

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF ADOPTING )      ORDINANCE NO. 85-192  
ADDITIONAL FINDINGS IN SUPPORT OF )  
THE URBAN GROWTH BOUNDARY AND )  
AMENDING THE FINDINGS ADOPTED IN )  
ORDINANCE NO. 79-77 )

WHEREAS, The Metropolitan Service District (Metro) is required by ORS 268 to prepare and adopt an urban growth boundary for the District consistent with the applicable statewide planning goals; and

WHEREAS, The Land Conservation and Development Commission (LCDC) has adopted an order continuing Metro's acknowledgment request for its Urban Growth Boundary (UGB) to allow Metro to develop findings consistent with the Circuit Court's decision in 1000 Friends of Oregon v. LCDC and Metro; and

WHEREAS, The Court determined that LCDC's acknowledgment order did not contain findings explaining why the boundary complies with Goal 14; and

WHEREAS, Metro has considered the evidence in the record supporting the UGB Findings adopted in Ordinance No. 79-77, the Findings attached as Exhibit A and hereby incorporated herein and the testimony on these Findings and has taken notice of official acts described in Appendix B of Exhibit A; and

WHEREAS, Based on this consideration, and not on any new evidence, it appears that the Findings attached in Exhibit A comply with the Court's order and should supplement the findings adopted in Ordinance No. 79-77 which are consistent with them and supersede the findings adopted in Ordinance No. 79-77 which are inconsistent with them; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. The Findings attached as Exhibit A are hereby adopted.

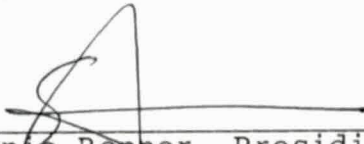
Section 2. Ordinance No. 79-77, Section 3 is amended to read:

"Section 3:

The document entitled 'Urban Growth Boundary Findings,' dated November 1979, a copy of which is attached hereto and by this reference incorporated herein is hereby adopted as the Findings in support of the UGB adopted by Section 2 of this Ordinance.

"The document entitled 'Augmented UGB Findings,' dated November 1985, supplement the 'Urban Growth Boundary Findings' as the Findings in support of the UGB adopted by Section 2, and those Findings in the 1979 document which are inconsistent with the 'Augmented UGB Findings' are hereby superseded."

ADOPTED by the Council of the Metropolitan Service District  
this 26th day of November, 1985.

  
Ernie Bonner, Presiding Officer

ATTEST:



Clerk of the Council

ESB/gl/4631C/435-3  
11/06/85

## AUGMENTED UGB FINDINGS

Summary

The Land Conservation and Development Commission (LCDC) issued Order 85-CONT-160 continuing Metro's acknowledgment request for its Urban Growth Boundary (UGB) to allow Metro to develop findings consistent with the Circuit Court's decision in 1000 Friends of Oregon v. LCDC and Metro.

The Circuit Court's order recognized that LCDC can acknowledge a UGB under any theory which the Commission determines complies with the Goals. The Court held that LCDC failed to make findings to explain how Metro's boundary complies with Goal 14.

The augmented findings presented here provide such an explanation. They are intended to re-justify certain aspects of the 1979 UGB, rather than establish a new UGB. Thus, they rely on the record of the 1979 proceedings and supplement the UGB Findings, Parts I and II, adopted by Metro in 1979.

The key elements of these Findings are as follows:

- They are based on the special challenges of planning in the Portland metropolitan area, unique in the state.
- They deal only with the need for 13 percent of the urban area which is projected to remain undeveloped in the year 2000, together with half the region's "constrained" land (4 percent of the total area). All other aspects of Goal 14 compliance were adequately addressed in the 1979 acknowledgment.
- This 13 percent vacancy allowance is shown to be a legitimate estimate of unbuildable land that could not be precisely quantified when the UGB was adopted.
- Metro's UGB thus contains only land projected to be developed by the year 2000 and land unsuitable or unavailable for development by that date. Such a boundary, supported by local growth management policies, fully complies with all aspects of Goal 14.
- If supplemental growth management strategies are considered necessary, the Washington County Special Industrial District and the Metropolitan Housing Rule provide them.

These Findings do not contain any specific locational justification for the lands whose inclusion within the UGB remains contested by 1000 Friends. The locational justification in the 1979 Findings is adequate for this purpose if the overall size of the urban is itself justified, as these Findings demonstrate.

## I. Introduction

Metro's Urban Growth Boundary (UGB) was contested by 1000 Friends of Oregon on the grounds that it was too big. Even 1000 Friends, however, would not dispute that by the year 2000 Metro's UGB will need to be at least as large as it was in 1979, and probably a good deal larger. In other words, the issue is not whether the UGB is "too big" as a year 2000 boundary. The issue is whether under Goal 14 Metro can appropriately adopt a UGB that, at the outset, includes land that all parties agree will have to be included at some time prior to the year 2000, rather than gradually include it later through a series of major UGB expansions.

LCDC accepted this approach for the Metro region when it first acknowledged the UGB.<sup>1</sup> The Circuit Court decision that overturned that action recognized LCDC's ability to endorse this approach, or any other, provided LCDC found it complied with Goal 14 requirements. The only defect identified by the Court was that LCDC had failed to present a clear statement of how such compliance was achieved.<sup>2</sup> The discussion that follows is designed to remedy that deficiency.

To put the controversy in perspective, it is important to note that the actual land area disputed in the Circuit Court case is only 1.1 percent of the land within the UGB. The disputed SRA areas, Bethany and Sherwood, represent only .8 percent of the total UGB area. The addition of Bull Mountain to the dispute adds another .3 percent.

These findings explain why Metro's approach was the most sensible and effective for the Metro area in general planning terms and demonstrate compliance with the particular requirements of Goal 14. These findings are based on the record from the 1979 Acknowledgment, supplemented only by official notice of certain subsequent government actions which may be considered an integral part of Goal 14 compliance. As LCDC specifically concluded in 1979, Metro is unique. One key element of Metro's Findings is that the need for early UGB adoption necessitated reliance on some general estimates and assumptions in lieu of more detailed data that would only become available later in the planning process of the local jurisdictions. The UGB was first adopted almost 10 years ago and acknowledged six years ago. To open up the record for new evidence would be, in essence, to begin the process of UGB adoption and justification all over again from the beginning. It would create a 1985 boundary. Metro's 1979 UGB was an adequate and appropriate one that complied with Goal 14; it needs only a better explanation of how it complies.

## II. Goal 14 Generally

Goal 14 (Urbanization) contains the following main elements:

- A purpose statement: "to provide for an orderly and efficient transition from rural to urban land";

- Seven factors to be considered when a UGB is established or amended. The first two deal with long-term growth needs, the last five with locational considerations;
- Application of exception requirements to UGB amendments (but not adoption);
- A requirement for local government coordination in the adoption process; and
- Four factors to be considered when urbanizable land is converted for urban use.

Metro addressed all goal requirements relating to UGB establishment in its earlier Findings. Most aspects of LCDC's acknowledgment of the UGB were either not challenged or were upheld by Circuit Court. This includes: 1) the assumptions used to calculate land needed for actual development; 2) the elimination of certain lands (50 percent of that identified as "constrained") from the inventory of buildable land on which such development could be accommodated; and 3) the locational justification for the boundary -- i.e., whether it has been appropriately placed, consistent with factors 3 - 7, once its overall size is justified.<sup>3</sup>

The current findings augment earlier findings only with regard to justification for the inclusion at the time of UGB establishment of more land than was projected to be developed by the year 2000. These Findings demonstrate that this inclusion was consistent with factors 1 and 2 for UGB establishment.

In doing so it is appropriate to consider Goal 14's two main objectives. As they are expressed in the Goal statement, these objectives are orderly and efficient development. To provide for orderly development, UGBs should include enough land to insure that future growth needs have been effectively anticipated and can be accurately planned for. But to assure efficient development, UGBs should include only as much land as is demonstrated to be needed to accommodate that growth. This provides more compact, and thus more efficient, development. Only if a UGB contains more land than has been demonstrated to be required is something additional needed to promote compact development.

The Findings that follow demonstrate that: 1) Metro has not included more land than needed to accommodate growth in an orderly way, but 2) even if it had, special state and local policies for this region promote a compact growth form sufficiently to achieve the Goal's objective. This is a valid approach to satisfy factors 1 and 2 of Goal 14. Factor 1 requires a demonstrated need to accommodate long-range urban population growth requirements. Metro satisfies this requirement by adequately assessing its land needs within the planning period. It further satisfies this requirement because of the policies which promote a compact growth form. Factor 2 requires that establishment of the boundary satisfy the need for housing, employment opportunities and liveability. In

addition to specific estimates of needed acreage, Metro has addressed this factor through two special regulations. Compliance with the Metropolitan Housing Rule ensures compact housing development at sufficient density to preserve land for needed housing. Metro's approval of Washington County's Special Industrial District specifically focuses upon employment opportunities by creation and preservation of large industrial tracts necessary to attract light industrial users.

### III. Designing a UGB for the Portland Metropolitan Area

One approach to Goal 14 compliance is to begin by estimating long-term (i.e., 20-year) growth needs (and so to identify the total amount of land to be included in a UGB) and then to apply the locational factors to determine the particular lands to be included to meet that need. To maintain an adequate supply of land within the boundary during the 20-year period, growth needs would be periodically recalculated for the succeeding 20 years, and additional lands included to meet these new need estimates.

This approach was both undesirable and impractical for the Metro area for a number of reasons. When the UGB was first adopted by CRAG almost 10 years ago, it covered 232,823 acres<sup>4</sup> encompassing 33 jurisdictions, all but five of which had boundaries containing or abutting some land being considered for an urban designation. Metro retained responsibility for 220,920 acres<sup>5</sup> of UGB and 27 jurisdictions -- many times more than any other urban area in the state. In addition, there were 62 special districts and utilities with which CRAG coordinated the original boundary's adoption.<sup>6</sup>

With the number of jurisdictions and special districts affected, the 350 community and special interest groups contacted,<sup>7</sup> and what was ultimately a 200-mile perimeter abutting hundreds and possibly thousands of individual properties,<sup>8</sup> it was impossible to control the total size of the UGB simultaneously with negotiating its location in dozens of specific areas.

Furthermore, in most other jurisdictions UGBs are developed concurrently with the local comprehensive plans. In the Metro area the number of jurisdictions and special districts involved meant that to proceed with the comprehensive planning process in a manageable fashion on a common, stable basis, there was urgent need to adopt a UGB early in the planning process.

Once established, the boundary had to remain relatively stable during the local plan adoption, acknowledgment and implementation process. The last Metro-area jurisdiction completed all needed plan changes to receive acknowledgment in fall of 1985, almost 10 years after the UGB was first adopted in 1976, and more than five from the date it was acknowledged in 1980 (Happy Valley Acknowledgment, September 12, 1985). Frequent major expansions in the boundary during this time would have played havoc with an orderly local planning process.

As a result of these complexities, the Metro area's UGB was developed following a different strategy. CRAG began with the locational considerations of Goal 14, and in coordination with local jurisdictions, special districts, and affected property owners, it worked to identify all lands that should appropriately be planned for urban use by the year 2000, considering such things as the best use of existing and planned public facilities and services, and the most efficient land use pattern possible.<sup>9</sup> The UGB developed on this basis was then checked against estimates of long-term growth needs to insure that it contained enough land to avoid the need for frequent major expansions -- yet not more than was likely to be needed to accommodate long-term growth.

The Metro area's UGB meets both these tests. Because of the unique challenges of planning in the Metro region, it was necessary to include at the outset as much ultimately-urban land as could be justified under Goal 14 in order to provide a more stable basis for local coordination and facilities planning. But no more land has been included than may be justified as needed to effectively accommodate long-term growth without frequent major amendments.

#### IV. Achieving Orderly Development

The Metro UGB is designed to achieve orderly development by providing a stable framework for local planning. To accomplish this, the UGB needs to contain enough land to accommodate growth through the year 2000 without frequent major expansions. This means that all land projected to be developed by the year 2000 should be genuinely buildable land, suitable and available for development by that date.

##### A. Calculating Buildable and Unbuildable Land

The Metro boundary contains 220,920 acres of land.<sup>10</sup> Of this, 17,590 acres were located in the 100-year floodplain or on slopes of 25 percent or greater. These lands were called "constrained" lands. Half of the constrained lands were classified as "unbuildable," leaving 212,125 acres.<sup>11</sup> Of these 212,125 acres, 183,973 acres were projected to be developed by the year 2000. The remaining 28,152 acres (13 percent of the total land in the boundary) were projected to remain undeveloped.

