

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENTERING AN) Resolution No. 08-3902A
ORDER DENYING THE APPLICATION OF)
THE CITY OF CORNELIUS TO EXPAND THE) Introduced by Chief Operating Officer Michael
URBAN GROWTH BOUNDARY BY MAJOR) Jordan with the Concurrence of Council President
AMENDMENT) 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

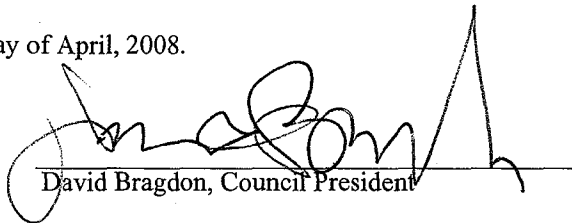
WHEREAS, the hearings officer submitted a recommendation to the Chief Operating Officer on March 3, 2008, pursuant to section 3.01.025 of the Metro Code; and

WHEREAS, the Council considered the recommendation and argument at a public hearing on March 27, 2008; now, therefore,

BE IT RESOLVED that the Metro Council:


Enters Order No. 08-044, attached to this resolution as Exhibit A, which denies the application of the city of Cornelius to expand the UGB by major amendment for the reason that it does not comply with the Metro Code.

ADOPTED by the Metro Council this 3rd day of April, 2008.



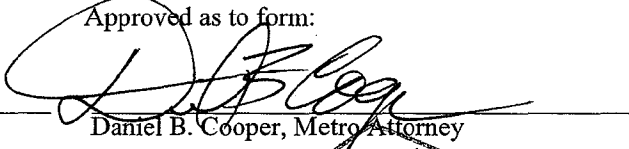
David Bragdon, Council President

Attest.

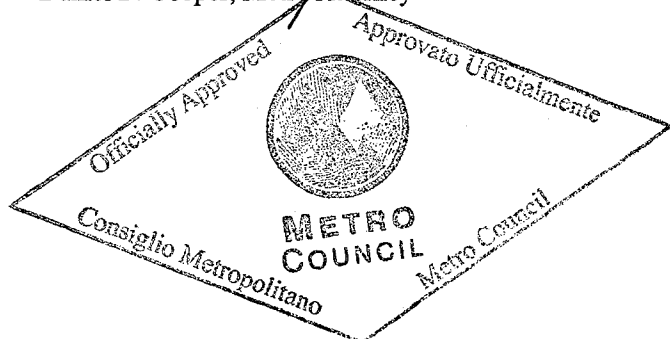


Christina Billington, Recording Secretary

Approved as to form:



Daniel B. Cooper, Metro Attorney



**Exhibit A to Resolution No. 08-3902A
Order No. 08-044**

**RELATING TO THE APPLICATION BY THE CITY OF CORNELIUS FOR A MAJOR
AMENDMENT TO THE URBAN GROWTH BOUNDARY UNDER SECTIONS 3.01.025 AND
3.01.030 OF THE METRO CODE**

The City of Cornelius filed a complete application for a major amendment to the urban growth boundary ("UGB") under section 3.01.025 of the Metro Code. Pursuant to that section, the application was considered by Metro Hearings Officer Richard Forester at a public hearing in Cornelius on February 19, 2008. The hearings officer submitted a recommendation to the Chief Operating Officer to approve the application. The Metro Council considered the recommendation and argument from the parties at a public hearing on March 27, 2008. The Council concluded that the application failed to meet the requirements for a major amendment in section 3.01.030 of the Code for the reasons set forth in the Findings of Fact and Conclusions of Law attached to this order.

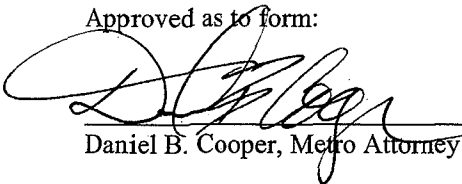
IT IS ORDERED THAT:

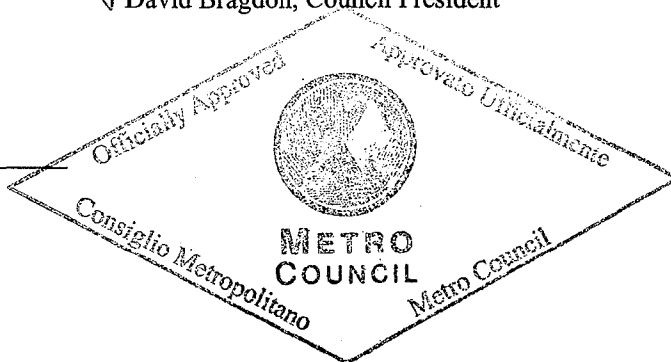
1. The Metro Council denies the proposed major amendment of the UGB.
2. The Council adopts the Findings of Fact and Conclusions of Law recommended attached to this order.

