

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF EXPRESSING) RESOLUTION NO. 01-3094
COUNCIL INTENT TO RESPOND TO COURT)
OF APPEALS OPINIONS ON TWO URBAN) Introduced by Presiding Officer Bragdon,
GROWTH BOUNDARY AMENDMENTS) Deputy Presiding Officer McLain and
ADOPTED IN 1998 AND 1999) Councilor Park

WHEREAS, pursuant to ORS 197.299 Metro is required to review the regional urban growth boundary (“UGB”) every five years; and

WHEREAS, state law also requires Metro to meet three deadlines to determine whether the regional UGB required expansion for the 20-year period 1997-2017; and

WHEREAS, the Metro Council met the first deadline in 1997 by completing an inventory of buildable lands; and

WHEREAS, the Metro Council complied with the second deadline in 1998 by amending the UGB to add about 3, 527 acres of land; and

WHEREAS, prior to complying with the third deadline in ORS 197.299, Metro entered into periodic review for the regional UGB with the Land Conservation and Development Commission (“LCDC”) in Order #001243, dated September 20, 2000; and

WHEREAS, in October, 2000, the Metro Council complied with the third and final deadline in ORS 197.299 and Task 1 of LCDC’s periodic review work program, by adopting Ordinance No. 00-871A; and

WHEREAS, the Metro Council determined in Ordinance No. 00-871A, that no new UGB amendments were needed to accommodate housing and employment needs for the period 1997-2017; and

WHEREAS, the Metro Council’s determination in Ordinance No. 00-871A was based in part on two UGB amendments approved in 1998 and 1999 that provided urbanizable land to serve identified housing needs at that time; and

WHEREAS, those UGB amendments were adopted in Ordinance No. 98-782C (Stafford - portions of former urban reserve areas 31, 32 and 33), and Ordinance No. 99-812A (Ryland - portion of former urban reserve area 65); and

WHEREAS, those two UGB amendments were appealed to the Land Use Board of Appeals (“LUBA”) and the Oregon Court of Appeals; and

WHEREAS, the Court of Appeals issued opinions remanding the Stafford UGB amendment in *Residents of Rosemont v. Metro*, 173 Or App 321 (2001), and the Ryland UGB amendment in *1000 Friends of Oregon v. Metro*, 174 Or App 406, __ P2d __ (2001); and

WHEREAS, these remands invalidate Ordinance No. 98-782C and Ordinance No. 99-812A resulting in a reduction in urbanizable land available to accommodate housing needs for the period 1997-2017; and

WHEREAS, the Metro staff are currently undertaking Task 2 of the periodic review work program which requires consideration of subregional housing needs and regional urban land need for the period 2002-2022; and

WHEREAS, in a letter dated July 27, 2001, the Executive Officer requested that the Metro Council clarify its intent on responding to the Court of Appeals remand of the Ryland UGB amendment; and

WHEREAS, the Metro Council does not intend to remedy the defects in Ordinance Nos. 98-782C and 99-812A to correct the respective insufficiencies identified by the Court of Appeals; and

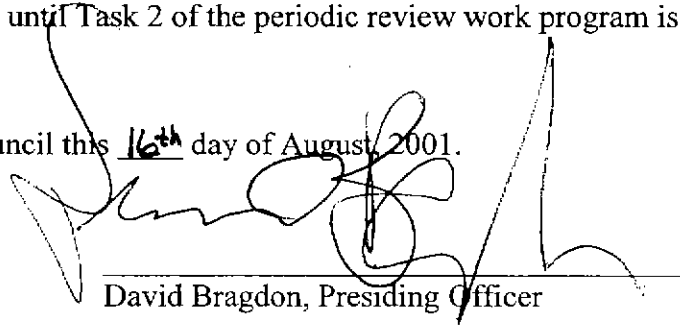
WHEREAS, the Metro Council desires to clarify its intent to consider the lands which were the subject of Ordinance Nos. 98-782C and 99-812A as part of completing Task 2 of Metro’s periodic review work program; and

WHEREAS, the Metro Council’s consideration of subregions during Task 2 of Metro’s periodic review work program may identify subregional areas which are different from those identified in Ordinance Nos. 98-782C and 99-812A; now, therefore,

BE IT RESOLVED,


1. The Office of General Counsel shall not pursue further litigation in regard to the remands of Ordinance No. 98-782C and Ordinance No. 99-812A.
2. The Executive Officer shall study the lands which were the subject of Ordinance No. 98-782C and Ordinance No. 99-812A together with other appropriate nearby lands in completing Task 2 of the periodic review work program.
3. The Executive Officer shall not accept new applications for Major Amendments to the UGB pursuant to Metro Code 3.01.030 for the purposes of addressing regional housing need until Task 2 of the periodic review work program is complete.

ADOPTED by the Metro Council this 16th day of August, 2001.

