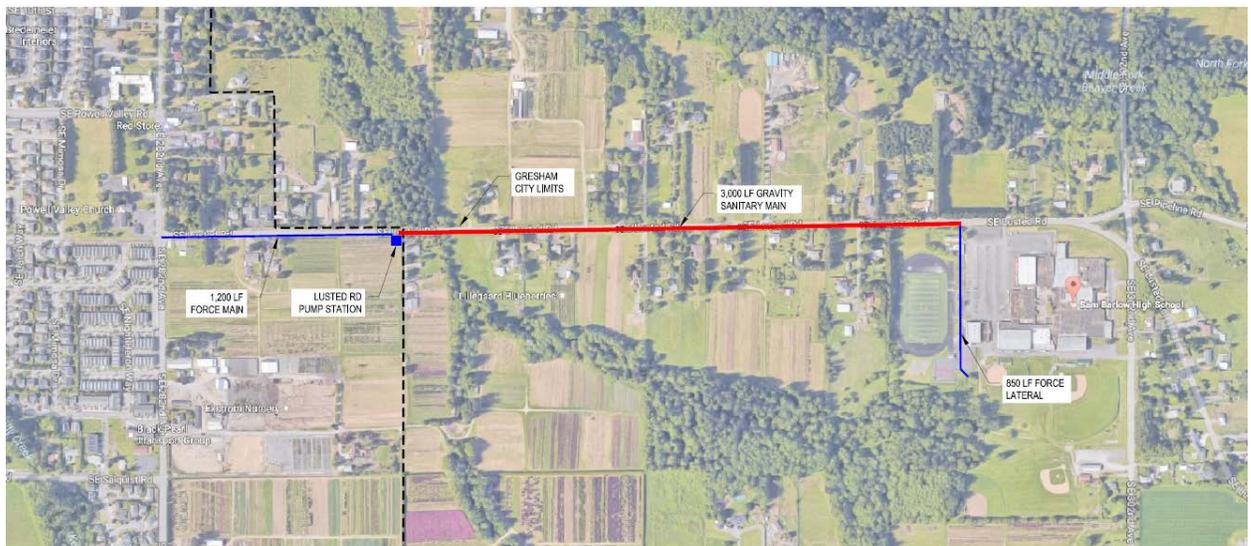
**ESEE Consequences: The Status Quo Option:**

- (1) Would have adverse economic consequences when compared with Option 1, because transporting wastewater by truck costs more in the long-term.*
- (2) Would have adverse social consequences, because the sewer line would not be available to provide public wastewater collection facilities to serve future residential growth in the Urban Reserve Area when the UGB is eventually expanded to provide residential development.*
- (3) Could have adverse environmental consequences due to the potential for spilled wastewater when transported by truck vs. a below-ground sewer line.*

- (4) *Would have adverse energy consequences, because trucks use more energy than gravity flow sewer, even after considering the energy required for a pump station.*

### **Option 1 – Extend Gresham Sewer Line to Serve the School Site**

*Option 1 would extend the new sewer line about 4,000 feet from the terminus of the existing line to the high school. The line would be sized to serve planned future urban development the UGB is expanded to include land within the Urban Reserve. The sewer line would be constructed within the Lusted Road right-of-way – which is owned by the county. The dedicated sewer line would connect Sam Barlow High School to the Gresham sewage collection system inside the UGB and would require an interim pump station to pass over the Beaver Creek tributary. Multnomah County would own the sewer line but would not allow any other properties outside the UGB to connect to the dedicated sewer line. The city of Gresham would continue to treat Sam Barlow High School’s sewerage as it has since the high school opened in 1968.*



**Figure 3. Proposed sewer pipe alignment**

#### **Advantages:**

*This approach would allow high school sewerage to connect to a sewer line located beneath Lusted Road, and would eliminate the need for holding tanks, trucks and daily transport of sewerage. This approach is consistent with the longer-term need to extend a sewer line to serve a designated urban reserve area.*

#### **Disadvantages:**

*A Goal 11 exception is required to extend a sewer line outside the UGB. The District would need to pay for the cost of extending this line to serve the school. A pump station will be needed to account for the lower elevation stream corridor near the City Limits.*

#### **ESEE Consequences: Option 1 (preferred option):**

- (1) *Would have positive adverse economic consequences when compared with the status quo option, because transporting wastewater by truck costs more than using gravity in the long-term.*

- (2) *Would have positive social consequences, because the sewer line would be available to provide public wastewater collection facilities to serve future residential growth in the Urban Reserve Area when the UGB is eventually expanded to provide residential development.*
- (3) *Would have positive environmental consequences because there would be less potential for spilled wastewater when transported by truck vs. a below-ground sewer line; potentially adverse environmental consequences on Beaver Creek would be minimized by pumping sewerage over the creek.*
- (4) *Would have positive energy consequences, because trucks use more energy than gravity flow sewer, even after considering the energy required for a pump station.*

***Option 2 – Construct a New On-Site System***

*The District could design and build an on-site sewage treatment system that meets County and DEQ requirements. The new on-site system would be used exclusively by the high school and could not serve neighboring properties.*

*Advantages: This approach would allow the high school to treat its own sewerage on site and would eliminate the need for holding tanks, trucks and daily transport of sewerage. This approach is not consistent with the longer-term need to extend a sewer line to serve a designated urban reserve area.*

*Disadvantages: A Goal 11 exception is required to construct an on-site sewerage system for this urban high school. The high school would eventually be required to hook-up to the city sewer system after the UGB is expanded into this portion of the urban reserve. This makes investment in an on-site system riskier and would likely result in increased costs for the District, when compared with Option 1.*

***ESEE Consequences: Option 2:***

- (1) *Would have adverse economic consequences when compared with Option 1, because the District would be constructing an on-site treatment system that could soon be obsolete.*
- (2) *Would have adverse social consequences, because the sewer line would not be available to provide public wastewater collection facilities to serve future residential growth in the Urban Reserve Area when the UGB is eventually expanded to provide residential development.*
- (3) *Would probably not have adverse environmental consequences if the system is well-design.*
- (4) *Would probably not have adverse energy consequences, because trucks use more energy than treating sewerage on-site.*

*ESEE Conclusion: Option 1 – constructing a sewer line and pump station to transport wastewater to the Gresham WTP has the fewest adverse ESEE consequences compared with the status quo option and Option 2.”*

**Staff Finding 17:** The applicant has adequately considered and articulated the long-term environmental, economic, social and energy consequences of various options. The City of Gresham Wastewater Pump Station Master Plan in Exhibit A.3 evaluates positive and negative consequences of two alternatives as compared to the status quo (continuing to truck sewage). In general, Option 1 involves extending sewer service roughly 4,200 linear feet from the existing Gresham sewage collection system inside the UGB to the school located outside the UGB. Option 2 contemplates building a new sewage treatment system on the school property. The Wastewater Pump Station Master Plan, in combination with the applicant’s narrative above, adequately describe the

characteristics, advantages/disadvantages and positive/negative consequences of each alternative as required by this provision.

### Evaluating Option 2

Staff does not support Option 2. In the short term it would eliminate the need for trucked sewage transport, but concerns arise when considering the negative long-term environmental, economic, social and energy consequences. The subject property and intervening lands between the school and the City of Gresham have been designated urban reserves which can reasonably be expected to be included in the UGB over the next 50-years. The economic consequences of such an expenditure would become apparent when the school property is brought inside the UGB and lands will be served by municipal sewer rather than by an on-site treatment system which is a more rural septic design.