These 28,152 acres are what were referred to as the "market factor." The market factor was expressed as a ratio of projected undeveloped to projected developed land. Thus, 28,152 projected undeveloped acres to 183,973 projected developed acres is a 15 percent market factor.

The 1979 UGB Findings argued for a 25 percent market factor, i.e., that 20 percent of the total urban area should be planned to remain undeveloped in order to maintain market flexibility. Because Metro believed so strongly in the legitimacy of including a market factor,

it unwaiveringly defended the UGB on this basis. But in fact, the 28,152 acres that was projected undeveloped by the year 2000 is too small to be a meaningful market factor.<sup>12</sup> It represents, instead, a legitimate estimate of lands unbuildable for other reasons than those previously identified as "constrained."

#### B. Why Land is Unbuildable

Every UGB contains lands that are not projected to be developed because they are unsuitable or unavailable for development during the planning period; i.e., unbuildable land.<sup>13</sup>

The UGB was adopted when: 1) the detailed local inventories of hazard and resource lands were not yet completed, or in many cases even begun; and 2) local land use designations, normally used to estimate carrying capacity, had not yet been finalized. The geographic extent of the planning area made it impossible for CRAG to substitute its own detailed inventories for the local jurisdictions'. Instead, it had to rely on assumptions in many cases for which smaller urban areas adopting UGBs later might have more detailed information.

Because CRAG was required to complete its land use inventory and adopt its UGB before local planning work was completed, it identified as "constrained land" only the most readily identified hazard lands: land with slopes over 25 percent or located in the 100-year floodplain. As explained above, 50 percent of the constrained land was included in the 183,973 acres projected to be developed and 50 percent was netted out (8,795 acres or 4 percent of all land in the UGB).

The additional 13 percent projected to remain vacant (28,152 acres) is an estimate of the amount of land within the UGB which will remain unbuildable during the planning period for one of the following reasons:

1. Local hazard and natural resource regulations: No local jurisdictions have a narrower definition of constrained or hazard lands, but many have a broader one. For example, many include all land with slopes over 20, rather than 25 percent, and include other types of hazard or protected natural resources, such as landslide hazard or wetlands.
2. Committed land: All unbuilt-upon land greater than one acre was counted as vacant developable land, though in fact it will not be available. This includes all lots used for free parking by one or more adjacent users.



This also includes undeveloped portions of partially developed lots. For example, one acre of each developed two-or-more-acre lot in Portland's Farm and Forest 2-acre minimum lot size zone was considered "buildable," even though further development would in fact be prohibited. Also included in this category are any undeveloped portions of industrial properties being held for expansion, even though such expansion is not expected to occur until after the year 2000. Much of the vacant land on such partially developed lots may indeed be built upon by the year 2000, but some accommodation must be made for that portion which, due to owner preference, will not be placed upon the market during the planning period.

3. Undevelopable for other reasons: Land may be unbuildable for a variety of other reasons. Some parcels may be landlocked, hemmed in by development around the periphery of large blocks, with no opportunity for access due to local restrictions and/or the unavailability of easements. Land may be undevelopable because it is in areas to which sewers will not be extended within the planning period because sewer service is physically unfeasible; although development may still occur on septic tanks, some lots will be too small and have soils too poorly drained to be able to obtain a septic tank permit.
4. Land use inequalities: Not all land is suitable for all uses: industry generally requires larger parcels of flat land near rail or freeway, for example, while heavily travelled, noisy streets are more suitable for commercial than residential use. It is improbable to the point of impossibility that the amount of land suitable for industrial use should exactly equal the amount projected to be needed through 2000 for that use, and similarly for commercial and residential uses.

The fact that the UGB was necessarily developed in advance of the adoption of final land use designations severely exacerbated this problem, but it is one that will be present even in less complex planning environments. Property in floodplains, by rail lines, surrounded by heavy industrial uses, for example, will almost have to be designated for industrial use, even if the total amount of land so situated exceeds the amount that could reasonably be expected to be needed for industrial uses during the planning period. Rather than being designated for, perhaps, multi-family use (if there would otherwise be a shortage of land in that category), some of the land must simply sit until it is needed for an appropriate industrial use, whether that be 2000, 2005, or later, and suitable land must be added elsewhere to accommodate the identified multi-family needs.

### C. Quantifying Vacant Unbuildable Land

Metro, unlike other jurisdictions, could only hope to approximate unbuildable land through its 13 percent vacancy allowance.

A smaller jurisdiction might actually calculate the amount of hazard or resource land identified as undevelopable in local comprehensive plans; field survey the remaining vacant lands to identify other development constraints, such as access, impeding buildability; interview all owners of partially developed properties whose vacant lands had been counted as buildable to determine their long-term plans for sale or redevelopment; separately measure and tabulate all undeveloped lots used for free parking; and finally, compare projected development with vacant land by local land use designation to determine which categories had more land than was estimated to be needed and then examine all land in these categories to determine which, if any, could be redesignated for other uses. Had a small jurisdiction undertaken all this work and used the results to specifically identify and net out all lands that were demonstrably unsuitable or unavailable for development during the planning period, this procedure would surely be appropriate and justifiable under Goal 14.

Because the geographic extent of the Metro area and the urgent need for early UGB adoption made such detailed calculations impossible does not mean that Metro should disregard these factors. Metro's use of estimates will not invite abuse.

Metro is and has been recognized as unique; it sets no precedent for other jurisdictions to exploit. Although Metro's UGB was acknowledged six years ago, no other jurisdictions have tried to follow Metro's approach, and now no more can, since the acknowledgment process is virtually completed. The estimate of unbuildable lands is part of the justification for the uniquely difficult and important task of establishing a UGB for the Metro area. Goal 14 recognizes that more latitude should be given in UGB establishment than in UGB amendment. LCDC should recognize and act upon this distinction. If, when considering UGB expansion, Metro were to make inappropriate use of the Findings for acknowledgment, the post-acknowledgment plan amendment process and the periodic review process provide ample opportunity for LCDC to correct such an error.

It is difficult for any jurisdiction to directly quantify lands which are unbuildable due to owner preferences, land development costs and other unmeasurable elements. It was especially difficult for Metro to directly quantify any of

the four factors in B, above. However, Metro's 13 percent is a reasonable approximation. An indirect measure is comparison with other developed cities. The UGB Findings contains a comparison with central cities of 100,000 or more in population.<sup>14</sup> The land still vacant in these cities is likely to be only unbuildable lands. Because these figures are for central cities (with higher densities), and include eastern cities hundreds of years old (and so unlikely to contain any land simply unavailable during the planning period, but ultimately developable), they may be considered to underestimate the proportion of land likely to remain vacant in areas that include both suburban and newer central city locations. Yet, the central cities' average was 20 to 25 percent total vacant. This percentage comprises land which would be "constrained" and which would be unbuildable under Metro's definitions. This compares with 17 percent for the Metro UGB: one-half constrained vacant is 4 percent, plus 13 percent unbuildable for other reasons. Thus, 13 percent vacancy allowance appears a reasonable, and even conservative, estimate.

Metro's UGB thus encloses only as much land as needed to accommodate long-term growth, once a reasonable estimate of lands unsuitable or unavailable for development have been netted out, consistent with factors 1 and 2 of Goal 14.

By recognizing and providing accommodation for the features that make land unsuitable or unavailable for development, Metro's UGB provides a sound and stable basis for local planning activities and thus for orderly urban development consistent with local plans.

## V. Achieving More Compact Development

The second overall objective of Goal 14 is to achieve more compact urban development. Compact development is development at higher densities, and with more infilling, than is typical of the leap frog pattern of low density suburban development. The benefits of compact development are: 1) lower housing and public facility costs (factors 4 and 5 of Goal 14); 2) less fuel consumption for both space heating and transportation, and so better energy conservation and less air pollution (factor 5); and 3) preservation of as much prime agricultural farm land as possible (factors 6 and 7).

### A. Conversion Requirements

Achieving compact urban development is a shared responsibility. Once the UGB established the framework for local planning, local jurisdictions undertook to develop and implement policies to manage the timing and location of urban development within that boundary. Such policies must address the four considerations listed in Goal 14

regarding the conversion of urbanizable land to urban uses, including "encouragement of development within urban areas before conversion of urbanizable areas." Compliance with Goal 14's conversion requirements generally includes establishment of at least a 10-acre minimum for land partitions when urban services are not yet available.<sup>15</sup> Requiring public water and sewer service for conversion discourages leapfrog development and promotes infilling. The 10-acre minimum lot size prohibits sub-urban, low-density development on septic tanks. Thus the conversion policies developed and implemented by local governments following UGB adoption complete the regional growth management picture by promoting compact development within the UGB. This insures that lands included within the boundary will not be "squandered" but protected.

#### B. Supplemental Strategies

During the first acknowledgement review LCDC found that: "If MSD establishes that it is impossible to draw a year 2000 boundary, [i.e., that contains only land demonstrated to be needed by 2000], it must also adopt strategies in addition to those expressly set forth in the goal for management of the urbanizable land surplus."<sup>16</sup> The current fundings demonstrate that Metro's UGB does not contain any such "land surplus." Nonetheless, such supplemental strategies have been implemented, should they be considered needed.

One way to achieve the more compact development is to artificially restrict the land supply. Artificially restricting the land supply increases land costs and spurs property owners and developers either to get the most out of their land under its current zoning (through infilling, etc.) or to seek a zone change to allow still more intensive development. As discussed below, other land use actions that allow more intensive development at the outset can achieve the same result.

A restricted land supply can be achieved by drawing a tight UGB that excludes land from the short-term market until it is added through amendment or by adopting other growth management measures designed to keep land within the boundary out of the land market. As discussed above, local policies to comply with Goal 14 conversion requirements play an important part in regulating the land supply to promote more compact development.<sup>17</sup>

In addition to the local conversion policies, in the Portland metropolitan area supplemental support for more compact development has been provided by two special regulations on the type of development allowed: 1) Washington County's Special Industrial District (SID); and 2) LCDC's Metropolitan Housing Rule, and local compliance with it.<sup>18</sup>

The County's SID was developed in response to Metro's policy guidelines for those "surplus" lands dubbed Specially Regulated Areas (SRAs) and the requirements of LCDC's amended acknowledgment order for Metro's UGB. It is a special zone designed to protect large, flat tracts of land for major industrial development.

In 1979 when Metro adopted the UGB findings, Metro argued that a boundary that contained only lands irrevocably committed to urban use would not -- virtually by definition -- contain, a sufficient supply of large, undeveloped parcels to meet industrial needs. Subsequently, it was able to present more detailed documentation to demonstrate that industrial land in SRAs was needed for this purpose. Washington County then adopted and applied the SID designation to protect a portion of these land for large lot industrial users. By insuring that such lands would not be converted to urban use until needed for large-lot, industrial development, this special designation not only promoted its most efficient use but, by restricting this land's availability for urban use, promoted more efficient use of other urban lands as well.

While Washington County's SID provided a special impetus for more efficient, and thus compact, industrial development, LCDC's Metropolitan Housing Rule, and local compliance with it, did the same for residential development. This unique rule established specific numeric density requirements for all but the region's tiniest jurisdictions.

Metro's UGB Findings assume actual development significantly more compact than would have occurred without the Goals. In particular, they assumed (1) that infill will occur on virtually all developable lands, passing over only the 13 percent estimated to be genuinely unsuitable or unavailable for development, and (2) that the average net density of lands that are developed will be significantly higher than has occurred in the past.

For suburban single family zones, for example, densities actually developed were assumed to increase 17 percent. At the same time, the construction of a multi-family housing as a proportion of all new units was projected to increase by more than 20 percent.<sup>19</sup>

The average density of actual development rarely achieves the maximum allowed under local zoning, however. Therefore, when the Metropolitan Housing Rule required a higher average zoned density regionwide than was projected in the Findings, this promoted the compact development the Findings assumed would occur. By establishing these requirements, LCDC eliminated the need for further special controls to achieve the densities projected.

