

 **Metro** | *Agenda*

Meeting: Special Metro Council Meeting
Date: Monday, November 29, 2010
Time: 5 p.m.
Place: Clackamas County Service Building, Commissioners' Hearing Room
2051 Kaen Rd., Oregon City

CALL TO ORDER AND ROLL CALL

1. **INTRODUCTIONS**
2. **METRO COUNCIL PUBLIC HEARING ON URBAN GROWTH BOUNDARY CAPACITY:**
Ordinance No. 10-1244, For the Purpose of Making the Greatest Place and Providing Capacity for Housing and Employment to the Year 2030; Amending the Regional Framework Plan and the Metro Code; and Declaring an Emergency.
3. **CHIEF OPERATING OFFICER COMMUNICATION**
4. **COUNCILOR COMMUNICATION**

ADJOURN

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF MAKING THE GREATEST) Ordinance No. 10-1244
PLACE AND PROVIDING CAPACITY FOR)
HOUSING AND EMPLOYMENT TO THE YEAR) Introduced by Chief Operating Officer
2030; AMENDING THE REGIONAL FRAMEWORK) Michael Jordan with the Concurrence of
PLAN AND THE METRO CODE; AND DECLARING) Council President Carlotta Collette
AN EMERGENCY)

WHEREAS, Metro, the cities and counties of the region and many other public and private partners have been joining efforts to make our communities into “the Greatest Place”; and

WHEREAS, state law requires Metro to assess the capacity of the urban growth boundary (UGB) on a periodic basis and, if necessary, increase the region’s capacity for housing and employment for the next 20 years; and

WHEREAS, Metro forecasted the likely range of population and growth in the region to the year 2030; and

WHEREAS, Metro assessed the capacity of the UGB to accommodate the forecasted growth, assuming continuation of existing policies and investment strategies, and determined that the UGB did not provide sufficient and satisfactory capacity for the next 20 years; and

WHEREAS, the Metro Council, with the advice and support of the Metro Policy Advisory Committee (MPAC), established six desired outcomes to use as the basis for comparing optional amendments to policies and strategies to increase the region’s capacity; and

WHEREAS, the outcomes reflect the region’s desire to develop vibrant, prosperous and sustainable communities with reliable transportation choices that minimize carbon emissions and to distribute the benefits and burdens of development equitably in the region; and

WHEREAS, Metro undertook an extensive process to consult its partner local governments and the public on optional ways to increase the region’s capacity and achieve the desired outcomes; and

WHEREAS, joint efforts to make the region “the Greatest Place” not only improve our communities but also increase our capacity to accommodate growth and achieve the desired outcomes; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The Regional Framework Plan (RFP) is hereby amended, as indicated by Exhibit A, attached and incorporated into this ordinance, to adopt: desired outcomes toward which the Metro Council will direct its policies and efforts; new policies on performance measurement to measure progress toward achievement of the outcomes; new policies on efficient use of land, public works and other public services; and new policies on investment in Centers, Corridors, Station Communities, Main Streets and Employment Areas.

2. Title 1 (Housing) of the UGMFP is hereby amended, as indicated in Exhibit B, attached and incorporated into this ordinance, to help ensure sufficient capacity to meet housing needs to year 2030.
3. Title 4 (Industrial and Other Employment Areas) of the UGMFP is hereby amended, as indicated in Exhibit C, attached and incorporated into this ordinance, to help ensure sufficient capacity to meet employment needs to year 2030.
4. The Title 4 Industrial and Other Employment Areas Map is hereby amended, as indicated in Exhibit D, attached and incorporated into this ordinance, to show changes to design-type designations to conform to new comprehensive plan designations by cities and counties pursuant to Title 11 of the UGMFP, to respond to needs identified in the 2009 Urban Growth Report, and to make corrections requested by local governments to reflect development on the ground.
5. Title 6 (Centers, Corridors, Station Communities and Main Streets) of the UGMFP is hereby amended, as indicated in Exhibit E, attached and incorporated into this ordinance, to implement new policies and investment strategies in those places.
6. The Title 6 Centers, Corridors, Station Communities and Main Streets Map is hereby adopted, as shown on Exhibit F, attached and incorporated into this ordinance, to implement Title 6 and other functional plan requirements.
7. Title 8 (Compliance Procedures) of the UGMFP is hereby amended, as indicated in Exhibit G, attached and incorporated into this ordinance, to reduce procedural burdens on local governments and Metro.
8. Title 9 (Performance Measures) is hereby repealed, as indicated in Exhibit H, to be consistent with new policies on performance measurement.
9. Title 10 (Functional Plan Definitions) of the UGMFP is hereby amended, as indicated in Exhibit I, attached and incorporated into this ordinance, to conform to the definitions to the use of terms in the amended UGMFP.
10. Title 11 (Planning for New Urban Areas) of the UGMFP is hereby amended, as indicated in Exhibit J, attached and incorporated into this ordinance, to provide more specific guidance on planning for affordable housing in new urban areas.
11. Metro Code Chapter 3.01 (Urban Growth Boundary and Urban Reserves Procedures) is hereby repealed, as indicated in Exhibit K, to be replaced by new Title 14 adopted by section 11 of this ordinance.
12. Title 14 (Urban Growth Boundary) is hereby adopted and added to the UGMFP, as indicated in Exhibit L, attached and incorporated into this ordinance, with amendments from Metro Code Chapter 3.01 to provide a faster process to add large sites to the UGB for industrial use.
13. The urban growth boundary (UGB), as shown on the attached Exhibit M, is hereby adopted by this ordinance as the official depiction of the UGB and part of Title 14 of the Urban Growth Management Functional Plan (UGMFP). The Council intends to amend the UGB in 2011 to add approximately 310 acres of land suitable for industrial

development in order to accommodate the demand identified in the 2009 UGR for large sites.

14. Metro Code Chapter 3.09 (Local Government Boundary Changes) is hereby amended, as indicated in Exhibit N, attached and incorporated into this ordinance, to conform to revisions to ORS 268.390 and adoption of urban and rural reserves pursuant to ORS 195.141, and to ensure newly incorporated cities have the capability to become great communities.
15. The 2040 Growth Concept Map, the non-regulatory illustration of the 2040 Growth Concept in the RFP, is hereby amended, as shown on Exhibit O, attached and incorporated into this ordinance, to show new configurations of 2040 Growth Concept design-type designations and transportation improvements.
16. *The Urban Growth Report 2009-2030* and the *20 and 50 Year Regional Population and Employment Range Forecasts*, approved by the Metro Council by Resolution No. 09-4094 on December 17, 2009, are adopted to support the decisions made by this ordinance. The Council determines that, for the reasons set forth in the 2010 Growth Management Assessment, August, 2010, it will direct its capacity decisions to a point between the low end and the high end of the middle third of the forecast range.
17. The Findings of Fact and Conclusions of Law in Exhibit P, attached and incorporated into this ordinance, explain how the actions taken by the Council in this ordinance provide capacity to accommodate at least 50 percent of the housing and employment forecast to the year 2030 and how they comply with state law and the Regional Framework Plan.
18. This ordinance is necessary for the immediate preservation of public health, safety and welfare because it repeals and re-adopts provisions of the Metro Code that govern changes to local government boundaries that may be under consideration during the ordinary 90-day period prior to effectiveness. An emergency is therefore declared to exist, and this ordinance shall take effect immediately, pursuant to Metro Charter section 39(1).

ADOPTED by the Metro Council this 16th day of December, 2010.

Carlotta Collette, Council President

Attest:

Approved as to form:

Tony Andersen, Clerk of the Council

Daniel B. Cooper, Metro Attorney

Exhibit A to Ordinance No. 10-1244

AMENDMENTS TO THE REGIONAL FRAMEWORK PLAN

A. Add the following:

It is the policy of the Metro Council to exercise its powers to achieve the following six outcomes, characteristics of a successful region:

1. People live, work and play in vibrant communities where their everyday needs are easily accessible.
2. Current and future residents benefit from the region's sustained economic competitiveness and prosperity.
3. People have safe and reliable transportation choices that enhance their quality of life.
4. The region is a leader in minimizing contributions to global warming.
5. Current and future generations enjoy clean air, clean water and healthy ecosystems.
6. The benefits and burdens of growth and change are distributed equitably.

It is also the policy of the Metro Council to:

Use performance measures and performance targets to:

- a. Evaluate the effectiveness of proposed policies, strategies and actions to achieve the desired Outcomes
- b. Inform the people of the region about progress toward achieving the Outcomes
- c. Evaluate the effectiveness of adopted policies, strategies and actions and guide the consideration of revision or replacement of the policies, strategies and actions; and
- d. Publish a report on progress toward achieving the desired Outcomes on a periodic basis.

B. Amend Chapter 1 (Land Use) Policy 1.1 as follows:

1.1 Compact Urban Form

It is the policy of the Metro Council to:

- 1.1.1 Ensure and maintain a compact urban form within the UGB.
- 1.1.2 Adopt and implement a strategy of investments and incentives to use land within the UGB more efficiently and to create a compact urban form.
- 1.1.3 Facilitate infill and re-development, particularly within Centers, Corridors, Station Communities, Main Streets and Employment Areas, to use land and urban services efficiently, to support public transit, to promote successful, walkable communities and to create equitable and vibrant communities.
- 1.1.4 Encourage elimination of unnecessary barriers to compact, mixed-use, pedestrian-friendly and transit-supportive development within Centers, Corridors, Station Communities and Main Streets.
- 1.1.5 Promote the distinctiveness of the region's cities and the stability of its neighborhoods.
- 1.1.6 Enhance compact urban form by developing the Intertwine, an interconnected system of parks, greenspaces and trails readily accessible to people of the region.
- 1.1.7 Promote excellence in community design.
- 1.1.8 Promote a compact urban form as a key climate action strategy to reduce greenhouse gas emissions.

C. Amend Chapter 1 (Land Use) Policy 1.2 as follows:

1.2 Centers, Corridors, Station Communities and Main Streets

It is the policy of the Metro Council to:

- 1.2.1 Recognize that the success of the 2040 Growth Concept depends upon the success of the region's Centers, Corridors, Station Communities and Main Streets as the principal centers of urban life in the region. Recognize that each Center, Corridor, Station Community and Main Street has its own character and stage of development and its own aspirations; each needs its own strategy for success.
- 1.2.2 Work with local governments, community leaders and state and federal agencies to develop an investment strategy for Centers, Corridors, Station Communities and Main Streets with a

program of investments in public works, essential services and community assets, that will enhance their roles as the centers of urban life in the region. The strategy shall:

- a. Give priority in allocation of Metro's investment funds to Centers, Corridors, Station Communities and Main Streets;
- b. To the extent practicable, link Metro's investments so they reinforce one another and maximize contributions to Centers, Corridors, Station Communities and Main Streets;
- c. To the extent practicable, coordinate Metro's investments with complementary investments of local governments and with state and federal agencies so the investments reinforce one another, maximize contributions to Centers, Corridors, Station Communities and Main Streets and help achieve local aspirations; and
- d. Include an analysis of barriers to the success of investments in particular Centers, Corridors, Station Communities and Main Streets.

1.2.3 Encourage employment opportunities in Centers, Corridors, Station Communities and Main Streets by:

- a. Improving access within and between Centers, Corridors, Station Communities and Main Streets;
- b. Encouraging cities and counties to allow a wide range of employment uses and building types, a wide range of floor-to-area ratios and a mix of employment and residential uses; and
- c. Encourage investment by cities, counties and all private sectors by complementing their investments with investments by Metro.

1.2.4 Work with local governments, community leaders and state and federal agencies to employ financial incentives to enhance the roles of Centers, Corridors, Station Communities and Main Streets and maintain a catalogue of incentives and other tools that would complement and enhance investments in particular Centers, Corridors, Station Communities and Main Streets.

1.2.5 Measure the success of regional efforts to improve Centers and Centers, Corridors, Station Communities and Main Streets and report results to the region and the state and revise strategies, if performance so indicates, to improve the results of investments and incentives.

D. Amend Chapter 1 (Land Use) Policy 1.3 as follows:

1.3 Housing Choices and Opportunities

It is the policy of the Metro Council to:

1.3.1 Provide housing choices in the region, including single family, multi-family, ownership and rental housing, and housing offered by the private, public and nonprofit sectors, paying special attention to those households with fewest housing choices.

- 1.3.2 As part of the effort to provide housing choices, encourage local governments to ensure that their land use regulations:
 - a. Allow a diverse range of housing types;
 - b. Make housing choices available to households of all income levels; and
 - c. Allow affordable housing, particularly in Centers and Corridors and other areas well-served with public services.
- 1.3.3 Reduce the percentage of the region's households that are cost-burdened, meaning those households paying more than 50 percent of their incomes on housing and transportation.
- 1.3.4 Maintain voluntary affordable housing production goals for the region, to be revised over time as new information becomes available and displayed in Chapter 8 (Implementation), and encourage their adoption by the cities and counties of the region.
- 1.3.5 Encourage local governments to consider the following tools and strategies to achieve the affordable housing production goals:
 - a. Density bonuses for affordable housing;
 - b. A no-net-loss affordable housing policy to be applied to quasi-judicial amendments to the comprehensive plan;
 - c. A voluntary inclusionary zoning policy;
 - d. A transferable development credits program for affordable housing;
 - e. Policies to accommodate the housing needs of the elderly and disabled;
 - f. Removal of regulatory constraints on the provision of affordable housing; and
 - g. Policies to ensure that parking requirements do not discourage the provision of affordable housing.
- 1.3.6 Require local governments in the region to report progress towards increasing the supply of affordable housing and seek their assistance in periodic inventories of the supply of affordable housing.
- 1.3.7 Work in cooperation with local governments, state government, business groups, non-profit groups and citizens to create an affordable housing fund available region wide in order to leverage other affordable housing resources.
- 1.3.8 Provide technical assistance to local governments to help them do their part in achieving regional goals for the production and preservation of housing choice and affordable housing.

- 1.3.9 Integrate Metro efforts to expand housing choices with other Metro activities, including transportation planning, land use planning and planning for parks and greenspaces.
- 1.3.10 When expanding the Urban Growth Boundary, assigning or amending 2040 Growth Concept design type designations or making other discretionary decisions, seek agreements with local governments and others to improve the balance of housing choices with particular attention to affordable housing.
- 1.3.11 Consider incentives, such as priority for planning grants and transportation funding, to local governments that obtain agreements from landowners and others to devote a portion of new residential capacity to affordable housing.
- 1.3.12 Help ensure opportunities for low-income housing types throughout the region so that families of modest means are not obliged to live concentrated in a few neighborhoods, because concentrating poverty is not desirable for the residents or the region.
- 1.3.13 Consider investment in transit, pedestrian and bicycle facilities and multi-modal streets as an affordable housing tool to reduce household transportation costs to leave more household income available for housing.
- 1.3.14 For purposes of these policies, “affordable housing” means housing that families earning less than 50 percent of the median household income for the region can reasonably afford to rent and earn as much as or less than 100 percent of the median household income for the region can reasonably afford to buy.

E. Amend Chapter 1 (Land Use) Policy 1.4 as follows:

1.4 Employment Choices and Opportunities

It is the policy of the Metro Council to:

- 1.4.1 Locate expansions of the UGB for industrial or commercial purposes in locations consistent with this plan and where, consistent with state statutes and statewide goals, an assessment of the type, mix and wages of existing and anticipated jobs within subregions justifies such expansion.
- 1.4.2 Balance the number and wage level of jobs within each subregion with housing cost and availability within that subregion. Strategies are to be coordinated with the planning and implementation activities of this element with Policy 1.3, Housing Choices and Opportunities and Policy 1.8, Developed Urban Land.

- 1.4.3 Designate, with the aid of leaders in the business and development community and local governments in the region, 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.
- 1.4.4 Require, through the Urban Growth Management Functional Plan, that local governments exercise their comprehensive planning and zoning authorities to protect Regionally Significant Industrial Areas from incompatible uses.
- 1.4.5 Facilitate investment in those areas of employment with characteristics that make them especially suitable and valuable for traded-sector goods and services, including brownfield sites and sites that are re-developable.
- 1.4.6 Consistent with policies promoting a compact urban form, ensure that the region maintains a sufficient supply of tracts 50 acres and larger to meet demand by traded-sector industries for large sites and protect those sites from conversion to non-industrial uses.

Repeal Chapter 1 (Land Use) Policy 1.6

Repeal Chapter 1 (Land Use) Policy 1.15

Exhibit B to Ordinance No. 10-1244

TITLE 1: HOUSING CAPACITY

3.07.110 Purpose and Intent

The Regional Framework Plan calls for a compact urban form and a “fair-share” approach to meeting regional housing needs. It is the purpose of Title 1 to accomplish these policies by requiring each city and county to maintain or increase its housing capacity except as provided in section 3.07.120.