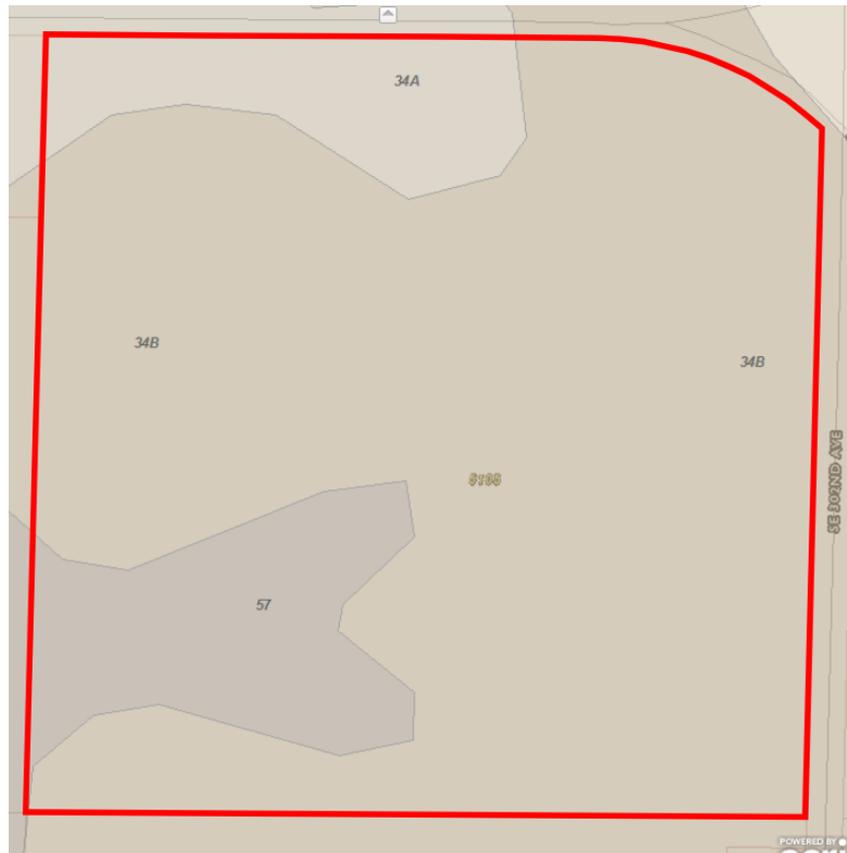
Environmental concerns of an onsite sewage treatment system need also to be considered. The southwest corner of the property is a mapped and protected Goal 5 Significant Environmental Concern resource for wildlife habitat (left map below) as well as a mapped and protected Goal 7 Slope Hazard area (right map below).



The soils across the majority of the school site is unit 34B (Powell Silt Loam) which according to the U.S. Department of Agriculture Soil Survey is typically poorly suited for urban development due to seasonal high water table, slow permeability and low strength. A map of soil units on the subject property is provided below.

A specific development limitation is listed within the USDA Soil Survey for septic tank absorption fields which do not function properly during rainy periods due to wetness and slow permeability. Designing an on-site sewage treatment system to overcome these limitations may be possible from an engineering standpoint but not ideal from a long-term planning perspective considering the close proximity to environmentally sensitive and potentially unstable lands.

It is less clear whether the energy and social consequences of Option 2 will become measurable over time and staff would expect Option 2 and 1 to be similar in both regards. Operating an on-site treatment plant may require more energy in long-term operation than a largely gravity fed sewer system (Option 1), but Option 1 requires use of an electrical pump station due to topographic challenges between the school and city. From a social impact standpoint, staff finds both options are equal by any reasonable measure. The general public would not be served by either alternative and neither alternative would have any impact on the scale or intensity of the school use.



### Evaluating Option 1

The proposed sewer extension using the proposed alignment down SE Lusted Road (Option 1) will not cause impacts more adverse than would typically result from the same proposal being located in a different area. It will be a closed system with less potential for impacts to the environment. The City of Gresham Wastewater Pump Station Master Plan has contemplated the economics of option 1 and the city recommends this approach. The main conveyance method along the alignment (less the pump station) is powered by gravity which requires no additional energy input. Option 1 will not cause short term impacts from a social perspective. However, social benefits will unfold once the intervening area is brought inside the UGB and urbanized. Having an existing sewer line available for neighboring connections will help encourage decommissioning of local on-site systems, which may have a net benefit to the environment in the form of improved groundwater quality.

Additionally, the proposed alignment down SE Lusted Road provides the shortest distance between the City of Gresham and the school. Other nearby alignment options only increase the needed sewer line length adding additional unnecessary urban facility infrastructure outside the UGB. The natural alternative alignment to the south of SE Lusted would involve extending a sewer east-west down SE Chase Road and then north-south to the school site along SE 302<sup>nd</sup> Ave. This southern alternative would increase the sewer line distance by approximately 62%.

The next available alignment to the north of SE Lusted Road would require the sewer line to travel east-west down SE Division Dr. and then north-south on SE 302<sup>nd</sup> to the school site. This would require an even longer sewer facility corridor with a roughly 285% length increase.

<p><i>Rough distance between UGB and school site using proposed SE Lusted Rd. alignment</i></p>	<p><i>Rough distance between UGB and school site using</i></p>	<p><i>Rough distance between UGB and school site using SE Division Dr.</i></p>
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	<i>alternative SE Chase Road alignment to south</i>	<i>alignment alternative to north</i>
<i>3,300 feet</i>	<i>5,354 feet</i>	<i>12,713 feet</i>

On balance, staff finds that option #1 (the proposed sewer extension) best meets the standard that the long-term environmental, economic, social and energy consequences will not be significantly more adverse than would typically result from the same proposal being located in an area other than the proposed site.

*Staff finds the standard is met.*

**(d) "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.**

*Applicant Response: "Approval of a reasons exception to change the method of conveyance of Sam Barlow High School sewage would be compatible with adjacent farming and rural residential development and will have no effect on the land use pattern in the vicinity. The sewer line will be constructed to city standards within the Lusted Road right-of-way, recognizing that the school site is within the urban reserve area and will eventually be included within the Metro UGB. However, no additional properties outside the UGB will be allowed to connect to this line until the land is added to the Metro UGB.*

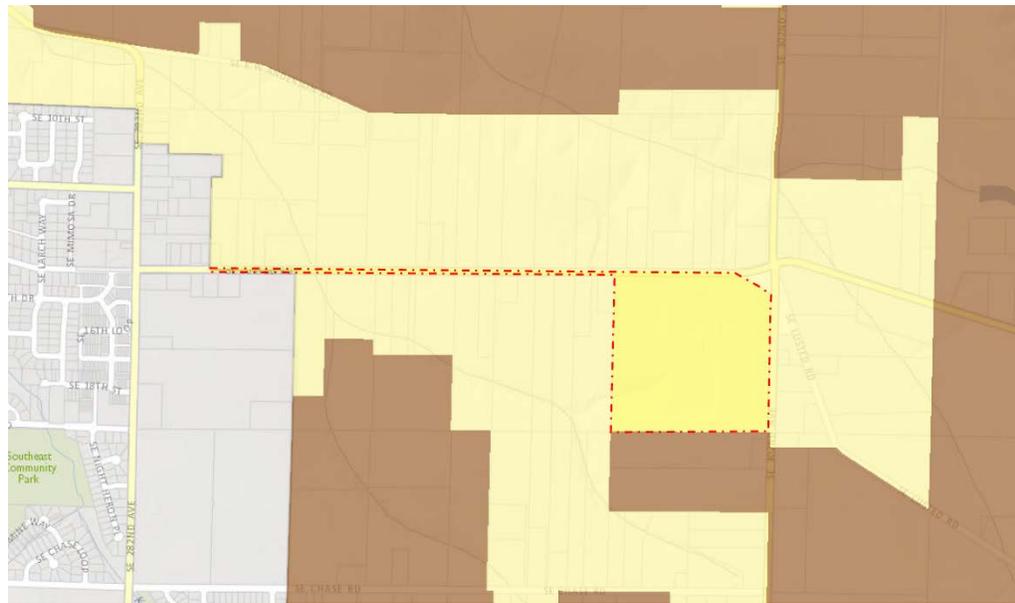
*In 2018, Multnomah County approved a nonconforming use application to allow expansion of the school and related campus improvements (County case file T2-2017-9119). To approve the school expansion, the county found that there would be not significant impacts on neighboring properties. Consequently, the school is non-conforming with respect to this use regulation of the MUA-20 zone. The County found that the standards and criteria of expansion of an existing non-conforming use were met.*