When a jurisdiction comprehensively upzones its land to allow higher densities than it would otherwise have provided, the result is the same as if upzoning had occurred on a case-by-case basis in response to requests from property owners due to the pressures of a restricted land supply. And with the two additional benefits that: 1) the increase in land prices, which negatively impacts housing costs, is less severe; and 2) jurisdictions have a more stable basis for long-term planning, not just in the UGB itself, but in their own land use designations. Thus, the Metropolitan Housing Rule, and local compliance with it, provided an extra incentive for more compact residential development, should one be considered needed.<sup>20</sup>

## VI. Conclusion

Growth management in the Portland metropolitan area is a two-tiered process: early UGB adoption establishes a framework for an orderly local planning process, which then implements the specific policies and zoning needed to achieve the compact development pattern on which the UGB was predicated.

The UGB adopted by Metro in 1979 was the culmination of a unique and complex process of coordination among an initial 33 jurisdictions, 62 special districts and utilities, and hundreds of individuals. The resulting UGB represents a reasonable estimate of the amount of land needed to accommodate growth through the year 2000 without frequent major UGB expansion. Growth management policies adopted by local jurisdictions to comply with Goal 14's conversion requirements assure orderly and compact development within that boundary. If further special strategies are considered needed, they have been provided by Washington County's SID designation and LCDC's Metropolitan Housing Rule.

4545C/436-4

## NOTES

- 1 See, for example, the last two paragraphs, p. 4 of the December 7, 1979, DLCD staff report.
- 2 See Appendix D for a complete explanation of Court's decision.
- 3 See Appendix A for a list of the documents that contain the appropriate findings on these uncontested issues, and the factors of the goals they address.

### Locational Considerations

Goal 14 lists seven factors to be considered when UGBs are established: two regarding need and five regarding location. When a UGB has been found to include only as much land as is needed under factors 1 and 2, application of the five locational factors involves only a demonstration that land within the boundary is better urban land than land left outside it, considering such things as the location and capacity of existing and planned services, access to and support of the regional transportation system, natural resources and hazards, potential for agricultural use, and compatibility with nearly agricultural activities. The 1979 UGB Findings and accompanying support documents contained more than enough locational analysis to comply with this requirement.

Because, however, LCDC did not accept that all land in the UGB was needed, it applied a higher standard regarding locational considerations. The idea was that Goal 14 requires only that all seven factors be considered and a UGB established based on those considerations. Each factor need not be fully complied with if, when consideration of all factors are weighed together, considerations regarding certain factors outweigh a failure to comply with other factors. In particular, LCDC found that if Metro could demonstrate that in terms of the five locational considerations listed, it was impossible to remove any land from the boundary, then that would constitute adequate reason for including more land than was consistent with the two need considerations. Whether LCDC found that Metro met this higher test in 1979 is unclear, since it did not articulate the basis for its decision to acknowledge. This higher test does not apply, however, if all land within the boundary is found to be needed, as Metro demonstrates in these findings.

- 4 See Table, p. iii, Part I, UGB Findings adopted by Metro in November 1979. (The total shown, 223,730 acres, does not include the 50 percent of the constrained land that was netted out as unbuildable. The total area, including 100 percent of the constrained land, is 223,730 acres + 9,093 acres = 232,823 acres).
- 5 Table 1, p. 5, Part II, UGB Findings. Total area calculated as per note 4: 212,125 acres + 8,795 acres = 220,920 acres.

- 6 See Section 1.2 of Attachment A to February 1, 1979, letter to Wes Kvarsten from Denton Kent: "Local, State and Federal Agencies Involved in the Process of Establishing the Urban Growth Boundary."
- 7 Planning and Adoption Process, p. 12, #1.
- 8 Ibid. Ten thousand draft documents were distributed; 1,155 people actually attended the CRAG hearings.
- 9 See Appendix A for sources of locational findings.
- 10 All acreage figures are from Table 2, p. 6, Part II, UGB Findings, November 1979.
- 11 Constrained land is defined in Table 8, note 1, p. 16, Part I, UGB Findings. Table 8 also shows that only 50 percent of land defined as constrained was actually counted vacant due to that characteristic. The remaining 50 percent was included in the acreage for Developable and Buildable Land. The quantities shown in Part I Table 8 were recalculated as described in Table I, Part II, and accompanying text, pp. 5 and 6. This Table shows that 8,795 acres is 50 percent of the constrained land. Therefore, total constrained land is 17,590.
- 12 In general terms, a "market factor" is intended to accommodate the fact that land buyers will need an array of site choices in order to find one suitable to their needs. If the land market were such that there were only as many total sites as there were buyers, two problems would arise. First, most buyers would be unable to find a site that met their needs: individual buyer needs are myriad, diverse and often unmeasurable, certainly not susceptible to being anticipated and specifically planned. Second, even if there were one suitable and available site for every buyer -- but only one -- the price of each site would skyrocket.

The market factor was an attempt to ensure that there would be sufficient "surplus" lands even after all unsuitable or unavailable sites had been eliminated, to provide enough choice among suitable, available sites without a substantial UGB expansion during the initial years of operation (e.g., through 1990 or so).

When the UGB was first adopted, there was enough vacant land to provide a choice among 10 acres for every one acre projected to be needed during the first five years of UGB operation. Among these 10 acres, roughly two would have slopes over 25 percent or be located in the floodplain -- only one of these two was assumed to be undevelopable and netted out of consideration. Of the remaining nine acres, roughly three could be considered unbuildable for the other reasons discussed in the main text. This left each buyer seeking one acre of land with a choice of six acres assumed to be suitable for some form of urban



development and available at some time during the planning period (although not all of these would be available initially). Of these six acres, roughly four were projected for development at some time during the planning period. The remaining two acres represent land assumed to be both suitable and available and included in the UGB solely to promote sufficient market choice to reduce the need for frequent UGB expansion. These two acres out of every 10 are the only truly "surplus" lands provided for by the market factor and they have not been provided for in the Metro UGB.

Such a "surplus" disappeared through CRAG action on the Rock Creek Study Area and through Metro adoption of a boundary excluding the satellite cities. These actions reduced the vacant undevelopable land to 13 percent of the total land in the UGB (28,152 acres of 220,920 acres).

- 13 Factors 1 and 2 of Goal 14 require that UGBs be based on identified growth needs, but do not specify how the supply of land to meet those needs should be defined. Goal 10 (Housing) does provide such a definition, however. "Buildable Land" is there defined as "lands suitable, available and necessary for residential development." Although the goals do not contain a comparable definition for lands needed for economic development, this oversight was remedied, to some degree, by 1983 HB 2295 which required plans to "provide for at least an adequate supply of suitable sizes, types, locations and service levels for industrial and commercial uses..." (ORS 197.712(2)(c)). Size, type and location are three elements of suitability taken into account in Metro's estimate of buildable land to meet year 2000 needs.
- 14 Metro's UGB Findings, p. 13, Part I, November 1979.
- 15 See, for example, Washington County Acknowledgment, LCDC Order 83-ACK-26, September 15, Report p. 65.
- 16 LCDC Continuance Order, September 28, 1979, p. 13, lines 21-23.
- 17 See, for example, Washington County Acknowledgment, LCDC Order 83-ACK-26, September 15, Report, pp. 68. The compact development aspect of Goal 14 is further implemented by Washington County's growth management system. This policy ensures that adequate public facilities and services are to be in place before development may proceed within a particular area. The policy was attacked during the acknowledgment proceeding as violative of Goal 14 because developers are permitted to finance service provisions "and thus make disorderly decisions about urbanization." In rejecting this claim, LCDC found:

"As addressed in the conclusion, the growth management system meets Goal 14 conversion requirements. Where a private investment into major public facilities can be

encouraged, this is a plus, not a detriment. Orderly growth is encouraged since those areas closer to developed areas will be more likely to be served, due to cost factors, than those areas further out." 83-ACK-216 at 64.

- 18 See Appendix B for citations of actions referenced.
- 19 See pp. 3-4, Part I, UGB Findings, and the discussion of those assumptions in "MSD reply to DLCD Critique of Urban Growth Assumptions," pp. 3-5.
- 20 For this reason, these findings have not considered it necessary or desirable to reopen the debate regarding what Metro's policy guideline for residential development in SRAs meant, when and how it should be applied and whether Washington County has adequately done so. Disagreements on these questions have never been resolved but now need not be.

## APPENDICES

- A. List of prior findings and support documents relied upon, with summary of how goal requirements addressed.
- B. List of official actions taken subsequent to acknowledgment, of which notice is taken.
- C. History of major events.
- D. Summary of relevant court decisions.

## APPENDIX A:

### SUMMARY OF COMPLIANCE DEMONSTRATION

Following is a list of documents that address compliance with the seven factors that Goal 14 requires be considered when UGBs are established:

#### Long-Term Growth Needs (factors 1 and 2)

- Assumptions used to calculate long-term growth needs and projections for tri-county area: pp. 1-11, Part I, UGB Findings, November 1979.
- Application of Assumptions to Metro area to project needs for Metro UGB, p. 6, Part II, UGB Findings.
- Methodology for calculating vacant land, pp. 15-19, Part I, UGB Findings.
- Vacant land calculations for Metro area: p. 5, Part II, UGB Findings.
- Estimate of vacant lands suitable and available to meet identified needs. Augmented Findings.

Support Documents: Items I.1-11, Appendix A UGB Findings Supplement, January 1979.

#### Locational Consideration (factors 3-7)

- Demonstration that UGB located in most suitable manner possible, pp. 12-36, Part II, UGB Findings, exclusive of references to Metro's Urban Growth Management policies; UGB Findings Supplement; plus documents listed in Supplement Appendix as items II.3 - 14

#### Coordination

#### CRAG Planning and Adoption Process and UGB Findings Supplement

Note: The Augmented Findings include references to sections of the 1979 UGB Findings, and to other documents in the record that included in this listing. Only the information cited has been relied upon for compliance.

APPENDIX B:

LIST OF ACTIONS SUBSEQUENT TO ACKNOWLEDGEMENT  
OF WHICH OFFICIAL NOTICE IS TAKEN

- Metropolitan Housing Rule (OAR 660 Division 7), adopted by LCDC December 3, 1981.
- Resolution No. 82-348, for the Purpose of Expanding the Region's Supply of Large Industrial Sites [Requesting that LCDC amend its Acknowledgment Order], adopted by the Metropolitan Service District August 26, 1982.
- Modification of Commission Order, in the Matter of the Amendment Acknowledgment of Compliance Order for the Metropolitan Service District Regional Urban Growth Boundary, adopted by LCDC on October 11, 1982.
- Ordinance No. 263, Comprehensive Framework Plan for the Urban Area, adopted by Washington County June 28, 1983.
- Ordinance No. 264, Community Development Code, adopted by Washington County June 28, 1983.
- Compliance Acknowledgment Order 83-ACK-216, In the Matter of Washington County's Urban Area Comprehensive Plan and Land Use Regulations, adopted by LCDC November 25, 1983.

APPENDIX C:

ACKNOWLEDGMENT CHRONOLOGY

DECEMBER 1976 CRAG ADOPTS A LAND USE FRAMEWORK ELEMENT OF THE REGIONAL PLAN (LUFE), ESTABLISHING "URBAN," "RURAL" and "NATURAL RESOURCE" DESIGNATIONS FOR ALL LAND IN THE TRI-COUNTY AREA.

NOVEMBER 1978 CRAG ADOPTS UGB FINDINGS (PART 1) TO DEMONSTRATE COMPLIANCE WITH GOAL 14. JUSTIFICATION INCLUDED IDENTIFICATION OF NEED FOR A "MARKET FACTOR."

DECEMBER 1978 CRAG COMPLETES RESOLUTION OF STUDY AREAS AND SUBMITS TRI-COUNTY UGB TO LCDC FOR ACKNOWLEDGMENT.

SEPTEMBER 1979 LCDC ADOPTS A CONTINUANCE ORDER THAT REJECTS THE ADEQUACY OF A MARKET FACTOR ALONE TO JUSTIFY THE INCLUSION OF "SURPLUS" LANDS BUT OUTLINES A RATIONALE FOR ACKNOWLEDGMENT.

NOVEMBER 1979 METRO ADOPTS THE UGB, ALONG WITH PARTS 2 AND 3 OF THE UGB FINDINGS. PART 2 CONTAINS THE FIRST REVISED FIGURES FOR THE METRO UGB, SHOWING ONLY 13 PERCENT "UNCONSTRAINED" LAND PROJECTED TO REMAIN UNDEVELOPED BY 2000.

DECEMBER 1979 LCDC VOTES TO ACKNOWLEDGE METRO'S UGB.