3.07.120 Housing Capacity

- A. A city or county may reduce the minimum zoned capacity of the Central City or a Regional Center, Town Center, Corridor, Station Community or Main Street under subsection D or E. A city or county may reduce its minimum zoned capacity in other locations under subsections C, D or E.
- B. Each city and county shall adopt a minimum dwelling unit density for each zone in which dwelling units are authorized except for zones that authorize mixed-use as defined in section 3.07.1010(hh). If a city or county has not adopted a minimum density for such a zone prior to March 16, 2011, the city or county shall adopt a minimum density that is at least 80 percent of the maximum density.
- C. A city or county may reduce its minimum zoned capacity by one of the following actions if it increases minimum zoned capacity by an equal or greater amount in other places where the increase is reasonably likely to be realized within the 20-year planning period of Metro’s last capacity analysis under ORS 197.299:
 1. Reduce the minimum dwelling unit density, described in subsection B, for one or more zones;
 2. Revise the development criteria or standards for one or more zones; or
 3. Change its zoning map such that the city’s or county’s minimum zoned capacity would be reduced.Action to reduce minimum zoned capacity may be taken any time within two years after action to increase capacity.
- D. A city or county may reduce the minimum zoned capacity of a zone without increasing minimum zoned capacity in another zone for one or more of the following purposes:
 1. To re-zone the area to allow industrial use under Title 4 of this chapter or an educational or medical facility similar in scale to those listed in section 3.07.1340D(5)(i) of Title 13 of this chapter; or

2. To protect natural resources pursuant to Titles 3 or 13 of this chapter.
- E. A city or county may reduce the minimum zoned capacity of a single lot or parcel so long as the reduction has a negligible effect on the city's or county's overall minimum zoned residential capacity.
- F. A city or county may amend its comprehensive plan and land use regulations to transfer minimum zoned capacity to another city or county upon a demonstration that:
1. A transfer between designated Centers, Corridors or Station Communities does not result in a net reduction in the minimum zoned capacities of the Centers, Corridors or Station Communities involved in the transfer; and
 2. The increase in minimum zoned capacity is reasonably likely to be realized within the 20-year planning period of Metro's last capacity analysis under ORS 197.299
- G. A city or county shall authorize the establishment of at least one accessory dwelling unit for each detached single-family dwelling unit in each zone that authorizes detached single-family dwellings. The authorization may be subject to reasonable regulation for siting and design purposes.

Exhibit C to Ordinance No. 10-1244

TITLE 4: INDUSTRIAL AND OTHER EMPLOYMENT AREAS

3.07.410 Purpose and Intent

The Regional Framework Plan calls for a strong regional economy. To improve the economy, Title 4 seeks to provide and protect a supply of sites for employment by limiting the types and scale of non-industrial uses in Regionally Significant Industrial Areas (RSIAs), Industrial and Employment Areas. Title 4 also seeks to provide the benefits of "clustering" to those industries that operate more productively and efficiently in proximity to one another than in dispersed locations. Title 4 further seeks to protect the capacity and efficiency of the region's transportation system for the movement of goods and services and to encourage the location of other types of employment in Centers, Corridors, Main Streets and Station Communities. The Metro Council will evaluate the effectiveness of Title 4 in achieving these purposes as part of its periodic analysis of the capacity of the urban growth boundary.

3.07.420 Protection of Regionally Significant Industrial Areas

A. Regionally Significant Industrial Areas (RSIAs) are those areas near the region's most significant transportation facilities for the movement of freight and other areas most suitable for movement and storage of goods. Each city and county with land use planning authority over RSIAs shown on the Employment and Industrial Areas Map shall derive specific plan designation and zoning district boundaries of RSIAs within its jurisdiction from the Map, taking into account the location of existing uses that would not conform to the limitations on non-industrial uses in this section and the need to achieve a mix of employment uses.

B. Cities and counties shall review their land use regulations and revise them, if necessary, to include measures to limit the size and location of new buildings for retail commercial uses - such as stores and restaurants - and retail and professional services that cater to daily customers - such as financial, insurance, real estate, legal, medical and dental offices - to ensure that they serve primarily the needs of workers in the area. One such measure shall be that new buildings for stores, branches, agencies or other outlets for these retail uses and services shall not occupy more than 3,000 square feet of sales or service area in a single outlet, or multiple outlets that occupy more than 20,000 square feet of sales or service area in a single building or in multiple buildings that are part of the same development project, with the following exceptions:

1. Within the boundaries of a public use airport subject to a facilities master plan, customary airport uses, uses that are accessory to the travel-related and freight movement activities of airports, hospitality uses, and retail uses appropriate to serve the needs of the traveling public; and
2. Training facilities whose primary purpose is to provide training to meet industrial needs.

C. Cities and counties shall review their land use regulations and revise them, if necessary, to include measures to limit the siting and location of new buildings for the uses described in subsection B and for non-industrial uses that do not cater to daily customers—such as banks or insurance processing centers—to ensure that such uses do not reduce off-peak performance on Main Roadway Routes and Roadway Connectors shown on the Regional Freight Network Map in the Regional Transportation Plan or require added road capacity to prevent falling below the standards.

D. Cities and counties shall review their land use regulations and revise them, if necessary, to prohibit the siting of schools, places of assembly larger than 20,000 square feet or parks intended to serve people other than those working or residing in the RSIA.

E. No city or county shall amend its land use regulations that apply to lands shown as RSIA on the Employment and Industrial Areas Map to authorize uses described in subsection B that were not authorized prior to July 1, 2004.

F. Cities and counties may allow division of lots or parcels into smaller lots or parcels as follows:

1. Lots or parcels smaller than 50 acres may be divided into any number of smaller lots or parcels.
2. Lots or parcels 50 acres or larger may be divided into smaller lots and parcels pursuant to a master plan approved by the city or county so long as the resulting division yields at least one lot or parcel of at least 50 acres in size.
3. Lots or parcels 50 acres or larger, including those created pursuant to paragraph 2 of this subsection, may be divided into any number of smaller lots or parcels pursuant to a master plan approved by the city or county so long as at least 40 percent of the area of the lot or parcel has been developed with industrial uses or uses accessory to industrial use, and no portion has been developed, or is proposed to be developed, with uses described in subsection B of this section.
4. Notwithstanding paragraphs 2 and 3 of this subsection, any lot or parcel may be divided into smaller lots or parcels or made subject to rights-of-way for the following purposes:
 - a. To provide public facilities and services;
 - b. To separate a portion of a lot or parcel in order to protect a natural resource, to provide a public amenity, or to implement a remediation plan for a site identified by the Oregon Department of Environmental Quality pursuant to ORS 465.225;

- c. To separate a portion of a lot or parcel containing a nonconforming use from the remainder of the lot or parcel in order to render the remainder more practical for a permitted use; or
- d. To allow the creation of a lot solely for financing purposes when the created lot is part of a master planned development.

G. Notwithstanding subsection B of this section, a city or county may allow the lawful use of any building, structure or land at the time of enactment of an ordinance adopted pursuant to this section to continue and to expand to add up to 20 percent more floor area and 10 percent more land area. Notwithstanding subsection E of this section, a city or county may allow division of lots or parcels pursuant to a master plan approved by the city or county prior to July 1, 2004.

3.07.430 Protection of Industrial Areas

A. Cities and counties shall review their land use regulations and revise them, if necessary, to include measures to limit new buildings for retail commercial uses—such as stores and restaurants—and retail and professional services that cater to daily customers—such as financial, insurance, real estate, legal, medical and dental offices—in order to ensure that they serve primarily the needs of workers in the area. One such measure shall be that new buildings for stores, branches, agencies or other outlets for these retail uses and services shall not occupy more than 5,000 square feet of sales or service area in a single outlet, or multiple outlets that occupy more than 20,000 square feet of sales or service area in a single building or in multiple buildings that are part of the same development project, with the following exceptions:

1. Within the boundaries of a public use airport subject to a facilities master plan, customary airport uses, uses that are accessory to the travel-related and freight movement activities of airports, hospitality uses, and retail uses appropriate to serve the needs of the traveling public; and
2. Training facilities whose primary purpose is to provide training to meet industrial needs.

B. Cities and counties shall review their land use regulations and revise them, if necessary, to include measures to limit new buildings for the uses described in subsection A to ensure that they do not interfere with the efficient movement of freight along Main Roadway Routes and Roadway Connectors shown on the Regional Freight Network Map in the Regional Transportation Plan. Such measures may include, but are not limited to, restrictions on access to freight routes and connectors, siting limitations and traffic thresholds. This subsection does not require cities and counties to include such measures to limit new other buildings or uses.

C. No city or county shall amend its land use regulations that apply to lands shown as Industrial Area on the Employment and Industrial Areas Map to authorize uses described in subsection A of this section that were not authorized prior to July 1, 2004.

D. Cities and counties may allow division of lots or parcels into smaller lots or parcels as follows:

1. Lots or parcels smaller than 50 acres may be divided into any number of smaller lots or parcels.
2. Lots or parcels 50 acres or larger may be divided into smaller lots and parcels pursuant to a master plan approved by the city or county so long as the resulting division yields at least one lot or parcel of at least 50 acres in size.
3. Lots or parcels 50 acres or larger, including those created pursuant to paragraph (2) of this subsection, may be divided into any number of smaller lots or parcels pursuant to a master plan approved by the city or county so long as at least 40 percent of the area of the lot or parcel has been developed with industrial uses or uses accessory to industrial use, and no portion has been developed, or is proposed to be developed with uses described in subsection A of this section.
4. Notwithstanding paragraphs 2 and 3 of this subsection, any lot or parcel may be divided into smaller lots or parcels or made subject to rights-of-way for the following purposes:
 - a. To provide public facilities and services;
 - b. To separate a portion of a lot or parcel in order to protect a natural resource, to provide a public amenity, or to implement a remediation plan for a site identified by the Oregon Department of Environmental Quality pursuant to ORS 465.225;
 - c. To separate a portion of a lot or parcel containing a nonconforming use from the remainder of the lot or parcel in order to render the remainder more practical for a permitted use; or
 - d. To allow the creation of a lot solely for financing purposes when the created lot is part of a master planned development.

E. Notwithstanding subsection B of this section, a city or county may allow the lawful use of any building, structure or land at the time of enactment of an ordinance adopted pursuant to this section to continue and to expand to add up to 20 percent more floorspace and 10 percent more land area.

3.07.440 Protection of Employment Areas

A. Except as provided in subsections C, D and E, in Employment Areas mapped pursuant to Metro Code section 3.07.130, cities and counties shall limit new and expanded commercial retail uses to those appropriate in type and size to serve the needs of businesses, employees and residents of the Employment Areas.

B. Except as provided in subsections C, D and E, a city or county shall not approve a commercial retail use in an Employment Area with more than 60,000 square feet of gross leasable area in a single building, or commercial retail uses with a total of more than 60,000 square feet of retail sales area on a single lot or parcel, or on contiguous lots or parcels, including those separated only by transportation right-of-way.

C. A city or county whose zoning ordinance applies to an Employment Area and is listed on Table 3.07-4 may continue to authorize commercial retail uses with more than 60,000 square feet of gross leasable area in that zone if the ordinance authorized those uses on January 1, 2003.

D. A city or county whose zoning ordinance applies to an Employment Area and is not listed on Table 3.07-4 may continue to authorize commercial retail uses with more than 60,000 square feet of gross leasable area in that zone if:

1. The ordinance authorized those uses on January 1, 2003;
2. Transportation facilities adequate to serve the commercial retail uses will be in place at the time the uses begin operation; and
3. The comprehensive plan provides for transportation facilities adequate to serve other uses planned for the Employment Area over the planning period.

E. A city or county may authorize new commercial retail uses with more than 60,000 square feet of gross leasable area in Employment Areas if the uses:

1. Generate no more than a 25 percent increase in site-generated vehicle trips above permitted non-industrial uses; and
2. Meet the Maximum Permitted Parking – Zone A requirements set forth in Table 3.08-3 of Title 4 of the Regional Transportation Functional Plan.

3.07.450 Employment and Industrial Areas Map

A. The Employment and Industrial Areas Map is the official depiction of the boundaries of Regionally Significant Industrial Areas, Industrial Areas and Employment Areas.

B. If the Metro Council adds territory to the UGB and designates all or part of the territory Regionally Significant Industrial Area, Industrial Area or Employment Area, after completion of Title 11 planning by the responsible city or county, the Chief Operating Officer (COO) shall issue an order to conform the map to the boundaries established by the responsible city or county. The order shall also make necessary amendments to the Habitat Conservation Areas Map, described in section 3.07.1320 of Title 13 of this chapter, to ensure implementation of Title 13.

C. A city or county may amend its comprehensive plan or zoning regulations to change its designation of land on the Employment and Industrial Areas Map in order to allow uses not allowed by this title upon a demonstration that:

1. The property is not surrounded by land designated on the map as Industrial Area, Regionally Significant Industrial Area or a combination of the two;
2. The amendment will not reduce the employment capacity of the city or county;
3. If the map designates the property as Regionally Significant Industrial Area, the subject property does not have access to specialized services, such as redundant electrical power or industrial gases, and is not proximate to freight loading and unloading facilities, such as trans-shipment facilities;
4. The amendment would not allow uses that would reduce off-peak performance on Main Roadway Routes and Roadway Connectors shown on the Regional Freight Network Map in the Regional Transportation Plan below volume-to-capacity standards in the plan, unless mitigating action is taken that will restore performance to RTP standards within two years after approval of uses;
5. The amendment would not diminish the intended function of the Central City or Regional or Town Centers as the principal locations of retail, cultural and civic services in their market areas; and
6. If the map designates the property as Regionally Significant Industrial Area, the property subject to the amendment is ten acres or less; if designated Industrial Area, the property subject to the amendment is 20 acres or less; if designated Employment Area, the property subject to the amendment is 40 acres or less.

D. A city or county may also amend its comprehensive plan or zoning regulations to change its designation of land on the Employment and Industrial Areas Map in order to allow uses not allowed by this title upon a demonstration that:

1. The entire property is not buildable due to environmental constraints; or
2. The property borders land that is not designated on the map as Industrial Area or Regionally Significant Industrial Area; and
3. The assessed value of a building or buildings on the property, built prior to March 5, 2004, and historically occupied by uses not allowed by this title, exceeds the assessed value of the land by a ratio of 1.5 to 1.

E. The COO shall revise the Employment and Industrial Areas Map by order to conform to an amendment made by a city or county pursuant to subsection C or D of this section within 30 days after notification by the city or county that no appeal of the amendment was filed

pursuant to ORS 197.825 or, if an appeal was filed, that the amendment was upheld in the final appeal process.

F. After consultation with MPAC, the Council may issue an order suspending operation of subsection C in any calendar year in which the cumulative amount of land for which the Employment and Industrial Areas Map is changed during that year from Regionally Significant Industrial Area or Industrial Area to Employment Area or other 2040 Growth Concept design type designation exceeds the industrial land surplus. The industrial land surplus is the amount by which the current supply of vacant land designated Regionally Significant Industrial Area and Industrial Area exceeds the 20-year need for industrial land, as determined by the most recent "Urban Growth Report: An Employment Land Need Analysis", reduced by an equal annual increment for the number of years since the report.

G. The Metro Council may amend the Employment and Industrial Areas Map by ordinance at any time to make corrections in order to better achieve the policies of the Regional Framework Plan.

