

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING THE) Ordinance No. 08-1169
URBAN GROWTH BOUNDARY IN THE)
VICINITY OF THE CITY OF CORNELIUS) Introduced by Chief Operating Officer Michael
UPON APPLICATION BY THE CITY OF) Jordan with the Concurrence of Council President
CORNELIUS) David Bragdon

WHEREAS, by Order No. 07-030 (Relating to a Waiver to Allow the City of Cornelius to Submit an Application for a Major Amendment to the UGB), entered on June 21, 2007, the Metro Council waived the deadlines in Metro Code 3.01.025 for submitting an application for a major amendment to the urban growth boundary (UGB) to allow the City of Cornelius to submit an application to amend the UGB; and

WHEREAS, the city filed an application for a major amendment to the UGB in compliance with Order No. 07-030; and

WHEREAS, the application was considered by a Metro hearings officer at a public hearing in Cornelius on February 19, 2008; and

WHEREAS, the hearings officer subsequently submitted a proposed order to the Council with a recommendation as to whether the application satisfied the requirements of the Metro Code for a major amendment; and

WHEREAS, the Council considered the proposed order and testimony at a public hearing on March 20, 2008; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The UGB is hereby amended to add 161 acres to the UGB for industrial uses under Title 4 of the Urban Growth Management Functional Plan as indicated in map Exhibit A and subject to the conditions in Exhibit B, both of which are attached and incorporated into this ordinance.
2. The Council adopts the Findings of Fact and Conclusions of Law in the Recommendation of the Hearings Officer in Case No. 07-02, dated March 3, 2008, attached and incorporated into this ordinance as Exhibit C, explain how this amendment to the UGB complies with the Regional Framework Plan, the Metro Code and statewide planning laws.

ADOPTED by the Metro Council this ___ day of _____, 2008.

Not Adopted
David Bragdon, Council President

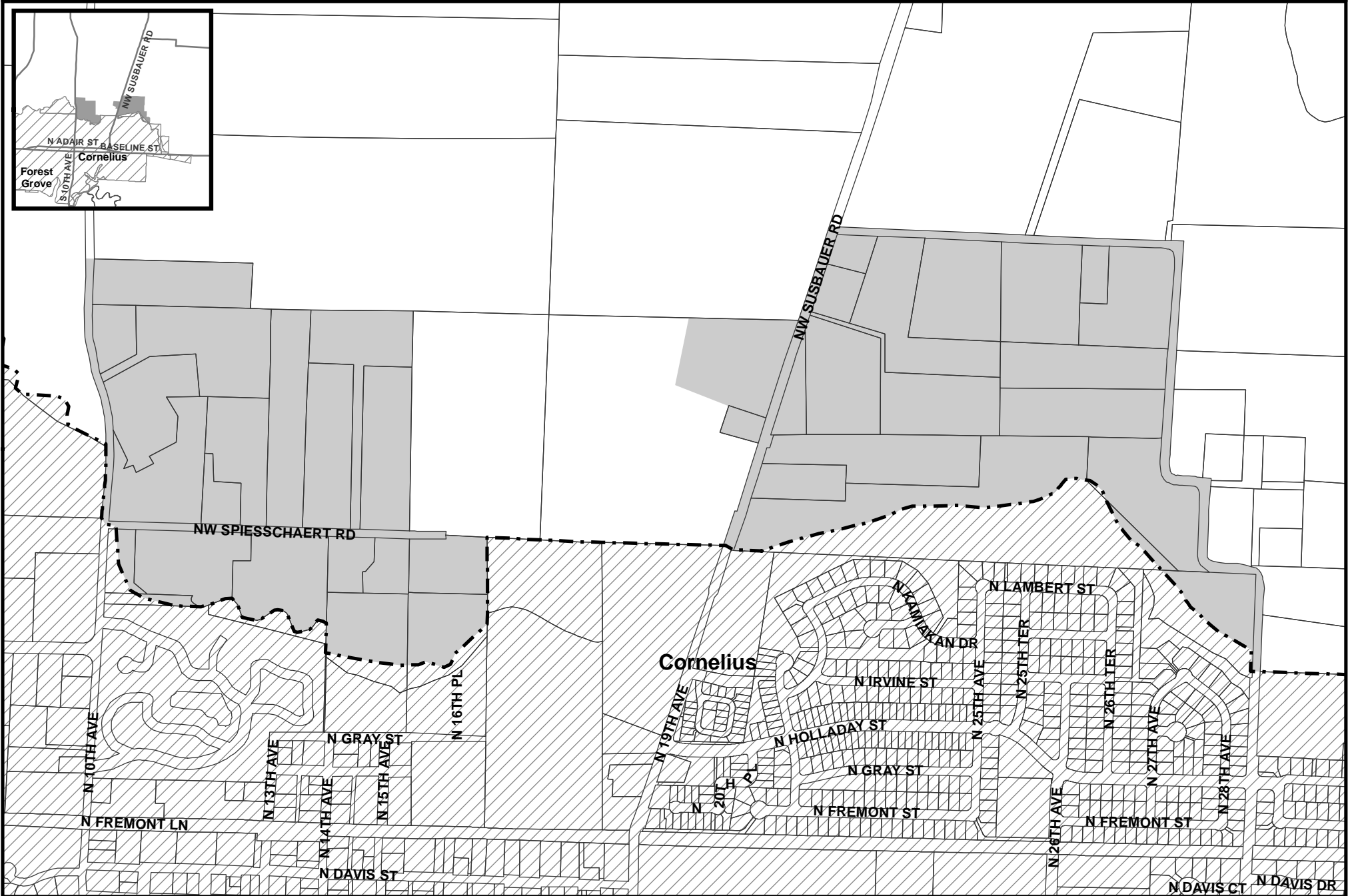
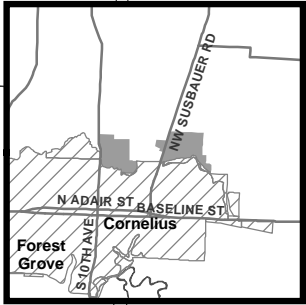
Attest:

Approved as to form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney


Exhibit A, Ordinance No. 08-1169



Data Resource Center
600 NE Grand Ave
Portland, OR 97232-2736
(503) 797-1742

--- Current UGB

 Area currently inside the UGB

 Land to be added to the UGB

Washington Co.
1:8,000

1n3w34
1n3w33

Exhibit B to Ordinance No. 08-1169
Conditions

Pursuant to Metro Code section 3.01.040, the following conditions shall apply to the territory added to the UGB by Ordinance No. 08-1169:

1. The territory shall be designated “Industrial Area.”
2. Washington County, in coordination with the city of Cornelius, shall prepare comprehensive plan provisions and land use regulations for the territory in compliance with Title 11 (Planning for New Urban Areas) of the Urban Growth Management Functional Plan. If the territory annexes to the city of Cornelius prior to October 31, 2008, the city, in coordination with Washington County, shall prepare comprehensive plan provisions and land use regulations. Comprehensive planning for the territory shall be completed by May 1, 2010.
3. The local government responsible for land use planning of the territory shall adopt comprehensive plan provisions and land use regulations that comply with Title 4 (Industrial and Other Employment Areas) of the Urban Growth Management Functional Plan.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 08-1169, FOR THE PURPOSE OF AMENDING THE URBAN GROWTH BOUNDARY IN THE VICINITY OF THE CITY OF CORNELIUS UPON APPLICATION BY THE CITY OF CORNELIUS

Date: March 5, 2008

Prepared by: Tim O'Brien
Principal Regional Planner

PROPOSED ACTION

Adoption of Ordinance 08-1169, approving *UGB Case 07-02: City of Cornelius*, a major amendment to the urban growth boundary (UGB). The proposed amendment area is shown on Attachment 1.

SUMMARY OF PROCESS

According to Metro Code 3.01.025(u), the Metro Council shall consider the hearings officer's report and recommendation at a meeting set by the Chief Operating Officer. The Council will allow oral and written argument by participants in the proceedings before the hearings officer. The argument must be based on the record of those proceedings before the hearings officer. Final council action shall be as provided in Section 2.05.045 of the Metro Code. The Council shall adopt the order, or ordinance if the Council decides to expand the UGB, within 15 days after the Council's consideration of the hearings officer's proposed order.

The Hearings Officer, J. Richard Forester, submitted a report recommending approval of Case 07-02 (Attachment 2). According to Metro Code 2.05.045(b), the Council shall, upon receipt of a proposed order and consideration of exceptions, adopt the proposed order or revise or replace the findings or conclusions in a proposed order, or remand the matter to the hearings officer.

When the proposed order in a contested case necessitates the adoption of an ordinance, as is the case for an amendment to the UGB, staff shall prepare an ordinance for Council adoption. The ordinance shall incorporate the rulings, findings and conclusions required by 2.05.045(a) & (b). An ordinance adopted pursuant to this subsection shall, upon adoption, be considered the final order subject to judicial review.

BACKGROUND AND ANALYSIS

Proposal Description:

On September 28, 2007, the City of Cornelius filed a petition for a 161-acre major amendment to the UGB for industrial purposes. The site consists of 38 separate tax lots in Washington County, north of the current City Boundary and generally north of Council Creek. The site is adjacent to NW Susbauer Road and NW Cornelius Schefflin Road. The subject property is zoned AF-5 (Agriculture and Forestry) and FD-10 (Future Development) by Washington County. The subject property is outside the Metro Boundary.

Hearings Officer Recommendation and Proposed Findings

The hearings officer, J. Richard Forester, conducted a public hearing at the City of Cornelius on February 19, 2008. The record was closed without objection at the conclusion of the hearing. He submitted a report and

recommendation to Metro on March 3, 2008, recommending approval of the petition. The case record contains the petitioners' submittals, Metro staff report, record lists, notification lists and the hearings officer's report.

- The Hearings Officer recommends approval of *Case 07-02: City of Cornelius* based upon the findings and conclusions in his report. A hearing on the recommendation before the Metro Council has been set for March 20, 2008.

SUMMARY

The Council has the following options:

- Adopt Ordinance 08-1169 to approve *Case 07-02: City of Cornelius*, based on the hearings officer's findings.
- Remand the proceeding to the Hearings Officer for further consideration.
- Adopt Resolution 08-3902 entering an order to deny *Case 07-02: City of Cornelius* based upon revised findings and conclusions.