*Sanitary sewer service is necessary for the high school to operate as it has since it opened in 1968. As noted above, Sam Barlow High School is unusual in that wastewater is collected in a holding tank and trucked to Gresham for treatment. Although school capacity has increased slightly over the "approximately 1500 students" approved with the original building, sewerage flows from the remodeled and expanded school will decrease. Lower overall flow into the sewer system is due to efficiency measures incorporated into the new design. (Applicant communication with Interface Engineering, March 2018) The primary purpose of the proposed exception is to increase the efficiency and decrease the long-term cost of conveying sewage from the high school to Gresham's municipal system.*

*Finally, daily truck trips to and from the school will be eliminated, thus reducing the potential for accidents and conflicts with farm equipment and neighboring residential traffic. The potential for spillage due to a vehicle accident will be eliminated. The sewer line will be constructed below ground, and so will have no visible or olfactory impacts."*

**Staff Finding 18:** This rule requires a finding of compatibility with adjacent uses and ORS 197.732(1)(a) defines *compatible* as meaning no interference or adverse impact of any type with adjacent uses. Lands adjacent (on either side) of SE Lusted Road and land surrounding the school

property is a mix of farming and residential land. Zoning adjacent to the project area is primarily Multiple Use Agriculture-20 (shown in yellow below), with exception to the property to the south of the school property which is zoned Exclusive Farm Use (shown in brown below) and is also owned by the school district.



Properties adjacent to the proposal vary in size from roughly 1 acre to the largest property (the school subject property) which is roughly 37 acres. Average property size in the area appears to be approximately 5-7 acres. The vast majority of adjacent properties are developed with a single family dwelling and one or more accessory buildings. Agricultural practices are visible in aerial photos on most adjacent properties.

Protected natural resources in the area include areas of Significant Environmental Concern (SEC wildlife habitat) shown in red below and Significant Environmental Concern (SEC Water Resources) shown in green. The closest drainage to the school property is the Middle Fork of Beaver Creek which flows to the NW and is located roughly 275-feet southwest of the southwest corner of the school property. From the vicinity of the school property, the Middle Fork of Beaver Creek flows roughly ½-mile along a forested corridor through farmland before crossing SE Lusted Road. The grove of trees at the SW corner of property (~3-acres total) is protected by the SEC Wildlife Habitat zoning overlay.

Staff does not foresee any adverse effects to adjacent uses being caused by the proposal. The sewer line will be underground (with exception of pump station equipment typical of right of way infrastructure) is not anticipated to cause any discernable visual impacts. The proposal does not establish a new use expected to generate vehicular trips. In fact trips will be reduced through the eliminated need to haul sanitary waste on the roadway. A reduction of vehicular trips enhances local transportation capacity for the occasional agricultural vehicle including moving product to market and moving equipment from one farm to another. The sewage infrastructure is not anticipated to cause noise, dust, odor or any other nuisance which might burden adjacent landowners. In fact the proposal to connect the school to the sanitary sewer conveyance system should reduce the likelihood of spills that occur when transferring the untreated effluent from the holding tank on site to the vehicle and then from the vehicle to the final destination within the city which is a manhole connected to the city's treatment system.

The exact sewer line alignment along SE Lusted Road is still being contemplated by the applicant's engineering team. Any development within a Significant Environmental Concern zoning overlay will be required to go through county environmental permit review assuring compatibility with local natural resources. A preliminary design concept presented by the applicant as Figure 3 (Proposed sewer pipe alignment) within Exhibit A.1 shows the on-site "850-LF Force Lateral" line to terminate adjacent to and outside of the on-site SEC wildlife habitat overlay zone and the "3,000 LF Gravity Sanitary Main" to cross the SEC Water Resources zone where the Middle Fork of Beaver Creek flows under SE Lusted Road towards the NW corner of the image below. Development within the SEC overlay will require a land use permit prior to construction to minimize environmental impacts.



3.08

660-004-0022

**Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)**

**An exception under Goal 2, Part II(c) may be taken for any use not allowed by the applicable goal(s) or for a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use. The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule. Reasons that may allow an exception to Goal 11 to provide sewer service to rural lands are described in OAR 660-011-0060. Reasons that may allow transportation facilities and improvements that do not meet the requirements of OAR 660-012-0065 are provided in OAR 660-012-0070. Reasons that rural lands are irrevocably committed to urban levels of development are provided in OAR 660-014-0030. Reasons that may justify the establishment of new urban development on undeveloped rural land are provided in OAR 660-014-0040.**

**(1) For uses not specifically provided for in this division, or in OAR 660-011-0060, 660-012-0070, 660-014-0030 or 660-014-0040, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:**

**(a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either**

**(A) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this paragraph must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or**

**(B) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.**

*Applicant Response: “Goal 11 is implemented by OAR 660 Division 11, Public Facilities and Services. General Standards for Reasons Exceptions: OAR 660-004-0020(1)-(4). As documented below, the proposal meets the standards for a Goal 11 reasons exception as set forth in ORS 197.732(2) as implemented by OAR 660-004-0020(1)-(4).*

- *Section 0020(2) of the rule mirrors and refines ORS 197.732(2) by stating that a reasons exception must be supported by substantial evidence and must explain why a use (in the case a sewer line outside of the UGB) that is not allowed by a statewide planning goal (in this case Goal 11) should be provided for.*
- *Section 0020(3) explains the purpose of the rule exceptions process – which is to permit necessary flexibility in the application of the statewide planning goals, that citizens can be involved in the review process, and to assure that findings adequately support a local government decision to approve a reasons exception.<sup>5</sup>*

*This application provides factual basis and reasoning to support the Goal 11 reasons exception. Procedural requirements set forth in Section 0020(3) will be met through Multnomah County’s public notification and hearing process. Since this is a comprehensive plan amendment, public hearings will be required before both the Multnomah County Planning Commission and Board of County Commissioners.*

*As required by statute and rule the proposed Goal 11 reasons exception, when adopted by Multnomah County and acknowledged by the Land Conservation and Development Commission, will be consistent with ORS 197.732 and Division 004 because the exception will:*

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<sup>5</sup> (Footnote provided in applicant’s narrative): (2) An exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals in accordance with the process specified in Goal 2, Part II, Exceptions. The documentation for an exception must be set forth in a local government’s comprehensive plan. Such documentation must support a conclusion that the standards for an exception have been met. The conclusion shall be based on findings of fact supported by substantial evidence in the record of the local proceeding and by a statement of reasons that explains why the proposed use not allowed by the applicable goal, or a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use, should be provided for. The exceptions process is not to be used to indicate that a jurisdiction disagrees with a goal.