APPENDIX D:

1000 FRIENDS v. LCDC AND METRO:  
APPLICATION OF THE CIRCUIT COURT DECISION

In 1000 Friends v. LCDC and Metro, the Court made three rulings applicable to LCDC's action on this remand. First, the Court held that LCDC was correct in recognizing the unique factual and political factors shaping Metro's UGB. Second, the Court held that LCDC need not make a finding on each of the seven factors in Goal 14, if the boundary meets Goal 14 as a whole. Third, the Court held that LCDC has the authority to adopt any approach to evaluating an urban growth boundary, including the surplus land or market factor approach, as long as the Commission makes findings showing why that approach complies with Goal 14:

"Traditionally, LCDC apparently has following the procedure of establishing a tight or compact UGB anticipating more than infrequent changes in the UGB as conditions change. This procedure was characterized in the record as an "inside-out" approach. In this case, LCDC apparently followed an "outside-in" approach, setting a boundary that admittedly includes "surplus land," but included strict controls inside the UGB on non-urban land. This "alternative approach" substitutes a longer term UGB (less change) and a growth management strategy for the more commonly used short-term UGB with periodic expansion (Exhibit 4, p. 10).\*\*\*

"Although Petitioner strongly condemns this alternative approach, I conclude that LCDC is free to adopt an alternative approach to UGB establishment if the alternative approach meets the requirements of Goal 14. The wisdom of establishing a different or alternative approach to comply with Goal 14 is for LCDC to decide and not for this Court as long as LCDC's alternative approach meets this standard."

Judge Carson disregarded the Court of Appeals rejection of LCDC's approach in 1000 Friends v. Washington County, 72 Or App 449 (1985), saying, "This Court notes that the Appellate Court did not have the question [of LCDC's acknowledgment of the Metro boundary] before it and, presumably, did not have the benefit of the able presentations made to this Court by Metro and LCDC." Indeed, the Court of Appeals, itself, recognized that the case of Metro's UGB it heard was not the full case. The Court of Appeals made its ruling only "if the Metro UGB is as the parties have described it to us," (emphasis added), and on "the record and arguments in this [Washington County Plan] appeal" (emphasis in the original). The Court of Appeals explicitly left the merits of Metro's UGB to Judge Carson. His ruling governs this remand.

Judge Carson's application of his ruling is the touchstone to LCDC's action now.

Having held that LCDC can accept any theory for a UGB as long as it complies with Goal 14, Judge Carson first identified what theory LCDC adopted, and then considered whether it was supported by findings of compliance with Goal 14.

The Court identified LCDC's theory to be: allow a larger boundary if it is accompanied by a growth management strategy for "rural" areas (e.g., Bethany, Sherwood, Bull Mountain). The Court said, "LCDC looked to the growth management strategy of Metro to find compliance with Goal 14" (p. 11). The Court identified LCDC's reasoning to be: if conversion factors regulate the change of urbanizable land to urban land in a tight boundary, then special policies must be needed to regulate the change of the surplus land ("otherwise rural land") to urban land in a surplus boundary. Note well, the Court did not require the growth management strategy when the larger boundary is used, Judge Carson merely identified that LCDC required it.

Next, the Court asked whether the growth management strategy satisfies Goal 14. The Court said,

"The standard against which this approach must be tested (Goal 14) specifically states the goal is: 'To provide for an orderly and efficient transfer from rural to urban land use.' The goal requires that: 'Urban growth boundaries shall be established to identify and separate urbanizable land from rural land.'"

The Court also found that "there appears to be no requirement that LCDC make a specific finding as to each of the seven factors [of Goal 14]."

The Court found that although LCDC's conclusion states that the growth management strategy complies with Goal 14, the findings do not support the conclusion. Therefore, new findings are necessary if LCDC wants to predicate the boundary on the growth management strategy. The Court pointed out that if LCDC does require the growth management strategy, then it must explain not only why it satisfies Goal 14, but also why it has not been followed in subsequent acknowledgment of other Metro area jurisdictions.

In summary, LCDC may acknowledge the boundary using any approach which meets the Goal 14 objective of "an orderly and efficient transition from rural to urban land use." LCDC can examine the record and determine there is no surplus land. Alternatively, LCDC can determine there is surplus land. Use of a growth management strategy with the surplus land approach is not required by the Court; LCDC can reconsider its previous analysis and decide whether the growth management strategy is required. If the growth management strategy was necessary in 1980 to meet Goal 14, LCDC must explain why and then explain how that need is met.



STAFF REPORT

Agenda Item No. 8.1

Meeting Date Nov. 26, 1985

CONSIDERATION OF ORDINANCE NO. 85-192, FOR THE  
PURPOSE OF ADOPTING ADDITIONAL FINDINGS IN  
SUPPORT OF THE URBAN GROWTH BOUNDARY AND AMENDING  
THE FINDINGS ADOPTED IN ORDINANCE NO. 79-77

(Second Reading)

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Date: November 15, 1985

Presented by: Jill Hinckley

FACTUAL BACKGROUND AND ANALYSIS

On July 22, 1985, Judge Wallace Carson, Marion County Circuit Court Judge Pro Tem, issued the decision in 1000 Friends of Oregon's five-year-old appeal of LCDC's acknowledgment of the Metropolitan Service District (Metro) Urban Growth Boundary. Although supportive of LCDC's action on most grounds, Judge Carson overturned the acknowledgment on the grounds that it lacked a clear statement of the reasons for compliance with LCDC Goal 14 (Urbanization). A summary of the decision is included as Appendix D in the attached report.

On September 12, 1985, LCDC remanded the matter to Metro for appropriate action. Metro staff have prepared the attached Findings in support of the UGB to augment the Findings previously adopted by Metro. These Findings remedy the problems identified by the Court and provide LCDC with a sound rationale for re-acknowledgment of Metro's UGB.

The proposed Findings have been developed based upon the existing record supporting adoption of the UGB in 1979, supplemented only by taking notice of certain key acknowledgments, rules and ordinances since that time (see Appendix A for a list of the record relied upon and Appendix B for a list of subsequent events noted). Although Council may hear new evidence, it should not base its decision on that evidence or incorporate any new information in the Findings. If the Council wishes to base its Findings on new evidence, it would be impractical to limit the scope of the testimony and the entire record would have to be opened for testimony on all topics. This would significantly delay the process. It is the intent of these Findings to explain why the 1979 boundary was correct when it was adopted in 1979.

Amendments jointly agreed to by Tim Ramis and Metro staff follow the Findings.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of the Ordinance.

*version before amendments to augmented findings*

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. The Findings attached as Exhibit A are hereby adopted.

Section 2. Ordinance No. 79-77, Section 3 is amended to read:

"Section 3:

The document entitled 'Urban Growth Boundary Findings,' dated November 1979, a copy of which is attached hereto and by this reference incorporated herein is hereby adopted as the Findings in support of the UGB adopted by Section 2 of this Ordinance.

"The document entitled 'Augmented UGB Findings,' dated November 1985, supplement the 'Urban Growth Boundary Findings' as the Findings in support of the UGB adopted by Section 2, and those Findings in the 1979 document which are inconsistent with the 'Augmented UGB Findings' are hereby superseded."

ADOPTED by the Council of the Metropolitan Service District this \_\_\_\_ day of \_\_\_\_\_, 1985.

Ernie Bonner, Presiding Officer

ATTEST:

\_\_\_\_\_  
Clerk of the Council

ESB/gl/4631C/435-3  
11/06/85

## I. Introduction

Metro's Urban Growth Boundary (UGB) was contested by 1000 Friends of Oregon on the grounds that it was too big. Even 1000 Friends, however, would not dispute that by the year 2000 Metro's UGB will need to be at least as large as it was in 1979, and probably a good deal larger. In other words, the issue is not whether the UGB is "too big" as a year 2000 boundary. The issue is whether under Goal 14 Metro can appropriately adopt a UGB that, at the outset, includes land that all parties agree will have to be included at some time prior to the year 2000, rather than gradually include it later through a series of major UGB expansions.

LCDC accepted this approach for the Metro region when it first acknowledged the UGB.<sup>1</sup> The Circuit Court decision that overturned that action recognized LCDC's ability to endorse this approach, or any other, provided LCDC found it complied with Goal 14 requirements. The only defect identified by the Court was that LCDC had failed to present a clear statement of how such compliance was achieved.<sup>2</sup> The discussion that follows is designed to remedy that deficiency.

These findings explain why Metro's approach was the most sensible and effective for the Metro area in general planning terms and demonstrate compliance with the particular requirements of Goal 14. These findings are based on the record from the 1979 Acknowledgment, supplemented only by official notice of certain subsequent government actions which may be considered an integral part of Goal 14 compliance. As LCDC specifically concluded in 1979, Metro is unique. One key element of Metro's Findings is that the need for early UGB adoption necessitated reliance on some general estimates and assumptions in lieu of more detailed data that would only become available later in the planning process of the local jurisdictions. The UGB was first adopted almost 10 years ago and acknowledged six years ago. To open up the record for new evidence would be, in essence, to begin the process of UGB adoption and justification all over again from the beginning. It would create a 1985 boundary. Metro's 1979 UGB was an adequate and appropriate one that complied with Goal 14; it needs only a better explanation of how it complies.

## II. Goal 14 Generally

Goal 14 (Urbanization) contains the following main elements:

- A purpose statement: "to provide for an orderly and efficient transition from rural to urban land";
- Seven factors to be considered when a UGB is established or amended. The first two deal with long-term growth needs, the last five with locational considerations;

- Application of exception requirements to UGB amendments (but not adoption);
- A requirement for local government coordination in the adoption process; and
- Four factors to be considered when urbanizable land is converted for urban use.

Metro addressed all goal requirements relating to UGB establishment in its earlier Findings. Most aspects of LCDC's acknowledgment of the UGB were either not challenged or were upheld by Circuit Court. This includes: 1) the assumptions used to calculate land needed for actual development; 2) the elimination of certain lands (50 percent of that identified as "constrained") from the inventory of buildable land on which such development could be accommodated; and 3) the locational justification for the boundary -- i.e., whether it has been appropriately placed, consistent with factors 3 - 7, once its overall size is justified.<sup>3</sup>

The current findings augment earlier findings only with regard to justification for the inclusion at the time of UGB establishment of more land than was projected to be developed by the year 2000. These Findings demonstrate that this inclusion was consistent with factors 1 and 2 for UGB establishment.

In doing so it is appropriate to consider Goal 14's two main objectives. As they are expressed in the Goal statement, these objectives are orderly and efficient development. To provide for orderly development, UGBs should include enough land to insure that future growth needs have been effectively anticipated and can be accurately planned for. But to assure efficient development, UGBs should include only as much land as is demonstrated to be needed to accommodate that growth. This provides more compact, and thus more efficient, development. Only if a UGB contains more land than has been demonstrated to be required is something additional needed to promote compact development.

The Findings that follow demonstrate that: 1) Metro has not included more land than needed to accommodate growth in an orderly way, but 2) even if it had, special state and local policies for this region promote a compact growth form sufficiently to achieve the Goal's objective.

### III. Designing a UGB for the Portland Metropolitan Area

One approach to Goal 14 compliance is to begin by estimating long-term (i.e., 20-year) growth needs (and so to identify the total amount of land to be included in a UGB) and then to apply the locational factors to determine the particular lands to be included to meet that need. To maintain an adequate supply of land within the boundary during the 20-year period, growth needs would be periodically recalculated for the succeeding 20 years, and additional lands included to meet these new need estimates.

This approach was both undesirable and impractical for the Metro area for a number of reasons. When the UGB was first adopted by CRAG almost 10 years ago, it covered 232,823 acres<sup>4</sup> encompassing 33 jurisdictions, all but five of which had boundaries containing or abutting some land being considered for an urban designation. Metro retained responsibility for 220,920 acres<sup>5</sup> of UGB and 27 jurisdictions -- many times more than any other urban area in the state. In addition, there were 62 special districts and utilities with which CRAG coordinated the original boundary's adoption.<sup>6</sup>

With the number of jurisdictions and special districts affected, the 350 community and special interest groups contacted,<sup>7</sup> and what was ultimately a 200-mile perimeter abutting hundreds and possibly thousands of individual properties,<sup>8</sup> it was impossible to control the total size of the UGB simultaneously with negotiating its location in dozens of specific areas.