INFORMATION

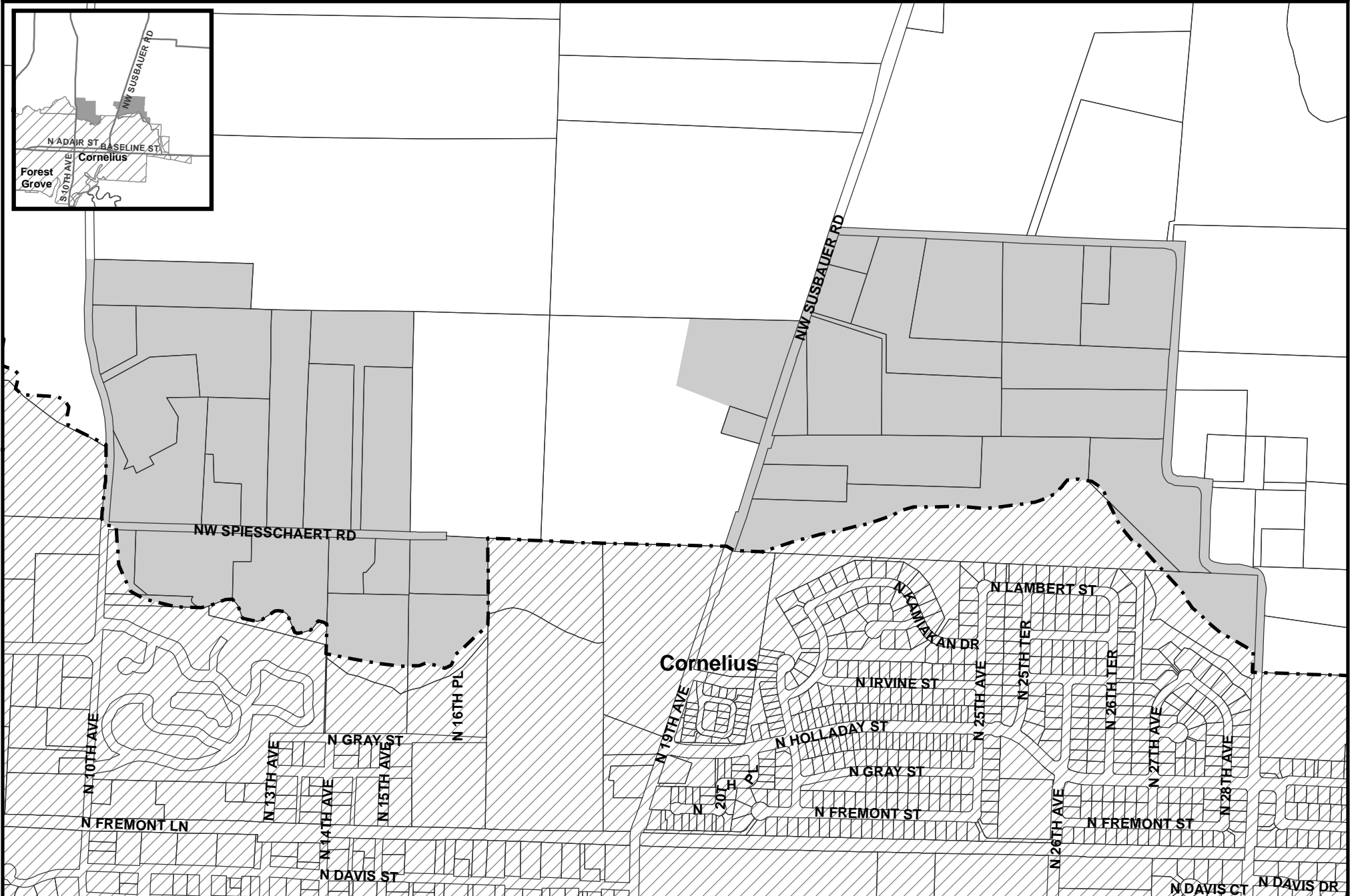
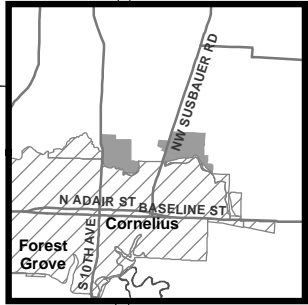
Known Opposition: Numerous people testified verbally and in writing in opposition to the proposed UGB amendment at the public hearing before the hearings officer.

Legal Antecedents: The Metro Regional Framework Plan and Metro Code Chapter 3.01 (Urban Growth Boundary and Urban Reserves Procedures) authorize amending the Urban Growth Boundary through a Major Amendment process.

Anticipated Effects: The adoption of Ordinance 08-1169 will add 161 acres of land to the urban growth boundary in the vicinity of the City of Cornelius for industrial uses.

Budget Impacts: There is no budget impact from adopting this ordinance.


Attachment 1, Ordinance No. 08-1169



Data Resource Center
 600 NE Grand Ave
 Portland, OR 97232-2736
 (503) 797-1742

--- Current UGB

 Area currently inside the UGB

 Land to be added to the UGB

Washington Co.
 1:8,000

1n3w34
 1n3w33

BEFORE THE METRO HEARINGS OFFICER

**IN THE MATTER OF THE PETITION OF THE
CITY OF CORNELIUS FOR A MAJOR URBAN
GROWTH BOUNDARY (UGB) AMENDMENT
IN WASHINGTON COUNTY**

Case # 07 - 02

RECOMMENDATION

Introduction

Hearing officer recommends **APPROVAL** to the Metro Council of City of Cornelius petitions to amend the UGB to include the 161-acres of exception lands north of the current City Boundary and basically north of the Council Creek to be used for industrial purposes. The property consists of 38 tax lots along the northern boundary of the City of Cornelius, north of Council Creek, adjacent to NW Susbauer Road and NW Cornelius Schefflin Road. (See Attachment 1.)

STAFF RECOMMENDATION: Staff recommended that the Hearings Officer forward a recommendation for *denial* to the Metro Council.

CASE HISTORY: Following a determination by the Land Conservation and Development Commission (LCDC) that Metro had previously not added sufficient land to meet the need for industrial land identified in the Urban Growth Report, the Metro Council, on June 24, 2004, added 261 acres, including the subject site, to the regional UGB (Ordinance No. 04-1040B). LCDC remanded that addition to Metro for further consideration, after which the Metro Council decided to reduce the addition of land in the Cornelius area to 65 acres and to satisfy the remaining need in the Evergreen area north of Hillsboro (Ordinance No. 05-1070A, November 17, 2005). LCDC concluded that the addition of industrial land by Ordinance 05-1070A, in combination with Metro's two earlier additions of industrial land, satisfied the need for industrial land to the year 2022.

LOCAL GOVERNMENT STATEMENT: The Washington County Board of Commissioners submitted a letter supporting the proposed UGB amendment. In addition the abutting cities of Forest Grove and Hillsboro expressed support for this request.

APPLICABLE REVIEW CRITERIA: Metro Code sections 3.01.030(a and b) and 3.01.020(b, c, and d)

HEARING AND RECORD

The Public Hearing on this matter was held on February 19 2008 and the record was closed without objection at the conclusion of the hearing. Records of all testimony received are filed with METRO.

Hearing Summary:

Timothy O'Brien, the lead METRO Planner on this application, introduced the site, highlighted key issues in the Staff Report and the Addendum thereto and made a recommendation of denial notwithstanding additional arguments submitted since the issuance of the original Staff Report.¹

Richard Meyer, Cornelius' Development Director, and Christopher Crean, the City's attorney on this application argued the need for land, based on demographic need, need for jobs, needs of locally based industry and the public investment in sewer and storm water, two new bridges, and urban standard road construction, triggered by the site's prior 15 month inclusion within the urban growth boundary. (See Footnote 1.)

They argued that the City boundaries and the pattern of adjacent development are largely unchanged since 1960's. The City has sought this area since the 1988 Periodic Review. The two exception areas subject to this request were included in Metro staff recommendations and supported by Metro Council in 2002 Periodic Review.

In 2004 Metro added industrial land to the UGB, including 261 acres north of Cornelius which included the two areas subject to this request and the intervening R-20 parcels. That approval was remand by LCDC, apparently at issue were the intervening agriculturally zoned parcels. In 2006 in response to the remand Metro staff again recommended inclusion, but based on objection to inclusion of agricultural acres, the Council only added 35 acres south of Council Creek.

This application does not include any agriculturally zoned acres. In reliance upon previous inclusion of the area capital improvements have been planned and some have been completed, with funding is available for the second bridge and road improvements. The City believes that the locational criteria approval inherent in Metro's prior inclusions of these 161² acres in the UGB supports the current application as well and is referenced in their supplemental response as the 2005 Staff Report. The City presented an argument that its request satisfies aggregate regional "need" argument based on Otak study. The short fall in the 20 year supply of industrial land starts 90 acres deficit in 2005 industrial land expansion, subsequent conversion of industrial land to non-industrial uses and actual absorption of industrial land. There is a great deal of "local" need in this request, which is now more urgent and cannot wait another two or three years necessitated by the passage of HB 2051. Mr. Crean sited and put into the record a case in Sherwood (2007-081) as an example of loss of industrially zoned land (approx 57 acres) through the PUD process.³

The urgency argument includes an opportunity to make transportation improvements which

¹ Specifically, January 28, 2008 letter and attachments from Christopher Crean of Beery Elsner & Hammond.

² Of the 161 acres, 51 may be wetlands – so the usable total will be 110 acres.

³ On rebuttal, Richard Benner pointed out that this Sherwood property was not part of the 2006 industrial inventory, so should not count as proof of need. Mr. Crean conceded the point, but argued that it was illustrative that in addition to absorption of land for industrial use, industrial designations are lost through rezonings and PUD arrangements.

will be facilitated by right of way dedications based on anticipated industrial rezoning. Without that rezoning the project costs may be increase by approximately \$500,000. The January 25, 2008 letter from Dan Brown, PE Washington County Project Manager (Ex 19), states the two new bridges over Council Creek (The 2007 Susbauer/19th Avenue and the 2008 Cornelius-Schefflin/10th Avenue) and their northern street extensions were designed to urban standards while the area was included within the UGB. The City argued that without extension of the UGB the urban standard extensions were in jeopardy. These improvements were valued at \$20.2 million on the Brown letter.

Finally in response to the February 15, 2008 letter from 1000 Friends of Oregon (Ex. 4) and Washington County Farm Bureau (Ex. 5), the City argues that there is nothing in the record to suggests that the Oregon Department of Agriculture opposes industrial expansion on exception lands north of Council Creek. Similarly there is no current legal designation for “Foundation Lands” designation for these parcels.

Dan Waffle, Cornelius City Manager, emphasized the fact that Washington County in partnership with the City and the State and relying on the 2004 approval is constructing and planning major urban level improvements by 2009 and they will be scaled back if this expansion is not approved. Because of ROW donation improvements funding parties will save at least \$500,000. Utilities are stubbed right to these areas (See Ex 16).

Bill Bash, the Mayor of Cornelius and four City Council members (See Ex 18)⁴ emphasized their desire and effort, now six years in the making, to achieve a balanced, livable and sustainable urban community. That effort encompasses a local employment base, which will help reduce the long commutes for some of its residents. That line of reasoning was echoed by Sheilla Ryan of the Cornelius Chamber of Commerce (Ex. 19) and Vickie Cordell, Chair of the City Planning Commission (Ex. 29). Ms. Cordell indicated that the City has created compatible environment for industrial and agricultural on the south side and services are being coordinated on the north side. Richard Kidd, the Mayor of Forest Grove, also supported the expansion as vital to this end of Washington County.

Melissa Jacobsen was one of several people who testified against the boundary expansion because they fear it will ruin their peaceful rural lifestyle. Jacobsen submitted two petitions with about 30 signatures from residents along Susbauer and Hobbs roads. (Ex. 17). Scott Vessey and Dick Reynolds favored investing in commercial uses downtown instead. Mr. Reynolds also questioned whether some of the roads can really be improved. Ken and MaryAnn Meeuwsen also argued against expansion based on inadequate roads north of Council Creek (See Ex. 18). Linda Woodson, by email objected based on road safety and need to preserve farms (Ex. 7) as did Paulette and Gene Ray by letter (Ex. 9) and Mr. Ray in person. Joe Strasburg wrote and testified that he had rural expectations when he bought the property and wants it to stay that way (Ex. 7). Charles White testified that there is insufficient data about increased demand for public services that expansion will cause. Mike Hewitt moved from Aloha and is being confronted with more development, while there is undeveloped space in Hillsboro. Eric Smith, whose family owns five parcels (25 acres) at

⁴ Jeffery Dalin, Bob Ferie, Brad Coffey

first preferred that the land be used for residential purposes (Ex. 1) but subsequently indicated support for whatever decision the process should yield (Ex. 6).

At the hearing itself, preponderance of those who testified supported the UGB expansion, including Harry Jacobsmuhlen, who wants to expand his meat company but believes that he can not unless the proposed land comes inside the UGB (Ex. 20).

Catherine Sidman, project manager for Sheldon Manufacturing, said the company plans to expand and will have to leave Cornelius if new industrial land is not brought into the city. She argued that Sheldon is the city's largest employer of full-time workers, with a 140-person work force. The company would prefer to stay in Cornelius where 80% of the employees live (See Ex. 23).

Walter and Tim Duyck, testified that they worked a farm which included exception land in the area subject to this request it was not capable of supporting a living and they looked forward to industrialization. A similar sentiment was expressed by David and Alice Armstrong (Ex 21) who own two lots in the subject area and who felt trapped by the long struggle to bring this area within the UGB.⁵ Also John Krautscheid who owns three lots and will provide access to neighbors cut of by the new bridge. Bruce Becking, argued for a need to expand the City's tax base (Ex. 13). Tom Evans, testified that there is need for more jobs with shorter commutes.