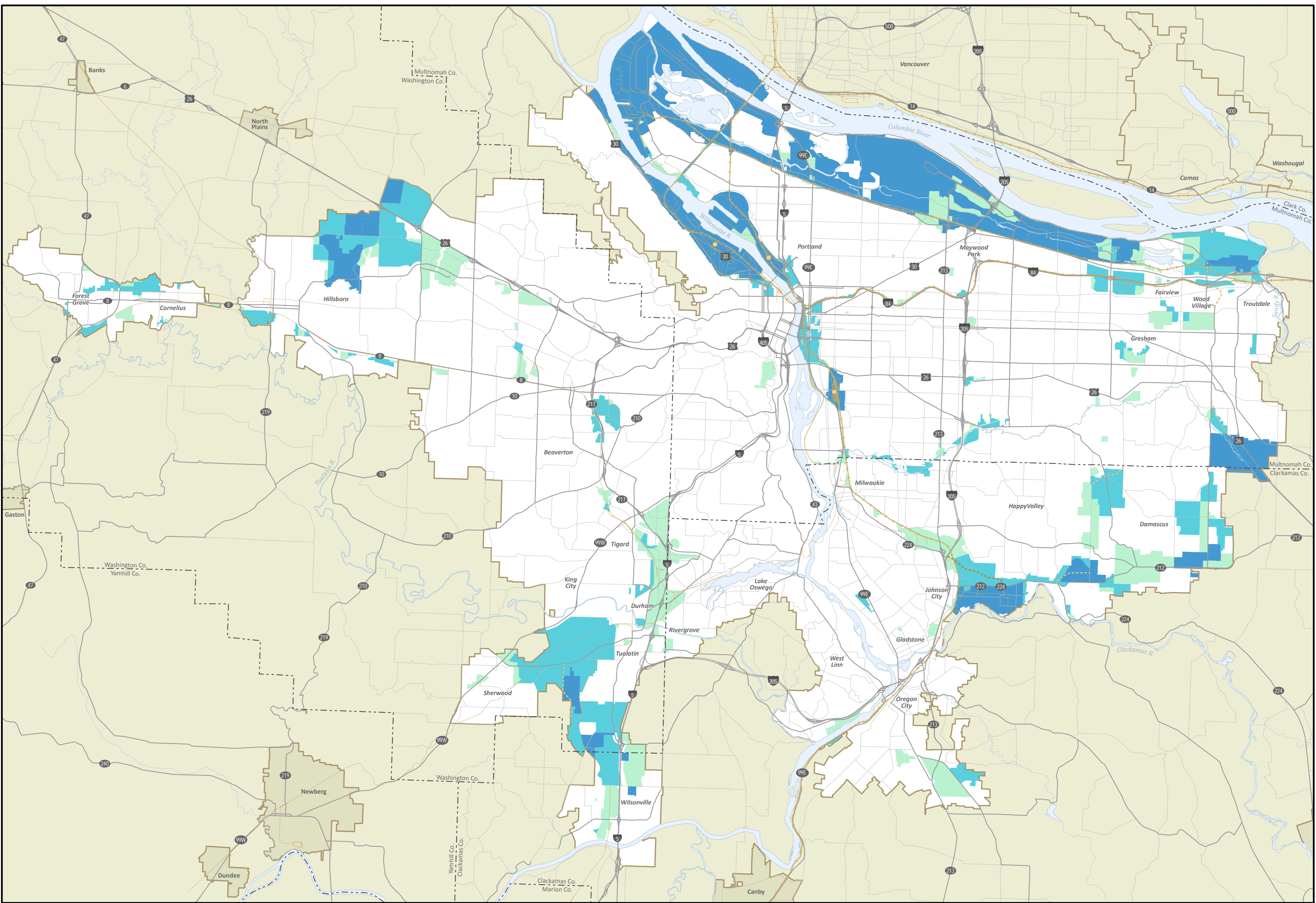
H. Upon request from a city or a county, the Metro Council may amend the Employment and Industrial Areas Map by ordinance to consider proposed amendments that exceed the size standards of paragraph 6 of subsection C of the section. To approve an amendment, the Council must conclude that the amendment:

1. Would not reduce the employment capacity of the city or county;
2. Would not allow uses that would reduce off-peak performance on Main Roadway Routes and Roadway Connectors shown on the Regional Freight Network Map in the Regional Transportation Plan below volume-to-capacity standards in the plan, unless mitigating action is taken that will restore performance to RTP standards within two years after approval of uses;
3. Would not diminish the intended function of the Central City or Regional or Town Centers as the principal locations of retail, cultural and civic services in their market areas;
4. Would not reduce the integrity or viability of a traded sector cluster of industries;
5. Would not create or worsen a significant imbalance between jobs and housing in a regional market area; and
6. If the subject property is designated Regionally Significant Industrial Area, would not remove from that designation land that is especially suitable for industrial use due to the availability of specialized services, such as redundant electrical power or industrial gases, or due to proximity to freight transport facilities, such as trans-shipment facilities.

I. Amendments to the Employment and Industrial Areas Map made in compliance with the process and criteria in this section shall be deemed to comply with the Regional Framework Plan.

J. The Council may establish conditions upon approval of an amendment to the Employment and Industrial Areas Map under subsection F to ensure that the amendment complies with the Regional Framework Plan and state land use planning laws.

K. By January 31 of each year, the COO (COO) shall submit a written report to the Council and MPAC on the cumulative effects on employment land in the region of the amendments to the Employment and Industrial Areas Map made pursuant to this section during the preceding year. The report shall include any recommendations the COO deems appropriate on measures the Council might take to address the effects.



Title 4, Industrial and Other Employment Areas

ORDINANCE 10-1244, EXHIBIT D
November 18, 2010



- Employment areas
- Industrial areas
- Regionally significant industrial areas
- Proposed main roadway routes
- Proposed road connectors
- Mainline freight
- Branch line freight
- Rail yards
- County boundaries
- Urban growth boundaries
- Neighbor cities



Exhibit E of Ordinance No. 10-1244

TITLE 6: CENTERS, CORRIDORS, STATION COMMUNITIES AND MAIN STREETS

3.07.610 Purpose

The Regional Framework Plan (RFP) identifies Centers, Corridors, Main Streets and Station Communities throughout the region and recognizes them as the principal centers of urban life in the region. Title 6 calls for actions and investments by cities and counties, complemented by regional investments, to enhance this role. A regional investment is an investment in a new high-capacity transit line or designated a regional investment in a grant or funding program administered by Metro or subject to Metro's approval.

3.07.620 Actions and Investments in Centers, Corridors, Station Communities and Main Streets

- A. In order to be eligible for a regional investment in a Center, Corridor, Station Community or Main Street, or a portion thereof, a city or county shall take the following actions:
1. Establish a boundary for the Center, Corridor, Station Community or Main Street, or portion thereof, pursuant to subsection B;
 2. Perform an assessment of the Center, Corridor, Station Community or Main Street, or portion thereof, pursuant to subsection C; and
 3. Adopt a plan of actions and investments to enhance the Center, Corridor, Station Community or Main Street, or portion thereof, pursuant to subsection D.
- B. The boundary of a Center, Corridor, Station Community or Main Street, or portion thereof, shall:
1. Be consistent with the general location shown in the RFP except, for a proposed new Station Community, be consistent with Metro's land use final order for a light rail transit project;
 2. For a Corridor with existing high-capacity transit service, include at least those segments of the Corridor that pass through a Regional Center or Town Center;
 3. For a Corridor designated for future high-capacity transit in the Regional Transportation Plan (RTP), include the area identified during the system expansion planning process in the RTP; and
 4. Be adopted and may be revised by the city council or county board following notice of the proposed boundary action to the Oregon Department of Transportation and Metro in the manner set forth in subsection A of section 3.07.820 of this chapter.

- C. An assessment of a Center, Corridor, Station Community or Main Street, or portion thereof, shall analyze the following:
 - 1. Physical and market conditions in the area;
 - 2. Physical and regulatory barriers to mixed-use, pedestrian-friendly and transit-supportive development in the area;
 - 3. The city or county development code that applies to the area to determine how the code might be revised to encourage mixed-use, pedestrian-friendly and transit-supportive development;
 - 4. Existing and potential incentives to encourage mixed-use pedestrian-friendly and transit-supportive development in the area; and
 - 5. For Corridors and Station Communities in areas shown as Industrial Area or Regionally Significant Industrial Area under Title 4 of this chapter, barriers to a mix and intensity of uses sufficient to support public transportation at the level prescribed in the RTP.

- D. A plan of actions and investments to enhance the Center, Corridor, Station Community or Main Street shall consider the assessment completed under subsection C and include at least the following elements:
 - 1. Actions to eliminate, overcome or reduce regulatory and other barriers to mixed-use, pedestrian-friendly and transit-supportive development;
 - 2. Revisions to its comprehensive plan and land use regulations, if necessary, to allow:
 - a. In Regional Centers, Town Centers, Station Communities and Main Streets, the mix and intensity of uses specified in section 3.07.640; and
 - b. In Corridors and those Station Communities in areas shown as Industrial Area or Regionally Significant Industrial Area in Title 4 of this chapter, a mix and intensity of uses sufficient to support public transportation at the level prescribed in the RTP;
 - 3. Public investments and incentives to support mixed-use pedestrian-friendly and transit-supportive development; and
 - 4. A plan to achieve the non-SOV mode share targets, adopted by the city or county pursuant to subsections 3.08.230A and B of the Regional Transportation Functional Plan (RTFP), that includes:
 - a. The transportation system designs for streets, transit, bicycles and pedestrians consistent with Title 1 of the RTFP;

- b. A transportation system or demand management plan consistent with section 3.08.160 of the RTFP; and
 - c. A parking management program for the Center, Corridor, Station Community or Main Street, or portion thereof, consistent with section 3.08.410 of the RTFP.
- E. A city or county that has completed all or some of the requirements of subsections B, C and D may seek recognition of that compliance from Metro by written request to the Chief Operating Officer (COO).
- F. Compliance with the requirements of this section is not a prerequisite to:
- 1. Investments in Centers, Corridors, Station Communities or Main Streets that are not regional investments; or
 - 2. Investments in areas other than Centers, Corridors, Station Communities and Main Streets.

3.07.630 Eligibility Actions for Lower Mobility Standards and Trip Generation Rates

- A. A city or county is eligible to use the higher volume-to-capacity standards in Table 7 of the 1999 Oregon Highway Plan when considering an amendment to its comprehensive plan or land use regulations in a Center, Corridor, Station Community or Main Street, or portion thereof, if it has taken the following actions:
- 1. Established a boundary pursuant to subsection B of section 3.07.620; and
 - 2. Adopted land use regulations to allow the mix and intensity of uses specified in section 3.07.640.
- B. A city or county is eligible for an automatic reduction of 30 percent below the vehicular trip generation rates reported by the Institute of Traffic Engineers when analyzing the traffic impacts, pursuant to OAR 660-012-0060, of a plan amendment in a Center, Corridor, Main Street or Station Community, or portion thereof, if it has taken the following actions:
- 1. Established a boundary pursuant to subsection B of section 3.07.620;
 - 2. Revised its comprehensive plan and land use regulations, if necessary, to allow the mix and intensity of uses specified in section 3.07.640 and to prohibit new auto-dependent uses that rely principally on auto trips, such as gas stations, car washes and auto sales lots; and
 - 3. Adopted a plan to achieve the non-SOV mode share targets adopted by the city or county pursuant to subsections 3.08.230A and B of the Regional Transportation Functional Plan (RTFP), that includes:

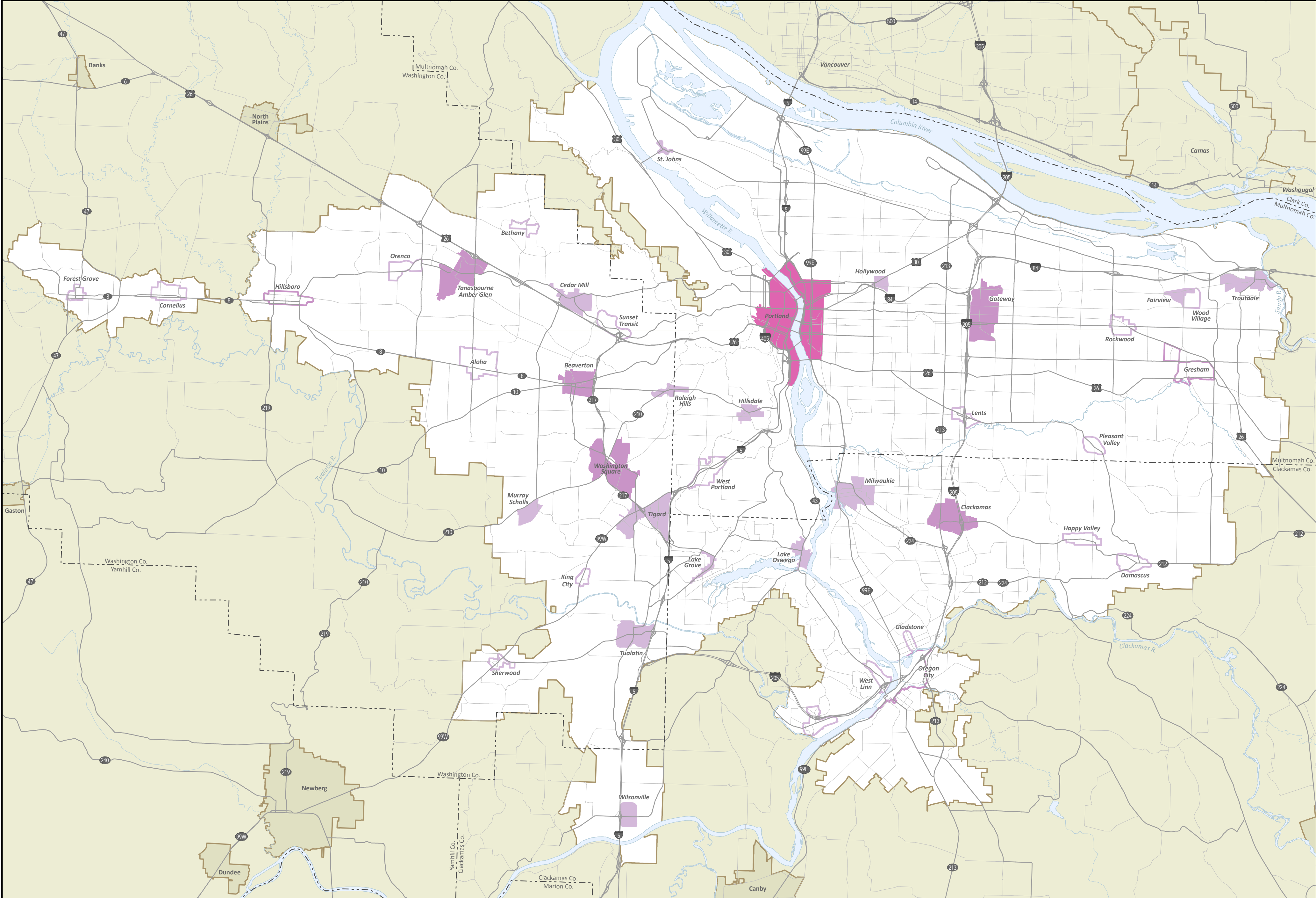
- a. Transportation system designs for streets, transit, bicycles and pedestrians consistent with Title 1 of the RTFP;
- b. A transportation system or demand management plan consistent with section 3.08.160 of the RTFP; and
- c. A parking management program for the Center, Corridor, Station Community or Main Street, or portion thereof, consistent with section 3.08.410 of the RTFP.

3.07.640 Activity Levels for Centers, Corridors, Station Communities and Main Streets

- A. Centers, Corridors, Station Communities and Main Streets need a critical number of residents and workers to be vibrant and successful. The following average number of residents and workers per acre is recommended for each:
 1. Central City - 250 persons
 2. Regional Centers - 60 persons
 3. Station Communities - 45 persons
 4. Corridors - 45 persons
 5. Town Centers - 40 persons
 6. Main Streets - 39 persons
- B. Centers, Corridors, Station Communities and Main Streets need a mix of uses to be vibrant and walkable. The following mix of uses is recommended for each:
 1. The land uses listed in *State of the Centers: Investing in Our Communities*, January, 2009, such as grocery stores and restaurants;
 2. Institutional uses, including schools, colleges, universities, hospitals, medical offices and facilities;
 3. Civic uses, including government offices open to and serving the general public, libraries, city halls and public spaces.
- C. Centers, Corridors, Station Communities and Main Streets need a mix of housings types to be vibrant and successful. The following mix of housing types is recommended for each:
 1. The types of housing listed in the “needed housing” statute, ORS 197.303(1);
 2. The types of housing identified in the city’s or county’s housing need analysis done pursuant to ORS 197.296 or statewide planning Goal 10 (Housing); and
 3. Accessory dwellings pursuant to section 3.07.120 of this chapter.

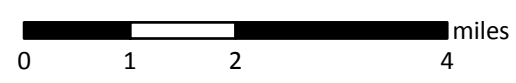
3.07.650 Centers, Corridors, Station Communities and Main Streets Map

- A. The Centers, Corridors, Station Communities and Main Streets Map is incorporated in this title and is Metro's official depiction of their boundaries. The map shows the boundaries established pursuant to this title.
- B. A city or county may revise the boundary of a Center, Corridor, Station Community or Main Street so long as the boundary is consistent with the general location on the 2040 Growth Concept Map in the RFP. The city or county shall provide notice of its proposed revision as prescribed in subsection B of section 3.07.620.
- C. The COO shall revise the Centers, Corridors, Station Communities and Main Streets Map by order to conform the map to establishment or revision of a boundary under this title.



Title 6, Centers, Corridors, Station Communities and Main Streets, Adopted Boundaries

ORDINANCE 10-1244, EXHIBIT F
November 18, 2010



- Central city, adopted boundary
- Regional center, adopted boundary
- Regional center, conceptual boundary
- Town center, adopted boundary
- Town center, conceptual boundary
- County boundaries
- Urban growth boundaries
- Neighbor cities



TITLE 8: COMPLIANCE PROCEDURES

3.07.810 Compliance with the Functional Plan

A. The purposes of this chapter are to establish a process for ensuring city or county compliance with requirements of the Urban Growth Management Functional Plan and for evaluating and informing the region about the effectiveness of those requirements. Where the terms "compliance" and "comply" appear in this title, the terms shall have the meaning given to "substantial compliance" in section 3.07.1010.

B. Cities and counties shall amend their comprehensive plans and land use regulations to comply with the functional plan, or an amendment to the functional plan, within two years after acknowledgement of the functional plan or amendment, or after any later date specified by the Metro Council in the ordinance adopting or amending the functional plan. The Chief Operating Officer (COO) shall notify cities and counties of the acknowledgment date and compliance dates described in subsections C and D.