ENTERED this 3rd day of April, 2008.


David Bragdon, Council President

Approved as to form:


Daniel B. Cooper, Metro Attorney



Attachment to Order No. 08-044
Findings of Fact and Conclusions of Law

The City of Cornelius filed an application with Metro for a “major amendment” to the Urban Growth Boundary (“UGB”) pursuant to Metro Code sections 3.01.025 (process) and 3.01.030 (criteria) on September 28, 2007. The application seeks to add 161 acres to the UGB to the north of the city for industrial use. The matter went to hearing before a hearings officer in Cornelius on February 19, 2008. The hearings officer submitted a recommendation to approve the application to the Chief Operating Officer on March 3, 2008. The Metro Council considered the recommendation and heard argument on the application on March 27, 2008. At the conclusion of the hearing, the Council voted to deny the application. These findings of fact and conclusions of law explain why the application failed to meet the criteria for a major amendment in section 3.01.030 of the code.

Section 3.01.030 contains the criteria that apply to the city’s application. Subsection (a) describes the purpose of the major amendment process and establishes a threshold criterion for applications:

“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.”

Subsection (a) requires the city to demonstrate a need for land that was not anticipated in Metro’s last analysis of its capacity to accommodate long-term growth. The subsection also requires the city to show that the unanticipated need must be satisfied prior to the next capacity analysis.

Need for Land Not Anticipated in Last UGB Capacity Analysis

Metro completed its last analysis of buildable land supply in December, 2002. The Council adopted the analysis, together with actions to expand the region’s capacity to accommodate population and employment growth to year 2022, by Ordinance No. 02-969B. The Council submitted the ordinance to the Land Conservation and Development Commission (“LCDC”) pursuant to ORS 197.626. As required by state law, LCDC reviewed Metro’s actions in the manner of periodic review. The Commission acknowledged most of the actions taken by Ordinance No. 02-969B, but remanded the matter to Metro after concluding that Metro had not provided sufficient capacity to accommodate its identified need for industrial land. In two subsequent ordinances – Nos. 04-1040B (2004) and 05-1070A (2005) – the Council found additional capacity within the UGB and added industrial land to the UGB. By “Periodic Review Task 2 LCDC Approval Order 07-WKTASK-001726”, entered May 2, 2007, LCDC concluded that Metro had added sufficient capacity for all needs identified in its 2002 analysis, including need for industrial land, and “acknowledged” Metro’s actions.

The city presented evidence of several needs it believes were not anticipated by Metro in its 2002 capacity analysis. First, the city points to House Bill 2051, passed by the 2007 Oregon Legislature. HB 2051 amended the statute that requires Metro to determine the capacity of the UGB every five years to accommodate the next 20 years’ growth (ORS 197.299) to extend the date for Metro’s next analysis from December, 2007, to December, 2009. The Council recognizes that HB 2051 was not anticipated in

2002. The Council also recognizes that any action to increase capacity for employment growth will likely occur two years later than would have been the case without the extension. The Council concludes, however, that the passage of HB 2051 is not a “need for land” as that term is used in section 3.01.030(a), and does not create such a need.

The city presented evidence that it needs industrial land: inquiries about sites in Cornelius for industrial uses; the departure of an agricultural processing firm for the reason that it could not find a suitable site for expansion in Cornelius; and testimony from several existing industrial companies that they wish to expand in Cornelius and would like to expand into the area proposed to be added to the UGB. Finally, the city believes additional land for industry is needed in Cornelius to “address well know [sic] tax equity and balance issues in Cornelius.” Completeness Submittal, October 23, 2007, Item #1, p. 1.

The Council concludes, however, that this evidence does not indicate a need for industrial land that was not anticipated in Metro’s 2002 capacity analysis. Ordinances Nos. 02-969B, 04-1040B and 05-1070A provided a supply of industrial land anticipating need for industrial use to the year 2022. The record of Metro proceedings that culminated in actions taken by Ordinance No. 04-1040B show that the Council anticipated both long-term regional need for industrial land and need in the Cornelius area. By Ordinance No. 04-1040B, the Council added 261 acres (including the 161 acres in this application) to the UGB to the north of Cornelius. The rationale for that action is set forth in Exhibit G to that ordinance. It relies upon much of the same evidence and arguments advanced by the city in its application for this major amendment. LCDC remanded that action to Metro for further consideration. In Ordinance No. 05-1070A, re-considered and modified the action. With the same evidence of need before it, the Council removed the 261 acres north of Cornelius and added a different 65 acres north of Cornelius to the UGB. The Council also added 321 net acres to the UGB north of Hillsboro, four to five miles to the east of Cornelius. The rationale for these actions is set forth in Exhibit D to that ordinance. The Council finds that the needs presented by the city in this major amendment application were anticipated by Metro, both regionally and near Cornelius itself, in the 2002 capacity analysis and actions taken to provide the needed capacity.