From Hillsboro Pat Ribelia, Planning Director, and Mayor Tom Hughes (Ex. 23) argued that rezoning of industrial land has diminished the 20 year supply number established in 2002 putting the region out of compliance with goal 14. They also argued that evidence from Metro's 2004 and 2005 evaluations of alternative industrial areas clearly demonstrates that these 161 acres rank higher than other alternative industrial sites. Michael Tharp, chair of CREEC, argued similar points in greater detail (See Ex. 12) as did Beverly Bookin who testified that the OTAK update was important evidence that 2230 acres are no longer available because of conversion to other uses. This short term shortfall should be addressed now to create development ready land.

Jonathan Schlueter, Westside Economic Alliance, referenced that the original 2004 industrial expansion was 90 acres short to start with, but approved as "close enough". 900 people move to Washington County each month and land need is high. One quarter of all the jobs created in Oregon will be in Washington County. LCDC wants large tracts, but there a no large tracts on the market. Some land is being land banked. Wilsonville was assigned a good deal of industrial land, but it too will be short.

⁵ Larry Duyck, President of Washington County Farm Bureau (Ex.. 5) submitted a letter opposing urbanization north of Council Creek because the creek and its associated wetlands provide "good edge and buffer" for the resource lands north of it and that the entire area is ranked as "Foundation" agricultural areas on the region. The bureau also questioned the need for the Expansion based on absence of demand for underutilized or vacant parcels already within the City.

FINDINGS of FACTS and CONCLUSIONS OF LAW

Only issues and approval criteria raised in the course of the application, during the hearing or before the close of the record are discussed in this section. All approval criteria not raised by staff, the applicant or a party to the proceeding have been waived as contested issues, and no argument with regard to these issues can be raised in any subsequent appeal. The following issues were either raised by the applicant, addressed by staff in its report, or by agency or public comments on the application, and the Hearing Officer adopts the following findings:

OVERVIEW

Beginning in 2002, Metro, after two remands added sufficient amount of industrial land until 2022 less 90 acres. Sufficiency of that supply for 20 years is a statistical exercise which projects demand for land and rate of absorption of that land. The adequacy of those projections is revisited every five years through a periodic review, but in this case the review will be in 7 years, or in 2009 via HB 2051. In 2009 the supply will be readjusted to extend the supply of available industrial to 2029 and sites may be added and subtracted based on past performance, regional needs and future locational demands.

Metro initially included this site in its determination in 2004, but after an LCDC remand traded this land for neighboring Washington County land in 2006. There is evidence in the record that a 15 month presence of these sites within the UGB lead to a series of consequent governmental actions. These actions are a part of the City's justification for an immediate need for the re-inclusion of this previously included land within the UGB. These actions include road and bridge improvements some of which have been completed and the remainder awaits this decision. The City and its various institutional backers view this as an opportunity to have shovel ready industrial land. Based on their testimony, the six year process has also left a number of land owners unable to decipher what to do with their land. They are on hold. To summarize then, the City anticipated that its need will be affirmatively addressed in 2007 and availed itself of funding and planning for public facilities, but now it's anticipated and oft foretold need will not be addressed until 2009. That was not anticipated by them. Based on this record, aside for the opportunity to add bridges and urban level roads, the City's demographic needs do not appear to be new, although the City has stated that the delay exacerbates those social and economic needs. The unanticipated delay in addressing those needs is a new event. Metro, having just gone through a long process of additions and subtractions to the UGB persuaded the legislature to give two more years to revisit the need for industrial land.

On the other hand, to paraphrase, Metro staff appears to be essentially arguing that in 20 year inventory planning process, all needs for the 20 year plan have to be by definition anticipated, otherwise it could not be a valid 20 year plan and this one has been acknowledged and nothing out of the ordinary has happened on a regional basis to suggest an unanticipated new regional need which cannot be met in due course via periodic review. If strictly construed this logic should defeat every major UGB amendment presented, barring some exceptional circumstances which are not readily apparent. Although this is a locally based quasi-judicial request, Metro Code applies its legislative criteria to the request and

therefore requires regional need and regionally based locational analysis; however, working on the assumption that the Major Amendment procedure is meant to work, however infrequently, the hearing officer believes it should be liberally construed.

Notwithstanding Washington County Farm Bureau and 1000 Friends theoretical opposition to the UGB crossing Council Creek, on this record the owners of land north of the Council Creek who oppose this expansion appear to be residential dwellers who adjoin the proposed expansion area. Their objections are essentially lifestyle objection one may expect of residential exception lands, namely aesthetic, road safety and traffic. To a large extent these are zoning issues, to be addressed by the City when and if it rezones the proposed parcels. Notwithstanding “industrial” designation, the uses discussed in this record appear low height office campus, susceptible to landscape buffering. Neither, can one assume that the City would not address road issues in its jurisdiction, and in fact the opportunity for up to 20 million in road improvements and new bridges is part of the impetus for this application.

APPLICABLE REVIEW CRITERIA

The criteria for a major amendment of the UGB are contained in Metro Code sections 3.01.030 (a and b) and 3.01.020 (b, c, and d). The criteria (**in bold**), and findings and conclusions of law follow.

Metro Code section 3.01.030(a) - The purpose of the major amendment process is to provide a mechanism to address needs for land that were not anticipated in the last analysis of buildable land supply under ORS 197.299(1) and cannot wait until the next analysis. Land may be added to the UGB under this section only for the following purposes: public facilities and services, public schools, natural areas, land trades and other non-housing needs;

This criterion presents a bit of a logical challenge because of its solipsistic circularity. As discussed in the overview the formula that creates a valid UGB plan that will be acknowledged and survive potential appeals, will anticipate a supply to meet a twenty year need. It also anticipates that in the intervening years the supply will be adjusted so that even some economic boom will have reduced the supply to ten years prior to first review, it will be readjusted back to 20 years when the periodic review is complete. Read that way, the section does not seem to anticipate hardly any successful amendments. To implement the Metro policy of allowing these major amendments to the UGB – the criteria has to be construed liberally to create at least an infrequent and specialized opportunity to apply and to obtain such an expansion. Fortunately, the last sentence of this code section puts a more specific emphasis on what the key unanticipated needs may be – these include public facilities, public schools, natural areas land trades and other non-housing needs.

These allowable purposes are very specific, essentially public purposes, and have historically been treated in minor amendments, for example Case 97-1 added 17 acres to the UGB for a school area and schools typically are between 20 to 30 acres. It is hard to imagine in our Oregon planning environment how needs exceeding 100 acres would not be anticipated. They could not be anticipated only because at the time the current UGB plan was adopted the

opportunity or the plans to construct or acquire these amenities were unknown to Metro and perhaps the applicant. The applicant is arguing two things. The need for “industrial” jobs is greater because the City of Cornelius is in worse straights economically and socially then five years ago and will deteriorate further because of the two year delay (not counting appeals) and also the addition of these lands will enable up to \$20,000,000 worth of public facilities that will make this industrial land more attractive not only for Cornelius but also for the region.

There are three criteria contained in Metro Code section 3.01.030(a) that are analyzed separately below:

1) The proposal must be for a non-housing need.

The petitioner proposes to add land to the boundary for an industrial need, which is a non-housing need. That addition will cause the County and the State to complete urban level bridge and road improvements which will make the industrial land close to shovel ready. Thus, the addition of the land will trigger completion of urban level public facilities and trigger a second criterion. (See 2 immediately below.)

The petition meets the criterion.

2) The proposal must be intended to meet needs that were not anticipated in the last analysis of buildable land supply.

In its application, the City asserted that the passage of HB 2051, delaying for two years the next analysis of buildable lands under ORS 197.299 (1) was an unexpected event and that the City could not wait the additional two years to pursue an expansion of the regional UGB adjacent to the City.⁶ The City believes the passage of HB 2051 and its effect on the City’s need for industrial land is sufficient to meet this criterion. During the delay and the at the hearing the City also argued likely loss of new public facilities and services – See the January 28, 2008 letter C.Crean (Beery, Elsner and Hammond LLP), Marah Danielson of ODOT (Ex. 8), Michael Tharp of CREEC (Ex. 12) and most critically a letter from Dan Brown, Washington County Development & Operations Director (Ex.14).

In terms of unanticipated short fall of industrial land, the City argues principally from the

⁶ *...the land that is the subject of this application was analyzed extensively in Metro’s prior round of UGB Expansion decisions and the appeals from those decisions. What was not anticipated was the passage of HB 2051 (2007). Prior to the passage of HB 2051, Metro was required to conduct an analysis of its buildable land supply and adopt corresponding amendments to the UGB not later than December 31, 2007. The City of Cornelius anticipated participating in that effort and was prepared to submit the proposed expansion area for Metro’s consideration. . . . Cornelius reasonably believed its proposed expansion for industrial lands would be successfully included in any expansion of the UGB by Metro. However, Metro sought and obtained the passage of HB 2051, which allows Metro until December 31, 2009, to conduct the analysis of the buildable land supply and adopt any resulting UGB amendments. This two-year extension of the planning cycle was not, and could not have been, anticipated by the City of Cornelius and the City’s efforts to develop the area for industrial uses cannot wait another two years.*

OTAK Report (City's Exhibit A to the C, Crean letter)

The OTAK report, dated June 26, 2007, was commissioned by Metro for the purpose of updating the Metro Industrial Land Supply Inventory. The report analyzes lands designated for industrial use within the region and recommends removing a portion of the land from the regional inventory because it is no longer vacant or because it is constrained in some fashion. The report also describes an amount of land zoned for industrial use that has been rezoned for other uses.

The report notes (OTAK, page 5) that the current Metro inventory contains approximately 9,437 acres of industrial land. From that amount, the report recommends removing 2,232 acres from the inventory for various reasons including that the land has been developed (in full or in part), the land has been rezoned to other uses, the land is constrained by lack of public facilities, or the land has been "banked."

If the recommended 2,232 acres are removed from the inventory, that leaves 7,205 acres available for industrial use over the next 18 years.⁷ The report states that "the average annual industrial land absorbed (by new construction) in the Metro UGB was approximately 300+ acres per year since 2004." At a conservative rate of 300 acres per year over the next 18 years, that amounts to 5,400 acres of industrial consumed, leaving a buffer 1,800 acres.

However, the report goes on to state that "approximately 200-300 acres per year within the Metro UGB are being re-designated from industrial use to other uses." Even if the low end of this range is used, the amount of land that is rezoned to other uses, hence not available for industrial use, is 3,600 acres. If the amount of land rezoned approaches the high end of the range identified in the report (i.e. 300 acres), the region will lose 5,400 acres of land currently designated for industrial.

Based on this evidence, at least 300 acres of industrially-zoned land is consumed by industrial development each year, and an additional 200+ acres per year are rezoned to other uses.⁸ (Both of these figures are at the most conservative end of the range cited by OTAK.) Combining these numbers results in a demonstrated need of at least 9,000 acres. This far exceeds the 7,205 acres of available industrial land. Stated differently, after accounting for land that is constrained or no longer available for industrial use, there are 7,205 acres available for industrial use for the next 18 years. However, the OTAK reports concludes that the region will need a minimum of 9,000 acres over the same period.

While it is possible to quibble with the exact numbers, the larger message is that industrial land in the Metro region is being absorbed (put to industrial use) and converted (to other uses) at rates far in excess of what was anticipated when the UGB was last expanded. If the 20-year supply of industrial land was designed to provide land for short-, medium- and long-term industrial needs, those planning horizons are now being compressed by the faster than

⁷ The current inventory of available land was established in 2005 to provide a 20-year supply of industrial land. There are 18 years remaining.

⁸ For example, the City of Sherwood recently approved commercial development on 57 acres designated for light industrial use.

expected consumption and diversion of those lands. As a result, the region simply does not have the amount of land available for to meet its short-, medium- and long term needs. While the medium- and long-term needs may be able to wait until the next analysis of buildable lands under ORS 197.296, the short-term needs, by definition, cannot.

Finally, Metro began the 20-year planning period under Ordinance 05-1070A with an acknowledged 90-acre deficit in industrial lands. LCDC acknowledged Metro's UGB expansion as "close enough," but the acknowledgement did not in any way refute the conclusion that the region is 90 acres short of its projected need.

Accordingly, the region started with a deficit which has since grown. Given the initial deficit and the evidence that has been generated since then, it is reasonable to conclude that the current regional need for industrial land is greater than anticipated by the Metro Council in 2005.