(3) The intent of the exceptions process is to permit necessary flexibility in the application of the Statewide Planning Goals. The procedural and substantive objectives of the exceptions process are to: (a) Assure that citizens and governmental units have an opportunity to participate in resolving plan conflicts while the exception is being developed and reviewed; and (b) Assure that findings of fact and a statement of reasons supported by substantial evidence justify an exception to a statewide goal.

*(A) be adopted as part of the comprehensive plan;*

*(B) be applied to a specific property (the school site); and*

*(C) will not establish planning or zoning policy of general applicability – because the Goal 11 exception is limited to extending a sewer line to serve the high school.”*

**Staff Finding 19:** The rule above directs a ‘reasons’ exception to Goal 11 to extend sewer service to rural lands to OAR 660-011-0060 for the types of reasons that may or may not be used to justify the exception. OAR 660-011-0060 is discussed in finding 3.09. Staff finds the provisions of OAR 660-004-0022(1) are not applicable to this request because it involves a use specifically provided for the provision (described in the intro to (1)).

**3.09**

## **Division 11**

### **PUBLIC FACILITIES PLANNING**

#### **660-011-0060**

##### **Sewer Service to Rural Lands**

**(1) As used in this rule, unless the context requires otherwise:**

**(a) "Establishment of a sewer system" means the creation of a new sewage system, including systems provided by public or private entities;**

**(b) "Extension of a Sewer System" means the extension of a pipe, conduit, pipeline, main, or other physical component from or to an existing sewer system in order to provide service to a use, regardless of whether the use is inside the service boundaries of the public or private service provider. The sewer service authorized in section (8) of this rule is not an extension of a sewer;**

**(c) "No practicable alternative to a sewer system" means a determination by the Department of Environmental Quality (DEQ) or the Oregon Health Division, pursuant to criteria in OAR chapter 340, division 71, and other applicable rules and laws, that an existing public health hazard cannot be adequately abated by the repair or maintenance of existing sewer systems or on-site systems or by the installation of new on-site systems as defined in OAR 340-071-0100;**

**(d) "Public health hazard" means a condition whereby it is probable that the public is exposed to disease-caused physical suffering or illness due to the presence of inadequately treated sewage;**

**(e) "Sewage" means the water-carried human, animal, vegetable, or industrial waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present;**

**(f) "Sewer system" means a system that serves more than one lot or parcel, or more than one condominium unit or more than one unit within a planned unit development, and includes pipelines or conduits, pump stations, force mains, and all other structures, devices, appurtenances and facilities used for treating or disposing of sewage or for collecting or conducting sewage to an ultimate point for treatment and disposal. The following are not considered a "sewer system" for purposes of this rule:**

- (A) A system provided solely for the collection, transfer and/or disposal of storm water runoff;**
- (B) A system provided solely for the collection, transfer and/or disposal of animal waste from a farm use as defined in ORS 215.303.**
- (2) Except as provided in sections (3), (4), (8), and (9) of this rule, and consistent with Goal 11, a local government shall not allow:**
  - (a) The establishment of new sewer systems outside urban growth boundaries or unincorporated community boundaries;**
  - (b) The extension of sewer lines from within urban growth boundaries or unincorporated community boundaries in order to serve uses on land outside those boundaries;**
  - (c) The extension of sewer systems that currently serve land outside urban growth boundaries and unincorporated community boundaries in order to serve uses that are outside such boundaries and are not served by the system on July 28, 1998.**
- (3) Components of a sewer system that serve lands inside an urban growth boundary (UGB) may be placed on lands outside the boundary provided that the conditions in subsections (a) and (b) of this section are met, as follows:**
  - (a) Such placement is necessary to:**
    - (A) Serve lands inside the UGB more efficiently by traversing lands outside the boundary;**
    - (B) Serve lands inside a nearby UGB or unincorporated community;**
    - (C) Connect to components of the sewer system lawfully located on rural lands, such as outfall or treatment facilities; or**
    - (D) Transport leachate from a landfill on rural land to a sewer system inside a UGB;**
  - (b) The local government:**
    - (A) Adopts land use regulations to ensure the sewer system shall not serve land outside urban growth boundaries or unincorporated community boundaries, except as authorized under section (4) of this rule; and**
    - (B) Determines that the system satisfies ORS 215.296(1) or (2) to protect farm and forest practices, except for systems located in the subsurface of public roads and highways along the public right of way.**
- (4) A local government may allow the establishment of a new sewer system, or the extension of an existing sewer system, to serve land outside urban growth boundaries and unincorporated community boundaries in order to mitigate a public health hazard, provided that the conditions in subsections (a) and (b) of this section are met, as follows:**
  - (a) The DEQ or the Oregon Health Division initially:**
    - (A) Determines that a public health hazard exists in the area;**
    - (B) Determines that the health hazard is caused by sewage from development that existed in the area on July 28, 1998;**

- (C) Describes the physical location of the identified sources of the sewage contributing to the health hazard; and**
- (D) Determines that there is no practicable alternative to a sewer system in order to abate the public health hazard; and**
- (b) The local government, in response to the determination in subsection (a) of this section, and based on recommendations by DEQ and the Oregon Health Division where appropriate:**
- (A) Determines the type of sewer system and service to be provided, pursuant to section (5) of this rule;**
- (B) Determines the boundaries of the sewer system service area, pursuant to section (6) of this rule;**
- (C) Adopts land use regulations that ensure the sewer system is designed and constructed so that its capacity does not exceed the minimum necessary to serve the area within the boundaries described under paragraph (B) of this subsection, except for urban reserve areas as provided under OAR 660-021-0040(6);**
- (D) Adopts land use regulations to prohibit the sewer system from serving any uses other than those existing or allowed in the identified service area on the date the sewer system is approved;**
- (E) Adopts plan and zone amendments to ensure that only rural land uses are allowed on rural lands in the area to be served by the sewer system, consistent with Goal 14 and OAR 660-004-0018, unless a Goal 14 exception has been acknowledged;**
- (F) Ensures that land use regulations do not authorize a higher density of residential development than would be authorized without the presence of the sewer system; and**
- (G) Determines that the system satisfies ORS 215.296(1) or (2) to protect farm and forest practices, except for systems located in the subsurface of public roads and highways along the public right of way.**
- (5) Where the DEQ determines that there is no practicable alternative to a sewer system, the local government, based on recommendations from DEQ, shall determine the most practicable sewer system to abate the health hazard considering the following:**
- (a) The system must be sufficient to abate the public health hazard pursuant to DEQ requirements applicable to such systems; and**
- (b) New or expanded sewer systems serving only the health hazard area shall be generally preferred over the extension of a sewer system from an urban growth boundary. However, if the health hazard area is within the service area of a sanitary authority or district, the sewer system operated by the authority or district, if available and sufficient, shall be preferred over other sewer system options.**
- (6) The local government, based on recommendations from DEQ and, where appropriate, the Oregon Health Division, shall determine the area to be served by a sewer system necessary to abate a health hazard. The area shall include only the following:**
- (a) Lots and parcels that contain the identified sources of the sewage contributing to the health hazard;**

**(b) Lots and parcels that are surrounded by or abut the parcels described in subsection (a) of this section, provided the local government demonstrates that, due to soils, insufficient lot size, or other conditions, there is a reasonably clear probability that onsite systems installed to serve uses on such lots or parcels will fail and further contribute to the health hazard.**

**(7) The local government or agency responsible for the determinations pursuant to sections (4) through (6) of this rule shall provide notice to all affected local governments and special districts regarding opportunities to participate in such determinations.**