The city points to a 2007 analysis of the current supply of buildable industrial land performed for Metro by OTAK (“Metro Industrial Land Supply Inventory”, June 26, 2007) as evidence that the 2002-2022 supply of industrial land is being absorbed faster than anticipated, creating an unanticipated need. The city also points to a recent report by Fregonese Associates that the region’s population is growing faster than forecast by Metro in 2002 as part of its UGB capacity analysis. By law, Metro cannot rely upon either the OTAK analysis or the Fregonese Associates report as a basis for this UGB expansion because Metro has not adopted the analysis or the report. The OTAK analysis makes assumptions about the supply of land that are inconsistent with assumptions used to determine the capacity of the UGB in Metro’s 2002 analysis, which Metro adopted by Ordinance No. 02-969B. Metro could rely upon the OTAK analysis and the population forecast in the Fregonese Associates Report if it adopted them by ordinance. In order to adopt them, however, Metro would have to re-analyze the forecast and the region’s supply of industrial land. Metro will complete a new population forecast and new analysis of the region’s supply of industrial land over the next 20 months to meet the December, 2009, statutory deadline for the next capacity analysis.

Even if the Council were able to rely upon the OTAK analysis, it contains information that would have to be reconciled with other information in the record of this proceeding. The OTAK analysis estimates that the region is losing 200-300 acres of industrial land each year that cities and counties are re-designating to other uses. Also in the record is the “Annual Title 4 Map Change Report”, dated January 29, 2008, reporting on the number of acres of industrial land re-designated to other uses in 2007. The Annual Report stated that 31.66 acres of industrial land were re-designated in four amendments to city land use

regulations. The February 11, 2008, Addendum to the Staff Report to the Hearings Officer explains the difference between 200-300 acres/year and the much lower number for 2007 by noting that OTAK attributed much of the loss to tentative, but not yet final, decisions pending in territories added to the UGB in 2002. The Council finds that the Annual Report casts a doubt on the reliability of that portion of the OTAK analysis.

Further, if the Council were confident of all the numbers in the OTAK analysis, it would still not demonstrate an unanticipated need for additional industrial land. The Council expects that absorption of industrial land will not happen in a steady drawdown of the supply. Rather, the drawdown will wax and wane with changing economic and other conditions both within and beyond the region.

The city points to a potential avoided expense to Washington County for transportation improvements that are scheduled soon, and an opportunity to design the improvements to urban rather than rural standards, as an unanticipated need. The Council concludes that these opportunities cannot serve as a basis for a major amendment to the UGB. They are not “needs for land” as that term is used in section 3.01.030(a).

Finally, the city calls attention to its high poverty rate, its low taxable property and the long commutes by its residents as indications of a need for additional industrial land. The Council recognizes these issues as genuine concerns. As expressly set forth in the Council’s reasoning in the three ordinances that expanded the UGB between 2002 and 2005, the Council was very much aware of the challenges the city faces. These issues were among the reasons the Council added land near Cornelius for industrial use. Whether these concerns are “needs for land” or not, the Council anticipated them clearly in the last UGB capacity analysis.

Need for Land Cannot Wait Until Next UGB Capacity Analysis

The second part of the threshold criterion in section 3.01.030(a) requires the city to show that any need for land it identifies cannot wait until Metro’s next UGB capacity analysis. By state law [ORS 197.299(1)], Metro’s next analysis is due in December, 2009 (five years after the last analysis – December, 2002 – plus the two-year extension granted by the Legislature in HB 2051). The city has an existing supply of vacant industrial land (50.47 acres). Metro added 65 gross acres to the inventory in 2005 (Ordinance No. 05-1070A), not yet annexed to the city. There is no indication from the city that this supply will be depleted within the next two to four years.

The city points to the OTAK report as evidence that the drawdown of the region’s supply of vacant industrial land must be addressed before the 2009 capacity analysis. Even if Metro were able to rely upon the report, and fully accepted its methodology and absorption/conversion numbers, there would still be a six-year supply of industrial land in the region. Implicit in the city’s arguments, and the recommendation of the hearings officer, is a legal obligation that Metro maintain a constant and continuous 20-year supply of land in the UGB. There is no such legal obligation.