The Staff responds that the petitioner addresses the criterion regarding an unanticipated need by referring to the enactment by the 2007 Legislature of a two-year extension (from 2007 to 2009) of Metro's next analysis of the capacity of the UGB to accommodate long-term population and employment growth. The unanticipated passage of HB 2051 is not relevant to addressing needs for land that were not anticipated in the last analysis of buildable land supply.

Staff also argues that in arguing shortage of in industrial sites in Cornelius for those, the city misinterprets the criterion, which calls for a demonstration of need for industrial land that was not anticipated during the last analysis of the capacity of the UGB (2002). That analysis of buildable land supply is intended to determine the overall regional need for industrial land, not the need for sites for industrial uses in particular locations in the region. Metro determined the 20-year regional need for industrial land in its "2002-2022 Urban Growth Report: An Employment Land Need Analysis" (UGR), updated in December 2002. There is no demonstration in the application, and no reason to think that a particular need for a site is not part of the overall regional need for industrial land identified in the UGR, and met with additional capacity for industrial growth by the Metro Council's UGB expansion decisions in 2002, 2004 and 2005.

As noted in the application, the Metro Council added 261 acres to the regional UGB adjoining Cornelius to the north (Ordinance No. 04-1040B, June 24, 2004) following a determination by LCDC that Metro had previously not added sufficient land to meet the need for industrial land identified in the UGR. LCDC remanded that addition to Metro for further consideration, after which the Metro Council decided to reduce the addition of land in the Cornelius area to 35 acres and to satisfy the remaining need in the Evergreen area north of Hillsboro (Ordinance No. 05-1070A, November 17, 2005). LCDC concluded that the addition of industrial land by this ordinance, in combination with Metro's two earlier additions of industrial land, satisfied the need for industrial land to the year 2022. Thus, the regional land need identified in 2002 has been met and no specific need, not anticipated in the 2002 buildable land supply analysis, is identified in the petition.

In direct response to the City's supplemental information, Staff argues in its ADDENDUM

that the OTAK memorandum notes: “It appears that the majority of these ‘re-designated land use’ issues occurred in the urbanizing Clackamas County and Gresham areas (e.g., Damascus, Beaver Creek, and Pleasant Valley) to provide mixed-use employment designations, which allow some housing and commercial and light industrial uses.” Memorandum, p. 3. Much of these areas were added to the UGB in Metro’s 2002-2005 periodic review. The Metro Annual Report refers to these lands as “new urban areas” and explains: “Based on completed plans and local zoning for new urban areas, the region has not ‘lost’ net acres since the 2002-2005 UGB expansions to designate RSIA [Regionally Significant Industrial Area] and Industrial Area land.” Annual Report, p. 2. A footnote explains ‘lost’:

“‘Lost’ refers to the amount of net acreage realized through local government planning and zoning that might be short of Metro’s original estimate for purposes of complying with LCDC acknowledgment of Metro’s Urban Growth Report. Shortages may be the result of a more refined buildable lands assessment and/or re-designation of land uses by local planning agencies.” Annual Report, p. 2.

In short, the Metro Annual Report indicates that there has been no net loss of industrial land in the transition from Metro Council designation at the time of UGB expansion to adoption of local plans and zones in those added territories for which the planning is complete. The cities of Damascus and Happy Valley, the local governments responsible for comprehensive planning of the majority of the industrial land added to the UGB in 2002 to 2005, have not yet completed the comprehensive planning for these lands. If, when the work is done, the land designated by the local governments as RSIA or Industrial Area falls below the amount estimated by the Metro Council when it added the territory to the UGB, Metro will have to account for the difference in its 2009 estimate of need and capacity.

A similar argument would defeat any and every quasi-judicial amendment to expand the UGB. Needs and uses were anticipated and if there were not we have periodic review will address them, and two years more or less can be accommodated by the region as a whole. So the question is really why does Metro permit this quasi-judicial process, when it really anticipates that needs for industrial land can be addressed through periodic review. While non-housing needs is a broad category, the remainder purposes are specific **“Land may be added to the UGB under this section only for the following purposes: public facilities and services, public schools, natural areas, land trades and other non-housing needs;”**

Notwithstanding the minimum acreage of 100, it would appear that the need has to be specific – a school, a natural area, a specific land trade, or a specific industrial use that needs to locate immediately. In this case allowable additions to the UGB are really unanticipated opportunities to add public facilities. Metro’s last inclusion of these two areas in the UGB created that opportunity. Metro has three times in this short century found this area locationally suited for industrial expansions, and it was included until remanded and has been recommended for inclusion by Metro Staff three times. That inclusion created an opportunity to commit the use of scarce Oregon public funds to make public facilities which will enhance the meeting of industrial needs which has been thrice recognized for this area. Land donations and trends have been secured for the ROW to extend the value of these improvements.

The additional urban development is consistent and connected to City projections and plans, made possible by re-entry of this area back into the UGB for industrial uses will help provide local match for federal and county funding already won for transportation improvements, including:

- Two new bridges (built to City standards) over Council Creek at 10th and 19th Avenues
- Realignment of Spieschart Road
- Reconstruction of 4th Avenue, 10th Ave. and 19th/20th Ave. Intersections with TV Highway
- Adair Main Street Reconstruction
- Baseline Main Street Reconstruction
- N 10th Avenue/Cornelius-Schefflin Road

Projects 3156, 3164, 3166, 3167, 3168 and 3171 in Metro's Regional Transportation Plan respond to the economic and infrastructure need and opportunities in Cornelius and are designed to support the additional employment encouraged by this UGB addition and the resulting traffic mix.

The petition meets the intent of this criteria.

3) The proposal must be intended to meet needs that cannot wait until the next analysis of land supply (December 2009).

Petitioners argue that the City of Cornelius is an economically challenged community by any standard. Metro has determined that providing communities in the region the tools they need to thrive is a matter of regional concern.

Regional Framework Plan Policy 1.2.1.c. Built Environment

“It is the policy of the Metro Council to ensure that development in the region occurs in a coordinated and balanced fashion as evidence by [the] continuing growth of regional economic opportunity, balanced so as to provide an equitable distribution of jobs, income, investment and tax capacity throughout the region and to support other regional goals and objectives.”

Regional Framework Plan Policy 1.4.3 Economic Opportunity

“Metro, with the aid of leaders in the business and development community and local governments in the region, shall designate as Regionally Significant Industrial Areas those areas with site characteristics that make them especially suitable for the particular requirements of industries that offer the best opportunities for family-wage jobs.”

Regional Framework Plan Policy 1.5.3 Economic Vitality

“It is the policy of the Metro Council to ensure that all neighborhoods and all people have access to opportunity and share the benefits, as well as the burdens, of economic

and population growth in the region.”

These policies reflect a judgment by Metro that the economic needs of the individual communities in the Metro region are a matter of regional concern.

The scope of the City’s needs is extensively and ably described in the application and it bears repeating:

“[The City has] the highest poverty rate, lowest taxable property per capita, highest proportion of minority population and longest average commute of the 26 jurisdictions in the Region. Our City is the only city in the metropolitan area that is determined a “Distressed City” by the Oregon Economic and Community Development Department. The “Regional Equity Atlas” published by the Coalition for a Livable Future and Portland State University ranks Cornelius as the lowest in total “regional equity” scores. Our highest need is local jobs.”⁹

Moreover, this statement from the City simply echoes the conclusions of Metro staff. In its report to the Metro Council on Ordinance 05-1070A, which recommended bringing this area into the UGB, staff concluded that “[t]he positive economic implications of including 261 acres of industrial land are significant for a community that ranks nearly last (23rd out of 24 cities) in the region in total taxable real market value and real property value per capita. A city’s tax base determines what resources are available for community services like police, fire, planning, libraries, social services and governance.”¹⁰ A copy of the relevant portions of the staff report are attached as Exhibit C of the Beery Elsner & Hammond letter.

The anemic tax base and lack of local jobs are not small considerations. As a result of the low tax base, City residents have to struggle with substandard city services including police and fire protection, libraries and social services. While local levies are theoretically available for these services, such levies are extremely unlikely given the prevailing income levels in the community. Hence, the lack of family income is exacerbated by lack of public services and vice-versa, and it becomes very difficult for city residents to improve the community.

So many apparently commute. Even if the compelling social needs of the City are ignored, the fact that Cornelius has the longest average commute of any city in the region is a circumstance that justifies immediate attention. The region’s air-quality and carbon-footprint as a whole are degraded by the amount of commuter traffic that is generated by the lack of available jobs in the community. Facilitating industrial development in Cornelius will result in almost immediate reductions in commuter traffic across the region as local residents will be able to walk, bike or drive the short distance from home to work.

Ultimately, given the demonstrated extent of the needs of Cornelius and its residents, it would be unfortunate to ignore these needs or to conclude that the people who use these services can simply wait another two or three years. It is worth noting that the information in the November 17, 2005, Metro staff report detailing the level of community need was

⁹ The Regional Equity Atlas, an Excerpt of which is attached as Exhibit B.

¹⁰ The current proposal Seeks to include 161gross acres (110 net acres) zoned as Exception area.

generated between 2002 and 2004, and the Council chose not to address the needs in Ordinance 05-1070A. As a result, the city argues that it has declined even further. The needs of the City and its residents are not going away, they are just getting direr.

In addition to the social needs, the State of Oregon, Washington County and the City of Cornelius are currently investing \$15 – “20 million in public improvements in, at the edge of, and connecting to this proposed expansion area. The letter from Dan Brown, Capital Projects Manager for Washington County, details these improvements. (See Ex. 14.) The improvements were designed for urban uses consistent with Metro’s UGB decision in 2004 to include this proposed area along the northern edge of Cornelius in the UGB. Mr. Brown’s letter confirms that not expanding the UGB here this year or waiting two years for further consideration will cost the County over \$500,000 in right-of-way costs alone for a road that is required to serve a nine-house subdivision within the proposed expansion area. It will also cost the City and the expansion area the cost of reduced or incomplete improvements. Accordingly, it is critical that the UGB be expanded in this area as soon as possible. Waiting two or three years carries a substantial financial penalty. Taking advantage of such an unanticipated opportunity seems to be the only plausible purpose of this amendment process.

MCC 3.01.030 (a) requires a finding that the need “cannot wait” until the next round of analysis. Perhaps “cannot wait” is in the eye of the beholder, Metro and the Region may be able to wait but Cornelius has a need and an opportunity in the cost of important public improvements, which may not be around in time for the next analysis.

Also, at several points in its application and the application, the city and Sheldon Manufacturing and Jacobsmuhler meat packing indicate immediate need for sites to respond to proposed expansion of industries in the city and to inquiries about sites.

This criterion is linked to criterion (2), above.

Staff argues that this criterion calls upon the city to demonstrate that the unanticipated need required by criterion (2) must be satisfied prior to the next (2009) analysis of UGB capacity to accommodate need for industrial land. The immediate demand for sites identified in the city’s application is part of the region’s need for industrial land identified in the “2002-2022 Urban Growth Report: An Employment Land Need Analysis”, updated December, 2002. Given that the Metro Council added capacity to accommodate industrial needs to the year 2022, it must be assumed that this capacity includes land for immediate needs.

The city’s application notes that it has a supply of sites within its city limits and its portion of the region’s UGB. The city does not adequately explain why this local capacity – a part of the 2022 capacity – cannot accommodate the city’s immediate needs - but, the City does make a case that its opportunity to acquire key public facilities can not wait.

There us substantial evidence in the record to indicate that the petitioner does meet this threshold criterion.

Conclusion:

The petition does meet the intent of the three criteria found in Metro Code section 3.01.030(a).

Metro Code section 3.01.030(b), referring to 3.01.020(b)(1) Demonstrated need to accommodate long-range urban population, consistent with a 20-year population forecast coordinated with affected local governments;

Under this criterion, the analysis is whether there is a 20-year supply of industrial land to accommodate the forecasted 20-year population.

As shown above, the OTAK report very clearly concludes that available industrial land in the region is being consumed or diverted at rates that far exceed the levels predicted when Metro last amended the UGB in 2005 and, as a result, the region does not have sufficient buildable industrial land.