**(8) A local government may allow a residential use to connect to an existing sewer line provided the conditions in subsections (a) through (h) of this section are met:**

**(a) The sewer service is to a residential use located on a parcel as defined by ORS 215.010(1), or a lot created by subdivision of land as defined in ORS 92.010;**

**(b) The parcel or lot is within a special district or sanitary authority sewer service boundary that existed on January 1, 2005, or the parcel is partially within such boundary and the sewer service provider is willing or obligated to provide service to the portion of the parcel or lot located outside that service boundary;**

**(c) The sewer service is to connect to a residential use located within a rural residential area, as described in OAR 660-004-0040, which existed on January 1, 2005;**

**(d) The nearest connection point from the residential parcel or lot to be served is within 300 feet of a sewer line that existed at that location on January 1, 2005;**

**(e) It is determined by the local government to be practical to connect the sewer service to the residential use considering geographic features or other natural or man-made constraints;**

**(f) The sewer service authorized by this section shall be available to only those parcels and lots specified in this section, unless service to other parcels or lots is authorized under sections (4) or (9) of this rule;**

**(g) The existing sewer line, from where the nearest connection point is determined under subsection (8)(d) of this rule, is not located within an urban growth boundary or unincorporated community boundary; and**

**(h) The connection of the sewer service shall not be relied upon to authorize a higher density of residential development than would be authorized without the presence of the sewer service, and shall not be used as a basis for an exception to Goal 14 as required by OAR 660-004-0040(6).**

**(9) A local government may allow the establishment of new sewer systems or the extension of sewer lines not otherwise provided for in section (4) of this rule, or allow a use to connect to an existing sewer line not otherwise provided for in section (8) of this rule, provided the standards for an exception to Goal 11 have been met, and provided the local government adopts land use regulations that prohibit the sewer system from serving any uses or areas other than those justified in the exception. Appropriate reasons and facts for an exception to Goal 11 include but are not limited to the following:**

**(a) The new system, or extension of an existing system, is necessary to avoid an imminent and significant public health hazard that would otherwise result if the sewer service is not provided;**

**and, there is no practicable alternative to the sewer system in order to avoid the imminent public health hazard, or**

**(b) The extension of an existing sewer system will serve land that, by operation of federal law, is not subject to statewide planning Goal 11 and, if necessary, Goal 14.**

*Applicant Response: “OAR 660-011-0060 applies to extension of sewer lines to serve rural areas and does not allow extension of sewer lines outside of UGBs. OAR 660-011-0060(9) allows local governments to approve an exception to this requirement, provided that (a) the standards for a Goal 11 exception are met and (b) that Multnomah County adopts (or has) land use regulations that prohibit the sewer line extension from serving any uses or areas other than the school unless and until the urban growth boundary is expanded.*

*The following sections evaluate standards for a Goal 11 exception to allow extension of sewer lines outside the UGB to serve the high school.”*

**Staff Finding 20:** OAR 660-011-0060(1) provides definitions which do not require staff findings. Sub (2), much like OAR 660-015-0000(11), establishes the rule from which this proposal seeks exception – that sewer systems cannot be established or extended outside the UGB. Sub (3)-(7) are not applicable to this request but are included for context and address unique situations where state law allows, without exception, rural sewer service to abate a public health hazard. Sub (8) allows limited service to a residential use located near an existing sewer service which is not applicable but included for the reader’s orientation.

Applicable to this request is OAR 660-011-0060(9) which reiterates the prohibition of sewer service extension outside a UGB without a Goal 11 exception. This rule establishes a requirement that an approved exception only serve the use justified in the exception and this has been made a recommended condition of approval.

OAR 660-011-0060(9) provides reasons and facts for an exception to Goal 11 “which include but are not limited to” examples provided in (9)(a) – necessary to avoid a public health hazard, and (9)(b) – serving federal land not subject to Goal 11. The scenarios established by OAR 660-011-0060(9) are illustrative and not exhaustive. For this application, the reasons and facts for an exception have been justified in finding 3.07.

*Staff finds this standard is met.*

**3.10 Former Multnomah County Code § 37.0705  
TYPE IV QUASI-JUDICIAL PLAN AND ZONE CHANGE APPROVAL STANDARDS.**

**(A) Quasi-judicial Plan Revision. The burden of proof is upon the person initiating a quasi-judicial plan revision. That burden shall be to persuade that the following standards are met:**

*Applicant Response: “The findings below explain why the District’s proposal to construct a sewer line outside the UGB to serve Sam Barlow High School is consistent with county quasi-judicial comprehensive plan amendment criteria – which reference state statutory and rule requirements for statewide planning goal exceptions. As noted above, the high school site has an acknowledged “built and committed” exception which justified assigning MUA-20 zoning and recognized that high school sewage would be transported by truck to the Gresham WTP.*

*As documented below, the statutory criteria for a Goal 11 exception to allow a change in the method of sewerage conveyance from the high school to the City of Gresham’s municipal system are found in ORS 197.732(2)(c), as implemented by OAR 660-004-0020(*

*Criterion (4) is not relevant to this proposal. Criteria (1) – (3) are addressed below.”*

**Staff Finding 21:** The applicant has accepted the burden of proof, supplied all necessary information and addressed all necessary standards. Staff determined the application to be complete as of August 30, 2018 (Exhibit B.3).

**(1) The plan revision is consistent with the standards of ORS 197.732 if a goal exception is required, including any OAR's adopted pursuant to these statutes;**

*Applicant Response: “OAR 660-004-0022(1) sets forth the general approval standards for a reasons exception – including a Goal 11 exception that does not meet the specific conditions set forth in OAR 660-011-0060(9):*

- (1) For uses not specifically provided for in this division, or in OAR 660-011-0060, 660-012-0070, 660-014-0030 or 660-014-0040, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following: (a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either (A) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this paragraph must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or (B) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.*
- (2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:*
- (3) (a) "Reasons justify why the state policy embodied in the applicable goals should not apply." The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;*

*The Multnomah County Code does not allow extension of sanitary sewer service to community service uses such as high schools in rural areas unless a Goal 11 exception has been acknowledged as an amendment to the Multnomah County Comprehensive Plan. Based on the committed exception, Sam Barlow High School site was and continues to be zoned MUA-20. The MUA-20 zone allows community service uses (including schools) pursuant to Multnomah County Code (MCC) 11.15.7005 through .7041. MCC 11.15.7020.A.20 allows schools; Subsection B. states that “Approval of a*

*Community Service Use shall be deemed to authorize associated public utilities, including energy and communication facilities.*

*However, MCC 11.15.7015.D states that: “The [school use] will not require public services other than those existing or programmed for the area.” Public sewer service will not be programmed for the area until the area is added to the Metro UGB. To extend the sewer line to connect with the school wastewater collection system, Multnomah County needs to adopt this Goal 11 exception, including the reasons justifying this exception, as part of its comprehensive plan. Substantial evidence for this decision is provided in Background Section of this document.*

*The Goal 11 chapter of the Multnomah County Comprehensive Plan (p. 11-3) recognizes that treatment of school-generated sewage at the Gresham WTP is “rare case”. To make sure that **Chapter 11 Public Facilities** of the Multnomah Comprehensive Plan should be amended as shown in bold font below:*