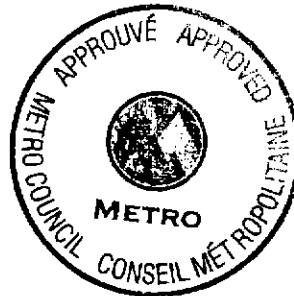


David Bragdon, Presiding Officer

Approved as to Form:



Daniel B. Cooper, General Counsel



COMMUNITY PLANNING COMMITTEE REPORT

CONSIDERATION OF **RESOLUTION NO. 01-3094**, FOR THE PURPOSE OF EXPRESSING COUNCIL INTENT TO RESPOND TO COURT OF APPEALS OPINIONS ON TWO URBAN GROWTH BOUNDARY AMENDMENTS ADOPTED IN 1998 AND 1999

Date: August 16, 2001

Presented by: Councilor Park

Committee Recommendation: At its August 7, 2001, meeting, the Community Planning Committee voted 4-0 to recommend Council adoption of Resolution No. 01-3094. Voting in favor: Councilors Bragdon, McLain, Atherton, and Park. Voting against: None. Absent: Councilors Hosticka, Burkholder, and Monroe.

Background: Ken Helm, Assistant Legal Counsel, presented the staff report. He stated that the intent of the resolution is to summarize the two remands and two previous legislative UGB amendments for Stafford (1998) and Bethany (1999). The resolution provides a historical perspective on the amendments, including identification of the combined number of acres and dwelling units between the amendments. Both amendments were based upon the assumption of former UGB adoption, and that, as a result of the remands, Metro is in a deficit of approximately 5,000 dwelling units. Council has the opportunity to correct issues identified by the Board of Appeals, and/or to roll lands and study into the Periodic Review, Task 2, which is the course provided for in the resolution. Mr. Helm then noted that, since Council has other quasi-judicial proceedings in progress, he would recommend that testimony regarding Ryland Remand be deferred to a Council hearing in approximately two months, when the quasi-judicial decision will be made.

Committee Issues/Discussion: Councilor McLain asked if, under the third "Be it Resolved" in the resolution, other amendments involving locational adjustments could be included or considered. Dan Cooper, Legal Counsel responded that it would be preferable to follow through with the resolution by making code amendments through ordinance, since the resolution specifically deals with two cases which were remanded, and not locational adjustments.

Councilor Monroe asked for confirmation that, in regards to the Stafford and Bethany remands, if the resolution is passed, Metro will not take further action to appeal, but will continue to study the lands as part of Periodic Review, with a possible expansion of the UGB next year. Mr. Helm noted this was correct.

Councilor Atherton asked if the resolution was presented to Lake Oswego, West Linn, and Beaverton for consideration? Councilor Bragdon stated that he had discussed it with both Mayor Hamersted of Lake Oswego, and with Mayor Drake of Beaverton. Councilor McLain stated that she will be meeting with the mayor of West Linn on Thursday, August 9.

Key Public Testimony: Al Burns, City of Portland Bureau of Planning stated that he was in favor of the resolution, but had two suggestions supported by hand-outs he distributed to Council. The first suggestion was in relationship to LUBA Case #99-010, where he made the point that Metro should establish a regional need before identifying subregional needs. The second suggestion was in relationship to LCDC's Periodic Review Order, Subtasks 2, 3, and 14. He stated that the resolution did not address subtask 3. He asked for a technical amendment to incorporate these suggestions. Mr. Cooper clarified that Council had taken action in the past to combine the former subtasks 2 and 3 into what is now identified by Metro as subtask 2. He further noted that Metro is prohibited in the Periodic Review Work Program from considering subregional before regional issues.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 01-3094, FOR THE PURPOSE OF EXPRESSING COUNCIL INTENT TO RESPOND TO COURT OF APPEALS OPINIONS ON TWO URBAN GROWTH BOUNDARY AMENDMENTS ADOPTED IN 1998 AND 1999

Date: August 1, 2001

Prepared by: Michael Morrissey

Proposed Action: Resolution 01-3094 clarifies Council intent on the remands of Ordinance Nos. 98-782C and 99-812A. Adoption of the resolution would require study of lands which were the subject of those two ordinances, as a step in the completion of task 2 of Metro's urban growth boundary (UGB) periodic work review.

Background and Analysis: Metro concluded its assessment of the 20-year land need for the period 1997-2017 in ordinance 00-871A. At that time no additional land was needed to accommodate housing and employment needs. Ordinance 00-871A was based, in part, on two UGB amendments approved in 1998 and 1999. Ordinances 98-782C (Stafford) and 99-812A (Ryland/Bethany) were appealed to the Land Use Board of Appeals and the Oregon Court of Appeals. The court issued opinions that invalidated both ordinances, and they were remanded to Metro. The remands result in a reduction of urbanizable land available to accommodate housing needs for the period 1997-2017.

Metro is currently in periodic review relative to the evaluation of land need and the management of the urban growth boundary. Task 2 of the periodic review work program focuses on meeting the regional land need for the 2002 to 2022 time period. The Council has the opportunity to address the shortfall in land supply, based on the court remands, as part of its legislative decision in 2002. The Bethany and Stafford areas that were part of the above-mentioned ordinances, are included in the land to be analyzed as potential lands for future urbanization.

The Executive Officer concurs with the intent of the resolution.

Existing Law: ORS 197.299 and other state law governing Metro review of the UGB every 5 years. LCDC order #001243 pertaining to the periodic review of the UGB. Metro ordinances 98-782C and 99-812A. Metro code 3.01.030 (major amendment criteria).

Budget Impact: There is no budget impact associated with passage of this resolution.