Furthermore, in most other jurisdictions UGBs are developed concurrently with the local comprehensive plans. In the Metro area the number of jurisdictions and special districts involved meant that to proceed with the comprehensive planning process in a manageable fashion on a common, stable basis, there was urgent need to adopt a UGB early in the planning process.

Once established, the boundary had to remain relatively stable during the local plan adoption, acknowledgment and implementation process. The last Metro-area jurisdiction completed all needed plan changes to receive acknowledgment in fall of 1985, almost 10 years after the UGB was first adopted in 1976, and more than five from the date it was acknowledged in 1980 (Happy Valley Acknowledgment, September 12, 1985). Frequent major expansions in the boundary during this time would have played havoc with an orderly local planning process.

As a result of these complexities, the Metro area's UGB was developed following a different strategy. CRAG began with the locational considerations of Goal 14, and in coordination with local jurisdictions, special districts, and affected property owners, it worked to identify all lands that should appropriately be planned for urban use by the year 2000, considering such things as the best use of existing and planned public facilities and services, and the most efficient land use pattern possible.<sup>9</sup> The UGB developed on this basis was then checked against estimates of long-term growth needs to insure that it contained enough land to avoid the need for frequent major expansions -- yet not more than was likely to be needed to accommodate long-term growth.

The Metro area's UGB meets both these tests. Because of the unique challenges of planning in the Metro region, it was necessary to include at the outset as much ultimately-urban land as could be justified under Goal 14 in order to provide a more stable basis for local coordination and facilities planning. But no more land has been included than may be justified as needed to effectively accommodate long-term growth without frequent major amendments.

#### IV. Achieving Orderly Development

The Metro UGB is designed to achieve orderly development by providing a stable framework for local planning. To accomplish this, the UGB needs to contain enough land to accommodate growth through the year 2000 without frequent major expansions. This means that all land projected to be developed by the year 2000 should be genuinely buildable land, suitable and available for development by that date.

##### A. Calculating Buildable and Unbuildable Land

The Metro boundary contains 220,920 acres of land.<sup>10</sup> Of this, 17,590 acres were located in the 100-year floodplain or on slopes of 25 percent or greater. These lands were called "constrained" lands. Half of the constrained lands were classified as "unbuildable," leaving 212,125 acres.<sup>11</sup> Of these 212,125 acres, 183,973 acres were projected to be developed by the year 2000. The remaining 28,152 acres (13 percent of the total land in the boundary) were projected to remain undeveloped.

These 28,152 acres are what were referred to as the "market factor." The market factor was expressed as a ratio of projected undeveloped to projected developed land. Thus, 28,152 projected undeveloped acres to 183,973 projected developed acres is a 15 percent market factor.

The 1979 UGB Findings argued for a 25 percent market factor, i.e., that 20 percent of the total urban area should be planned to remain undeveloped in order to maintain market flexibility. Because Metro believed so strongly in the legitimacy of including a market factor, it unwaiveringly defended the UGB on this basis. But in fact, the 28,152 acres that was projected undeveloped by the year 2000 is too small to be a meaningful market factor.<sup>12</sup> It represents, instead, a legitimate estimate of lands unbuildable for other reasons than those previously identified as "constrained."

##### B. Why Land is Unbuildable

Every UGB contains lands that are not projected to be developed because they are unsuitable or unavailable for development during the planning period; i.e., unbuildable land.<sup>13</sup>

The UGB was adopted when: 1) the detailed local inventories of hazard and resource lands were not yet completed, or in many cases even begun; and 2) local land use designations, normally used to estimate carrying capacity, had not yet been finalized. The geographic extent of the planning area made it impossible for CRAG to substitute its own detailed inventories for the local

jurisdictions'. Instead, it had to rely on assumptions in many cases for which smaller urban areas adopting UGBs later might have more detailed information.

Because CRAG was required to complete its land use inventory and adopt its UGB before local planning work was completed, it identified as "constrained land" only the most readily identified hazard lands: land with slopes over 25 percent or located in the 100-year floodplain. As explained above, 50 percent of the constrained land was included in the 183,973 acres projected to be developed and 50 percent was netted out (8,795 acres or 4 percent of all land in the UGB).

The additional 13 percent projected to remain vacant (28,152 acres) is an estimate of the amount of land within the UGB which will remain unbuildable during the planning period for one of the following reasons:

1. Local hazard and natural resource regulations: No local jurisdictions have a narrower definition of constrained or hazard lands, but many have a broader one. For example, many include all land with slopes over 20, rather than 25 percent, and include other types of hazard or protected natural resources, such as landslide hazard or wetlands.
2. Committed land: All unbuilt-upon land greater than one acre was counted as vacant developable land, though in fact it will not be available. This includes all lots used for free parking by one or more adjacent users.

This also includes undeveloped portions of partially developed lots. For example, one acre of each developed two-or-more-acre lot in Portland's Farm and Forest 2-acre minimum lot size zone was considered "buildable," even though further development would in fact be prohibited. Also included in this category are any undeveloped portions of industrial properties being held for expansion, even though such expansion is not expected to occur until after the year 2000. Much of the vacant land on such partially developed lots may indeed be built upon by the year 2000, but some accommodation must be made for that portion which, due to owner preference, will not be placed upon the market during the planning period.

3. Undevelopable for other reasons: Land may be unbuildable for a variety of other reasons. Some parcels may be landlocked, hemmed in by development around the periphery of large blocks, with no opportunity for access due to local restrictions and/or the unavailability of easements. Land may be undevelopable

because it is in areas to which sewers will not be extended within the planning period because sewer service is physically unfeasible; although development may still occur on septic tanks, some lots will be too small and have soils too poorly drained to be able to obtain a septic tank permit.

4. Land use inequalities: Not all land is suitable for all uses: industry generally requires larger parcels of flat land near rail or freeway, for example, while heavily travelled, noisy streets are more suitable for commercial than residential use. It is improbable to the point of impossibility that the amount of land suitable for industrial use should exactly equal the amount projected to be needed through 2000 for that use, and similarly for commercial and residential uses.

The fact that the UGB was necessarily developed in advance of the adoption of final land use designations severely exacerbated this problem, but it is one that will be present even in less complex planning environments. Property in floodplains, by rail lines, surrounded by heavy industrial uses, for example, will almost have to be designated for industrial use, even if the total amount of land so situated exceeds the amount that could reasonably be expected to be needed for industrial uses during the planning period. Rather than being designated for, perhaps, multi-family use (if there would otherwise be a shortage of land in that category), some of the land must simply sit until it is needed for an appropriate industrial use, whether that be 2000, 2005, or later, and suitable land must be added elsewhere to accommodate the identified multi-family needs.

#### C. Quantifying Vacant Unbuildable Land

Metro, unlike other jurisdictions, could only hope to approximate unbuildable land through its 13 percent vacancy allowance.

A smaller jurisdiction might actually calculate the amount of hazard or resource land identified as undevelopable in local comprehensive plans; field survey the remaining vacant lands to identify other development constraints, such as access, impeding buildability; interview all owners of partially developed properties whose vacant lands had been counted as buildable to determine their long-term plans for sale or redevelopment; separately measure and tabulate all undeveloped lots used for free parking; and finally, compare projected development with vacant land by local land use designation to determine which categories had more land than was estimated to be needed and then examine all land in these categories to



determine which, if any, could be redesignated for other uses. Had a small jurisdiction undertaken all this work and used the results to specifically identify and net out all lands that were demonstrably unsuitable or unavailable for development during the planning period, this procedure would surely be appropriate and justifiable under Goal 14.

Because the geographic extent of the Metro area and the urgent need for early UGB adoption made such detailed calculations impossible does not mean that Metro should disregard these factors. Metro's use of estimates will not invite abuse.

Metro is and has been recognized as unique; it sets no precedent for other jurisdictions to exploit. Although Metro's UGB was acknowledged six years ago, no other jurisdictions have tried to follow Metro's approach, and now no more can, since the acknowledgment process is virtually completed. Nor will Metro use an estimate of unbuildable lands to justify future UGB expansion; that is quite explicitly not Metro's intent and can quite explicitly not be LCDC's. The estimate of unbuildable lands is part of the justification for the uniquely difficult and important task of establishing a UGB for the Metro area. Goal 14 recognizes that more latitude should be given in UGB establishment than in UGB amendment. LCDC should recognize and act upon this distinction. If, when considering UGB expansion, Metro were to make inappropriate use of the Findings for acknowledgment, the post-acknowledgment plan amendment process and the periodic review process provide ample opportunity for LCDC to correct such an error.

It is difficult for any jurisdiction to directly quantify lands which are unbuildable due to owner preferences, land development costs and other unmeasurable elements. It was especially difficult for Metro to directly quantify any of the four factors in B, above. However, Metro's 13 percent is a reasonable approximation. An indirect measure is comparison with other developed cities. The UGB Findings contains a comparison with central cities of 100,000 or more in population.<sup>14</sup> The land still vacant in these cities is likely to be only unbuildable lands. Because these figures are for central cities (with higher densities), and include eastern cities hundreds of years old (and so unlikely to contain any land simply unavailable during the planning period, but ultimately developable), they may be considered to underestimate the proportion of land likely to remain vacant in areas that include both suburban and newer central city locations. Yet, the central cities' average was 20 to 25 percent total vacant. This percentage comprises land which would be "constrained" and which would be unbuildable under Metro's definitions.

This compares with 17 percent for the Metro UGB: one-half constrained vacant is 4 percent, plus 13 percent unbuildable for other reasons. Thus, 13 percent vacancy allowance appears a reasonable, and even conservative, estimate.

Metro's UGB thus encloses only as much land as needed to accommodate long-term growth, once a reasonable estimate of lands unsuitable or unavailable for development have been netted out, consistent with factors 1 and 2 of Goal 14.

By recognizing and providing accommodation for the features that make land unsuitable or unavailable for development, Metro's UGB provides a sound and stable basis for local planning activities and thus for orderly urban development consistent with local plans.

## V. Achieving More Compact Development

The second overall objective of Goal 14 is to achieve more compact urban development. Compact development is development at higher densities, and with more infilling, than is typical of the leap frog pattern of low density suburban development. The benefits of compact development are: 1) lower housing and public facility costs (factors 4 and 5 of Goal 14); 2) less fuel consumption for both space heating and transportation, and so better energy conservation and less air pollution (factor 5); and 3) preservation of as much prime agricultural farm land as possible (factors 6 and 7).

### A. Conversion Requirements

Achieving compact urban development is a shared responsibility. Once the UGB established the framework for local planning, local jurisdictions undertook to develop and implement policies to manage the timing and location of urban development within that boundary. Such policies must address the four considerations listed in Goal 14 regarding the conversion of urbanizable land to urban uses, including "encouragement of development within urban areas before conversion of urbanizable areas." Compliance with Goal 14's conversion requirements generally includes establishment of at least a 10-acre minimum for land partitions when urban services are not yet available.<sup>15</sup> Requiring public water and sewer service for conversion discourages leapfrog development and promotes infilling. The 10-acre minimum lot size prohibits sub-urban, low-density development on septic tanks. Thus the conversion policies developed and implemented by local governments following UGB adoption complete the regional growth management picture by promoting compact development within the UGB. This insures that lands included within the boundary will not be "squandered" but protected.

## B. Supplemental Strategies

During the first acknowledgement review LCDC found that: "If MSD establishes that it is impossible to draw a year 2000 boundary, [i.e., that contains only land demonstrated to be needed by 2000], it must also adopt strategies in addition to those expressly set forth in the goal for management of the urbanizable land surplus."<sup>16</sup> The current fundings demonstrate that Metro's UGB does not contain any such "land surplus." Nonetheless, such supplemental strategies have been implemented, should they be considered needed.

One way to achieve the more compact development is to artificially restrict the land supply. Artificially restricting the land supply increases land costs and spurs property owners and developers either to get the most out of their land under its current zoning (through infilling, etc.) or to seek a zone change to allow still more intensive development. As discussed below, other land use actions that allow more intensive development at the outset can achieve the same result.