The Council concludes, therefore, that even if the needs for land identified by the city had not been anticipated by the Council in the last capacity analysis, the needs can wait until the 2009 capacity analysis.

Land Needs Cannot be Accommodated within the Existing UGB

The Metro Code [section 3.01.020(b)(3)] and Goal 14 require the city to demonstrate that the needs it has identified cannot reasonably be accommodated inside the existing UGB. The city has an existing supply of vacant industrial land (50.47 acres). Metro added 65 gross acres to the inventory in 2005, not yet

annexed to the city. The hearings officer found that the city had not adequately explained why this supply of industrial land cannot accommodate the city's needs.¹ The Council agrees the city has not shown that the local land needs it has identified, regardless whether they meet the threshold criterion in section 3.01.030(a), cannot reasonably be accommodated within the city and the existing UGB, either in or near Cornelius or somewhere else in the region.

Participants at Council Hearing

The city objected to participation of several persons who made argument before the Council at its March 28 hearing. The city contended that the persons had not shown they were authorized to speak for organizations. The organizations for whom those persons made argument (1000 Friends of Oregon; Washington County Farm Bureau) had participated in the evidentiary hearing before the hearings officer on February 19. Recommendation, p. 3. The city had made no objection on these grounds at that time. The Council concludes there was no error by allowing those persons to make argument at the March 28 hearing.

Overall Conclusion

The city's application did not demonstrate:

- (a) a need for land that was not anticipated in Metro's 2002 UGB capacity report;
- (b) a need for land that cannot wait for the 2009 UGB capacity report; or
- (c) that land inside the UGB in Cornelius or adjacent to Cornelius cannot reasonably accommodate the land needs identified by the city.

The city's application does not comply with the criteria for a major amendment to the UGB in Metro Code section 3.01.030.

¹ "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 cannot wait." Recommendation, p. 13. "Staff is correct that the City has no [sic] adequately addressed why its new 35 acres and whatever internal rezoning opportunities it has [sic] to address the demand generated, except to argue that its needs will require more lands to restore is [sic] sustainability and livability." Recommendation, p. 15. "Petitioner does not reconcile the availability and asserted demand for small industrial sites with their actual UGB expansion request." Recommendation, p. 19 "None of the 65 acres added to the UGB in Cornelius have been planned or developed. Petitioner does not explain why its needs cannot be accommodated on these lands already in the UGB." Recommendation, p. 19.

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URBAN GROWTH BOUNDARY BY MAJOR) Jordan with the Concurrence of Council President
AMENDMENT) David Bragdon

WHEREAS, by Order No. 08-044 (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 submitted a recommendation to the Chief Operating Officer on March 3, 2008, pursuant to section 3.01.025 of the Metro Code; and

WHEREAS, the Council considered the recommendation and argument at a public hearing on March 20, 2008; now, therefore,

BE IT RESOLVED that the Metro Council:

Enters Order No. 08-044, attached to this resolution as Exhibit A, which denies the application of the city of Cornelius to expand the UGB by major amendment for the reason that it does not comply with the Metro Code.

ADOPTED by the Metro Council this ____ day of March, 2008.

David Bragdon, Council President

Attest:

Approved as to form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

Exhibit A to Resolution No. 08-3902
Order No. 08-044

RELATING TO THE APPLICATION BY THE CITY OF CORNELIUS FOR A MAJOR
AMENDMENT TO THE URBAN GROWTH BOUNDARY UNDER SECTIONS 3.01.025 AND
3.01.030 OF THE METRO CODE

The City of Cornelius filed a complete application for a major amendment to the urban growth boundary (“UGB”) under section 3.01.025 of the Metro Code. Pursuant to that section, the application was considered by Metro Hearings Officer Richard Forester at a public hearing in Cornelius on February 19, 2008. The hearings officer submitted a recommendation to the Chief Operating Officer to approve the application. The Metro Council considered the recommendation and argument from the parties at a public hearing on March 20, 2008. The Council concluded that the application failed to meet the requirements for a major amendment in section 3.01.030 of the Code for the reasons set forth in the Findings of Fact and Conclusions of Law attached to this order.

IT IS ORDERED THAT:

1. The Metro Council denies the proposed major amendment of the UGB.
2. The Council adopts the Findings of Fact and Conclusions of Law recommended attached to this order.

ENTERED this ____ day of March, 2008.

David Bragdon, Council President

Approved as to form:

Daniel B. Cooper, Metro Attorney