In addition, in a recent report to the “Big Look” Committee in Salem, Fregonese Associates concludes that actual population growth in the region will exceed Metro’s 20-year forecast. In Clackamas and Multnomah County, Fregonese’s projected population growth rates are close to Metro’s projections. However, in Washington County, Fregonese forecasts a population increase of 105 percent, while Metro projects only a 50 percent increase. A summary of the comparison is attached as Exhibit E to the Berry, Elsner & Hammond letter. Accordingly, and in addition to the OTAK report showing a current shortfall of industrial land, the evidence suggests that the regional 20-year population will exceed Metro’s 20-year forecast upon which Ordinance 05-1070A was based.

Metro Staff Argues that by actions in 2002, 2004 and 2005, the Metro Council added capacity for industrial growth to the year 2022. LCDC found that this added capacity satisfied that need when it “acknowledged” Metro’s actions. Among Metro’s actions was addition of 35 acres to the region’s UGB adjacent to Cornelius. When the Metro Council added this land to the UGB, one of its considerations was regional balance and equity. The city has not explained why this land, together with industrial land in the pre-expansion UGB, are not sufficient to address the needs identified in its application.¹¹

¹¹ Petitioner Response

Cornelius has an immediate demonstrated need for employment generating development for the current population. Land need for additional projected population will be analyzed and planned for during the next regional UGB legislative decision round in 2009.

Cornelius has a population in 2007 of approximately 11,000. We have the highest poverty rate, lowest taxable property per capita, highest proportion of minority population and longest average commute of the 26 jurisdictions in the Region. Our City is the only city in the metropolitan area that is determined a “Distressed City” by the Oregon Economic & Community Development Department. “The Regional Equity Atlas” published by the Coalition For a Livable Future and Portland State University ranks Cornelius lowest in total “region equity” scores. Our highest need is local jobs.

In Cornelius, the jobs / housing balance is unhealthy and unsustainable. There are an estimated 3,800 more employed Cornelius residents than there are jobs within the City and the nearby agriculture areas. That is approximately half our work force of 7,800 that does not have an opportunity to walk or bike to work and afford a livable community. All of these workers with no local jobs currently cause vehicular congestion, pollution, and wasted energy from the longest average

Staff is correct that the City has not adequately addressed why its new 35 acres and whatever internal rezoning opportunities it has are insufficient to address the demand generated, except to argue that its needs will require more lands to restore sustainability and livability. However, the applicant has produced evidence which supports a finding that there is a demonstrated need for additional industrial land to accommodate the region's long-range urban population and that meeting that need at this site creates an anticipated opportunity to complete public facility which will make this industrial land more accessible and useful. Notwithstanding that such needs can be addressed in the next periodic review, they exist now, which is sufficient to meet this criterion. One has to keep in mind that the 3.030.030(a) premise allows additions of non-residential land to meet the unanticipated public facility opportunity that will be a greater benefit to the region and to Cornelius.

Conclusion:

The petition meets this criterion.

Metro Code section 3.01.030(b), referring to 3.01.020(b)(2) Demonstrated need for land suitable to accommodate housing, employment opportunities, livability or uses such as public facilities and services, schools, parks, open space, or any combination of the foregoing in this paragraph;

Again, the need for additional industrial land in the region is demonstrated by the OTAK report, describing the absorption and diversion of industrial lands at rates that far exceed Metro's projections when it adopted Ordinance 05-1070A. This conclusion is supported by the Fregonese population projections in Exhibit E. The "suitability" of the land is described in the City's application and in the sections below regarding appropriate locations to expand the UGB for industrial land.

The City's application seeks to add land adjacent to the city for employment opportunities – specifically, industrial uses. The City's application describes at least one specific proposal for industrial development on the site as well as describing additional inquiries for similar development. The petitioner has also shown the need for this industrial land, based on expectation build up over three years of prior approvals and the resulting public facilities funding that will make this land more attractive to industry.

The following immediate opportunities for industrial development exist for the 110 acres of buildable land were included in the Cornelius UGB expansion request.

- A. A 12-acre Light Industrial Park is proposed on a site off Cornelius-Schefflin Rd. within 6 – 18 months of UGB expansion. (See attached letter) The plan is to sell built

commute in the region.

Too few local jobs for resident workers is not just expensive for families who pay more for transportation, but also for the community. Public services for residential use are more expensive than for commercial and industrial uses. Yet tax revenues generated from residential uses are significantly less than from commercial and industrial uses in our property tax reliant system. With this expansion, a healthy jobs and housing balance is possible.

- space to 15-25 small industrial businesses that will provide 50-200 jobs, the equivalent of one of Cornelius' top employers, and add approximately \$50,000 in property taxes to the City's General Fund revenues.
- B. The City has had several inquiries by employment intensive industries about the availability of 25 acres or more in the eastern exception area of this request. "Call us when Cornelius has this settled." A 25-acre industrial site might increase Cornelius General Fund revenue by \$100,000 or 6%.
 - C. The area east of Susbauer Rd. also offers a great opportunity for a 50-acre State Certified Industrial Site. The City has already begun discussions with OECDD to start the research, planning and property owner negotiations necessary for certification immediately upon UGB expansion. The goal is for the State of Oregon to be marketing this site within a year. A 50-acre industrial site might increase property taxes 12%.
 - D. These developments would help give over 1,500 low-moderate income and disabled people, who commute long distances to work now, the opportunity to walk, wheel or drive a shorter distance to work, spend less on transportation and live in a more complete affordable and accessible community.
 - E. Cornelius has little vacant industrial land within the UGB; the largest parcel is 12 ½ acres and most are constrained. New and expanding industries looking for a west side location within the next three years would have an option they do not have today in Cornelius, which has a higher than average employment rate and significant demand for more jobs.
 - F. At least two of Cornelius' top ten industrial businesses are looking for room to expand right now, and if they cannot find a site within Cornelius they will move elsewhere. Cornelius lost one of its top ten employers, Subroso - Heikes Division (berry processing), to Woodburn in 2005, because there was not even a 20-acre industrial site in which to expand.
 - G. Cornelius can deliver. Cornelius businesses and institutions directly support agriculture. Land for supportive uses, e.g., implement manufacturing & repair, product processing, storage and transport, is in high demand. Over 50% of the 16 acres brought into the Cornelius UGB in 2004 will be developed and open for business by the end of this year.

At the hearing another proposed expansion was identified for a meat packing firm. Clearly, the site has potential for immediate industrial development.

Metro Staff argues that the petitioner describes the characteristics of the 161 acres proposed for addition to the UGB as suitable for industrial use. To support its argument that the area is suitable to accommodate industrial needs, the city notes interest from developers of industrial properties and that the city has begun discussions with OECDD to obtain state industrial certification for the site upon inclusion in the UGB. Though the petitioner has mentioned

potential opportunities for economic development, they have not addressed the criterion and demonstrated a need for land.

Conclusion

The petition does meet this criterion. This criterion requires the applicant to demonstrate the need for land suitable for industrial development. Considering the information submitted by the applicant, this criterion is met.

Metro Code section 3.01.030(b), referring to 3.01.020(b)(3) A demonstration that any need shown under paragraphs (1) and (2) of this subsection cannot be accommodated on land already inside the UGB.

This criterion requires a demonstration that this need cannot be accommodated on land already inside the UGB.¹² Industrial land is not fungible and not all industrial needs can be

¹² Petitioner Response

First, Metro acknowledged in 2005 a 90-acre shortfall of its estimated regional industrial acreage need. See discussion of the significance of this need in the attached letters of record supporting a larger Cornelius UGB expansion from the Westside Economic Alliance, CREEC & National Association of Industrial and Office Properties, ECONorthwest, and the Regional Economic Development Partners, and the City of Forest Grove. Metro's estimate of regional industrial developable acreage deficit resulted from calculations that included all reasonable accommodation of industrial uses on land inside the regional UGB.

Second, additional developable land for industry is necessary specifically in Cornelius to address well know tax equity and balance issues in Cornelius. The City of Cornelius has been almost totally built out to the UGB limits for some time. This has resulted in a very limited land supply to accommodate the opportunities for growth of all kinds of development based on the population and employment allocations assigned from Metro and Washington County. The majority of land in the City of Cornelius has been zoned and developed residential to meet Metro Housing goals. Industrial zoned land comprises less than 9 percent of total land in Cornelius. This has placed a heavy burden on residents to support the necessary urban services and facilities. Residential uses tend to create urban service demands that are disproportionate to their tax revenue contribution. Commercial and industrial land uses tend to contribute a greater share of tax revenue in relation to their demand for urban services. The need for more industrially zoned property that can be developed within the City is crucial for it's financial health, development and sustainability.

Cornelius' Vacant Land Inventory, updated in April 2007, identifies 50.47 acres of vacant industrially zoned property in the City. These 50 acres are the total of fourteen scattered tax lots, 13 of which range from 1.4 to 4.1 acres in size. There is one 12½-acre site, our largest vacant industrial parcel. As mentioned earlier, Cornelius lost one of its top ten employers, Subroso - Heikes Division (berry processing), to Woodburn in 2005 because Cornelius did not have even a 20-acre industrial site into which they could expand. The Hazelnut Growers Association currently located in the City is also looking for a larger site to accommodate its current operation and future growth. Multiple property owners of small parcels make it difficult to successfully aggregate tax lots to meet the demand for development and expansion. With the majority of the vacant industrial land in Cornelius having been partitioned or subdivided into small parcels, the economy of scale for development often discourages investment in property improvement. Meeting demands for medium and larger industrial parcels will be easier with the proposed UGB expansion, as these parcels are larger in size and have fewer different property owners, making aggregation of land for development easier.

Following is a calculation of Cornelius' job shortage (2007)

accommodated on industrial land located anywhere in the region. For example, Ordinance 05-1070A specifically included about 1,000 acres near Hillsboro to accommodate the Washington County high-tech cluster (Shute, Evergreen and Helvetia). A “planetary chart” showing the growth of the high-tech cluster is attached as Exhibit F to the Beery, Elsner & Hammond letter. Most of the companies listed on the chart are located in Washington County. The particular needs of this industry require nearby incubator sites for ancillary business development to support the industry. Cornelius is ideally located to continue to serve the industrial land needs of the high-tech cluster.

Moreover, Cornelius is located immediately adjacent to significant agricultural areas and provides a substantial portion of the industrial land needs for the agricultural business cluster. Unfortunately, Cornelius’ ability to service this cluster has been eroded in recent years by land constraints. As noted in the application, a berry-processing facility (Subroso- Heikes Division) relocated *out* of the Metro region because it could not find an industrial site that was large enough. At the time, Subroso was one of Cornelius’ largest employers and those jobs were lost to the community, exacerbating an already grim employment picture.

Agricultural industries need to be located next to agricultural areas, and high-tech industries need to be located near the high-tech centers. To the extent the regional need for industrial land includes the need for land to serve the high-tech and agricultural clusters, this land need simply cannot be located anywhere in the region. It needs to be located close to those industries. Expanding the UGB adjacent to Cornelius allows the region to provide land for both the high-tech and agriculture industrial clusters.

Finally, to the extent the RFP policies are intended to promote regional equity in employment opportunities, those policies cannot be met by locating employment-generating industrial land anywhere in the region. Those policies are best served by expanding the UGB to accommodate industrial lands in a distressed community like Cornelius.

Healthy Housing/Jobs Balance (Residents employed = Jobs available)

<i>Est. Jobs Needed @2.37employees/household</i>	<i>7,800</i>
<i>Est. Jobs within City limits</i>	<i>- 2,500</i>
<i>Est. Jobs in nearby Agricultural areas</i>	<i>- 1,500</i>
<i>55 Existing Vacant Commercial Zoned acres @ 20 emp</i>	<i>- 1,100</i>
<i>50 Existing Vacant Industrial Zoned acres @ 18 emp.</i>	<i>- 900</i>
<hr/> <i>Total Cornelius Job Shortage</i>	<hr/> <i>1,800</i>

(Met by est. 100 additional Industrial acres @ 18 emp.)

* Projected from 2000 Census and Business License Data, pop. 11,000.