A restricted land supply can be achieved by drawing a tight UGB that excludes land from the short-term market until it is added through amendment or by adopting other growth management measures designed to keep land within the boundary out of the land market. As discussed above, local policies to comply with Goal 14 conversion requirements play an important part in regulating the land supply to promote more compact development.<sup>17</sup>

In addition to the local conversion policies, in the Portland metropolitan area supplemental support for more compact development has been provided by two special regulations on the type of development allowed: 1) Washington County's Special Industrial District (SID); and 2) LCDC's Metropolitan Housing Rule, and local compliance with it.<sup>18</sup>

The County's SID was developed in response to Metro's policy guidelines for those "surplus" lands dubbed Specially Regulated Areas (SRAs) and the requirements of LCDC's amended acknowledgment order for Metro's UGB. It is a special zone designed to protect large, flat tracts of land for major industrial development.

In 1979 when Metro adopted the UGB findings, Metro argued that a boundary that contained only lands irrevocably committed to urban use would not -- virtually by definition -- contain, a sufficient supply of large, undeveloped parcels to meet industrial needs. Subsequently, it was able to present more detailed documentation to demonstrate that industrial land in SRAs

was needed for this purpose. Washington County then adopted and applied the SID designation to protect a portion of these land for large lot industrial users. By insuring that such lands would not be converted to urban use until needed for large-lot, industrial development, this special designation not only promoted its most efficient use but, by restricting this land's availability for urban use, promoted more efficient use of other urban lands as well.

While Washington County's SID provided a special impetus for more efficient, and thus compact, industrial development, LCDC's Metropolitan Housing Rule, and local compliance with it, did the same for residential development. This unique rule established specific numeric density requirements for all but the region's tiniest jurisdictions.

Metro's UGB Findings assume actual development significantly more compact than would have occurred without the Goals. In particular, they assumed (1) that infill will occur on virtually all developable lands, passing over only the 13 percent estimated to be genuinely unsuitable or unavailable for development, and (2) that the average net density of lands that are developed will be significantly higher than has occurred in the past.

For suburban single family zones, for example, densities actually developed were assumed to increase 17 percent. At the same time, the construction of a multi-family housing as a proportion of all new units was projected to increase by more than 20 percent.<sup>19</sup>

The average density of actual development rarely achieves the maximum allowed under local zoning, however. Therefore, when the Metropolitan Housing Rule required a higher average zoned density regionwide than was projected in the Findings, this promoted the compact development the Findings assumed would occur. By establishing these requirements, LCDC eliminated the need for further special controls to achieve the densities projected.

When a jurisdiction comprehensively upzones its land to allow higher densities than it would otherwise have provided, the result is the same as if upzoning had occurred on a case-by-case basis in response to requests from property owners due to the pressures of a restricted land supply. And with the two additional benefits that: 1) the increase in land prices, which negatively impacts housing costs, is less severe; and 2) jurisdictions have a more stable basis for long-term planning, not just in the UGB itself, but in their own land use designations. Thus, the Metropolitan Housing Rule, and local compliance with it, provided an extra incentive for more compact residential development, should one be considered needed.<sup>20</sup>

## VI. Conclusion

Growth management in the Portland metropolitan area is a two-tiered process: early UGB adoption establishes a framework for an orderly local planning process, which then implements the specific policies and zoning needed to achieve the compact development pattern on which the UGB was predicated.

The UGB adopted by Metro in 1979 was the culmination of a unique and complex process of coordination among an initial 33 jurisdictions, 62 special districts and utilities, and hundreds of individuals. The resulting UGB represents a reasonable estimate of the amount of land needed to accommodate growth through the year 2000 without frequent major UGB expansion. Growth management policies adopted by local jurisdictions to comply with Goal 14's conversion requirements assure orderly and compact development within that boundary. If further special strategies are considered needed, they have been provided by Washington County's SID designation and LCDC's Metropolitan Housing Rule.

4545C/436-4

## NOTES

- 1 See, for example, the last two paragraphs, p. 4 of the December 7, 1979, DLCDC staff report.
- 2 See Appendix D for a complete explanation of Court's decision.
- 3 See Appendix A for a list of the documents that contain the appropriate findings on these uncontested issues, and the factors of the goals they address.

### Locational Considerations

Goal 14 lists seven factors to be considered when UGBs are established: two regarding need and five regarding location. When a UGB has been found to include only as much land as is needed under factors 1 and 2, application of the five locational factors involves only a demonstration that land within the boundary is better urban land than land left outside it, considering such things as the location and capacity of existing and planned services, access to and support of the regional transportation system, natural resources and hazards, potential for agricultural use, and compatibility with nearly agricultural activities. The 1979 UGB Findings and accompanying support documents contained more than enough locational analysis to comply with this requirement.

Because, however, LCDC did not accept that all land in the UGB was needed, it applied a higher standard regarding locational considerations. The idea was that Goal 14 requires only that all seven factors be considered and a UGB established based on those considerations. Each factor need not be fully complied with if, when consideration of all factors are weighed together, considerations regarding certain factors outweigh a failure to comply with other factors. In particular, LCDC found that if Metro could demonstrate that in terms of the five locational considerations listed, it was impossible to remove any land from the boundary, then that would constitute adequate reason for including more land than was consistent with the two need considerations. Whether LCDC found that Metro met this higher test in 1979 is unclear, since it did not articulate the basis for its decision to acknowledge. This higher test does not apply, however, if all land within the boundary is found to be needed, as Metro demonstrates in these findings.

- 4 See Table, p. iii, Part I, UGB Findings adopted by Metro in November 1979. (The total shown, 223,730 acres, does not include the 50 percent of the constrained land that was netted out as unbuildable. The total area, including 100 percent of the constrained land, is 223,730 acres + 9,093 acres = 232,823 acres).
- 5 Table 1, p. 5, Part II, UGB Findings. Total area calculated as per note 4: 212,125 acres + 8,795 acres = 220,920 acres.

- 6 See Section 1.2 of Attachment A to February 1, 1979, letter to Wes Kvarsten from Denton Kent: "Local, State and Federal Agencies Involved in the Process of Establishing the Urban Growth Boundary."
- 7 Planning and Adoption Process, p. 12, #1.
- 8 Ibid. Ten thousand draft documents were distributed; 1,155 people actually attended the CRAG hearings.
- 9 See Appendix A for sources of locational findings.
- 10 All acreage figures are from Table 2, p. 6, Part II, UGB Findings, November 1979.
- 11 Constrained land is defined in Table 8, note 1, p. 16, Part I, UGB Findings. Table 8 also shows that only 50 percent of land defined as constrained was actually counted vacant due to that characteristic. The remaining 50 percent was included in the acreage for Developable and Buildable Land. The quantities shown in Part I Table 8 were recalculated as described in Table I, Part II, and accompanying text, pp. 5 and 6. This Table shows that 8,795 acres is 50 percent of the constrained land. Therefore, total constrained land is 17,590.
- 12 In general terms, a "market factor" is intended to accommodate the fact that land buyers will need an array of site choices in order to find one suitable to their needs. If the land market were such that there were only as many total sites as there were buyers, two problems would arise. First, most buyers would be unable to find a site that met their needs: individual buyer needs are myriad, diverse and often unmeasurable, certainly not susceptible to being anticipated and specifically planned. Second, even if there were one suitable and available site for every buyer -- but only one -- the price of each site would skyrocket.

The market factor was an attempt to ensure that there would sufficient "surplus" lands even after all unsuitable or unavailable sites had been eliminated, to provide enough choice among suitable, available sites without a substantial UGB expansion during the initial years of operation (e.g., through 1990 or so).

When the UGB was first adopted, there was enough vacant land to provide a choice among 10 acres for every one acre projected to be needed during the first five years of UGB operation. Among these 10 acres, roughly two would have slopes over 25 percent or be located in the floodplain -- only one of these two was assumed to be undevelopable and netted out of consideration. Of the remaining nine acres, roughly three could be considered unbuildable for the other reasons discussed in the main text. This left each buyer seeking one acre of land with a choice of six acres assumed to be suitable for some form of urban

development and available at some time during the planning period (although not all of these would be available initially). Of these six acres, roughly four were projected for development at some time during the planning period. The remaining two acres represent land assumed to be both suitable and available and included in the UGB solely to promote sufficient market choice to reduce the need for frequent UGB expansion. These two acres out of every 10 are the only truly "surplus" lands provided for by the market factor and they have not been provided for in the Metro UGB.

Such a "surplus" disappeared through CRAG action on the Rock Creek Study Area and through Metro adoption of a boundary excluding the satellite cities. These actions reduced the vacant undevelopable land to 13 percent of the total land in the UGB (28,152 acres of 220,920 acres).

- 13 Factors 1 and 2 of Goal 14 require that UGBs be based on identified growth needs, but do not specify how the supply of land to meet those needs should be defined. Goal 10 (Housing) does provide such a definition, however. "Buildable Land" is there defined as "lands suitable, available and necessary for residential development." Although the goals do not contain a comparable definition for lands needed for economic development, this oversight was remedied, to some degree, by 1983 HB 2295 which required plans to "provide for at least an adequate supply of suitable sizes, types, locations and service levels for industrial and commercial uses..." (ORS 197.712(2)(c)). Size, type and location are three elements of suitability taken into account in Metro's estimate of buildable land to meet year 2000 needs.
- 14 Metro's UGB Findings, p. 13, Part I, November 1979.
- 15 See, for example, Washington County Acknowledgment, LCDC Order 83-ACK-26, September 15, Report p. 65.
- 16 LCDC Continuance Order, September 28, 1979, p. 13, lines 21-23.
- 17 See, for example, Washington County Acknowledgment, LCDC Order 83-ACK-26, September 15, Report, p 68.
- 18 See Appendix B for citations of actions referenced.
- 19 See pp. 3-4, Part I, UGB Findings, and the discussion of those assumptions in "MSD reply to DLCD Critique of Urban Growth Assumptions," pp. 3-5.
- 20 For this reason, these findings have not considered it necessary or desirable to reopen the debate regarding what Metro's policy guideline for residential development in SRAs meant, when and how it should be applied and whether Washington County has adequately done so. Disagreements on these questions have never been resolved but now need not be.



## APPENDICES

- A. List of prior findings and support documents relied upon, with summary of how goal requirements addressed.
- B. List of official actions taken subsequent to acknowledgment, of which notice is taken.
- C. History of major events.
- D. Summary of relevant court decisions.

## APPENDIX A:

### SUMMARY OF COMPLIANCE DEMONSTRATION

Following is a list of documents that address compliance with the seven factors that Goal 14 requires be considered when UGBs are established:

#### Long-Term Growth Needs (factors 1 and 2)

- Assumptions used to calculate long-term growth needs and projections for tri-county area: pp. 1-11, Part I, UGB Findings, November 1979.
- Application of Assumptions to Metro area to project needs for Metro UGB, p. 6, Part II, UGB Findings.
- Methodology for calculating vacant land, pp. 15-19, Part I, UGB Findings.
- Vacant land calculations for Metro area: p. 5, Part II, UGB Findings.
- Estimate of vacant lands suitable and available to meet identified needs. Augmented Findings.

Support Documents: Items I.1-11, Appendix A UGB Findings Supplement, January 1979.

#### Locational Consideration (factors 3-7)

- Demonstration that UGB located in most suitable manner possible, pp. 12-36, Part II, UGB Findings, exclusive of references to Metro's Urban Growth Management policies; UGB Findings Supplement; plus documents listed in Supplement Appendix as items II.3 - 14

#### Coordination

CRAG Planning and Adoption Process and UGB Findings Supplement

Note: The Augmented Findings include references to sections of the 1979 UGB Findings, and to other documents in the record that included in this listing. Only the information cited has been relied upon for compliance.

APPENDIX B:

LIST OF ACTIONS SUBSEQUENT TO ACKNOWLEDGEMENT  
OF WHICH OFFICIAL NOTICE IS TAKEN

- Metropolitan Housing Rule (OAR 660 Division 7), adopted by LCDC December 3, 1981.
- Resolution No. 82-348, for the Purpose of Expanding the Region's Supply of Large Industrial Sites [Requesting that LCDC amend its Acknowledgment Order], adopted by the Metropolitan Service District August 26, 1982.
- Modification of Commission Order, in the Matter of the Amendment Acknowledgment of Compliance Order for the Metropolitan Service District Regional Urban Growth Boundary, adopted by LCDC on October 11, 1982.
- Ordinance No. 263, Comprehensive Framework Plan for the Urban Area, adopted by Washington County June 28, 1983.
- Ordinance No. 264, Community Development Code, adopted by Washington County June 28, 1983.
- Compliance Acknowledgment Order 83-ACK-216, In the Matter of Washington County's Urban Area Comprehensive Plan and Land Use Regulations, adopted by LCDC November 25, 1983.