C. After one year following acknowledgment of a functional plan requirement, cities and counties that amend their comprehensive plans and land use regulations shall make such amendments in compliance with the new functional plan requirement.

D. Cities and counties whose comprehensive plans and land use regulations do not yet comply with the new functional plan requirement shall, after one year following acknowledgment of the requirement, make land use decisions consistent with the requirement. The COO shall notify cities and counties of the date upon which functional plan requirements become applicable to land use decisions at least 120 days before that date. For the purposes of this subsection, "land use decision" shall have the meaning of that term as defined in ORS 197.015(10).

E. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan upon the expiration of the appropriate appeal period specified in ORS 197.830 or 197.650 or, if an appeal is made, upon the final decision on appeal. Once the amendment is deemed to comply, the functional plan requirement shall no longer apply to land use decisions made in conformance with the amendment.

F. An amendment to a city or county comprehensive plan or land use regulation shall be deemed to comply with the functional plan as provided in subsection E only if the city or county provided notice to the COO as required by subsection A of section 3.07.820.

3.07.820 Review by the Chief Operating Officer

A. A city or county proposing an amendment to a comprehensive plan or land use regulation shall submit the proposed amendment to the COO at least 45 days prior to the first evidentiary hearing on the amendment. The COO may request, and if so the city or county shall submit, an analysis of compliance of the amendment with the functional plan. If the COO submits

comments on the proposed amendment to the city or county, the comment shall include analysis and conclusions on compliance and a recommendation with specific revisions to the proposed amendment, if any, that would bring it into compliance with the functional plan. The COO shall send a copy of comment to those persons who have requested a copy.

B. If the COO concludes that the proposed amendment does not comply with the functional plan, the COO shall advise the city or county that it may:

1. Revise the proposed amendment as recommended in the COO's analysis;
2. Seek an extension of time, pursuant to section 3.07.830, to bring the proposed amendment into compliance with the functional plan; or
3. Seek an exception pursuant to section 3.07.840.

3.07.830 Extension of Compliance Deadline

A. A city or county may seek an extension of time for compliance with a functional plan requirement. The city or county shall file an application for an extension on a form provided by the COO. Upon receipt of an application, the COO shall notify the city or county and those persons who request notification of applications for extensions. Any person may file a written comment in support of or opposition to the extension.

B. The COO may grant an extension if the city or county is making progress toward compliance or there is good cause for failure to meet the deadline for compliance. Within 30 days after the filing of a complete application for an extension, the COO shall issue an order granting or denying the extension. The COO shall not grant more than two extensions of time to a city or county and shall grant no extension of more than one year. The COO shall send the order to the city or county and any person who filed a written comment.

C. The COO may establish terms and conditions for the extension in order to ensure that compliance is achieved in a timely and orderly fashion and that land use decisions made by the city or county during the extension do not undermine the ability of the city or county to achieve the purposes of the functional plan requirement. A term or condition must relate to the requirement of the functional plan to which the COO has granted the extension.

D. The city or county applicant or any person who filed written comment on the extension may appeal the COO's order to the Metro Council within 15 days after receipt of the order. If an appeal is filed, the Council shall hold a hearing to consider the appeal. After the hearing, the Council shall issue an order granting or denying the extension and shall send copies to the applicant and any person who participated in the hearing. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

3.07.840 Exception from Compliance

A. A city or county may seek an exception from compliance with a functional plan requirement by filing an application on a form provided by the COO. Upon receipt of an application, the COO shall notify the city or county and those persons who request notification of requests for exceptions. Any person may file a written comment in support of or opposition to the exception.

B. Except as provided in subsection C, the COO may grant an exception if:

1. it is not possible to achieve the requirement due to topographic or other physical constraints or an existing development pattern;
2. this exception and likely similar exceptions will not render the objective of the requirement unachievable region-wide;
3. the exception will not reduce the ability of another city or county to comply with the requirement; and
4. the city or county has adopted other measures more appropriate for the city or county to achieve the intended result of the requirement.

C. The COO may grant an exception to the housing capacity requirements in section 3.07.120 if:

1. the city or county has completed the analysis of capacity for dwelling units required by section 3.07.120;
2. it is not possible to comply with the requirements due to topographic or other physical constraints, an existing development pattern, or protection of natural resources pursuant to Titles 3 or 13 of this chapter; and
3. this exception and other similar exceptions will not render the targets unachievable region-wide.

D. The COO may establish terms and conditions for the exception in order to ensure that it does not undermine the ability of the region to achieve the purposes of the requirement. A term or condition must relate to the requirement of the functional plan to which the COO grants the exception. The COO shall incorporate the terms and conditions into the order on the exception.

E. The city or county applicant or a person who filed a written comment on the exception may appeal the COO's order to the Metro Council within 15 days after receipt of the order. If an appeal is filed, the Council shall hold a hearing to consider the appeal. After the hearing, the Council shall issue an order granting or denying the exception and send copies to the applicant and any person who participated in the hearing. The city or county or a person who participated in the proceeding may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

3.07.850 Enforcement of Functional Plan

A. The Metro Council may initiate enforcement if a city or county has failed to meet a deadline for compliance with a functional plan requirement or if the Council has good cause to believe that a city or county is engaged in a pattern or a practice of decision-making that is inconsistent with the functional plan, ordinances adopted by the city or county to implement the plan, or the terms or conditions in an extension or an exception granted pursuant to section 3.07.830 or 3.07.840, respectively. The Council may consider whether to initiate enforcement proceedings upon the request of the COO or a Councilor. The Council shall consult with the city or county before it determines there is good cause to proceed to a hearing under subsection B.

B. If the Council decides there is good cause, the Council President shall set the matter for a public hearing before the Council within 90 days of its decision. The COO shall publish notice of the hearing in a newspaper of general circulation in the city or county and send notice to the city or county, MPAC and any person who requests a copy of such notices.

C. The COO shall prepare a report and recommendation on the pattern or practice, with a proposed order, for consideration by the Council. The COO shall publish the report at least 14 days prior to the public hearing and send a copy to the city or county and any person who requests a copy.

D. At the conclusion of the hearing, the Council shall adopt an order that dismisses the matter if it decides the city or county complies with the requirement. If the Council decides the city or county has failed to meet a deadline for compliance with a functional plan requirement or has engaged in a pattern or a practice of decision-making that is inconsistent with the functional plan, ordinances adopted by the city or county to implement the plan, or terms or conditions of an extension or an exception granted pursuant to section 3.07.830 or 3.07.840, respectively, the Council may adopt an order that:

1. Directs changes in the city or county ordinances necessary to remedy the pattern or practice; or
2. Includes a remedy authorized in ORS 268.390(7).

E. The Council shall issue its order not later than 30 days following the hearing and send copies to the city or county, MPAC and any person who requests a copy.

3.07.860 Citizen Involvement in Compliance Review

A. Any person may contact Metro staff or the COO or appear before the Metro Council to raise issues regarding local functional plan compliance, to request Metro participation in the local process, or to request the COO to appeal a local enactment for which notice is required pursuant to subsection A of section 3.07.820. Such contact may be oral or in writing and may be made at any time.

B. In addition to considering requests as described in A above, the Council shall at every regularly scheduled meeting provide an opportunity for people to address the Council on any matter related to this functional plan. The COO shall maintain a list of persons who request notice in writing of COO reviews, reports and orders and proposed actions under this chapter and shall send requested documents as provided in this chapter.

C. Cities, counties and the Council shall comply with their own adopted and acknowledged Citizen Involvement Requirements (Citizen Involvement) in all decisions, determinations and actions taken to implement and comply with this functional plan. The COO shall publish a citizen involvement fact sheet, after consultation with the Metro Committee for Citizen Involvement, that describes opportunities for citizen involvement in Metro's growth management procedures as well as the implementation and enforcement of this functional plan.

3.07.870 Compliance Report

A. The COO shall submit a report to the Metro Council by March 1 of each calendar year on the status of compliance by cities and counties with the requirements of the Urban Growth Management Function Plan. The COO shall send a copy of the report to MPAC, JPACT, MCCI and each city and county within Metro.

B. A city, county or person who disagrees with a determination in the compliance report may seek review of the determination by the Council by written request to the COO. The Council shall notify the requestor, all cities and counties, MPAC, JPACT, MCCI, the Department of Land Conservation and Development and any person who requests notification of the review. The notification shall state that the Council does not have jurisdiction to:

1. Determine whether previous amendments of comprehensive plans or land use regulations made by a city or county comply with functional plan requirements if those amendments already comply pursuant to subsections E and F of section 3.07.810; or
2. Reconsider a determination in a prior order issued under this section that a city or county complies with a requirement of the functional plan.

C. Following its review at a public hearing, the Council shall adopt an order that determines whether the city or county complies with the functional plan requirement raised in the request. The order shall be based upon the COO's report and testimony received at the public hearing. The COO shall send a copy of the order to cities and counties and any person who testifies, orally or in writing, at the public hearing.

D. A city or county or a person who participated, orally or in writing, at the public hearing, may seek review of the Council's order as a land use decision described in ORS 197.015(10)(a)(A).

Exhibit H to Ordinance No. 10-1244

TITLE 9: PERFORMANCE MEASURES

Title 9 is repealed.

Exhibit I to Ordinance No. 10-1244

TITLE 10: FUNCTIONAL PLAN DEFINITIONS

3.07.1010 Definitions

For the purpose of this functional plan, the following definitions shall apply:

- (a) "Balanced cut and fill" means no net increase in fill within the floodplain.
- (b) "COO" means Metro's Chief Operating Officer.
- (c) "Comprehensive plan" means the all inclusive, generalized, coordinated land use map and policy statement of cities and counties defined in ORS 197.015(5).
- (d) "DBH" means the diameter of a tree measured at breast height.
- (e) "Design flood elevation" means the elevation of the 100-year storm as defined in FEMA Flood Insurance Studies or, in areas without FEMA floodplains, the elevation of the 25-year storm, or the edge of mapped flood prone soils or similar methodologies.
- (f) "Design type" means the conceptual areas described in the Metro 2040 Growth Concept text and map in Metro's regional goals and objectives, including central city, regional centers, town centers, station communities, corridors, main streets, inner and outer neighborhoods, industrial areas, and employment areas.
- (g) "Designated beneficial water uses" means the same as the term as defined by the Oregon Department of Water Resources, which is: an instream public use of water for the benefit of an appropriator for a purpose consistent with the laws and the economic and general welfare of the people of the state and includes, but is not limited to, domestic, fish life, industrial, irrigation, mining, municipal, pollution abatement, power development, recreation, stockwater and wildlife uses.
- (h) "Development" means any man-made change defined as buildings or other structures, mining, dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation. In addition, any other activity that results in the removal of more than 10 percent of the vegetation in the Water Quality Resource Area on the lot is defined as development, for the purpose of Title 3 except that less than 10 percent removal of vegetation on a lot must comply with section 3.07.340(C) - Erosion and Sediment Control. In addition, any other activity that results in the removal of more than either 10 percent or 20,000 square feet of the vegetation in the Habitat Conservation Areas on the lot is defined as development, for the purpose of Title 13. Development does not include the following: (1) Stream enhancement or restoration projects approved by cities and counties; (2) Farming practices as defined in ORS 30.930 and farm use as defined in ORS 215.203, except that buildings associated with farm practices and farm

uses are subject to the requirements of Titles 3 and 13 of this functional plan; and (3) Construction on lots in subdivisions meeting the criteria of ORS 92.040(2).

- (i) "Development application" means an application for a land use decision, limited land decision including expedited land divisions, but excluding partitions as defined in ORS 92.010(7) and ministerial decisions such as a building permit.
- (j) "Division" means a partition or a subdivision as those terms are defined in ORS chapter 92.
- (k) "Ecological functions" means the biological and hydrologic characteristics of healthy fish and wildlife habitat. Riparian ecological functions include microclimate and shade, streamflow moderation and water storage, bank stabilization and sediment/pollution control, sources of large woody debris and natural channel dynamics, and organic material sources. Upland wildlife ecological functions include size of habitat area, amount of habitat with interior conditions, connectivity of habitat to water resources, connectivity to other habitat areas, and presence of unique habitat types.
- (l) "Emergency" means any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, and includes, but is not limited to, fire, explosion, flood, severe weather, drought earthquake, volcanic activity, spills or releases of oil or hazardous material, contamination, utility or transportation disruptions, and disease.
- (m) "Enhancement" means the process of improving upon the natural functions and/or values of an area or feature which has been degraded by human activity. Enhancement activities may or may not return the site to a pre-disturbance condition, but create/recreate processes and features that occur naturally.
- (n) "Fill" means any material such as, but not limited to, sand, gravel, soil, rock or gravel that is placed in a wetland or floodplain for the purposes of development or redevelopment.
- (o) "Flood Areas" means those areas contained within the 100-year floodplain and floodway as shown on the Federal Emergency Management Agency Flood Insurance Maps and all lands that were inundated in the February 1996 flood.
- (p) "Flood Management Areas" means all lands contained within the 100-year floodplain, flood area and floodway as shown on the Federal Emergency Management Agency Flood Insurance Maps and the area of inundation for the February 1996 flood. In addition, all lands which have documented evidence of flooding.
- (q) "Floodplain" means land subject to periodic flooding, including the 100-year floodplain as mapped by FEMA Flood Insurance Studies or other substantial evidence of actual flood events.

- (r) "Growth Concept Map" means the conceptual map demonstrating the 2040 Growth Concept design types attached to this plan¹.
- (s) "Habitat Conservation Area" or "HCA" means an area identified on the Habitat Conservation Areas Map and subject to the performance standards and best management practices described in Metro Code section 3.07.1340.
- (t) "Habitat-friendly development" means a method of developing property that has less detrimental impact on fish and wildlife habitat than does traditional development methods. Examples include clustering development to avoid habitat, using alternative materials and designs such as pier, post, or piling foundations designed to minimize tree root disturbance, managing storm water on-site to help filter rainwater and recharge groundwater sources, collecting rooftop water in rain barrels for reuse in site landscaping and gardening, and reducing the amount of effective impervious surface created by development.
- (u) "Habitats of Concern" means the following unique or unusually important wildlife habitat areas as identified based on cite specific information provided by local wildlife or habitat experts: Oregon white oak woodlands, bottomland hardwood forests, wetlands, native grasslands, riverine islands or deltas, and important wildlife migration corridors.
- (v) "Hazardous materials" means materials described as hazardous by Oregon Department of Environmental Quality.
- (w) "Implementing ordinances or regulations" means any city or county land use regulation as defined by ORS 197.015(11) which includes zoning, land division or other ordinances which establish standards for implementing a comprehensive plan.
- (x) "Invasive non-native or noxious vegetation" means plants listed as nuisance plants or prohibited plants on the Metro Native Plant List as adopted by Metro Council resolution because they are plant species that have been introduced and, due to aggressive growth patterns and lack of natural enemies in the area where introduced, spread rapidly into native plant communities.
- (y) "Land Conservation and Development Commission" or "LCDC" means the Oregon Land Conservation and Development Commission.
- (z) "Land use regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan, as defined in ORS 197.015.
- (aa) "Large-format retail commercial buildings" means a building intended for retail commercial use with more than 60,000 square feet of gross leasable area, or that amount or more of retail sales area on a single lot or parcel, or that amount or more on contiguous lots or parcels including lots or parcels separated only by a transportation right-of-way.

¹ On file in the Metro Council office.

- (bb) "Local program effective date" means the effective date of a city's or county's new or amended comprehensive plan and implementing ordinances adopted to comply with Title 13 of the Urban Growth Management Functional Plan, Metro Code sections 3.07.1310 to 3.07.1370. If a city or county is found to be in substantial compliance with Title 13 without making any amendments to its comprehensive plan or land use regulations, then the local program effective date shall be December 28, 2005. If a city or county amends its comprehensive plan or land use regulations to comply with Title 13, then the local program effective date shall be the effective date of the city's or county's amendments to its comprehensive plan or land use regulations, but in no event shall the local program effective date be later than two years after Title 13 is acknowledged by LCDC. For territory brought within the Metro UGB after December 28, 2005, the local program effective date shall be the effective date of the ordinance adopted by the Metro Council to bring such territory within the Metro UGB.
- (cc) "Metro" means the regional government of the metropolitan area, the elected Metro Council as the policy setting body of the government.
- (dd) "Metro boundary" means the jurisdictional boundary of Metro, the elected regional government of the metropolitan area.
- (ee) "MCCI" means the Metro Committee for Citizen Involvement.
- (ff) "MPAC" means the Metropolitan Advisory Committee established pursuant to Metro Charter, Chapter V, Section 27.
- (gg) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order: (1) avoiding the impact altogether by not taking a certain action or parts of an action; (2) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (3) rectifying the impact by repairing, rehabilitating or restoring the affected environment; (4) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and (5) compensating for the impact by replacing or providing comparable substitute water quality resource areas or habitat conservation areas.
- (hh) "Mixed use" means comprehensive plan or implementing regulations that permit a mixture of commercial and residential development.
- (ii) "Mixed-use development" includes areas of a mix of at least two of the following land uses and includes multiple tenants or ownerships: residential, retail and office. This definition excludes large, single-use land uses such as colleges, hospitals, and business campuses. Minor incidental land uses that are accessory to the primary land use should not result in a development being designated as "mixed-use development." The size and definition of minor incidental, accessory land uses allowed within large, single-use

developments should be determined by cities and counties through their comprehensive plans and implementing ordinances.