*“In rural Multnomah County, most sewer, water, and drainage facilities are installed and maintained on-site by individual property owners or other private entities with the exception of road drainage facilities. For most rural households and businesses, domestic water is obtained via private wells and most wastewater is treated by on-site septic systems although municipal sewer service is provided in a few scattered locations inside the Urban Growth Boundary per agreements with other providers (e.g., Cities of Fairview, Gresham, and Portland, or Alto Park, Burlington, and Corbett Water Districts). Additionally, Multnomah County operates the Dunthorpe-Riverdale Sanitary Service District, which provides sanitary sewer to residents in the unincorporated Dunthorpe neighborhood as well as a few properties in Clackamas County and the City of Portland. **Except for Sam Barlow High School which has an approved Goal 11 exception to allow extension of a city of Gresham sewer line to serve the school site (but no other rural land), no additional municipal service is planned for the rural areas in the future. In a few rare cases, wastewater is collected in storage tanks and transported off-site for treatment. Acknowledgement of the Goal 11 exception for Sam Barlow High School means that wastewater will no longer be transported by truck to be treated at the Gresham Wastewater Treatment Facility.**”*

**Staff Finding 22:** The applicant has responded to goal exception standards outlined in ORS 197.732 (see finding 3.02) and to all applicable Oregon Administrative Rules which comprise the bulk of this staff report. A list of all applicable approval standards is provided towards the beginning of this staff report.

**(2) The proposal conforms to the intent of relevant policies in the comprehensive plan or that the plan policies do not apply. In the case of a land use plan map amendment for a commercial, industrial, or public designation, evidence must also be presented that the plan does not provide adequate areas in appropriate locations for the proposed use; and**

***Applicant Response:** “In 2016, Multnomah County completed a major update of its comprehensive plan. The plan update was adopted by County Ordinance 1235 and subsequently acknowledged by LCDC. The updated plan does not include policies that would be violated if the exception is approved. Moreover, the plan does not*

appear to include or reference the Goal 2 Exceptions document that was adopted with the 1980 plan.

However, the revised Goal 11 Public Facilities and Services chapter (p. 11-3) includes text that recognizes cases where wastewater is stored and transported off-site for treatment:

*“In a few rare cases, wastewater is collected in storage tanks and transported off-site for treatment.”*

*One of these “rare cases” is the Sam Barlow high school site. Since this text is included in the acknowledged Multnomah County Comprehensive Plan (p. 11-3) and is based on the “built and committed exception” acknowledged in 1980, the county “extended” access to the Gresham sewer system outside of the regional urban growth boundary when it approved high school development in 1964. Thus, the county effectively took a Goal 11 exception to allow this rural site to “connect” to the city’s sanitary sewer system—via truck—as part of the “built and committed” exception taken in 1979 and acknowledged in 1980.”*

**Staff Finding 23:** Multnomah County Code 37.0705(A)(2) requires a finding that the proposal conforms to the relevant Comprehensive Plan policies, or that the policies do not apply. The Multnomah County Comprehensive Plan (adopted in 2016) is available on-line: <https://multco.us/landuse/comprehensive-plan>

Findings of Comprehensive Plan Policy compliance begin with Section 3.11 of this report.

**(3) The uses allowed by the proposed changes will:**

- (a) Not destabilize the land use pattern in the vicinity;**
- (b) Not conflict with existing or planned uses on adjacent lands; and**
- (c) That necessary public services are or will be available to serve allowed uses.**

***Applicant Response:** Approval of a reasons exception to change the method of conveyance of Sam Barlow High School sewage will have no effect on the land use pattern in the vicinity. The sewer line will be constructed to city standards within the Lusted Road right-of-way, recognizing that the school site is within the urban reserve area and will eventually be included within the Metro UGB. However, no additional properties outside the UGB will be allowed to connect to this line until the land is added to the Metro UGB.*

*In 2018, Multnomah County approved a nonconforming use application to allow expansion of the school and related campus improvements (County case file T2-2017-9119). To approve the school expansion, the county found that there would be not significant impacts on neighboring properties. Consequently, the school is non-conforming with respect to this use regulation of the MUA-20 zone. The County found that the standards and criteria of expansion of an existing non-conforming use were met.*

*Sanitary sewer service is necessary for the high school to operate as it has since it opened in 1968. As noted above, Sam Barlow High School is unusual in that wastewater is collected in a holding tank and trucked to Gresham for treatment. Although school capacity has increased slightly over the “approximately 1500 students” approved with the original building, sewerage flows from the remodeled and expanded school will decrease. Lower overall flow into the sewer system is due to efficiency measures incorporated into the new design. (Applicant communication with Interface Engineering, March 2018) The primary purpose of the proposed exception is to increase the efficiency and decrease the long-term cost of conveying sewage from the high school to the Gresham WTP.”*

**Staff Finding 24:** Installation of sewer infrastructure largely located below grade (with possible exception of a pump station within the public road right-of-way) and below ground on the school property will not destabilize the land use pattern in the vicinity as it will not be visible once it is constructed. Authorizing a sewer connection to the school is not associated with any increase in school’s population, will not alter hours of operation and will not require any change in on-site vehicular circulation. It is quite possible that, after construction, the infrastructure will be unnoticeable to the casual observer. As noted earlier, the proposal will eliminate vehicle trips on the adjacent roadways.

Staff foresees no reason that below ground infrastructure contained to lands within the public road right of way and on the subject property will have any effect or cause any conflicts with existing residential and agricultural uses. The school property and intervening lands between the school and City of Gresham are designated Urban Reserve which can reasonably be expected to be included in the UGB in the next 50-years, and ultimately urbanize. The presence of an urban facility in an Urban Reserve will not cause a conflict with existing or planned uses on adjacent lands. Finally, the City of Gresham has confirmed that public sewer service will be available to serve the allowed school use (Exhibit A.4) so staff can find that necessary public services will be available to serve the allowed use. Staff should point out that the Lusted Water District confirmed that adequate water service can also be provided in conjunction with this request (Exhibit A.5). Staff cannot think of any other relevant public service that would relate to the proposal.

*Staff finds the standards are met.*

**(4) Proof of change in a neighborhood or community or mistake in the planning or zoning for the property under consideration are additional relevant factors to be considered under this subsection.**

**Staff Finding 25:** Staff finds that neither factor listed above is relevant to this request.

**3.11 Multnomah County Comprehensive Plan Chapter 2 (Land Use; Community Facilities)**

**Community facilities such as schools, parks, fire stations, and cemeteries are currently allowed in a number of areas within the County as “conditional uses” if they meet specific criteria. The following policies provide direction and support for County Zoning Code requirements which guide the decisions related to these uses.**

**Policy 2.45: Support the siting and development of community facilities and services appropriate to the needs of rural areas while avoiding adverse impacts on farm and forest practices, wildlife, and natural and environmental resources including views of important natural landscape features.**

**Staff Finding 26:** The proposed sewer line is an urban service supporting an approved rural school community facility. The direct alignment from the City of Gresham to the school property down the SE Lusted Road right of way avoids impacts to farm and forest practices as does the reduction in waste hauling transportation trips, opening up transportation capacity for movement of farm and forest products to market. Impacts of the infrastructure construction on the natural environment will be considered through all required county permits such as, but not limited to, Significant Environmental Concern and Erosion and Sediment Control which will be obtained prior to construction.

*Staff finds the project complies with this Comprehensive Plan policy.*

**Policy 2.46: Encourage land use development which supports the efficient use of existing and planned community facilities.**

**Staff Finding 27:** The proposal will allow a more efficient wastewater disposal arrangement for an existing community facility.