APPENDIX C:

ACKNOWLEDGMENT CHRONOLOGY

DECEMBER 1976 CRAG ADOPTS A LAND USE FRAMEWORK ELEMENT OF THE REGIONAL PLAN (LUFE), ESTABLISHING "URBAN," "RURAL" and "NATURAL RESOURCE" DESIGNATIONS FOR ALL LAND IN THE TRI-COUNTY AREA.

NOVEMBER 1978 CRAG ADOPTS UGB FINDINGS (PART 1) TO DEMONSTRATE COMPLIANCE WITH GOAL 14. JUSTIFICATION INCLUDED IDENTIFICATION OF NEED FOR A "MARKET FACTOR."

DECEMBER 1978 CRAG COMPLETES RESOLUTION OF STUDY AREAS AND SUBMITS TRI-COUNTY UGB TO LCDC FOR ACKNOWLEDGMENT.

SEPTEMBER 1979 LCDC ADOPTS A CONTINUANCE ORDER THAT REJECTS THE ADEQUACY OF A MARKET FACTOR ALONE TO JUSTIFY THE INCLUSION OF "SURPLUS" LANDS BUT OUTLINES A RATIONALE FOR ACKNOWLEDGMENT.

NOVEMBER 1979 METRO ADOPTS THE UGB, ALONG WITH PARTS 2 AND 3 OF THE UGB FINDINGS. PART 2 CONTAINS THE FIRST REVISED FIGURES FOR THE METRO UGB, SHOWING ONLY 13 PERCENT "UNCONSTRAINED" LAND PROJECTED TO REMAIN UNDEVELOPED BY 2000.

DECEMBER 1979 LCDC VOTES TO ACKNOWLEDGE METRO'S UGB.

PROPOSED AMENDMENTS SUBMITTED BY TIM RAMIS

November 14, 1985

- On p. 2, following the second paragraph, add the following additional paragraph:

To put the controversy in perspective, it is important to note that the actual land area disputed in the circuit court case is only 1.1 percent of the land within the UGB. The disputed SRA areas, Bethany and Sherwood, represent only .8 percent of the total UGB area. The addition of Bull Mountain to the dispute adds another .3 percent.

- On p. 8, in the second paragraph, delete the sentence indicated below:

Metro is and has been recognized as unique; it sets no precedent for other jurisdictions to exploit. Although Metro's UGB was acknowledged six years ago, no other jurisdictions have tried to follow Metro's approach, and now no more can, since the acknowledgment process is virutally completed. [Nor will Metro use an estimate of buildable lands to justify UGB expansion; that is quite explicitly not Metro's intent and can quite explicitly not be LCDC's]

- On p. 15, in footnote 17, add the following:

The compact development aspect of Goal 14 is further implemented by Washington County's growth management system. This policy insures that adequate public facilities and services are to be in place before development may proceed within a particular area. The policy was attacked during the acknowledgment proceeding as violative of Goal 14 because developers are permitted to finance service provisions "and thus make disorderly decisions about urbanization." In rejecting this claim, LCDC found:

"As addressed in the conclusion, the growth management system meets Goal 14 conversion requirements. Where a private investment into major public facilities can be encouraged, this is a plus, not a detriment. Orderly growth is encouraged since those areas closer to developed areas will be more likely to be served, due to cost factors, than those areas further out." 83-ACK-216 at 64.

- On p. 3, add the following to the fourth paragraph:

The Findings that follow demonstrate that: (1) Metro has not included more land than needed to accommodate growth in an orderly way, but (2) even if it had, special state and local policies for this region promote a compact growth form sufficient to achieve the Goal's objective. This is a valid approach to satisfy factors 1 and 2 of Goal 14. Factor 1 requires a demonstrated need to accommodate long-range urban population growth requirements. Metro satisfies this requirement by adequately assessing its land needs within the planning period. It further satisfies this requirement because of the policies which promote a compact growth form. Factor 2 requires that establishment of the boundary satisfy the need for housing, employment opportunities and liveability. In addition to specific estimates of needed acreage, Metro has addressed this factor through two special regulations. Compliance with the Metropolitan Housing Rule insures compact housing development at sufficient density to preserve land for needed housing. Metro's approval of Washington County's Special Industrial District specifically focuses upon employment opportunities by creation and preservation of large industrial tracts necessary to attract light industrial users.

APPENDIX D:

1000 FRIENDS v. LCDC AND METRO:  
APPLICATION OF THE CIRCUIT COURT DECISION

In 1000 Friends v. LCDC and Metro, the Court made three rulings applicable to LCDC's action on this remand. First, the Court held that LCDC was correct in recognizing the unique factual and political factors shaping Metro's UGB. Second, the Court held that LCDC need not make a finding on each of the seven factors in Goal 14, if the boundary meets Goal 14 as a whole. Third, the Court held that LCDC has the authority to adopt any approach to evaluating an urban growth boundary, including the surplus land or market factor approach, as long as the Commission makes findings showing why that approach complies with Goal 14:

"Traditionally, LCDC apparently has following the procedure of establishing a tight or compact UGB anticipating more than infrequent changes in the UGB as conditions change. This procedure was characterized in the record as an "inside-out" approach. In this case, LCDC apparently followed an "outside-in" approach, setting a boundary that admittedly includes "surplus land," but included strict controls inside the UGB on non-urban land. This "alternative approach" substitutes a longer term UGB (less change) and a growth management strategy for the more commonly used short-term UGB with periodic expansion (Exhibit 4, p. 10).\*\*\*

"Although Petitioner strongly condemns this alternative approach, I conclude that LCDC is free to adopt an alternative approach to UGB establishment if the alternative approach meets the requirements of Goal 14. The wisdom of establishing a different or alternative approach to comply with Goal 14 is for LCDC to decide and not for this Court as long as LCDC's alternative approach meets this standard."

Judge Carson disregarded the Court of Appeals rejection of LCDC's approach in 1000 Friends v. Washington County, 72 Or App 449 (1985), saying, "This Court notes that the Appellate Court did not have the question [of LCDC's acknowledgment of the Metro boundary] before it and, presumably, did not have the benefit of the able presentations made to this Court by Metro and LCDC." Indeed, the Court of Appeals, itself, recognized that the case of Metro's UGB it heard was not the full case. The Court of Appeals made its ruling only "if the Metro UGB is as the parties have described it to us," (emphasis added), and on "the record and arguments in this [Washington County Plan] appeal" (emphasis in the original). The Court of Appeals explicitly left the merits of Metro's UGB to Judge Carson. His ruling governs this remand.

Judge Carson's application of his ruling is the touchstone to LCDC's action now.

Having held that LCDC can accept any theory for a UGB as long as it complies with Goal 14, Judge Carson first identified what theory LCDC adopted, and then considered whether it was supported by findings of compliance with Goal 14.

The Court identified LCDC's theory to be: allow a larger boundary if it is accompanied by a growth management strategy for "rural" areas (e.g., Bethany, Sherwood, Bull Mountain). The Court said, "LCDC looked to the growth management strategy of Metro to find compliance with Goal 14" (p. 11). The Court identified LCDC's reasoning to be: if conversion factors regulate the change of urbanizable land to urban land in a tight boundary, then special policies must be needed to regulate the change of the surplus land ("otherwise rural land") to urban land in a surplus boundary. Note well, the Court did not require the growth management strategy when the larger boundary is used, Judge Carson merely identified that LCDC required it.

Next, the Court asked whether the growth management strategy satisfies Goal 14. The Court said,

"The standard against which this approach must be tested (Goal 14) specifically states the goal is: 'To provide for an orderly and efficient transfer from rural to urban land use.' The goal requires that: 'Urban growth boundaries shall be established to identify and separate urbanizable land from rural land.'"

The Court also found that "there appears to be no requirement that LCDC make a specific finding as to each of the seven factors [of Goal 14]."

The Court found that although LCDC's conclusion states that the growth management strategy complies with Goal 14, the findings do not support the conclusion. Therefore, new findings are necessary if LCDC wants to predicate the boundary on the growth management strategy. The Court pointed out that if LCDC does require the growth management strategy, then it must explain not only why it satisfies Goal 14, but also why it has not been followed in subsequent acknowledgment of other Metro area jurisdictions.

In summary, LCDC may acknowledge the boundary using any approach which meets the Goal 14 objective of "an orderly and efficient transition from rural to urban land use." LCDC can examine the record and determine there is no surplus land. Alternatively, LCDC can determine there is surplus land. Use of a growth management strategy with the surplus land approach is not required by the Court; LCDC can reconsider its previous analysis and decide whether the growth management strategy is required. If the growth management strategy was necessary in 1980 to meet Goal 14, LCDC must explain why and then explain how that need is met.



full-page advertisement in the Sunday Oregonian asking citizens for their comments on the program.

4. WRITTEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

5. CITIZEN COMMUNICATIONS TO COUNCIL ON NON-AGENDA ITEMS

None.

6. APPROVAL OF MINUTES

Motion: Councilor Gardner moved to approve the Council meeting minutes of September 26, October 10 and October 24, 1985. Councilor Waker seconded the motion.

Vote: A vote on the motion resulted in:

Ayes: Councilors Cooper, DeJardin, Gardner, Hansen, Kafoury, Kelley, Oleson, Van Bergen, Waker and Bonner

Absent: Councilors Kirkpatrick and Myers

The motion carried and the minutes were approved.

7. ORDINANCES

7.1 Consideration of Ordinance No. 85-192, for the Purpose of Adopting Additional Findings in Support of the Urban Growth Boundary (UGB) and Amending the Findings Adopted in Ordinance No. 79-77 (First Reading and Public Hearing)

The Clerk read the ordinance by title only.

Motion: Councilor Kafoury, seconded by Councilor Waker, moved the Ordinance be adopted.

Jill Hinckley explained that last July Judge Wallace Carson, Marion County Circuit Court Judge Pro Tem, issued the decision in 1000 Friends of Oregon's five-year-old appeal of the Land Conservation & Development Commission's (LCDC) acknowledgement of Metro's Urban Growth Boundary. Although supportive of LCDC's action on most grounds, the Court overturned the acknowledgement on the grounds that it lacked a clear statement of the reasons for compliance with LCDC Goal 14 (Urbanization). She explained that LCDC then remanded the matter to Metro so that new Findings would be submitted to address the deficiencies posed by the Court. The proposed Findings,

she said, were based on the existing records supporting adoption of the UGB in 1979 and supplemented by taking notice of certain key acknowledgments, rules and ordinances since that time. Ms. Hinckley explained that although the Council could hear new evidence, it should not base its decision on that evidence or incorporate any new information in the Findings.

Presiding Officer Bonner opened the public hearing on Ordinance No. 85-192. He then read the following statement to ensure all parties understood the action before the Council: "The matter before the Council today is the adoption of additional Findings to support the Urban Growth Boundary adopted in 1979. These Findings are in response to remand from LCDC to address the issues identified by Marion County District Court in its decision overturning the acknowledgment of that boundary. Because the Findings are intended to clarify the basis for LCDC's acknowledgement, the record has not been opened for new information regarding the appropriate size and location of the Boundary for 1985. Such information will be excluded from the proceedings but the Council legally may not consider that information when it makes its own decision." The Presiding Officer then asked that those testifying limited their comments to five minutes each.

Bob Stacey, 300 Willamette Building, 534 S.W. 3rd Avenue, Portland, representing 1000 Friends of Oregon, submitted five exhibits as part of his testimony. He said he did not accept the premise the Council was legally bound not to consider new evidence and that 1000 Friends would be presenting new evidence to the LCDC when the Boundary was resubmitted. He then explained the decision before the Council was that of ratifying the existing UGB and adopting a new justification for approximately 28,000 acres of surplus as identified in 1977, for growth within the Boundary.

Mr. Stacey proposed that due to inaccuracies in the original data and in the land development process, it was very unlikely much of this land would be developed by the year 2000. Mr. Stacey summarized the conclusions of this assertion. He said that conclusion was based on the assumption that Metro would continue to experience the kind of growth experienced in 1977 but since then, growth had slowed. Also, the development densities that were assumed in the 1979 and 1977 UGB Findings were substantially lower than the densities allowed in current comprehensive plans, resulting in an approximate 12,000 acre surplus in residentially-designated land within the tri-county region, he said. In addition, Metro staff prepared a recent industrial land survey which identified an approximate 11,000 acre surplus in raw industrial land. The kind of restraints and inefficiencies which staff findings identified as being the basis for the 28,000 acre surplus were already accounted for in the kinds

of projections, estimates and inventory techniques used by CRAG in 1978 to prepare the original findings. Finally, Mr. Stacey raised the concern that the three areas in question, totaling about 3,500 acres, were all residential properties located in Washington County. As such, the County's plan had previously identified an approximate 6,000 acre surplus of residential, single family land in unincorporated urban areas of Washington County, he said. He questioned whether those areas were committed to urban development and requested the Council reject the Findings and direct the staff to inquire whether the surplus land in Washington County should be deleted from the Boundary.