Metro Staff analysis argues that the city offers two reasons that the needs it identifies cannot reasonably be accommodated on land inside the current UGB. First, the city notes that the last addition of land to the UGB for industrial use (Ordinance No. 05-1070A) was 90 acres short of the estimated regional need for industrial land. The city contends that this shows a need in that amount that cannot be reasonably accommodated inside the UGB.

Second, the city points to its own fiscal circumstances and the limits of its current supply of vacant industrial land. The petitioner states “Cornelius’ Vacant Land Inventory, updated in April 2007, identifies 50.47 acres of vacant industrially zoned property in the City. These 50 acres are the total of fourteen scattered tax lots, 13 of which range from 1.4 to 4.1 acres in size. There is one 12½-acre site, our largest vacant industrial parcel.” The petitioner contends that its land supply is inadequate to meet needs expressed by current businesses and by inquiries for parcels 20 acres or larger. However, this assertion is not consistent with one of the letters of support provided by petitioner. Petitioner provided a March 28, 2007 letter from Walt Duyck and David and Alice Armstrong that specifically identifies a need for small industrial sites, but makes no mention of a demand for large industrial sites: “There is a reasonably high demand for smaller lots allowing for small business owners to own their own land and building.” Petitioner does not reconcile the availability and asserted demand for small industrial sites with their actual UGB expansion request. An October 19, 2007 letter of support from the Westside Economic Alliance identifies a regional need for larger industrial sites. Other letters of support pre-date this application and are in reference to the previous analysis of UGB capacity.

In its acknowledgement order following Ordinance No. 05-1070A, LCDC concluded that Metro had met the region’s need for industrial land notwithstanding a shortfall, finding that a 90-acre shortfall was insignificant in light of the region’s overall need (9,366 acres) and the supply added to the UGB in the three additions in periodic review (9,276 acres). Again the Staff argues that given that the region now has a supply of industrial land sufficient to meet needs to the year 2022, the city has not yet demonstrated that there is a need that cannot be accommodated by this supply, particularly in the short term between the present and the next analysis of UGB capacity required by state law in 2009.

By Ordinance No. 05-1070A, Metro added 65 acres (24 net acres) to the UGB north or and adjacent to the City of Cornelius. In the three ordinances adding land to the UGB for industrial use, the Metro Council concluded that the lands it added satisfied policies in the Regional Framework Plan on jobs/housing balance and regional equity. None of the 65 acres added to the UGB in Cornelius have been planned or developed. Petitioner does not explain why its need cannot be accommodated on these lands already in the UGB.

It would require an economic boom of unrecorded proportions to absorb 100% of 20 year supply as distributed throughout the region in less that a 5 or 7 interval between periodic reviews. As section 3.01.030(a) shows this amendment process was designed to address specific opportunities such as public facilities. In the meantime 110 net acres can be added with public facility improvements. How these sites are aggregated or divided for smaller or larger uses is speculative based on this record. To show that these uses can be accommodate anywhere else in the UGB is also highly speculative for a specific petitioner to demonstrate beyond a reasonable doubt. It requires a showing that Cornelius’s needs can be met

anywhere else in the region, where its needs can only be met adjacent to the City and the petitioner has also shown substantial evidence that regional Washington County needs are well addressed at this location and Metro has agreed with that analysis three times in the recent past and removed the site apparently only because it included agriculturally zoned land which is no longer part of this proposal.

Conclusion

Because the demonstrated need for industrial land cannot be accommodated on land already inside the UGB, this criteria is met.

Metro Code section 3.01.030(b), referring to 3.01.020(c)(1) If the Council determines that there is a need to amend the UGB, the Council shall evaluate areas for possible addition to the UGB, and, consistent with ORS 197.298, shall determine which areas are better considering efficient accommodation of identified land needs;

This criterion requires Metro to determine that an area identified for expansion makes the most efficient use of the land. However, this analysis must be made consistent with ORS 197.298, which provides in relevant part:

“ORS 197.298. (1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:

“(a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.

“(b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land.”

There are no urban reserves in the Metro area, so first priority lands are not available. Second priority is land that is designated as an exception area or is non-resource land. *All of the land that Cornelius proposes for expansion is designated exception area.* Accordingly, the proposed expansion area is the highest priority for inclusion under ORS 197.298. Any analysis of this criterion and subsequent criteria must conform to the statute.

In 2005, as a result of the analysis that lead to the adoption of Ordinance 05-1070A, Metro reviewed a large number of potential expansion areas to accommodate industrial land. After eliminating a number of areas for various reasons, Metro settled on the thirteen areas that best met the selection criteria. Those areas are listed on Table 4 and Table 5 from the November 17, 2005, staff report, attached as Exhibit G to the Beery, Elsner & Hammond letter. Ultimately, the UGB was amended to include the Helvetia and Evergreen areas. Of the remaining areas, Cornelius best meets the applicable criteria.

Specifically, Table 5 lists the eligible expansion areas and rates them on the degree to which they meet Metro’s policy factors. The area Cornelius currently proposes for expansion is entirely within the area listed as “Cornelius (partial).” As you can see from the table, Cornelius gets a “high” ranking for “efficient accommodation of identified land needs.” The

only other area that received a “high” ranking under this criterion was the Evergreen site, which was brought in. No other expansion area identified by Metro for industrial lands scores as high as this site.

In addition, Exhibit G includes an excerpt from the November 17, 2005, staff report in which staff discusses its alternative analysis. It is clear from the staff report and the accompanying tables that the proposed expansion area will efficiently accommodate the identified land need.¹³

Staff argues that the petitioner does not address the main purpose of this criterion, which is to determine which potential expansion areas would make the most efficient use of land. Elsewhere in its application, the petitioner states that approximately 110 acres of the 161-acre property is buildable. This criterion requires a comparison of the proposed UGB expansion area with other possible expansion areas in the region. The petitioner provides substantial comparative evidence in the Beery, Elsner & Hammond submittal based on prior Metro Staff findings.

Conclusion

The petitioner meets this criterion.

Metro Code section 3.01.030(b), referring to 3.01.020(c)(2) If the Council determines that there is a need to amend the UGB, the Council shall evaluate areas for possible addition to the UGB, and, consistent with ORS 197.298, shall determine which areas are better considering orderly and economic provision of public facilities and services;

As argued above this analysis must be made consistent with ORS 197.298 and as there are no urban reserves in the Metro area, so first priority lands are not available. Second priority is land that is designated as an exception area or is non-resource land. *All of the land that Cornelius proposes for expansion is designated exception area.* Accordingly, the proposed expansion area is the highest priority for inclusion under ORS 197.298. Any analysis of this criterion and subsequent criteria must conform to the statute.

In 2005, as a result of the analysis that lead to the adoption of Ordinance 05-1070A, Metro reviewed a large number of potential expansion areas to accommodate industrial land. After eliminating a number of areas for various reasons, Metro settled on the thirteen areas that best met the selection criteria. Those areas are listed on Table 4 and Table 5 from the November 17, 2005,. Ultimately, the UGB was amended to include the Helvetia and Evergreen areas. Of the remaining areas, Cornelius best meets the applicable criteria.

Specifically, Table 5 lists the eligible expansion areas and rates them on the degree to which they meet Metro’s policy factors. The area Cornelius currently proposes for expansion is entirely within the area listed as “Cornelius (partial).” As you can see from the table, Cornelius gets a “high” ranking for “efficient accommodation of identified land needs.” The

¹³ It is worth reiterating that the proposed expansion area in 2005 included 261 acres. The current proposal excludes all EFU land and two parcels zoned R-20. The proposed expansion area now includes only 161 gross acres, or 110 net buildable acres.

only other area that received a “high” ranking under this criterion was the Evergreen site, which was brought in. No other expansion area identified by Metro for industrial lands scores as high as this site.

In addition, Exhibit G includes an excerpt from the November 17, 2005, staff report in which staff discusses its alternative analysis. It is clear from the staff report and the accompanying tables that the proposed expansion area will efficiently accommodate the identified land need.¹⁴

To inform its consideration whether this Cornelius area can be provided with public facilities and services in an orderly and economic manner, Metro in 2005 relied upon the Industrial Land Alternative Analysis Study (Appendix A, Item (c), pages 111 and Table A-2, respectively) (Record of Ordinance No. 04-1040B, p. 890), the Addendum to the Alternatives Analysis, September, 2005, and information from the city of Cornelius. The analysis compared "serviceability" for transportation, sewer, water, and storm-water services and assigned serviceability ratings for twelve subregional areas. The proposed Cornelius area included by this ordinance rates "easy" for all those services, the only area among those considered so rated. Metro Staff Report, p. 11.

Table 4. Goal 14 Locational Factor Scores

Area	Locational Factor Scores						
	Trans.	Sewer	Water	Storm	Environ.	SEE	Agriculture
Cornelius (partial)	Easy	Easy	Easy	Easy	Moderate	Low	Moderate
Evergreen (partial)	Moderate	Difficult	Easy	Easy	Moderate	Moderate	Moderate
Farmington	Moderate	Difficult	Easy	Easy	Moderate	Moderate	High
Forest Grove East	Moderate	Easy	Moderate	Easy	Moderate	High	High
Forest Grovc West	Moderate	Easy	Moderate	Easy	Moderate	High	High
Helvetia ¹⁶	Moderate	Moderate	Easy	Easy	Moderate	High	High
Hillsboro South	Moderate	Difficult	Easy	Easy	Low	Moderate	Moderate
Jackson School Rd	Moderate	Difficult	Easy	Easy	Low	High	High
Noyer Creek	Easy	Difficult	Moderate	Easy	Low	Moderate	Low
West Union	Moderate	Moderate	Moderate	Easy	High	High	High
Wilsonville East	Moderate	Difficult	Difficult	Moderate	Low	High	High
Wilsonville South	Difficult	Difficult	Difficult	Moderate	Low	High	High

15

Urban services, with the capacity to accommodate industrial development in the area, are currently located at or very close to the perimeter of the area. The city's recently updated Transportation Systems Plan and Master Water, Sanitary Sewer and Storm Water Plans show services can be extended into the areas in an orderly and economic manner. There is road access to the western sub-area from the west at 10th Avenue (Arterial) and from both the west and east from 19th Avenue and 29th Ave./Hobbs Road (Major Collectors) to the proposed

¹⁴ It is worth reiterating that the proposed Expansion area in 2005 included 261 acres. The current proposal Excludes all EFU land and two parcels zoned R-20. The proposed expansion area now includes only 161 gross acres, or 110 net buildable acres.

¹⁵ Table 4. Goal 14 Locational Factor Scores is from is from an October 13, 2005 Metro Staff Report for Metro Ordinance 05-1070

east sub-area. Further access will be provided by Washington County's realignment of Spieschart Road as an Industrial Collector through the proposed west area this next summer (2008).

Rural residential uses in these Exception Lands have been developed with on-site septic systems (tanks, pipes and drain fields) that provide sanitary sewer service. These systems have been in operation for many years and are approaching their failure point. On-site septic systems rely on appropriate soils and adequate 'gravity/slopes' to successfully work. If a system fails on-site it becomes extremely difficult to legally and physically replace it. The extension of City sanitary sewer lines and service to address failures on rural properties only becomes available through expansion of the UGB. Clean Water Services has a 42" sewer line along Council Creek that can provide service to both areas.

Water can also be provided from current service serving properties both inside and outside the present UGB. The City has served the residences along Spieschart Road outside the UGB for 20 years. Twelve-inch mainlines are located in North 10th and 19th Avenues at or close to the current boundary. Cornelius Master Water Plan, CIP and utility rate and SDC plans account for development in these proposed UGB expansion area. (See Exhibit, City Utility Location Maps)

The proposed areas lie less than a half a mile north of the Tualatin Valley Highway, which is also the Cornelius Main Street District. Industrial development in the Cornelius area will both increase and decrease use and congestion of the highway and county road connections to Sunset Highway and the region. More people and vehicles will be attracted to new uses. However, commuter traffic will decrease as more people have the opportunity to work in their own community. The additional urban development is consistent and connected to City projections and plans, and will help provide local match for federal and county funding already won for transportation improvements, including:

- Two new bridges (built to City standards) over Council Creek at 10th and 19th Avenues
- Realignment of Spieschart Road
- Reconstruction of 4th Avenue, 10th Ave. and 19th/20th Ave. Intersections with TV Highway
- Adair Main Street Reconstruction
- Baseline Main Street Reconstruction
- N 10th Avenue/Cornelius-Schefflin Road

Projects 3156, 3164, 3166, 3167, 3168 and 3171 in Metro's Regional Transportation Plan respond to the economic and infrastructure need and opportunities in Cornelius and are designed to support the additional employment encouraged by this UGB addition and the resulting traffic mix.