- (jj) "Native vegetation" or "native plant" means any vegetation listed as a native plant on the Metro Native Plant List as adopted by Metro Council resolution and any other vegetation native to the Portland metropolitan area provided that it is not listed as a nuisance plant or a prohibited plant on the Metro Native Plant List.
- (kk) "Net acre" means an area measuring 43,560 square feet which excludes:
- Any developed road rights-of-way through or on the edge of the land; and
 - Environmentally constrained areas, including any open water areas, floodplains, natural resource areas protected under statewide planning Goal 5 in the comprehensive plans of cities and counties in the region, slopes in excess of 25 percent and wetlands requiring a Federal fill and removal permit under Section 404 of the Clean Water Act. These excluded areas do not include lands for which the local zoning code provides a density bonus or other mechanism which allows the transfer of the allowable density or use to another area or to development elsewhere on the same site; and
 - All publicly-owned land designated for park and open spaces uses.
- (ll) "Net developed acre" consists of 43,560 square feet of land, after excluding present and future rights-of-way, school lands and other public uses.
- (mm) "Net vacant buildable land" means all vacant land less all land that is: (1) within Water Quality Resource Areas; (2) within Habitat Conservation Areas; (3) publicly owned by a local, state or federal government; (4) burdened by major utility easements; and (5) necessary for the provision of roads, schools, parks, churches, and other public facilities.
- (nn) "Perennial streams" means all primary and secondary perennial waterways as mapped by the U.S. Geological Survey.
- (oo) "Performance measure" means a measurement derived from technical analysis aimed at determining whether a planning policy is achieving the expected outcome or intent associated with the policy.
- (pp) "Person-trips" means the total number of discrete trips by individuals using any mode of travel.
- (qq) "Persons per acre" means the intensity of building development by combining residents per acre and employees per acre.

- (rr) "Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose. As used in Title 13 of this functional plan, "practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose and probable impact on ecological functions.
- (ss) "Primarily developed" means areas where less than 10% of parcels are either vacant or underdeveloped.
- (tt) "Property owner" means a person who owns the primary legal or equitable interest in the property.
- (uu) "Protected Water Features"

Primary Protected Water Features shall include:

- Title 3 wetlands; and
- Rivers, streams, and drainages downstream from the point at which 100 acres or more are drained to that water feature (regardless of whether it carries year-round flow); and
- Streams carrying year-round flow; and
- Springs which feed streams and wetlands and have year-round flow; and
- Natural lakes.

Secondary Protected Water Features shall include intermittent streams and seeps downstream of the point at which 50 acres are drained and upstream of the point at which 100 acres are drained to that water feature.

- (vv) "Public facilities and services" means sewers, water service, stormwater services and transportation.
- (ww) "Redevelopable land" means land on which development has already occurred, which due to present or expected market forces, there exists the strong likelihood that existing development will be converted to more intensive uses during the planning period.
- (xx) "Regionally significant fish and wildlife habitat" means those areas identified on the Regionally Significant Fish and Wildlife Habitat Inventory Map, adopted in Metro Code section 3.07.1320, as significant natural resource sites.
- (yy) "Restoration" means the process of returning a disturbed or altered area or feature to a previously existing natural condition. Restoration activities reestablish the structure,

function, and/or diversity to that which occurred prior to impacts caused by human activity.

- (zz) "Retail" means activities which include the sale, lease or rent of new or used products to the general public or the provision of product repair or services for consumer and business goods.
- (aaa) "Riparian area" means the water influenced area adjacent to a river, lake or stream consisting of the area of transition from a hydric ecosystem to a terrestrial ecosystem where the presence of water directly influences the soil-vegetation complex and the soil-vegetation complex directly influences the water body. It can be identified primarily by a combination of geomorphologic and ecologic characteristics.
- (bbb) "Rural reserve" means an area designated rural reserve by Clackamas, Multnomah or Washington County pursuant to OAR 660-027.
- (ccc) "Significant negative impact" means an impact that affects the natural environment, considered individually or cumulatively with other impacts on the Water Quality Resource Area, to the point where existing water quality functions and values are degraded.
- (ddd) "Straight-line distance" means the shortest distance measured between two points.
- (eee) "Stream" means a body of running water moving over the earth's surface in a channel or bed, such as a creek, rivulet or river. It flows at least part of the year, including perennial and intermittent streams. Streams are dynamic in nature and their structure is maintained through build-up and loss of sediment.
- (fff) "Substantial compliance" means city and county comprehensive plans and implementing ordinances, on the whole, conforms with the purposes of the performance standards in the functional plan and any failure to meet individual performance standard requirements is technical or minor in nature.
- (ggg) "Title 3 Wetlands" means wetlands of metropolitan concern as shown on the Metro Water Quality and Flood Management Area Map and other wetlands added to city or county adopted Water Quality and Flood Management Area maps consistent with the criteria in Title 3, section 3.07.340(E)(3). Title 3 wetlands do not include artificially constructed and managed stormwater and water quality treatment facilities.
- (hhh) "Top of bank" means the same as "bankfull stage" defined in OAR 141-085-0010(2).
- (iii) "Urban development value" means the economic value of a property lot or parcel as determined by analyzing three separate variables: assessed land value, value as a property that could generate jobs ("employment value"), and the Metro 2040 design type designation of property. The urban development value of all properties containing

regionally significant fish and wildlife habitat is depicted on the Metro Habitat Urban Development Value Map referenced in Metro Code section 3.07.1340(E).

- (jjj) "UGB" means an urban growth boundary adopted pursuant to ORS chapter 197.
- (kkk) "Underdeveloped parcels" means those parcels of land with less than 10% of the net acreage developed with permanent structures.
- (lll) "Urban reserve" means an area designated urban reserve by the Metro Council pursuant to OAR 660 Division 27.
- (mmm) "Utility facilities" means buildings, structures or any constructed portion of a system which provides for the production, transmission, conveyance, delivery or furnishing of services including, but not limited to, heat, light, water, power, natural gas, sanitary sewer, stormwater, telephone and cable television.
- (nnn) "Vacant land" means land identified in the Metro or local government inventory as undeveloped land.
- (ooo) "Variance" means a discretionary decision to permit modification of the terms of an implementing ordinance based on a demonstration of unusual hardship or exceptional circumstance unique to a specific property.
- (ppp) "Visible or measurable erosion" includes, but is not limited to:
- Deposits of mud, dirt sediment or similar material exceeding one-half cubic foot in volume on public or private streets, adjacent property, or onto the storm and surface water system, either by direct deposit, dropping discharge, or as a result of the action of erosion.
 - Evidence of concentrated flows of water over bare soils; turbid or sediment laden flows; or evidence of on-site erosion such as rivulets on bare soil slopes, where the flow of water is not filtered or captured on the site.
 - Earth slides, mudflows, earth sloughing, or other earth movement that leaves the property.
- (qqq) "Water feature" means all rivers, streams (regardless of whether they carry year-round flow, i.e., including intermittent streams), springs which feed streams and wetlands and have year-round flow, Flood Management Areas, wetlands, and all other bodies of open water.
- (rrr) "Water Quality and Flood Management Area" means an area defined on the Metro Water Quality and Flood Management Area Map, to be attached hereto². These are areas that require regulation in order to mitigate flood hazards and to preserve and enhance water

² On file in Metro Council office.

quality. This area has been mapped to generally include the following: stream or river channels, known and mapped wetlands, areas with flood-prone soils adjacent to the stream, floodplains, and sensitive water areas. The sensitive areas are generally defined as 50 feet from top of bank of streams for areas of less than 25% slope, and 200 feet from top of bank on either side of the stream for areas greater than 25% slope, and 50 feet from the edge of a mapped wetland.

- (sss) "Water Quality Resource Areas" means vegetated corridors and the adjacent water feature as established in Title 3.
- (ttt) "Wetlands." Wetlands are those areas inundated or saturated by surface or ground water at a frequency and duration sufficient to support and under normal circumstances do support a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands are those areas identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual.
- (uuu) "Zoned capacity" means the highest number of dwelling units or jobs that are allowed to be contained in an area by zoning and other city or county jurisdiction regulations.

Exhibit J to Ordinance No. 10-1244

TITLE 11: PLANNING FOR NEW URBAN AREAS

3.07.1105 Purpose and Intent

The Regional Framework Plan calls for long-range planning to ensure that areas brought into the UGB are urbanized efficiently and become or contribute to mixed-use, walkable, transit-friendly communities. It is the purpose of Title 11 to guide such long-range planning for urban reserves and areas added to the UGB. It is also the purpose of Title 11 to provide interim protection for areas added to the UGB until city or county amendments to land use regulations to allow urbanization become applicable to the areas.

3.07.1110 Planning for Areas Designated Urban Reserve

- A. The county responsible for land use planning for an urban reserve and any city likely to provide governance or an urban service for the area, shall, in conjunction with Metro and appropriate service districts, develop a concept plan for the urban reserve prior to its addition to the UGB pursuant to sections 3.07.1420, 3.07.1430 or 3.07.1435 of this chapter. The date for completion of a concept plan and the area of urban reserves to be planned will be jointly determined by Metro and the county and city or cities.
- B. A concept plan shall achieve, or contribute to the achievement of, the following outcomes:
 1. If the plan proposes a mix of residential and employment uses:
 - a. A mix and intensity of uses that will make efficient use of the public systems and facilities described in subsection C;
 - b. A development pattern that supports pedestrian and bicycle travel to retail, professional and civic services;
 - c. A range of housing needed in the prospective UGB expansion area, the prospective governing city, and the region, - including ownership and rental housing; single-family and multi-family housing; and a mix of public, nonprofit and private market housing – with an option for households with incomes at or below 80, 50 and 30 percent of median family incomes for the region;
 - d. Sufficient employment opportunities to support a healthy economy, including, for proposed employment areas, lands with characteristics, such as proximity to transportation facilities, needed by employers;
 - e. Well-connected systems of streets, bikeways, parks, recreation trails and public transit that link to needed housing so as to reduce the combined cost of housing and transportation;
 - f. A well-connected system of parks, natural areas and other public open spaces;

- g. Protection of natural ecological systems and important natural landscape features; and
 - h. Avoidance or minimization of adverse effects on farm and forest practices and important natural landscape features on nearby rural lands.
2. If the plan involves fewer than 100 acres or proposes to accommodate only residential or employment needs, depending on the need to be accommodated:
- a. A range of housing needed in the prospective UGB expansion area, the prospective governing city, and the region, - including ownership and rental housing; single-family and multi-family housing; and a mix of public, nonprofit and private market housing – with an option for households with incomes at or below 80, 50 and 30 percent of median family incomes for the region;
 - b. Sufficient employment opportunities to support a healthy economy, including, for proposed employment areas, lands with characteristics, such as proximity to transportation facilities, needed by employers;
 - c. Well-connected systems of streets, bikeways, pedestrian ways, parks, natural areas, recreation trails;
 - d. Protection of natural ecological systems and important natural landscape features; and
 - e. Avoidance or minimization of adverse effects on farm and forest practices and important natural landscape features on nearby rural lands.
- C. A concept plan shall:
- 1. Show the general locations of any residential, commercial, industrial, institutional and public uses proposed for the area with sufficient detail to allow estimates of the cost of the public systems and facilities described in paragraph 2;
 - 2. For proposed sewer, park and trail, water and storm-water systems and transportation facilities, provide the following:
 - a. The general locations of proposed sewer, park and trail, water and storm-water systems;
 - b. The mode, function and general location of any proposed state transportation facilities, arterial facilities, regional transit and trail facilities and freight intermodal facilities;
 - c. The proposed connections of these systems and facilities, if any, to existing systems;

- d. Preliminary estimates of the costs of the systems and facilities in sufficient detail to determine feasibility and allow cost comparisons with other areas;
 - e. Proposed methods to finance the systems and facilities; and
 - f. Consideration for protection of the capacity, function and safe operation of state highway interchanges, including existing and planned interchanges and planned improvements to interchanges.
3. If the area subject to the concept plan calls for designation of land for industrial use, include an assessment of opportunities to create and protect parcels 50 acres or larger and to cluster uses that benefit from proximity to one another;
 4. If the area subject to the concept plan calls for designation of land for residential use, include strategies, such as partnerships and incentives, that increase the likelihood that needed housing types described in subsection B of this section will be market-feasible or provided by non-market housing developers within the 20-year UGB planning period;
 5. Show water quality resource areas, flood management areas and habitat conservation areas that will be subject to performance standards under Titles 3 and 13 of the Urban Growth Management Functional Plan;
 6. Be coordinated with the comprehensive plans and land use regulations that apply to nearby lands already within the UGB;
 7. Include an agreement between or among the county and the city or cities and service districts that preliminarily identifies which city, cities or districts will likely be the providers of urban services, as defined at ORS 195.065(4), when the area is urbanized;
 8. Include an agreement between or among the county and the city or cities that preliminarily identifies the local government responsible for comprehensive planning of the area, and the city or cities that will have authority to annex the area, or portions of it, following addition to the UGB;
 9. Provide that an area added to the UGB must be annexed to a city prior to, or simultaneously with, application of city land use regulations to the area intended to comply with subsection C of section 3.07.1120; and
 10. Be coordinated with schools districts, including coordination of demographic assumptions.

D. Concept plans shall guide, but not bind:

1. The designation of 2040 Growth Concept design types by the Metro Council;
2. Conditions in the Metro ordinance that adds the area to the UGB; or

3. Amendments to city or county comprehensive plans or land use regulations following addition of the area to the UGB.

E. If the local governments responsible for completion of a concept plan under this section are unable to reach agreement on a concept plan by the date set under subsection A, then the Metro Council may nonetheless add the area to the UGB if necessary to fulfill its responsibility under ORS 197.299 to ensure the UGB has sufficient capacity to accommodate forecasted growth.

3.07.1120 Planning for Areas Added to the UGB

A. The county or city responsible for comprehensive planning of an area, as specified by the intergovernmental agreement adopted pursuant to section 3.07.1110C(8) or the ordinance that added the area to the UGB, shall adopt comprehensive plan provisions and land use regulations for the area to address the requirements of subsection C by the date specified by the ordinance or by section 3.07.1455B(4) of this chapter.

B. If the concept plan developed for the area pursuant to section 3.07.1110 assigns planning responsibility to more than one city or county, the responsible local governments shall provide for concurrent consideration and adoption of proposed comprehensive plan provisions unless the ordinance adding the area to the UGB provides otherwise.

C. Comprehensive plan provisions for the area shall include:

1. Specific plan designation boundaries derived from and generally consistent with the boundaries of design type designations assigned by the Metro Council in the ordinance adding the area to the UGB;
2. Provision for annexation to a city and to any necessary service districts prior to, or simultaneously with, application of city land use regulations intended to comply with this subsection;
3. Provisions that ensure zoned capacity for the number and types of housing units, if any, specified by the Metro Council pursuant to section 3.07.1455B(2) of this chapter;
4. If the comprehensive plan authorizes housing in any part of the area, provision for a range of housing needed in the prospective UGB expansion area, the prospective governing city, and the region, - including ownership and rental housing; single-family and multi-family housing; and a mix of public, nonprofit and private market housing – with an option for households with incomes at or below 80, 50 and 30 percent of median family incomes for the region and implementing strategies that increase the likelihood that needed housing types will be market-feasible or provided by non-market housing developers within the 20-year UGB planning period;
5. Provision for the amount of land and improvements needed, if any, for public school facilities sufficient to serve the area added to the UGB in coordination with affected

school districts. This requirement includes consideration of any school facility plan prepared in accordance with ORS 195.110;

6. Provision for the amount of land and improvements needed, if any, for public park facilities sufficient to serve the area added to the UGB in coordination with affected park providers.
 7. A conceptual street plan that identifies internal street connections and connections to adjacent urban areas to improve local access and improve the integrity of the regional street system. For areas that allow residential or mixed-use development, the plan shall meet the standards for street connections in the Regional Transportation Functional Plan;
 8. Provision for the financing of local and state public facilities and services; and
 9. A strategy for protection of the capacity and function of state highway interchanges, including existing and planned interchanges and planned improvements to interchanges.
- D. The county or city responsible for comprehensive planning of an area shall submit to Metro a determination of the residential capacity of any area zoned to allow dwelling units, using the method in section 3.07.120, within 30 days after adoption of new land use regulations for the area.