James Rapp, City Manager, City of Sherwood, read written testimony which strongly urged Metro to forward Findings supporting reacknowledgment of the UGB, as originally established in 1980, to the LCDC. The UGB, he testified, was established only after a lengthy process of public participation and had been reconfirmed by subsequent actions such as adoption of the city of Sherwood and Washington County Plans. The wisdom of the 1980 boundary had been shown by several annexations to the city of Sherwood, new industrial and residential planning and development, major water and sewer service upgrades and extensions up to and into the disputed area, and the formation of LID's to pay for urban services. He urged the Council to restore confidence in a decision made over five years ago.

Ken Hosler, Route 3, Box 310, Sherwood, owner of Tualatin Valley Nursery in Sherwood, said he represented 50 property owners who had participated in the process of developing Sherwood's Comprehensive Plan. This group supported the position that Metro maintain the original Urban Growth Boundary.

Charles L. Hoar, Route 3, Box 159A3, Sherwood, representing the 1,600 members of the Sherwood Elk's Lodge, testified in favor of maintaining the existing UGB. To do otherwise would undermine plans for growth and development, he said.

Al Benkendorf, 522 S.W. 5th Avenue, Portland, Principal of Benkendorf Associates, representing Ridgecrest Farms, 10120 S.W. Nimbus Avenue, Tigard, testified the farm owned four contiguous lots comprising over 92 acres on the south side of S.W. Scholls Ferry Road. That property was located within the UGB acknowledged by LCDC in 1979, he said. Mr. Benkendorf submitted a five-page letter to the Council explaining why he supported staff's recommendation. In addition to the reasons for accepting the recommendation as listed in the letter, Mr. Benkendorf read from the letter thirteen comments explaining why staff's recommendation would specifically apply to the Ridgecrest Farms property.

James J. Huntzicker, 5170 S.W. Kaiser Road, Portland, said he was in favor of shrinking the UGB by removing the Bethany area from the UGB. Mr. Huntzicker specifically addressed Exhibit A of the agenda materials which contained the issue of market factors. Those findings stated the UGB contained a 13 percent market factor or surplus, he said, and that surplus was designed to prevent the price of land from skyrocketing if UGB land was filled up. He pointed out that figure was 13 percent of the total UGB and translated to over 28,000 buildable acres or approximately 9,800 acres per county. Mr. Huntzicker testified Washington County provided for about 18,000 buildable acres within its share of the UGB but only projected a need for about 8,000 of those acres which left 9,800 acres in surplus. He maintained Washington County's method of calculating the market factor and necessary surplus was wrong. Mr. Huntzicker proposed the market factor be projected on the basis of need rather than on the total amount of land within the UGB. He then suggested removing Bethany from the UGB which would not seriously impact the supply of buildable land available. In conclusion, he said if the Council decided not to remove the Bethany property from the UGB as a compromise solution, the Council might consider reinstating the special regulated area status of the property, meaning the property could not be urbanized until at least 1990.

Mary Tobias, Mayor, city of Sherwood, introduced other Sherwood residents attending the meeting. She said residents were committed to urban development and asked the Council to support staff's findings.

Greg Malinowski, 13720 N.W. 6th Avenue, Apartment 25, Beaverton, testified if the Council approved staff's recommendation, the potential for his farm's growth would be restricted. Urbanization would result in much higher property taxes and sprawl, he said, and such development would not be conducive to good agricultural practices. He stressed that planned urban services were not needed in the Bethany area and the urban designation should be moved to an area where it was needed. Mr. Malinowski submitted reports to the Council to document his position. Councilor Kafoury requested copies of these reports be made available to all Councilors before the second hearing on the Ordinance.

Richard Leonard, 9999 S.W. Wilshire Street, Portland, of Richard Leonard Architecture & Planning, said he had previously submitted a letter to the Council in support of staff's recommendation. Services were in place, properties were being assessed and plans were being drawn for development, he reported, which were all clear and compelling commitments to urbanization. He disagreed with Mr. Stacey's earlier statement there was no need for additional single family land. Mr. Leonard reported only 28 percent of the land had been planned for single family dwellings.

Maurine Warneking, 12835 N.W. Laidlaw Road, Portland, Bethany area resident, said she had been very involved in the initial effort to include the Bethany area in the UGB. The land in question, she said, was not in the country but was less than one mile from prime industrial land and near the Sunset Corridor. Ms. Warneking testified that property owners wanting to keep the area zoned rural lived on small farms of five acres or less. Larger parcels had already been sold for industrial or housing projects. She urged the Council to accept staff's recommendation and maintain the urban designation for the area.

Jan Teeter, 13835 N.W. Greenwood, Portland, a Bethany area resident, testified it was the Council's job to balance the citizens' needs and make a decision that would be in everyone's best interests. She requested the Council defer a decision for five years.

Darlene Werner, 5475 N.W. 137th, Portland, read a letter from Raymond Taennler which supported the position of keeping the Bethany land rural. Mr. Taennler stressed that 70 percent of the land was rural and the soil was best suited for agricultural purposes.

Robert O. Werner, 5475 N.W. 137th Avenue, Portland, advocated keeping the Bethany land rural because he did not think additional development was needed at this time.

David Bennett, 3500 First Interstate Tower, Portland, Chairman of the Business and Land Development Committee of the I-5 Corridor Association, said the Association's Board of Directors supported the initial boundary, especially for the Bull Mountain and Sherwood areas. He then read a portion of a letter from the Association to the LCDC, dated September 6, 1985, advocating this position.

Tim Ramis, 1727 N.W. Hoyt, Portland, representing Bethany and Bull Mountain property owners, submitted proposed amendments to the Findings for the Council's consideration. He explained the amendments did not specifically address the contested areas. Instead, they augmented staff's approach and provided additional, factual information which would be helpful to the Attorney General's office in defending the Findings before the Court of Appeals. Mr. Ramis testified the amendments sought to emphasize two important factors: 1) the disputed area represented only 1.1 percent of the land within the UGB; and 2) the Washington County Growth Management Program, referred to at footnote 17 in the staff draft, was acknowledged by LCDC and upheld by the Court of Appeals in the face of challenges similar to those raised in the Metro UGB case. He also pointed out that one of his proposed amendments (point 2, page 4, the addition of a paragraph) should be deleted from consideration.

In response to the Presiding Officer's question, Ms. Hinckley said staff supported Mr. Ramis' proposed amendments with the following changes: 1) the deletion of point 2 as noted by Mr. Ramis earlier; and 2) the deletion of the entire sentence referred to under point 3. Ms. Baxendale added she wanted to record to be clear that by deleting that sentence, it would not be construed the Council did not want to entertain the option in question. Rather, the sentence was being deleted to specifically include the option. Ms. Hinckley said she would prepare amendment language to be considered by the Council for the second hearing on the Ordinance.

John O. Mitchell, 4180 N.W. Kaiser Road, Portland, testified the Bethany area should stay within the UGB.

There being no further public testimony, Presiding Officer Bonner closed the public hearing. A second reading on the Ordinance was scheduled for November 26. He then declared recess at 7:00 p.m. The Council reconvened at 7:10 p.m.

8. RESOLUTIONS

8.1 Consideration of Resolution No. 85-605, for the Purpose of Expanding the Membership of the Regional Adult Corrections Task Force to Include Representatives from Cities

Motion: Councilor Kafoury moved to adopt the Resolution and Councilor DeJardin seconded the motion.

In response to Councilor Waker's question, Neal McFarlane explained the current makeup of the Task Force included sharrifs, commissioners or executives, district attorneys, jail administrators and community corrections advisors from each county plus six judiciary repretatives, three Metro Councilors and the Director of State Division of Corrections. The group established priorities for the region, he explained.

Vote: A vote on the motion resulted in:

Ayes: Councilors Cooper, DeJardin, Gardner, Hansen, Kafoury, Kelley, Waker and Bonner

Absent: Councilors Kirkpatrick, Myers, Oleson and Van Bergen

The motion carried and the Resolution was adopted.

8.2 Consideration of Resolution No. 85-603, for the Purpose of Continuing the Bi-State Policy Advisory Committee

Motion: Councilor Kafoury moved to adopt the Resolution and Councilor Kelley seconded the motion.



8.1 Consideration of Ordinance No. 85-192, for the Purpose of Amending Ordinance No. 79-77 to Reference Additional Findings in Support of the Urban Growth Boundary (Second Reading)

The Clerk read the Ordinance a second time by title only and the Presiding Officer invited members of the public to comment on the suggested amendments to the Ordinance.

In order to give the public time to review the amendments, the Presiding Officer set the item back on the agenda for consideration later in the meeting.

NOTE: The following discussion occurred immediately after consideration of Agenda Item No. 8.3. For recording purposes, it will be noted below.

Bob Stacey, representing 1000 Friends of Oregon, thanked the Council for allowing him time to review the amended findings. Mr. Stacey testified the amendments, although not the ones he would have written, raised no new issues of fact or policy.

Motion: The motion to adopt the Ordinance was made by Councilors Kafoury and Waker at the meeting of November 14, 1985

Motion to Amend: Councilor Kirkpatrick, seconded by Councilor Hansen, moved to adopt the amendments to the Augmented Findings as submitted in the staff report.

In response to Councilor Gardner's question, Ms. Hinckley said although the amendments were not the ones she would have written, she did think they were helpful.

Presiding Officer Bonner announced he would accept testimony from parties wishing to speak about the amendments. There was no testimony.

Vote on motion to amend: A vote on the motion resulted in:

Ayes: Councilors Cooper, DeJardin, Gardner, Hansen, Kirkpatrick, Kelley, Oleson, Van Bergen and Bonner

Absent: Councilors Kafoury, Myers and Waker

The motion carried.

Vote on main motion as amended: The vote resulted in:

Ayes: Councilors Cooper, DeJardin, Gardner, Hansen,  
Kirkpatrick, Kelley, Oleson, Van Bergen and Bonner

Absent: Councilors Kafoury, Myers and Waker

The motion carried and Ordinance No. 85-192 was adopted as amended.

Presiding Officer Bonner called a recess at 8:25 p.m.. The Council reconvened at 8:35 p.m.

8.2 Consideration of Ordinance No. 85-193, Adopting a Final Order and Amending the Metro Urban Growth Boundary for Contested Case No. 85-4: Foster Property (First Reading and Public Hearing)

The Clerk read the Ordinance by title only.

Motion: Councilor Kelley moved the Ordinance be adopted and Councilor DeJardin seconded the motion.

Ms. Hinckley introduced Chris Thomas, hearings officer for the contested case. Mr. Thomas recommended approval of the Foster petition to add 12 acres to the Urban Growth Boundary.

There was no testimony on the ordinance and Presiding Officer Bonner passed the Ordinance to a second reading.

8.3 Consideration of Order No. 85-5, in the Matter of Contested Case No. 84-2, a Petition for an Urban Growth Boundary Locational Adjustment by Portland General Electric, et al

Councilor Waker excused himself from considering this Order due to a conflict of interest.

Mr. Thomas reviewed the case as outlined in the meeting agenda materials. He noted the petition met all applicable standards except for Code Section 3.01.040(d)(3). The petitioners, he said, had not demonstrated the difference between the UGB as proposed and as existing was sufficient to justify the 50-acre addition. Mr. Thomas noted if it were not for that Code Section, he would have recommended approval of the petition. However, Mr. Thomas said he did not consider it a significant factor that if the petition were approved, the Tigard School District, landowner in the area, could realize substantial increases in property values.

The Presiding Officer said he would accept public testimony from those who had filed or who wished to rebut written exceptions to the hearings officer's findings.



F R O M

**Marie Nelson**

*Clerk of the Council*

*See Ord. 85-191  
file for copies  
of letters to  
Countries.*



**METROPOLITAN SERVICE DISTRICT**  
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