The City continues to work closely with Washington County and Metro, to fully assess the effects of development in this area during Title 11 planning. Title 11 calls for a conceptual transportation plan as part of amendment of city or county comprehensive plans and land use

regulations, to which statewide planning Goal 12 and the Transportation Planning Rule apply. This area is approximately five and a half miles from U.S. Highway 26, on which a new interchange (Glencoe Road interchange) is being constructed.

The proposed area is also currently served by the Cornelius Fire Department and by the Cornelius Police Department in cooperation with the Washington County Sheriffs Department.

This proposed area can be provided with services in an orderly and economic manner and can be served efficiently. The provision of urban services to existing development can be effectively expanded as well with the systems development funding that new development brings.

Metro Staff analysis agrees that urban services are available nearby, within the UGB, and that the area proposed for addition compares well, with respect to transportation, water, sewer and stormwater services, with other areas the Metro Council considered for addition for industrial use during periodic review (2002-2005).

The petitioner makes a good case that the proposed areas could accommodate industrial uses efficiently.

Conclusion

The petition meets this criterion.

Metro Code section 3.01.030(b), referring to 3.01.020(c)(3) If the Council determines that there is a need to amend the UGB, the Council shall evaluate areas for possible addition to the UGB, and, consistent with ORS 197.298, shall determine which areas are better considering comparative environmental, energy, economic and social consequences;

In 2002 Metro analyzed the same exception lands that are proposed for inclusion in the current application. Metro's 2002 Alternatives Analysis Study of 94 study areas included the current proposed Cornelius site (known then as Study Areas 75 & 76) and made the following findings with respect to the ESEE consequences of expansion.

“Low Energy/Social/Economic Consequence

“There are three general categories of study areas that have low economic, social, and energy consequences from urbanization. Each group shares a number of attributes with location to the current UGB being the main difference.

“Study Areas 1, 16, 45, 46, 61, 62, 63, 64, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81.

“Generally these areas are small in size, directly adjacent to the current UGB and are stand alone study areas. They commonly contain a number of small-developed

parcels and a relatively small degree of agricultural activities and environmental features related to area size. Urbanization of these areas will not significantly change the current use of the land or negatively impact the general activity of the residents as these small areas are currently more urban than other study areas. The relatively small amount of agricultural activity and environmental features will reduce the potential negative economic impacts of a lost farming economy and costs for natural resource protection. Accordingly, urbanization of these areas would result in a low energy/social/economic consequence.”

Again in 2005 Metro identified the best potential expansion areas for industrial use. Among the areas identified, the Evergreen and Helvetia sites were ultimately brought in. Again, by reference to Exhibit G, Table 5, the Cornelius site rated “high” for potential benefits when it was analyzed for comparative environmental, energy, economic and social consequences. None of the remaining potential expansion areas has a “high” rating. Conversely, the area received only a “moderate” ranking for adverse benefits and, according to the staff report, most of the adverse impacts were due to the inclusion of agricultural areas. These agricultural areas have been removed from the current proposal. Accordingly, the adverse impacts have been minimized.

Based on this evidence, the proposed expansion area is the most appropriate considering comparative environmental, energy, economic and social consequences.

Metro Staff analysis states that the city anticipates that the addition of the proposed areas to the UGB will have positive environmental, energy, economic and social consequences for the city, but does not explain the environmental, energy, economic and social consequences of a UGB expansion for the site itself. This criterion requires a comparison of the proposed UGB expansion area with other possible expansion areas in the region. The city also does not compare the proposed UGB expansion site with other alternative expansion areas in the region as required by the criterion; however, the record clearly shows that the ESEE analysis has been performed for these parcels even when the expansion was larger and accepted by Metro. There have not been dramatic shifts to suggest that the wheel has to be invented all over again.

Conclusion

The petitioner meets this criterion.

Metro Code section 3.01.030(b), referring to 3.01.020(c)(4) If the Council determines that there is a need to amend the UGB, the Council shall evaluate areas for possible addition to the UGB, and, consistent with ORS 197.298, shall determine which areas are better considering compatibility of proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.

The City’s application sets forth in detail the City’s current economic circumstances and the

potential benefits from expanding the UGB for additional industrial land.¹⁶ The staff report noted that the application lacked an analysis of these circumstances compared to other potential expansion areas. This analysis was conducted by Metro in 2005 and included in the November 17, 2005, staff report. Again, by reference to Table 5, only the Noyer Creek, Hillsboro South and Helvetia sites received anything other than a “low” rating under this criterion. The Helvetia site was included in Ordinance 05-1070A, leaving only Hillsboro South and Noyer Creek as potential sites with a higher ranking than Cornelius in this category. However, both of these sites scored *lower* than the Cornelius site in almost every other category.

Moreover, as is clear from the 2005 staff report, the Cornelius site received lower ranking for

¹⁶ Petitioner Response

Tualatin Valley farmland is very important to sustainable commercial agriculture in the county and state. Cities like Cornelius, Forest Grove, North Plains and Banks owe their very existence to agriculture as they were historically built around and remain supportive of farm, orchard and nursery business. Urban Cornelius houses rural workers and provides the schools, churches, banks, shops, entertainment and law enforcement services that feed commercial agriculture. Commercial agriculture in turn feeds the community. It has long been an interdependent relationship.

A balanced, sustainable urban community provides the most sustainable healthy agriculture/urban community relationship. The purpose of this UGB expansion is to meet expressed and proven need for space for businesses that support and grow primarily two area industry clusters – agriculture and high tech businesses. New Season Food and Subroso fruit processing plants, Hazelnut Growers of Oregon Coop, Pacific Harvest Supply Company, Wilco, Hillsboro Pump, Fisher Implements and the new Coastal Farm & Ranch store are examples of agriculture related businesses in town. Without nearby urban space for processing, supply and fueling businesses, and sustainable living areas for agricultural workers, agriculture industry costs go up and its health goes down.

There are two dramatic recent examples of the growing demand for industrial space in Cornelius to support agriculture. Sabroso Fruit Processing Company, one of the top ten employees in Cornelius, moved to Woodburn in 2004 because it needed 20 acres of land to expand into and could not make the one assemblage of 20 acres possible in Cornelius work. Now, some local berry producers have to truck their fruit all the way to Woodburn.

The Hazelnut Growers of Oregon, also one of the top ten employers in Cornelius, wants to move their processing plant from the center of Cornelius’ commercial area to twice their current 10 acres at the edge but within Cornelius, if there is space. If new space is not made available, the Hazelnut Coop may move to the Salem area, thus hurting both the local agriculture and Cornelius economies. Moreover, there is commercial demand for their current commercial zoned central location. Most agriculture supportive industries need and want the urban services of a city location. If there is not room for them, they will move further away, which increases transport costs for local growers and makes their business less sustainable.

Transportation improvements to county arterials and major collectors, made feasible by the traffic warrants and funding of urban development and resources, promise to improve traffic safety and reduce interference between current commuters and agricultural vehicles. Examples include the bridge replacements at 19th Avenue/Susbauer and 10th Avenue/Cornelius-Schefflin over Council Creek in anticipation of this UGB expansion. Road widening, paving and storm water facilities along Cornelius-Schefflin, Susbauer, Zion Church and Glencoe Roads and their new intersections encourage commuter traffic use and are designed to reduce short-cutting across agricultural roads like Wren and Gordon Roads. It is a common purpose of area farmers and the City of Cornelius to reduce commuting on farm roads. Cornelius needs room for local jobs to be able to do that.

compatibility with adjacent agricultural uses because the City proposed including several parcels zoned for or in agricultural use. These areas have been removed from consideration and the City now proposed including only those areas designated as exception areas. Accordingly, conflicts with adjacent farm and forest uses have decreased from the earlier proposal and compatibility has increased.

The City's application extensively discussed the manner in industrial areas in the proposed expansion areas will be compatible with farm activities on nearby lands outside the UGB. In light of the additional fact that the City has removed all agricultural lands from consideration, it becomes clear that the proposed expansion area will be compatible with nearby agricultural activities.

Conclusion

The petitioner meets this criterion.

Metro Code section 3.01.030(b), referring to Metro Code section 3.01.020(d)(1) If the Council determines there is a need to amend the UGB, the Council shall evaluate areas for possible addition to the UGB and, consistent with ORS 197.298 and statewide planning Goal 14, shall determine which areas are better, considering equitable and efficient distribution of housing and employment opportunities throughout the region;

The staff report notes that the City sufficiently described “the fiscal and social problems faced by the city, which would be ameliorated by additional jobs and industry, more so than jobs added in other parts of the region.” What was missing was a comparison of the Cornelius site with other possible expansion areas.

This was subsequently addressed. As with the other criteria noted above, Metro conducted this analysis as part of its UGB effort in 2005. Again, Table 5 compares the Cornelius site to other possible sites. Only Cornelius and Forest Grove rank “high” for potential contribution to the equitable distribution of housing and employment opportunities. However, as described above under MCC 3.01.030 (a), Cornelius is the only city in the metropolitan area that is designated a “distressed city” by the Oregon Economic and Community Development Department. The City also ranks lowest in total “regional equity” scores according to both “The Regional Equity Atlas” published in 2007 by the Coalition for a Livable Future and the Affordable Housing Needs Study for the Portland Metropolitan Area published by Portland State University in 2007.

Finally, Metro's considerations under this criterion are constrained by ORS 197.298, and the Cornelius site is the only potential industrial expansion site that is comprised exclusively of exception lands. Based on ORS 197.298, Metro's comparative analysis, the distressed city designation by OECD and the equity rankings published by PSU and the Coalition for a Livable Future, the Cornelius site is the most appropriate site to accommodate the region's industrial land need, “considering [the] equitable and efficient distribution of housing and employment opportunities throughout the region.”

Conclusion

The petitioner meets this criterion.

Metro Code section 3.01.030(b), referring to Metro Code section 3.01.020(d)(2) If the Council determines there is a need to amend the UGB, the Council shall evaluate areas for possible addition to the UGB and, consistent with ORS 197.298 and statewide planning Goal 14, shall determine which areas are better, considering contribution to the purposes of Centers;

As with the other locational factors, the Cornelius site has the highest priority inclusion in the UGB because it consists exclusively of designated exception area. In addition, Metro's 2005 analysis of suitable sites for industrial lands concluded that the Cornelius site ranked "high" in its ability to contribute to the Cornelius "center." See, Table 5. (As noted in your staff report, the City does not have a "center." Instead, the site is analyzed for its contribution to the economic health of the City's Main Street.) Support of the City's Main Street as its business, cultural and service center is consistent with all the Regional 2040 goals and objectives, particularly those that result in "complete communities."

The only other potential expansion site that was ranked "high" for its ability to contribute to the affected center was the Evergreen site, and it was brought in. None of the other potential expansion area included in Metro's analysis contributes to the affected center to the extent that the Cornelius site would contribute to the City. Accordingly, and consistent with ORS 197.298, the Cornelius site is the most appropriate site for expansion "considering the contribution to the purposes of Centers."

Conclusion

The petition meets this criterion.

Metro Code section 3.01.030(b), referring to Metro Code section 3.01.020(d)(3) If the Council determines there is a need to amend the UGB, the Council shall evaluate areas for possible addition to the UGB and, consistent with ORS 197.298 and statewide planning Goal 14, shall determine which areas are better, considering protection of farmland that is most important for the continuation of commercial agriculture in the region;

This criterion is designed to compare the ability of competing sites to protect farmland. No other site included in Metro's analysis (Table 5) consists of exception area. The Cornelius (partial) area scored "low" on Table 5 because the proposed expansion area included AF-20 land that is being farmed. If this agricultural land is excluded from the analysis (it is not part of this application), the extent to which this application protects farmland and farming increases correspondingly.