3.07.1130 Interim Protection of Areas Added to the UGB

Until land use regulations that comply with section 3.07.1120 become applicable to the area, the city or county responsible for planning the area added to the UGB shall not adopt or approve:

- A. A land use regulation or zoning map amendment that allows higher residential density in the area than allowed by regulations in effect at the time of addition of the area to the UGB;
- B. A land use regulation or zoning map amendment that allows commercial or industrial uses not allowed under regulations in effect at the time of addition of the area to the UGB;
- C. A land division or partition that would result in creation of a lot or parcel less than 20 acres in size, except for public facilities and services as defined in section 3.07.1010(ww) of this chapter, or for a new public school;
- D. In an area designated by the Metro Council in the ordinance adding the area to the UGB as Regionally Significant Industrial Area:
 1. A commercial use that is not accessory to industrial uses in the area; and
 2. A school, a church, a park or any other institutional or community service use intended to serve people who do not work or reside in the area.

3.07.1140 Applicability

Section 3.07.1110 becomes applicable on December 31, 2011.

Exhibit K to Ordinance No. 10-1244

Metro Code Chapter 3.01 is repealed.

~~3.01.005 Purpose~~

~~This chapter prescribes criteria and procedures to be used by Metro in establishing urban reserves and making amendments to the Metro Urban Growth Boundary (UGB). The chapter prescribes three processes for amendment of the UGB:~~

- ~~—— (a) —— Legislative amendments following periodic analysis of the capacity of the UGB and the need to amend it to accommodate long range growth in population and employment;~~
- ~~—— (b) —— Major amendments to address short term needs that were not anticipated at the time of legislative amendments; and~~
- ~~—— (c) —— Minor adjustments to make small changes to make the UGB function more efficiently and effectively.~~

~~3.01.010 Definitions~~

- ~~—— (a) —— "Council" has the same meaning as in Chapter 1.01 of the Metro Code.~~
- ~~—— (b) —— "Compatible," as used in this chapter, is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses. Any such interference or adverse impacts must be balanced with the other criteria and considerations cited.~~
- ~~—— (c) —— "Goals" means the statewide planning goals adopted by the Oregon Land Conservation and Development Commission at OAR 660-015-0000.~~
- ~~—— (d) —— "Legislative amendment" means an amendment to the UGB initiated by Metro, which is not directed at a particular site-specific situation or relatively small number of properties.~~
- ~~—— (e) —— "Property owner" means a person who owns the primary legal or equitable interest in the property.~~
- ~~—— (f) —— "Public facilities and services" means sewers, water service, stormwater services and transportation.~~
- ~~—— (g) —— "UGB" means the Urban Growth Boundary for Metro.~~
- ~~—— (h) —— "Urban reserve" means an area designated as an urban reserve pursuant to Section 3.01.012 of this Code and applicable statutes and administrative rules.~~

3.01.012 Urban Reserve Areas

~~(a) Purpose. This section establishes the process and criteria for designation of urban reserve areas pursuant to ORS 195.145 and Oregon Administrative Rules Chapter 660, Division 021.~~

~~(b) Designation of Urban Reserve Areas:~~

~~(1) The Council shall designate the amount of urban reserves estimated to accommodate the forecast need for a period from 10 to 30 years beyond the planning period for the most recent amendment of the UGB pursuant to ORS 197.299.~~

~~(2) The Council shall estimate the capacity of urban reserve areas consistent with the estimate of the capacity of land within the UGB.~~

~~(3) The Council may allocate urban reserve areas to different planning periods in order to phase addition of the areas to the UGB.~~

~~(4) The Council shall establish a 2040 Growth Concept design type applicable to each urban reserve area designated.~~

~~(c) Plans For Urban Reserve Areas. Cities and counties may plan for urban reserve areas, consistent with the Regional Framework Plan and OAR 660-021-0040, prior to the inclusion of the areas within the UGB.~~

3.01.015 Legislative Amendment Procedures

~~(a) The Council shall initiate a legislative amendment to the UGB when required by state law and may initiate a legislative amendment when it determines there is a need to add land to the UGB.~~

~~(b) Except as otherwise provided in this chapter, the Council shall make a legislative amendment to the UGB by ordinance in the manner prescribed for ordinances in Chapter VII of the Metro Charter. For each legislative amendment, the Council shall establish a schedule of public hearings that allows for consideration of the proposed amendment by MPAC and other advisory committees and the general public.~~

~~(c) Notice to the public of a proposed legislative amendment of the UGB shall be provided as prescribed in Section 3.01.050 of this chapter.~~

~~(d) Prior to the final hearing on a proposed legislative amendment of the UGB in excess of 100 acres, the Chief Operating Officer shall prepare a report on the effect of the proposed amendment on existing residential neighborhoods. The Chief Operating Office shall provide copies of the report to all households located within one mile of the proposed~~

~~amendment area and to all cities and counties within the district at least 20 days prior to the hearing. The report shall address:~~

~~————— (1) ——— Traffic patterns and any resulting increase in traffic congestion, commute times and air quality;~~

~~————— (2) ——— Whether parks and open space protection in the area to be added will benefit existing residents of the district as well as future residents of the added territory; and~~

~~————— (3) ——— The cost impacts on existing residents of providing needed public facilities and services, police and fire services, public schools, emergency services and parks and open spaces.~~

~~(e) ——— The Council shall base its final decision on information received by the Council during the legislative process.~~

~~————— (f) ——— The Council may amend the UGB to include land outside the district only upon a written agreement with the local government that exercises land use planning authority over the land that the local government will apply the interim protection requirements set forth in Section 3.07.1110 of the Metro Code to the land until the effective date of annexation of the land to the Metro district. A city or county may adopt an amendment to its comprehensive plan pursuant to Section 3.07.1120 of the Metro Code prior to annexation of the land to the district so long as the amendment does not become applicable to the land until it is annexed to the district.~~

~~3.01.020 Legislative Amendment – Criteria~~

~~————— (a) ——— The purpose of this section is to identify and guide the application of the factors and criteria for UGB expansion in state law and the Regional Framework Plan. Compliance with this section shall constitute compliance with statewide planning Goal 14 and the Regional Framework Plan.~~

~~————— (b) ——— The Council shall determine whether there is a need to amend the UGB. In determining whether a need exists, the Council may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need. The Council's determination shall be based upon:~~

~~————— (1) ——— Demonstrated need to accommodate long-range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and~~

~~————— (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; and~~

~~(3) A demonstration that any need shown under paragraphs (1) and (2) of this subsection cannot reasonably be accommodated on land already inside the UGB.~~

~~(c) 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, shall determine which areas are better considering the following factors:~~

~~(1) Efficient accommodation of identified land needs;~~

~~(2) Orderly and economic provision of public facilities and services;~~

~~(3) Comparative environmental, energy, economic and social consequences;
and~~

~~(4) Compatibility of proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.~~

~~(d) If the Council determines there is a need to amend the UGB, the Council shall also 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 the following factors:~~

~~(1) Equitable and efficient distribution of housing and employment opportunities throughout the region;~~

~~(2) Contribution to the purposes of Centers;~~

~~(3) Protection of farmland that is most important for the continuation of commercial agriculture in the region;~~

~~(4) Avoidance of conflict with regionally significant fish and wildlife habitat;
and~~

~~(5) Clear transition between urban and rural lands, using natural and built features to mark the transition.~~

~~3.01.025 Major Amendments – Procedures~~

~~(a) A city, a county, a special district or a property owner may initiate a major amendment to the UGB by filing an application on a form provided by Metro. The Chief Operating Officer will accept applications for major amendments between February 1 and March 15 of each calendar year except that calendar year in which the Council is completing its analysis of buildable land supply under ORS 197.299(1).~~

~~(b) Except for that calendar year in which the Council is completing its analysis of buildable land supply, the Chief Operating Officer shall give notice of the March 15 deadline for applications for major amendments not less than 120 days before the deadline and again 90 days~~

~~before the deadline in a newspaper of general circulation in Metro and in writing to each city and county in Metro and anyone who has requested notification. The notice shall explain the consequences of failure to file before the deadline and shall specify the Metro representative from whom additional information may be obtained. Upon a request by a Metro Councilor and a finding of good cause, the Metro Council may waive the deadline by a vote of five members of the full Council.~~

~~————(c)—— With the application, the applicant shall provide the names and addresses of property owners for notification purposes, consistent with Section 3.01.050(b). The list shall be certified as true and accurate as of the specified date by a title company, a county assessor or designate of the assessor or the applicant.~~

~~————(d)—— The applicant shall provide a written statement from the governing body of each city or county with land use jurisdiction over the area and any special district that has an agreement with that city or county to provide an urban service to the area that it recommends approval or denial of the application. The Council may waive this requirement if the city, county or special district has a policy not to comment on major amendments, or has not adopted a position within 120 days after the applicant's request for the statement. The governing body of a local government may delegate the decision to its staff.~~

~~————(e)—— The Chief Operating Officer will determine whether an application is complete and will notify the applicant of the determination within seven working days after the filing of the application. The Chief Operating Officer will dismiss an application and return application fees if a complete application is not received within the 14 days after the notice of incompleteness.~~

~~————(f)—— Within 14 days after receipt of a complete application, the Chief Operating Officer will:~~

~~————(1)—— Set the matter for a public hearing before a hearings officer for a date no later than 55 days following receipt of a complete application; and~~

~~————(2)—— Notify the public of the public hearing as prescribed in Section 3.01.050 of this chapter.~~

~~————(g)—— The Chief Operating Officer shall submit a report and recommendation on the application to the hearings officer not less than 15 days before the hearing and send copies to the applicant and others who have requested copies. Any subsequent report by the Chief Operating Officer to be used at the hearing shall be available to the public at least seven days prior to the hearing.~~

~~————(h)—— If the proposed major amendment would add more than 100 acres to the UGB, then the Chief Operating Officer shall prepare a report on the effect of the proposed amendment on existing residential neighborhoods in the manner prescribed in Section 3.01.015(d).~~

~~(i) An applicant may request postponement of the hearing within 20 days after filing a complete application. The Chief Operating Officer may postpone the hearing for no more than 60 days. If the applicant fails to request rescheduling within 90 days after the request for postponement, the application shall be considered withdrawn and the Chief Operating Officer will return the unneeded portion of the fee deposit assessed pursuant to Section 3.01.045.~~

~~(j) Participants at a hearing before a hearings officer need not be represented by an attorney. If a person wishes to represent an organization orally or in writing, the person must indicate the date of the meeting at which the organization adopted the position presented.~~

~~(k) Failure of the applicant to appear at the hearing shall be grounds for dismissal of the application unless the applicant requests a continuance. The applicant the burden of demonstrating that the proposed amendment complies with the criteria.~~

~~(l) The hearings officer will provide the following information to participants at the beginning of the hearing:~~

~~(1) The criteria applicable to major amendments and the procedures for the hearing;~~

~~(2) A statement that testimony and evidence must be directed toward the applicable criteria or other criteria the person believes apply to the proposal; and~~

~~(3) A statement that failure to raise an issue in a manner sufficient to afford the hearings officer and participants an opportunity to respond to the issue precludes appeal of that issue.~~

~~(m) The hearing shall be conducted in the following order:~~

~~(1) Presentation of the report and recommendation of the Chief Operating Officer;~~

~~(2) Presentation of evidence and argument by the applicant;~~

~~(3) Presentation of evidence and argument in support of or opposition to the application by other participants; and~~

~~(4) Presentation of rebuttal evidence and argument by the applicant.~~

~~(n) The hearings officer may grant a request to continue the hearing or to leave the record open for presentation of additional evidence upon a demonstration that the evidence could not have been presented during the hearing. If the hearings officer grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. A reasonable opportunity shall be provided at the continued hearing for persons to present and rebut new evidence.~~

~~——(o)—— If new evidence is submitted at the continued hearing, the hearings officer may grant a request, made prior to the conclusion of the continued hearing, to leave the record open to respond to the new evidence. If the hearings officer grants the request, the record shall be left open for at least seven days. Any participant may respond to new evidence during the period the record is left open.~~

~~——(p)—— Cross examination by parties shall be by submission of written questions to the hearings officer. The hearings officer shall give participants an opportunity to submit such questions prior to closing the hearing. The hearings officer may set reasonable time limits for oral testimony and may exclude or limit cumulative, repetitive, or immaterial testimony.~~

~~——(q)—— A verbatim record shall be made of the hearing, but need not be transcribed unless necessary for appeal.~~

~~——(r)—— The hearings officer may consolidate applications for hearing after consultation with Metro staff and applicants. If the applications are consolidated, the hearings officer shall prescribe rules to avoid duplication or inconsistent findings, protect the rights of all participant, and allocate the charges on the basis of cost incurred by each applicant.~~

~~——(s)—— Within 15 days following the close of the record, the hearings officer shall submit a proposed order, with findings of fact and conclusions of law and the record of the hearing, to the Chief Operating Officer, who shall make it available for review by participants.~~

~~——(t)—— Within seven days after receipt of the proposed order from the hearings officer, the Chief Operating Officer shall set the date and time for consideration of the proposed order by the Council, which date shall be no later than 40 days after receipt of the proposed order. The Chief Operating Officer shall provide written notice of the Council meeting to the hearings officer and participants at the hearing before the hearings officer, and shall post notice of the hearing at Metro's website, at least 10 days prior to the meeting.~~

~~——(u)—— The Council shall consider the hearings officer's report and recommendation at the 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 upon the record of those proceedings. 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.~~

~~——(v)—— The Council may approve expansion of the UGB to include land outside the Metro jurisdictional boundary only upon a written agreement with the local government that exercises land use planning authority over the subject land that the local government will apply the interim protection requirements set forth in Section 3.07.1110 of the Metro Code until Metro annexes the subject land to Metro. A city or county may approve an amendment to its comprehensive plan, pursuant to Section 3.07.1120 of the Metro Code so long as the amendment does not become effective until Metro annexes the subject land to Metro.~~

3.01.030 Major Amendments—Criteria

~~—(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.~~

~~—(b)— The applicant shall demonstrate that the proposed amendment to the UGB will provide for an orderly and efficient transition from rural to urban land use and complies with the criteria and factors in subsections (b), (c) and (d) of Section 3.01.020 of this chapter. The applicant shall also demonstrate that:~~

~~—(1)— The proposed uses of the subject land would be compatible, or through measures can be made compatible, with uses of adjacent land;~~

~~—(2)— The amendment will not result in the creation of an island of urban land outside the UGB or an island of rural land inside the UGB; and~~

~~—(3)— If the amendment would add land for public school facilities, a conceptual school plan as described in Section 3.07.1120(f) has been completed.~~

~~—(c)— If the Council incidentally adds land to the UGB for housing in order to facilitate a trade, the Council shall designate the land to allow an average density of at least 10 units per net developable acre or such other density that is consistent with the 2040 Growth Concept plan designation for the area.~~

3.01.033 Minor Adjustments—Procedures

~~—(a)— A city, a county, a special district, Metro or a property owner may initiate a minor adjustment to the UGB by filing an application on a form provided by Metro. The application shall include a list of the names and addresses of owners of property within 100 feet of the land involved in the application. The application shall also include the positions on the application of appropriate local governments and special districts, in the manner required by Section 3.01.025(d).~~

~~—(b)— The Chief Operating Officer will determine whether an application is complete and shall notify the applicant of the determination within ten working days after the filing of the application. If the application is not complete, the applicant shall complete it within 14 days of notice of incompleteness. The Chief Operating Officer will dismiss an application and return application fees if a complete application is not received within 14 days of the notice of incompleteness.~~

~~—(c)— Notice to the public of a proposed minor adjustment of the UGB shall be provided as prescribed in Section 3.01.050 of this chapter.~~

~~———— (d) ——— The Chief Operating Officer shall review the application for compliance with the criteria in Section 3.01.035 of this chapter and shall issue an order with analysis and conclusions within 90 days of receipt of a complete application. The Chief Operating Officer shall send a copy of the order to the applicant, the city or county with jurisdiction over the land that is the subject of the application, to each member of the Council and any person who requests a copy.~~

~~———— (e) ——— The applicant or any person who commented on the application may appeal the Chief Operating Officer's order to the Metro Council by filing an appeal on a form provided by Metro within 14 days after receipt of the order. A member of the Council may request in writing within 14 days of receipt of the order that the decision be reviewed by the Council. The Council shall consider the appeal or Councilor referral at a public hearing held not more than 60 days following receipt of a timely appeal or referral.~~

~~———— (f) ——— Notice to the public of a Council hearing on a proposed minor adjustment to the UGB shall be provided as prescribed in Section 3.01.050 of this chapter.~~

~~———— (g) ——— Following the hearing, the Council shall uphold, deny or modify the Chief Operating Officer's order. The Council shall issue an order with its analysis and conclusions and send a copy to the appellant, the city or county with jurisdiction over the land that is the subject of the application and any person who requests a copy.~~

3.01.035 Minor Adjustments – Criteria

~~———— (a) ——— The purpose of this section is to provide a mechanism to make small changes to the UGB in order to make it function more efficiently and effectively. It is not the purpose of this section to add land to the UGB to satisfy a need for housing or employment. This section establishes criteria that embody state law and Regional Framework Plan policies applicable to minor adjustments.~~