*Staff finds the project is consistent with this Comprehensive Plan policy.*

**Policy 2.47: Support community facilities siting and development at sites of a size which can accommodate the present and future uses and is of a shape which allows for a site layout in a manner which maximizes user convenience and energy conservation.**

**Staff Finding 28:** The *Gresham Wastewater Pump Station Master Plan* (Exhibit A.3) shows the preferred location of the sewer line within the Lusted Road right-of-way to serve the school and/or future urban development (after land has been added to the UGB). The hard lined, gravity fed sewage conveyance method will be more convenient and energy efficient over the long term as opposed to hauling waste daily to the City of Gresham by truck.

*Staff finds the proposal supports this Comprehensive Plan policy.*

**3.12 Multnomah County Comprehensive Plan Chapter 3 (Farm Land; Multiple Use Agricultural Land)**

County policies for these areas promote agricultural activities and minimize conflicts between farm and non-farm uses but are less stringent than policies in Exclusive Farm Use zones.

**Policy 3.15: Protect farm land from adverse impacts of residential and other non-farm uses.**

**Strategy 3.15-1: Ensure that new, replacement, or expanding uses on MUA zoned lands minimize impacts to farm land and forest land by requiring recordation of a covenant that recognizes the rights of adjacent farm managers and foresters to farm and practice forestry on their land.**

**Staff Finding 29:** Construction of the sewer line between the City of Gresham and the school property will avoid farmland and will be contained within the SE Lusted Road right-of-way which is not farmed and is reserved for transportation and utility infrastructure. Eliminating the need for truck transportation of sewage waste will protect local farmland. Staff finds a covenant recognizing the rights of adjacent farm managers and foresters is not necessary in this case because the use is largely underground sewage infrastructure as opposed to an occupied structure (residence or business, for example) which is where conflicts with surrounding uses tend to occur.

*Staff finds the project meets the intent of this Comprehensive Plan policy.*

**3.13 Multnomah County Comprehensive Plan Chapter 11 (Public Facilities)**

**...Public Facilities Conditions**

**In rural Multnomah County, most sewer, water, and drainage facilities are installed and maintained on-site by individual property owners or other private entities with the exception of road drainage facilities. For most rural households and businesses, domestic water is obtained via private wells and most wastewater is treated by on-site septic systems although municipal sewer service is provided in a few scattered locations inside the Urban Growth Boundary per agreements with other providers (e.g., Cities of Fairview, Gresham, and Portland, or Alto Park, Burlington, and Corbett Water Districts). Additionally, Multnomah County operates the Dunthorpe-Riverdale Sanitary Service District, which provides sanitary sewer to residents in the unincorporated Dunthorpe neighborhood as well as a few properties in Clackamas County and the City of Portland. No additional municipal service is planned for the rural areas in the future. In a few rare cases, wastewater is collected in storage tanks and transported off-site for treatment.**

**The Multnomah County Environmental Health Department conducts water system surveys of small water systems once every 3-5 years, depending on the population served, to ensure that they are being maintained properly. The Department also reviews permits for and inspects wastewater collection and treatment facilities for consistency with state requirements. Multnomah County contracts with the Portland Bureau of Development Services (BDS) to review all applications for on-site sewage disposal systems including those for marinas and floating home moorages along Multnomah Channel.**

**A number of schools are located within rural portions of Multnomah County, including those operated by the Beaverton, Centennial, Corbett, Gresham Barlow, Portland, Reynolds, and Scappoose School Districts. Public schools in unincorporated areas include Corbett Grade School, Middle School, and High School, East Orient Elementary School, Pleasant Valley Elementary School, Sam Barlow High School, Sauvie Island Academy, Skyline School, and West Orient Middle School. Planning for these facilities is undertaken entirely by the school districts. The County's primary role in relation to them is to review land use permits associated with improvements to these schools or proposals for construction of new schools...**

**Goal: To coordinate and collaborate with service providers and affected agencies to ensure an appropriate level of public services to rural areas of the County, consistent with their rural character.**

**General Policies and Strategies - Wastewater**

**Policy 11.13: Wastewater disposal for new development shall be by any of the following methods:**

- 1. Connection to a public sewer system having adequate capacity to serve the development and all other system customers**
- 2. A private system that meets Oregon Department of Environmental Quality regulations**

**Staff Finding 30:** The stated goal of Comprehensive Plan Chapter 11 relates to coordination and collaboration to ensure an appropriate level of public services consistent with the county's rural character. Staff believes the proposal aligns with this goal for several reasons. Extending a physical gravity fed sewer line to the school will eliminate the need to transport sewage waste to the City of Gresham by truck and provide a more reliable and consistent method of conveyance. Reduced truck traffic to and from the school will help better maintain the rural character of the SE Lusted Road corridor by increasing rural road capacity and reducing vehicular noise. Staff also finds that the level of public service requested is appropriate and reasonable given the proposal will serve the current school population and is not proposed in an attempt to expand future enrollment. The school has always been permitted to be served by urban sewage facilities (on-site holding tank) and the proposal provides a safer way to convey that effluent from the site to the closest urban waste water treatment plant.

Policy 11.13 relates to sanitation service for new development. Although the school use is not new, the intent of the policy is to assure adequate sanitation service is provided to the community through either (1) connection to a public sewer having adequate service capacity, or (2) a private system meeting DEQ regulations such as a sanitary drain field. The applicant has applied for a goal exception so that the school can connect to a public sewer facility. The Certification of Public Sewer Service provider form filled out by the City of Gresham Public Works Director confirms adequate capacity as required by Policy 11.13(1), see Exhibit A.4.

*Staff finds the proposal is in compliance with the relevant Comprehensive Plan goal and policy.*

**3.14 Multnomah County Comprehensive Plan Chapter 12 (Transportation)**

**TRANSPORTATION GOAL**

**GOAL: To provide a safe and efficient transportation network for all modes of travel that serves the rural areas of the County and achieves the following objectives:**

- 1. Implement a transportation system that is safe and efficient in meeting the needs of area residents.**
- 2. Implement a balanced transportation system that supports all modes of travel.**
- 3. Develop a transportation system that supports the rural character of unincorporated Multnomah County.**
- 4. Develop a transportation system the supports a healthy economy.**
- 5. Provide transportation improvements in a timely manner according to funding capability.**
- 6. Reduce vehicle traffic on rural County roadways caused by those traveling through the area.**

**Policy 1: Overall Transportation System Maintain and improve the transportation system for all modes of travel with the following goals: reducing vehicle miles travelled, minimizing carbon emissions, reducing conflict between travel modes, and improving the natural environment by minimizing stormwater runoff and facilitating wildlife movement. Ensure that the transportation system reflects the community's rural character while ensuring efficiency and local connectivity.**

**Policy 4: Overall Transportation System Coordinate with public service providers and private utility suppliers to maximize the efficient delivery of both public and private utilities and facilities in County Right of way. Strategies a. Work with utility companies that own transmission and distribution lines to strive to bury the power lines to provide more secure power service during emergency situations and improve scenic qualities. b. Coordinate utility and road work whenever possible.**

**Staff Finding 31:** The Multnomah County Transportation System Plan (TSP) serves as the Transportation element of the Multnomah County Comprehensive Plan. Relevant TSP policies are provided above. Staff finds the transportation goal is met in that the proposal eliminates daily truck trips which results in a safer and more efficient transportation facility. In keeping with Policy 1, the elimination of truck trips also has the benefit of reducing vehicle miles traveled, reduces carbon emissions and eliminates the possibility of conflicts between travel modes. The proposal will have no impact on stormwater runoff or wildlife movement since the infrastructure will largely be underground preserving the rural character of the area. Policy 4 has also been met. The school district has closely coordinated the proposal with the City of Gresham who is a project partner and jointly both parties desire to maximize the efficient delivery of utility services.