As an initial matter, Metro's 2002 Alternatives Analysis Study found for both Study Areas 75 and 76 that:

1. "Urbanization of this area would increase traffic on NW Cornelius-Schefflin, NW Susbauer and NW Hobbs Roads. The majority of the daily increased traffic flow would most likely be directed into Cornelius and therefore, would have minimal affect on the normal movement of farm equipment and the movement of agricultural

- goods on NW Cornelius-Schefflin and NW Susbauer Roads” (The city would also point out that NW Hobbs Road now connects via N. Holladay Street to a signalized intersection at N. 26th Avenue and Tualatin Valley Highway in Cornelius Offering a safe and easy connection to the State Highway system.)
2. “Overall, urbanization of this area will result in a small amount of new development that could impact some of the adjacent agricultural activity to the north, east and west.”

Second, the attached letter from Washington County (Ex. 14) describes public improvements to the multi-purpose arterials Cornelius-Schefflin Road / 10th Avenue and Susbauer Road / 19th Avenue and Council Creek bridge replacements that have been or are being constructed through and connecting the proposed expansion areas. The cost of these improvements exceeds \$15million. These improvements are designed to provide improved access for urban commuting, freight traffic and farm equipment along two important west county arterials. Urban standard sidewalks, lighting and right-of-way are being constructed north from inside the current Cornelius city boundary to the new industrial collector that provides access to future industrial uses and Spieschart Road. These improvements will be safer, more efficient and will reduce commuter and freight traffic on the secondary roads used by farm equipment.

Third, it is important to note that providing sufficient land for urban services that support commercial agriculture is vital to the protection of farming. Cornelius has shown it needs room for industries like food processing, transportation, fuel and equipment manufacturing that are an integral part of the local agricultural community.

Ultimately, as noted in the City’s application¹⁷, industrial uses produce fewer conflicts with

¹⁷ Petitioner response

This proposed UGB expansion purposely excludes all land zoned for agricultural purposes. It includes only long defined exception Land, which is partially urbanized and characterized by relatively small lots, and non-agricultural land uses and which is the highest priority land in the state defined hierarchy for UGB expansion. These 161 acres are broken into 38 parcels, the average size of which is 4.2 acres. This land has not been important farmland for decades.

Two dozen residences are scattered throughout the proposed area, half of which are served by the Cornelius water system. There is one existing industrial use already in this expansion area; Jacobsmuhlen Meat Packing Company lies on 4 acres off Susbauer Road and wants the urban services and ability to expand offered by the City within its city limits. Owners of property within this area, who themselves farm larger parcels north of Dairy Creek, have testified that farming within the proposed area is not profitable and have committed that upon UGB inclusion their 12 acres in this exception Area will be developed into an industrial park.

Industrial land uses are known to be comparatively good neighbors to farming and therefore would be a good buffer between the urban residential uses which align much of the current UGB here and agricultural uses. Industrial uses can be planned under the current Cornelius Code to responsibly buffer neighboring agriculture land from more intense urban uses that are less understanding of the noise, dust and traffic of active farming and orchard management. New industrial development also promises to reduce some of the dependence on commuting and help pay for collector road improvements that can reduce the use of secondary farm roads by urban residents.

Council Creek, which currently coincides roughly with the UGB along the north of Cornelius, has not served to effectively protect important farmland to the north for some time. For decades now, urban

adjacent farm activities. With this proposal, no agricultural land will be taken out of production and any adjacent industrial development will introduce the least potential number of conflicts with and provide the best buffer for adjacent farm uses. No other proposed expansion area offers these same benefits.

For these reasons, and consistent with ORS 197.298, the Cornelius site is the best potential site, “considering [the] protection of farmland that is most important for the continuation of commercial agriculture in the region.”

Conclusion

The petition meets the criterion.

Metro Code section 3.01.030(b), referring to Metro Code section 3.01.020(d)(4) If the Council determines there is a need to amend the UGB, the Council shall evaluate areas for possible addition to the UGB and, consistent with ORS 197.298 and statewide planning Goal 14, shall determine which areas are better, considering avoidance of conflict with regionally significant fish and wildlife habitat;

When Metro analyzed the proposed expansion areas for Ordinance 05-1070A, the Cornelius site received a “moderate” ranking for its conflicts with regionally significant fish and wildlife habitat. That placed the Cornelius site firmly in the middle of the pack, since most of the study areas received a “moderate” ranking. The two site that were brought into the UGB, Evergreen and Helvetia, received “low” and “moderate” rankings, respectively.

Since that analysis was conducted, a number of things have occurred. First, the Council Creek corridor between NW Susbauer and NW Hobbs Road (in old study area 76, an area constituting approximately 25 acres) is now owned by Metro Parks and Greenspaces, which limits development of this land. The City has provided additional safeguards for wildlife and habitat in this area.

Second, as part of its recent periodic review, the City inventoried and adopted additional protection measures for significant natural resources. The City’s acknowledged Natural Resource Protection Plan identifies the Council Creek corridor between Jobes Ditch (east of NW Hobbs Road) west to NW Cornelius-Schefflin Road (old Study Areas 75, 76) as a Significant Natural Resource with maximum protection measures for the stream, wetlands and riparian corridor. This provides significant protection of the resource and restricts urbanization. The Significant Natural Resource designation and the Metro Parks ownership of a portion of the Council Creek corridor that is part of the proposed UGB expansion area would provide protections of wildlife habitat that were not assessed in 2002 or 2003. Therefore, the potential impact on regionally significant fish and wildlife habitat has moved closer to “low” and not “moderate.”

uses, including residential, industrial, and infrastructure improvements, have been developed north of Council Creek at sub-urban densities and inefficiencies. Land has been subdivided to average four-acre lots. The proposed land is long lost to agriculture. Planned development, transitions and buffers will serve to protect all neighboring uses much better.

In 2005, the Cornelius site was comparable to the other potential expansion areas. In light of the wildlife and habitat protections that have been put into place since then, it is now clear that the Cornelius site is better than the other sites, “considering avoidance of conflict with regionally significant fish and wildlife habitat.”

Conclusion

The petition meets this criterion.

Metro Code section 3.01.030(b), referring to Metro Code section 3.01.020(d)(5) If the Council determines there is a need to amend the UGB, the Council shall evaluate areas for possible addition to the UGB and, consistent with ORS 197.298 and statewide planning Goal 14, shall determine which areas are better, considering clear transition between urban and rural lands, using natural and built features to mark the transition.

This criterion requires Metro to find that the Cornelius area is better than other potential expansion areas in providing a clear transition between urban and rural lands. This criterion was also analyzed by Metro staff in 2005 and the Cornelius (partial) site received a “moderate” ranking. Exhibit F, Table 5. The Noyer Creek site received a “high” ranking, but scored poorly in most other areas and was not brought into the UGB. The Helvetia and Evergreen areas both received “moderate” rankings and were brought in. The only remaining sites that received a “moderate ranking are the West Union and Wilsonville East sites, and, like the Noyer Creek site, both of these sites scored poorly in other areas.

After balancing all of the locational factors, it becomes clear that the proposed Cornelius site is the best site to accommodate the identified need for industrial land. As stated in the 2005 Metro staff report: “Although no one area meets all of the combined factors in Table 5, the Evergreen and the Cornelius areas satisfy a great number of the combined factors.” The Metro Council expanded the UGB to include the Evergreen site in 2005. Of the remaining sites, the Cornelius is the best meets the applicable criteria.

Finally, it is worth reiterating that the proposed expansion area adjacent to the City consists entirely of exception land. Under ORS 197.298, in the absence of urban reserve areas, exception land is the highest priority land for expanding the UGB. Only if available exception areas are insufficient to accommodate the identified need can other areas be included. All of the other potential expansion areas reviewed by Metro in 2005 include at least some resource land. Only the Cornelius area is entirely exception land. For this reason, the Cornelius site is the best and highest priority site under ORS 197.298.

Conclusion

The petition meets this criterion.

Metro Code section 3.01.030(b)(1) The proposed uses of the subject land would be compatible, or through measures can be made compatible, with uses of adjacent land.

The City argues that well planned industrial uses will provide an excellent “good neighbor” transition between urban and rural uses at the north edge to Cornelius. Conflict between current existing “sub”urban development and more rural activity to the north has

resulted in complaints and at least one Measure 37 claim just off Spieschart Road And abutting residential neighbors showed up in some numbers at the hearings (See Hearing Summary above) and signed petitions opposing the request. Industrial uses are generally more intense than agricultural uses and less intense than residential activity, so they make for good transitional uses. Also pending upgrades to the arterial 10th Ave./Cornelius-Schefflin Road right in this very area has created the opportunity to build improvements that meet standards necessary for shared urban/rural uses and enhance the transition.

Council Creek, the stream along the northern side of Cornelius has been approximately contiguous with the UGB since the Boundary's inception in 1978. That edge, expected to be the boundary for up to 20 years by the citizens who drew it, has long ago been out-grown and breached. Partially urbanized "Exception Land" covers almost the entire length of Cornelius north of Council Creek and has been planned and developed around for two decades. Two dozen homes are scattered just north of this Creek. Cornelius serves 13 properties north of the Creek with water. An important meat packing industrial business, located north of this Creek for two decades, wants urban services. And, approximately 13 acres of land north of this Creek has been inside the City limits of Cornelius for some time, yet outside the current UGB.

The City of Cornelius is partner in the region-wide study of future urban and rural reserves. The location and character of future boundaries and transition will be fruit of this four-year discussion. In the mean time, Cornelius can become a more sustainable and equitable community and manage the transition actively with its agricultural neighbors and business partners, rather than by avoidance.

Metro staff agrees that petitioner notes that industrial uses are "good neighbors" to agricultural uses. Most of the perimeter of the areas proposed for addition borders agricultural land. The petitioner does not address compatibility with areas within the UGB in the portion of its application devoted to this criterion. But elsewhere in the application, the petitioner notes the proximity of the proposed areas to areas in the city devoted to industrial use and their compatibility.

As stated in the Overview section, design of industrial area can be made sensitive through landscape and other design requirements which the City is capable of addressing through the zoning. Campus industrial uses are envisioned.

Conclusion

The petition meets this criterion.

Metro Code section 3.01.030(b)(2) The amendment will not result in the creation of an island of rural land inside the UGB or an island of rural land inside the UGB;

Addition to the UGB of the proposed land would neither create an island of land outside the UGB nor an island of rural land inside the UGB.

Conclusion

The petition meets this criterion.

Metro Code section 3.01.030(b)(3) If the amendment would add land for public school facilities, a conceptual school plan as described in Section 3.07.1120(I) has been completed.

The proposed expansion is not for school facilities.

Conclusion

The petition meets this criterion.

SUMMARY AND RECOMMENDATION

This petitioner seeks to amend the UGB to include 161 (110 net) acres for industrial purposes. The petitioner has provided substantial evidence to show that there is a deficiency in the long-range supply for land through rezoning and the two year or longer review delay that was not anticipated in the last analysis of buildable land supply and that the in context of allowable expansion uses under Section 3.01.030(a) cannot wait until the next analysis. The petitioner has also provide adequate comparison of the proposed UGB expansion area with other possible expansion areas in the region as required by multiple criteria based on previously adopted Metro Staff Report which ranked this site in comparison to the other in Metro area based on the same legislative criteria..

The hearing officer concludes that deferring all unanticipated needs to the next periodic review makes a nullity of allowing major amendments to be considered in a quasi-judicial setting. This is reinforced by an opportunity to complete significant public facilities which are dependent on the re-inclusion of these sites within the UGB. The need and the opportunity considered jointly meet the intent of 3.01.030(a). To give any effect to the system in which major amendments are available to individual petitioners requires a more liberal reading of the criteria and allows reliance on recent legislative Metro findings which were favorable to the inclusion of this area within the UGB. Given high credibility of 2005 Metro Staff Report of regional analysis and comparison of all potentially available expansion parcels, this area ranked high. Given its high location values, the need for jobs, public facility opportunity to create highly accessible and desirable industrial land the petition deserves approval.

For all those reasons the Hearing Officer recommends APPROVAL of the request.

Dated this _____ day of March 2008

/s/ J. Richard Forester

**J. Richard Forester, OSB #74101
Metro Hearing Officer**