~~———— (b) ——— Metro may adjust the UGB under this section only for the following reasons: (1) to site roads and lines for public facilities and services; (2) to trade land outside the UGB for land inside the UGB; or (3) to make the UGB coterminous with nearby property lines or natural or built features.~~

~~———— (c) ——— To make a minor adjustment to site a public facility line or road, or to facilitate a trade, Metro shall find that:~~

~~———— (1) ——— The adjustment will result in the addition to the UGB of no more than two net acres for a public facility line or road and no more than 20 net acres in a trade;~~

~~———— (2) ——— Adjustment of the UGB will make the provision of public facilities and services more efficient or less costly;~~

~~———— (3) ——— Urbanization of the land added by the adjustment would have no more adverse environmental, energy, economic or social consequences than urbanization of land within the existing UGB;~~

~~(4) Urbanization of the land added by the adjustment would have no more adverse effect upon agriculture or forestry than urbanization of land within the existing UGB;~~

~~(5) The adjustment will help achieve the 2040 Growth Concept;~~

~~(6) The adjustment will not result in an island of urban land outside the UGB or an island of rural land inside the UGB; and~~

~~(7) If the adjustment is to facilitate a trade, the adjustment would not add land to the UGB that is currently designated for agriculture or forestry pursuant to a statewide planning goal.~~

~~(d) To approve a minor adjustment to make the UGB coterminous with property lines, natural or built features, Metro shall find that:~~

~~(1) The adjustment will result in the addition of no more than two net acres to the UGB;~~

~~(2) Urbanization of the land added by the adjustment would have no more adverse environmental, energy, economic or social consequences than urbanization of land within the existing UGB;~~

~~(3) Urbanization of the land added by the adjustment would have no more adverse effect upon agriculture or forestry than urbanization of land within the existing UGB;~~

~~(4) The adjustment will help achieve the 2040 Growth Concept; and~~

~~(5) The adjustment will not result in an island of urban land outside the UGB or an island of rural land inside the UGB.~~

~~(e) Where the UGB is intended to be coterminous with the 100-year floodplain, as indicated on the map of the UGB maintained by Metro's Data Resource Center, Metro may adjust the UGB in order to conform it to a more recent delineation of the floodplain. To approve such an adjustment, Metro shall find that:~~

~~(1) The delineation was done by a professional engineer registered by the State of Oregon;~~

~~(2) The adjustment will result in the addition of no more than 20 net acres to the UGB;~~

~~(3) The adjustment will help achieve the 2040 Growth Concept; and~~

~~(4) The adjustment will not result in an island of urban land outside the UGB or an island of rural land inside the UGB.~~

~~(f) If a minor adjustment adds more than two acres of land available for housing to the UGB, Metro shall designate the land to allow an average density of at least 10 units per net developable acre or such other density that is consistent with the 2040 Growth Concept designation for the area.~~

~~(g) The Chief Operating Officer shall submit a report to the Council at the end of each calendar year with an analysis of all minor adjustments made during the year. The report shall demonstrate how the adjustments, when considered cumulatively, are consistent with and help achieve the 2040 Growth Concept.~~

3.01.040 Conditions of Approval

~~(a) Land added to the UGB by legislative amendment pursuant to Section 3.01.015 or by major amendment pursuant to Section 3.01.025 shall be subject to the requirements of Title 11, Planning for New Urban Areas, of the Urban Growth Management Functional Plan (Metro Code Chapter 3.07.1105, et seq.).~~

~~(b) Unless a comprehensive plan amendment has been previously approved for the land pursuant to Section 3.01.012(c), when the Council adopts a legislative or major amendment to the UGB, the Council shall:~~

~~(1) In consultation with affected local governments, designate the city or county responsible for adoption of amendments to comprehensive plans and land use regulations to allow urbanization of each area added to the UGB, pursuant to Title 11. If local governments have an adopted agreement that establishes responsibility for adoption of amendments to comprehensive plans and land use regulations for the area, the Council shall assign responsibility according to the agreement.~~

~~(2) Establish the 2040 Growth Concept design type designations applicable to the land added to the UGB, including the specific land need, if any, that is the basis for the amendment. If the design type designation authorizes housing, the Council shall designate the land to allow an average density of at least 10 units per net developable acre or such other density that is consistent with the design type.~~

~~(3) Establish the boundaries of the area that shall be included in the planning required by Title 11. The boundary of the planning area may include all or part of one or more designated urban reserves.~~

~~(4) Establish the time period for city or county compliance with the requirements of Title 11, which shall not be less than two years following the effective date of the ordinance adding the area to the UGB.~~

~~———— (e) ——— When it adopts a legislative or major amendment to the UGB, the Council may establish conditions that it deems necessary to ensure that the addition of land complies with state planning laws and the Regional Framework Plan. If a city or county fails to satisfy a condition, the Council may enforce the condition after following the notice and hearing process set forth in Section 3.07.870 of the Urban Growth Management Functional Plan.~~

~~3.01.045 Fees~~

~~———— (a) ——— Each application submitted by a property owner or group of property owners pursuant to this chapter shall be accompanied by a filing fee in an amount to be established by resolution of the Council. Such fees shall not exceed the actual costs of Metro to process an application. The filing fee shall include administrative costs and the cost of hearings officer and of public notice.~~

~~———— (b) ——— The fees for costs shall be charged from the time an application is filed through mailing of the notice of adoption or denial to the Department of Land Conservation and Development and other interested persons.~~

~~———— (c) ——— Before a hearing is scheduled, an applicant shall submit a fee deposit.~~

~~———— (d) ——— The unexpended portion of an applicant's deposit, if any, shall be returned to the applicant at the time of final disposition of the application. If hearings costs exceed the amount of the deposit, the applicant shall pay to Metro an amount equal to the costs in excess of the deposit prior to final action by the Council.~~

~~———— (e) ——— The Council may, by resolution, reduce, refund or waive the fee, or portion thereof, if it finds that the fee would create an undue hardship for the applicant.~~

~~3.01.050 Notice Requirements~~

~~———— (a) ——— For a proposed legislative amendment under Section 3.01.015, the Chief Operating Officer shall provide notice of the hearings in the following manner:~~

~~———— (1) ——— In writing to the director of the Department of Land Conservation and Development at least 45 days before the first public hearing on the proposal;~~

~~———— (2) ——— In writing to the local governments of the Metro area at least 30 days before the first public hearing on the proposal; and~~

~~———— (3) ——— To the general public by an advertisement no smaller than 1/8 page in a newspaper of general circulation in the Metro area and by posting notice on the Metro website.~~

~~———— (b) ——— For a proposed major amendment under Section 3.01.025, the Chief Operating Officer shall provide notice of the hearing in the following manner:~~

- ~~(1) In writing at least 45 days before the first public hearing on the proposal to:
 - ~~(A) The applicant;~~
 - ~~(B) The director of the Department of Land Conservation and Development;~~
 - ~~(C) The owners of property that is being considered for addition to the UGB; and~~
 - ~~(D) The owners of property within 250 feet of property that is being considered for addition to the UGB, or within 500 feet of the property if it is designated for agriculture or forestry pursuant to a statewide planning goal;~~~~
- ~~(2) In writing at least 30 days before the first public hearing on the proposal to:
 - ~~(A) The local governments of the Metro area;~~
 - ~~(B) A neighborhood association, community planning organization, or other organization for citizen involvement whose geographic area of interest includes or is adjacent to the subject property and which is officially recognized as entitled to participate in land use decisions by the cities and counties whose jurisdictional boundaries include or are adjacent to the site, and to any other person who requests notice of amendments to the UGB; and~~~~
- ~~(3) To the general public by posting notice on the Metro website at least 30 days before the first public hearing on the proposal.~~
- ~~(c) The notice required by subsections (a) and (b) of this section shall include:
 - ~~(1) A map showing the location of the area subject to the proposed amendment;~~
 - ~~(2) The time, date and place of the hearing;~~
 - ~~(3) A description of the property reasonably calculated to give notice as to its actual location, with street address or other easily understood geographical reference if available;~~
 - ~~(4) A statement that interested persons may testify and submit written comments at the hearing;~~~~

- ~~(5) The name of the Metro staff to contact and telephone number for more information;~~
- ~~(6) A statement that a copy of the written report and recommendation of the Chief Operating Officer on the proposed amendment will be available at reasonable cost 20 days prior to the hearing; and~~
- ~~(7) A general explanation of the criteria for the amendment, the requirements for submission of testimony and the procedure for conduct of hearings;~~
- ~~(8) For proposed major amendments only:
 - ~~(A) An explanation of the proposed boundary change;~~
 - ~~(B) A list of the applicable criteria for the proposal; and~~
 - ~~(C) A statement that failure to raise an issue at the hearing, orally or in writing, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes an appeal based on the issue.~~~~
- ~~(9) For the owners of property described in paragraph (b)(1)(C) of this section, the information required by ORS 268.393(3).~~
- ~~(d) For a proposed minor adjustment under Section 3.01.033, the Chief Operating Officer shall provide notice in the following manner:
 - ~~(1) In writing to the director of the Department of Land Conservation and Development at least 45 days before the issuance of an order on the proposal;~~
 - ~~(2) In writing at least 20 days before the issuance of an order on the proposal to:
 - ~~(A) The applicant and the owners of property subject to the proposed adjustment;~~
 - ~~(B) The owners of property within 500 feet of the property subject to the proposed adjustment;~~
 - ~~(C) The local governments in whose planning jurisdiction the subject property lies or whose planning jurisdiction lies adjacent to the subject property;~~
 - ~~(D) Any neighborhood association, community planning organization, or other organization for citizen involvement whose geographic~~~~~~

~~area of interest includes the area subject to the proposed amendment and which is officially recognized as entitled to participate in land use decisions by the city or county whose jurisdictional boundary includes the subject property; and~~

~~(E) Any other person requesting notification of UGB changes.~~

~~(e) The notice required by subsection (d) of this section shall include:~~

~~(1) A map showing the location of the area subject to the proposed amendment;~~

~~(2) A description of the property reasonably calculated to give notice as to its actual location, with street address or other easily understood geographical reference if available;~~

~~(3) A statement that interested persons may submit written comments and the deadline for the comments;~~

~~(4) The name of the Metro staff to contact and telephone number for more information; and~~

~~(5) A list of the applicable criteria for the proposal.~~

~~(f) The Chief Operating Officer shall notify each county and city in the district of each amendment of the UGB.~~

~~3.01.055 Regular Review of Chapter~~

~~The procedures in this chapter shall be reviewed by Metro every five years, and can be modified by the Council at any time to correct any deficiencies which may arise.~~

~~3.01.060 Severability~~

~~Should a section, or portion of any section of this chapter, be held to be invalid or unconstitutional, the remainder of this chapter shall continue in full force and effect.~~

Exhibit L to Ordinance No. 10-1244

Title 14 is added to the Urban Growth Management Functional Plan

TITLE 14: URBAN GROWTH BOUNDARY

3.07.1405 Purpose

The Regional Framework Plan (RFP) calls for a clear transition from rural to urban development, an adequate supply of urban land to accommodate long-term population and employment, and a compact urban form. Title 14 prescribes criteria and procedures for amendments to the urban growth boundary (UGB) to achieve these objectives.

3.07.1410 Urban Growth Boundary

A. The UGB for the metropolitan area is incorporated into this title and is depicted on the Urban Growth Boundary and Urban and Rural Reserves Map. Cities and counties within the Metro boundary shall depict the portion of the UGB, if any, that lies within their boundaries on their comprehensive plan maps. Within 21 days after an amendment to the UGB under this title, the COO shall submit the amended UGB to the city and county in which the amended UGB lies. The city and county shall amend their comprehensive plan maps to depict the amended UGB within one year following receipt of the amendment from the COO.

B. Urban and Rural Reserves are depicted on the Urban Growth Boundary and Urban and Rural Reserves Map. Amendments to the UGB made pursuant to this title shall be based upon this map.

3.04.1420 Legislative Amendment to UGB - Procedures

A. Legislative amendments follow periodic analysis of the capacity of the UGB and the need to amend it to accommodate long-range growth in population and employment. The Metro Council shall initiate a legislative amendment to the UGB when required by state law and may initiate a legislative amendment when it determines there is a need to add land to the UGB.

B. Except as otherwise provided in this title, the Council shall make legislative amendments to the UGB by ordinance in the manner prescribed for ordinances in Chapter VII of the Metro Charter. For each legislative amendment, the Council shall establish a schedule of public hearings that allows for consideration of the proposed amendment by MPAC, other advisory committees and the general public.

C. Notice to the public of a proposed legislative amendment of the UGB shall be provided as prescribed in section 3.07.1465.

D. Prior to the final hearing on a proposed legislative amendment of the UGB in excess of 100 acres, the COO shall prepare a report on the effect of the proposed amendment on existing residential neighborhoods. The COO shall provide copies of the report to all households located

within one mile of the proposed amendment area and to all cities and counties within the district at least 20 days prior to the hearing. The report shall address:

1. Traffic patterns and any resulting increase in traffic congestion, commute times and air quality;
2. Whether parks and open space protection in the area to be added will benefit existing residents of the district as well as future residents of the added territory; and
3. The cost impacts on existing residents of providing needed public facilities and services, police and fire services, public schools, emergency services and parks and open spaces.

3.07.1425 Legislative Amendment to the UGB - Criteria

A. This section sets forth the factors and criteria for amendment of the UGB from state law and the Regional Framework Plan. Compliance with this section shall constitute compliance with statewide planning Goal 14 (Urbanization) and the Regional Framework Plan.

B. The Council shall determine whether there is a need to amend the UGB. In determining whether a need exists, the Council may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need. The Council's determination shall be based upon:

1. Demonstrated need to accommodate future urban population, consistent with a 20-year population range forecast coordinated with affected local governments; and
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; and
3. A demonstration that any need shown under paragraphs 1 and 2 of this subsection cannot reasonably be accommodated on land already inside the UGB.

C. If the Council determines there is a need to amend the UGB, the Council shall evaluate areas designated urban reserve for possible addition to the UGB and shall determine which areas better meet the need considering the following factors:

1. Efficient accommodation of identified land needs;
2. Orderly and economic provision of public facilities and services;
3. Comparative environmental, energy, economic and social consequences; and
4. Compatibility of proposed urban uses with nearby agricultural and forest activities occurring on land outside the UGB designated for agriculture or forestry pursuant to a statewide planning goal.

5. Equitable and efficient distribution of housing and employment opportunities throughout the region;
6. Contribution to the purposes of Centers and Corridors;
7. Protection of farmland that is most important for the continuation of commercial agriculture in the region;
8. Avoidance of conflict with regionally significant fish and wildlife habitat; and
9. Clear transition between urban and rural lands, using natural and built features to mark the transition.

D. The Council may consider land not designated urban or rural reserve for possible addition to the UGB only if it determines that:

1. Land designated urban reserve cannot reasonably accommodate the need established pursuant to subsection B of this section; or
2. The land is subject to a concept plan approved pursuant to section 3.07.1110 of this chapter, involves no more than 50 acres not designated urban or rural reserve and will help the concept plan area urbanize more efficiently and effectively.

E. The Council may not add land designated rural reserve to the UGB.

F. The Council may not amend the UGB in such a way that would create an island of urban land outside the UGB or an island of rural land inside the UGB.

3.07.1430 Major Amendments - Procedures

A. A city, a county, a special district or a property owner may initiate a major amendment to the UGB by filing an application on a form provided by Metro. The COO will accept applications for major amendments between February 1 and March 15 of each calendar year except that calendar year in which the Council is completing its analysis of buildable land supply under ORS 197.299. Upon a request by a Metro Councilor and a finding of good cause, the Metro Council may accept an application at other times by a vote of five members of the Council.

B. Except for that calendar year in which the Council is completing its analysis of buildable land supply, the COO shall give notice of the March 15 deadline for applications for major amendments not less than 120 days before the deadline and again 90 days before the deadline in a newspaper of general circulation in Metro and in writing to each city and county in Metro and anyone who has requested notification. The notice shall explain the consequences of failure to file before the deadline and shall specify the Metro representative from whom additional information may be obtained.

C. With the application, the applicant shall provide the names and addresses of property owners for notification purposes, consistent with section 3.07.1465. The list shall be certified as true and accurate as of the specified date by a title company, a county assessor or designate of the assessor or the applicant.

D. The applicant shall provide a written statement from the governing body of each city or county with land use jurisdiction over the area and any special district that has an agreement with that city or county to provide an urban service to the area that it recommends approval or denial of the application. The Council may waive this requirement if the city, county or special district has a policy not to comment on major amendments, or has not adopted a position within 120 days after the applicant's request for the statement. The governing body of a local government may delegate the decision to its staff.

E. The COO will determine whether an application is complete and will notify the applicant of the determination within seven working days after the filing of the application. The COO will dismiss an application and return application fees if a complete application is not received within the 14 days after the notice of incompleteness.

F. Within 14 days after receipt of a complete application, the COO will:

1. Set the matter for a public hearing before a hearings officer for a date no later than 55 days following receipt of a complete application; and
2. Notify the public of the public hearing as prescribed in section 3.07.1465 of this title.