*Staff finds the project is consistent with relevant transportation policies.*

#### **4.00 Multnomah County Road Rules Transportation Findings:**

##### **MCRR 5.000 - Transportation Impact**

**MCRR 5.100 - To determine if a Transportation Impact is caused by a proposed development, the County Engineer will determine the number of new trips generated by a site by one of the following methods:**

- A. Calculations from the most recent edition of the Institute of Transportation Engineers' Trip Generation (ITE); or**
- B. A site development transportation impact study conducted by a professional engineer registered in the State of Oregon and accepted by the County.**

**Staff Finding 32:** The Multnomah County Road Rules defines a Transportation Impact as the effect of any new construction or alteration which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour (MCRR 5.000). A minimum increase of 10 new trips per day is required to find a transportation impact.

This land use proposal is an application to amend the County's Comprehensive Plan in order to obtain a Statewide Goal 11 exception. The statewide goal exception would allow for an extension of public sewer line in the public right of way on SE Lusted Road to a site located outside of the Urban Growth Boundary. The Multnomah County Transportation Planning Division reviewed this proposal under transportation file number EP-2018-11025. As Transportation staff understand, this proposal is not a development

application. Therefore, there is no transportation impact as defined by MCRR 5.000. In fact, the proposal will result in a *reduction* in vehicle trips because trucking the effluent on a daily basis will cease.

Prior to development, the applicant must provide Transportation staff a narrative of the proposed work, along with any relevant site plans, so that Transportation staff can determine whether or not a development triggers a transportation impact. Any potential transportation impacts can be addressed at the time of development review of associated land use permits.

*Staff finds the standard is met.*

## **MCRR 18.000 - Right-of-Way Use Permits**

### **18.200 - Construction Permit:**

**A. A Construction Permit is required for any activity in the right of way that involves the construction of a facility, structure or otherwise permanently alters any physical aspect of the right of way, except for those activities covered under subsection 18.250 through an Access/Encroachment Permit.**

**B. The County Engineer shall not issue a Construction permit unless and until the permit fully addresses each of the following:**

- 1. Complete statement and description of the work to be performed in the County right-of-way, with all applicable documentation including but not limited to any specifications, drawing, plans to be used in construction of the work;**
- 2. Clear statement of the responsibilities of the property owner, developer and contractor(s) including but not limited to: proof of adequate liability insurance, identity, address, phone, fax and or email address of a qualified contact person for each party involved with the project;**
- 3. Required fee and deposit amounts are established and or paid as appropriate;**
- 4. Clear statement of the time period for completion of the work or project;**
- 5. Any special provisions as authorized and applicable under this Section have been included in the permit; and**
- 6. A performance guarantee for the work in the right-of-way and a maintenance guarantee for a 2-year period following the completion of the work as provided under Subsection 18.700.**

**C. Administrative fees to cover the County's cost of issuing and administering the permit shall be charged to the Permittee. The fee amounts shall be established by Resolution of the County Board of Commissioners.**

**Staff Finding 33:** The Multnomah County Road Rules require a Construction Permit for any proposed work within the right-of-way. These permits will be required at a later date when design details and the alignment of the sewer line along SE Lusted road are finalized. No work within the right-of-way may occur without a valid Construction Permit.

*This standard is not applicable to this review.*

## **5.00 Compliance Findings:**

### **§ 37.0560 CODE COMPLIANCE AND APPLICATIONS (FORMER COUNTY CODE).**

**Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.**

**(A) A permit or other approval, including building permit applications, may be authorized if:**

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected property.**

**Staff Finding 34:** The school property at 5105 SE 302<sup>nd</sup> Avenue is associated with an active complaint (UR-2017-8040) involving non-permitted development of a softball field and structures associated with the school use. A representative with the school district has signed a Voluntary Compliance Agreement obligating the district to corrective actions resulting in full compliance. There are no active complaints involving the SE Lusted Road right-of-way between the City of Gresham and the school property.

*Therefore, staff finds the county has the authority under the provisions of MCC 37.0560(A)(1) to issue this land use decision.*

## **6.00 Summary of Public Comments:**

No public comments have been submitted before this staff report was finalized. Any written comments received by the county after report staff report finalization and prior to the Planning Commission Hearing will be submitted to the commission by county staff.

## **7.00 Recommended Comprehensive Plan Text Amendment:**

***Applicant Response:*** “Chapter 11 Public Facilities of the Multnomah Comprehensive Plan should be amended as shown in bold font below:

*“In rural Multnomah County, most sewer, water, and drainage facilities are installed and maintained on-site by individual property owners or other private entities with the exception of road drainage facilities. For most rural households and businesses, domestic water is obtained via private wells and most wastewater is treated by on-site septic systems although municipal sewer service is provided in a few*

scattered locations inside the Urban Growth Boundary per agreements with other providers (e.g., Cities of Fairview, Gresham, and Portland, or Alto Park, Burlington, and Corbett Water Districts). Additionally, Multnomah County operates the Dunthorpe-Riverdale Sanitary Service District, which provides sanitary sewer to residents in the unincorporated Dunthorpe neighborhood as well as a few properties in Clackamas County and the City of Portland. **Except for Sam Barlow High School which has an approved Goal 11 exception to allow extension of a city of Gresham sewer line to serve the school site (but no other rural land), no additional municipal service is planned for the rural areas in the future. In a few rare cases, wastewater is collected in storage tanks and transported off-site for treatment. Acknowledgement of the Goal 11 exception for Sam Barlow High School means that wastewater will no longer be transported by truck to be treated at the Gresham Wastewater Treatment Facility.”**

**Staff Finding 35:** The applicant has proposed amendments to Chapter 11 (Public Facilities) of the Multnomah County’s Comprehensive Plan to recognize the goal exception pursuant to OAR 660-004-0000(2) which requires that “documentation for an exception must be set forth in a local government’s comprehensive plan.” Rather than amending text within Chapter 11; Staff believes it is more appropriate to provide the required documentation within the Comprehensive Plan’s Administration Section (Page xi) which is intended to catalogue adopted documents amending the Plan.

Staff recommends that the Planning Commission recommend that the Board incorporate the text amendments to the Plan’s Administration section, documenting the approved goal exception, as outlined in the Planning Commission Order.

**8.00 Conclusion:**

Based on the findings and other information provided above, staff believes the applicant has carried the burden necessary for goal exception and Comprehensive Plan amendment necessary to extend sewer service from the City of Gresham to the Sam Barlow High School at 5105 SE 302<sup>nd</sup> Ave. Staff recommends the Planning Commission recommend approval of the request to the Multnomah County Board of Commissioners, subject to the recommended conditions of approval established in this report.

**9.00 Exhibits:**

- ‘A’ Applicant’s Exhibits
- ‘B’ Staff Exhibits
- ‘C’ Comments Received

Exhibits are available for review in Case File T4-2018-10415 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	5.9.18
A.2	29	Applicant Narrative (Including Cover Letter) – Sam Barlow High School Goal 11 Exception	8.30.18
A.3	15	City of Gresham Wastewater Pumping Station Master Plan, Carollo Engineers	8.30.18
A.4	1	Certification of Public Sewer Service	8.30.18

A.5	1	Certification of Water Service	8.30.18
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information	5.9.18
B.2	4	Letter finding application incomplete	6.5.18
B.3	1	Letter finding application complete	9.17.18
B.4	24	1980 Multnomah County Ordinance 233	1.18.19
'H'	#	Hearing Exhibits	Date
H.1		(placeholder)	