G. The COO shall submit a report and recommendation on the application to the hearings officer not less than 15 days before the hearing and send copies to the applicant and others who have requested copies. Any subsequent report by the COO to be used at the hearing shall be available to the public at least seven days prior to the hearing.

H. If the proposed major amendment would add more than 100 acres to the UGB, the COO shall prepare a report on the effect of the proposed amendment on existing residential neighborhoods in the manner prescribed in subsection D of section 3.07.1420.

I. An applicant may request postponement of the hearing within 20 days after filing a complete application. The COO may postpone the hearing for no more than 60 days. If the applicant fails to request rescheduling within 90 days after the request for postponement, the application shall be considered withdrawn and the COO will return the unneeded portion of the fee deposit assessed pursuant to section 3.07.1460.

J. Participants at a hearing before a hearings officer need not be represented by an attorney. If a person wishes to represent an organization orally or in writing, the person must show the date of the meeting at which the organization adopted the position presented and authorized the person to represent it.

K. Failure of the applicant to appear at the hearing shall be grounds for dismissal of the application unless the applicant requests a continuance prior to the hearing. The applicant has the burden of demonstrating that the proposed amendment complies with the criteria.

L. The hearings officer shall provide the following information to participants at the beginning of the hearing:

1. The criteria applicable to major amendments and the procedures for the hearing;
2. A statement that testimony and evidence must be directed toward the applicable criteria or other criteria the person believes apply to the proposal; and
3. A statement that failure to raise an issue in a manner sufficient to afford the hearings officer and participants an opportunity to respond to the issue precludes appeal of that issue.

M. The hearing shall be conducted in the following order:

1. Presentation of the report and recommendation of the COO;
2. Presentation of evidence and argument by the applicant;
3. Presentation of evidence and argument in support of or opposition to the application by other participants; and
4. Presentation of rebuttal evidence and argument by the applicant.

N. The hearings officer may grant a request to continue the hearing or to leave the record open for presentation of additional evidence upon a demonstration that the evidence could not have been presented during the hearing. If the hearings officer grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. A reasonable opportunity shall be provided at the continued hearing for persons to present and rebut new evidence.

O. If new evidence is submitted at the continued hearing, the hearings officer may grant a request, made prior to the conclusion of the continued hearing, to leave the record open to respond to the new evidence. If the hearings officer grants the request, the record shall be left open for at least seven days. Any participant may respond to new evidence during the period the record is left open.

P. Cross-examination by parties shall be by submission of written questions to the hearings officer, who shall give participants an opportunity to submit such questions prior to closing the hearing. The hearings officer may set reasonable time limits for oral testimony and may exclude or limit cumulative, repetitive, or immaterial testimony.

Q. A verbatim record shall be made of the hearing, but need not be transcribed unless necessary for appeal.

R. The hearings officer may consolidate applications for hearing after consultation with Metro staff and applicants. If the applications are consolidated, the hearings officer shall prescribe rules to avoid duplication or inconsistent findings, protect the rights of all participants, and allocate the charges on the basis of cost incurred by each applicant.

S. Within 15 days following the close of the record, the hearings officer shall submit a proposed order, with findings of fact and conclusions of law and the record of the hearing, to the COO, who shall make it available for review by participants.

T. Within seven days after receipt of the proposed order from the hearings officer, the COO shall set the date and time for consideration of the proposed order by the Council, which date shall be no later than 40 days after receipt of the proposed order. The COO shall provide written notice of the Council meeting to the hearings officer and participants at the hearing before the hearings officer, and shall post notice of the hearing at Metro's website, at least 10 days prior to the meeting.

U. The Council shall consider the hearings officer's report and recommendation at the meeting set by the COO. The Council will allow oral and written argument by those who participated in the hearing before the hearings officer. Argument must be based upon the record of those proceedings. 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.

3.07.1435 Major Amendments – Expedited Procedures

A. The COO may file an application at any time to add land to the UGB for industrial use, pursuant to section 3.07.460, by major amendment following the expedited procedures in this section. The application under this section remains subject to subsections C, D, H, M and Q of section 3.07.1430.

B. Within 10 days after receipt of a complete application, the Council President will:

1. Set the matter for a public hearing before the Council for a date no later than 55 days following receipt of a complete application; and
2. Notify the public of the public hearing as prescribed in section 3.07.1465.

C. The COO shall submit a report and recommendation on the application to the Council not less than 15 days before the hearing and send copies to those who have requested copies. Any subsequent report by the COO to be used at the hearing shall be available to the public at least seven days prior to the hearing.

D. Participants at the hearing need not be represented by an attorney. If a person wishes to represent an organization orally or in writing, the person must show the date of the meeting at which the organization adopted the position presented and authorized the person to represent it.

E. The Council President shall provide the following information to participants at the beginning of the hearing:

1. The criteria applicable to major amendments and the procedures for the hearing;
2. A statement that testimony and evidence must be directed toward the applicable criteria or other criteria the person believes apply to the proposal.

F. The Council President may grant a request to continue the hearing or to leave the record open for presentation of additional evidence upon a demonstration that the evidence could not have been presented during the hearing. If the Council President grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. A reasonable opportunity shall be provided at the continued hearing for persons to present and rebut new evidence.

G. If new evidence is submitted at the continued hearing, the Council President may grant a request, made prior to the conclusion of the continued hearing, to leave the record open to respond to the new evidence. If the Council President grants the request, the record shall be left open for at least seven days. Any participant may respond to new evidence during the period the record is left open.

H. The Council President may set reasonable time limits for oral testimony and may exclude or limit cumulative, repetitive, or immaterial testimony.

I. Within 15 days following the close of the record, the Council shall adopt:

1. An ordinance, with findings of fact and conclusions of law, that amends the UGB to add all or a portion of the territory described in the application; or
2. A resolution adopting an order, with findings of fact and conclusions of law, that denies the application.

3.07.1440 Major Amendments - Criteria

A. The purpose of the major amendment process is to provide a mechanism to address needs for land that cannot wait until the next analysis of buildable land supply under ORS 197.299. Land may be added to the UGB under sections 3.07.1430 and 3.07.1440 only for public facilities and services, public schools, natural areas and other non-housing needs and as part of a land trade under subsection D. An applicant under section 3.07.1430 must demonstrate compliance with this purpose and these limitations.

B. The applicant shall demonstrate that the proposed amendment to the UGB will provide for an orderly and efficient transition from rural to urban land use and complies with the criteria

and factors in subsections B, C, D, E, F and G of section 3.07.1425. The applicant shall also demonstrate that:

1. The proposed uses of the subject land would be compatible, or through measures can be made compatible, with uses of adjacent land;
2. If the amendment would add land for public school facilities, the coordination required by subsection C(5) of section 3.07.1120 of this chapter has been completed; and
3. If the amendment would add land for industrial use pursuant to section 3.07.1435, a large site or sites cannot reasonably be created by land assembly or reclamation of a brownfield site.

C. If the application was filed under section 3.07.1435, the applicant shall demonstrate that the amendment is consistent with any concept plan for the area developed pursuant to section 3.07.1110 of this chapter.

D. To facilitate implementation of the Metropolitan Greenspaces Master Plan of 1992, the Council may add land to the UGB in a trade that removes a nearly equal amount of land from the UGB. If the Council designates the land to be added for housing, it shall designate an appropriate average density per net developable acre.

3.07.1445 Minor Adjustments - Procedures

A. Minor adjustments make small changes to the UGB so that land within the UGB functions more efficiently and effectively. A city, a county, a special district, Metro or a property owner may initiate a minor adjustment to the UGB by filing an application on a form provided by Metro. The application shall include a list of the names and addresses of owners of property within 100 feet of the land involved in the application. The application shall also include the positions on the application of appropriate local governments and special districts, in the manner required by subsection D of section 3.07.1430.

B. The COO will determine whether an application is complete and shall notify the applicant of the determination within ten working days after the filing of the application. If the application is not complete, the applicant shall complete it within 14 days of notice of incompleteness. The COO will dismiss an application and return application fees if a complete application is not received within 14 days of the notice of incompleteness.

C. Notice to the public of a proposed minor adjustment of the UGB shall be provided as prescribed in section 3.07.1465.

D. The COO shall review the application for compliance with the criteria in section 3.07.1450 and shall issue an order with analysis and conclusions within 90 days of receipt of a complete application. The COO shall send a copy of the order to the applicant, the city or county with jurisdiction over the land that is the subject of the application, to each member of the Council and any person who requests a copy.

E. The applicant or any person who commented on the application may appeal the COO's order to the Council by filing an appeal on a form provided by Metro within 14 days after receipt of the order. A member of the Council may request in writing within 14 days of receipt of the order that the decision be reviewed by the Council. The Council shall consider the appeal or Councilor referral at a public hearing held not more than 60 days following receipt of a timely appeal or referral.

F. Notice to the public of a Council hearing on a proposed minor adjustment to the UGB shall be provided as prescribed in section 3.07.1465.

G. Following the hearing, the Council shall uphold, deny or modify the COO's order. The Council shall issue an order with its analysis and conclusions and send a copy to the appellant, the city or county with jurisdiction over the land that is the subject of the application and any person who requests a copy.

3.07.1450 Minor Adjustments - Criteria

A. The purpose of this section is to provide a mechanism to make small changes to the UGB in order to make land within it function more efficiently and effectively. It is not the purpose of this section to add land to the UGB to satisfy a need for housing or employment. This section establishes criteria that embody state law and Regional Framework Plan policies applicable to minor adjustments.

B. Metro may adjust the UGB under this section only for the following reasons: (1) to site roads and lines for public facilities and services; (2) to trade land outside the UGB for land inside the UGB; or (3) to make the UGB coterminous with nearby property lines or natural or built features.

C. To make a minor adjustment to site a public facility line or road, or to facilitate a trade, Metro shall find that:

1. The adjustment will result in the addition to the UGB of no more than two net acres for a public facility line or road and no more than 20 net acres in a trade;
2. Adjustment of the UGB will make the provision of public facilities and services easier or more efficient;
3. Urbanization of the land added by the adjustment would have no more adverse environmental, energy, economic or social consequences than urbanization of land within the existing UGB;
4. Urbanization of the land added by the adjustment would have no more adverse effect upon agriculture or forestry than urbanization of land within the existing UGB;
5. The adjustment will help achieve the 2040 Growth Concept;

6. The adjustment will not result in an island of urban land outside the UGB or an island of rural land inside the UGB; and
7. If the adjustment is to facilitate a trade, the adjustment would not add land to the UGB that is designated rural reserve or for agriculture or forestry pursuant to a statewide planning goal.

D. To approve a minor adjustment to make the UGB coterminous with property lines, natural or built features, Metro shall find that:

1. The adjustment will result in the addition of no more than two net acres to the UGB;
2. Urbanization of the land added by the adjustment would have no more adverse environmental, energy, economic or social consequences than urbanization of land within the existing UGB;
3. Urbanization of the land added by the adjustment would have no more adverse effect upon agriculture or forestry than urbanization of land within the existing UGB;
4. The adjustment will help achieve the 2040 Growth Concept; and
5. The adjustment will not result in an island of urban land outside the UGB or an island of rural land inside the UGB.

E. Where the UGB is intended to be coterminous with the 100-year floodplain, as indicated on the map of the UGB maintained by Metro's Data Resource Center, Metro may adjust the UGB in order to conform it to a more recent delineation of the floodplain. To approve such an adjustment, Metro shall find that:

1. The delineation was done by a professional engineer registered by the State of Oregon;
2. The adjustment will result in the addition of no more than 20 net acres to the UGB;
3. The adjustment will help achieve the 2040 Growth Concept; and
4. The adjustment will not result in an island of urban land outside the UGB or an island of rural land inside the UGB.

F. If a minor adjustment adds more than two acres of land available for housing to the UGB, Metro shall designate an appropriate average density per net developable acre for the area.

G. The COO shall submit a report to the Council at the end of each calendar year with an analysis of all minor adjustments made during the year. The report shall demonstrate how the adjustments, when considered cumulatively, are consistent with and help achieve the 2040 Growth Concept.

3.07.1455 Conditions of Approval

A. Land added to the UGB pursuant to sections 3.07.1420, 3.07.1430 and 3.07.1435 shall be subject to the requirements of sections 3.07.1120 and 3.07.1130 of this chapter.

B. If the Council amends the UGB pursuant to sections 3.07.1420, 3.07.1430 or 3.07.1435, it shall:

1. In consultation with affected local governments, designate the city or county responsible for adoption of amendments to comprehensive plans and land use regulations to allow urbanization of each area added to the UGB, pursuant to Title 11 of this chapter. If local governments have an agreement in a concept plan developed pursuant to Title 11 that establishes responsibility for adoption of amendments to comprehensive plans and land use regulations for the area, the Council shall assign responsibility according to the agreement.
2. Establish the 2040 Growth Concept design type designations applicable to the land added to the UGB, including the specific land need, if any, that is the basis for the amendment. If the design type designation authorizes housing, the Council shall designate an appropriate average density per net developable acre consistent with the need for which the UGB is expanded.
3. Establish the boundaries of the area that shall be included in the planning required by Title 11. A planning area boundary may include territory designated urban reserve, outside the UGB.
4. Establish the time period for city or county compliance with the requirements of Title 11, which shall be two years following the effective date of the ordinance adding the area to the UGB unless otherwise specified.

C. If the Council amends the UGB pursuant to sections 3.07.1420, 3.07.1430 or 3.07.1435, it may establish other conditions it deems necessary to ensure the addition of land complies with state planning laws and the Regional Framework Plan. If a city or county fails to satisfy a condition, the Council may enforce the condition after following the notice and hearing process set forth in section 3.07.850 of this chapter.

3.07.1460 Fees

A. Each application submitted by a property owner or group of property owners pursuant to this title shall be accompanied by a filing fee in an amount to be established by the Council. Such fee shall not exceed Metro's actual cost to process an application. The fee may include administrative costs, the cost of a hearings officer and of public notice.

B. The fee for costs shall be charged from the time an application is filed through mailing of the notice of adoption or denial to the Department of Land Conservation and Development and other interested persons.

C. Before a hearing is scheduled, an applicant shall submit a fee deposit. In the case of an application for a minor adjustment pursuant to section 3.07.1445, the applicant shall submit the fee deposit with the application.

D. The unexpended portion of an applicant's deposit, if any, shall be returned to the applicant at the time of final disposition of the application. If hearings costs exceed the amount of the deposit, the applicant shall pay to Metro an amount equal to the costs in excess of the deposit prior to final action by the Council.

E. The Council may, by resolution, reduce, refund or waive the fee, or portion thereof, if it finds that the fee would create an undue hardship for the applicant.

3.07.1465 Notice Requirements

A. For a proposed legislative amendment under section 3.07.1420, the COO shall provide notice of the public hearing in the following manner:

1. In writing to the Department of Land Conservation and Development and local governments of the Metro region at least 45 days before the first public hearing on the proposal; and
2. To the general public at least 45 days before the first public hearing by an advertisement no smaller than 1/8-page in a newspaper of general circulation in the Metro area and by posting notice on the Metro website.

B. For a proposed major amendment under sections 3.07.1430 or 3.07.1435, the COO shall provide notice of the hearing in the following manner:

1. In writing at least 45 days before the first public hearing on the proposal to:
 - a. The applicant;
 - b. The director of the Department of Land Conservation and Development;
 - c. The owners of property that is being considered for addition to the UGB; and
 - d. The owners of property within 250 feet of property that is being considered for addition to the UGB, or within 500 feet of the property if it is designated for agriculture or forestry pursuant to a statewide planning goal;
2. In writing at least 30 days before the first public hearing on the proposal to:
 - a. The local governments of the Metro area;
 - b. A neighborhood association, community planning organization, or other organization for citizen involvement whose geographic area of interest includes or

is adjacent to the subject property and which is officially recognized as entitled to participate in land use decisions by the cities and counties whose jurisdictional boundaries include or are adjacent to the site, and to any other person who requests notice of amendments to the UGB; and

3. To the general public by posting notice on the Metro website at least 30 days before the first public hearing on the proposal.

C. The notice required by subsections A and B of this section shall include:

1. A map showing the location of the area subject to the proposed amendment;
2. The time, date and place of the hearing;
3. A description of the property reasonably calculated to give notice as to its actual location, with street address or other easily understood geographical reference if available;
4. A statement that interested persons may testify and submit written comments at the hearing;
5. The name of the Metro staff to contact and telephone number for more information;
6. A statement that a copy of the written report and recommendation of the COO on the proposed amendment will be available at reasonable cost 20 days prior to the hearing; and
7. A general explanation of the criteria for the amendment, the requirements for submission of testimony and the procedure for conduct of hearings;
8. For proposed major amendments only:
 - a. An explanation of the proposed boundary change;
 - b. A list of the applicable criteria for the proposal; and
 - c. A statement that failure to raise an issue at the hearing, orally or in writing, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes an appeal based on the issue.
9. For the owners of property described in subsection B(1)(c) of this section, the information required by ORS 268.393(3).

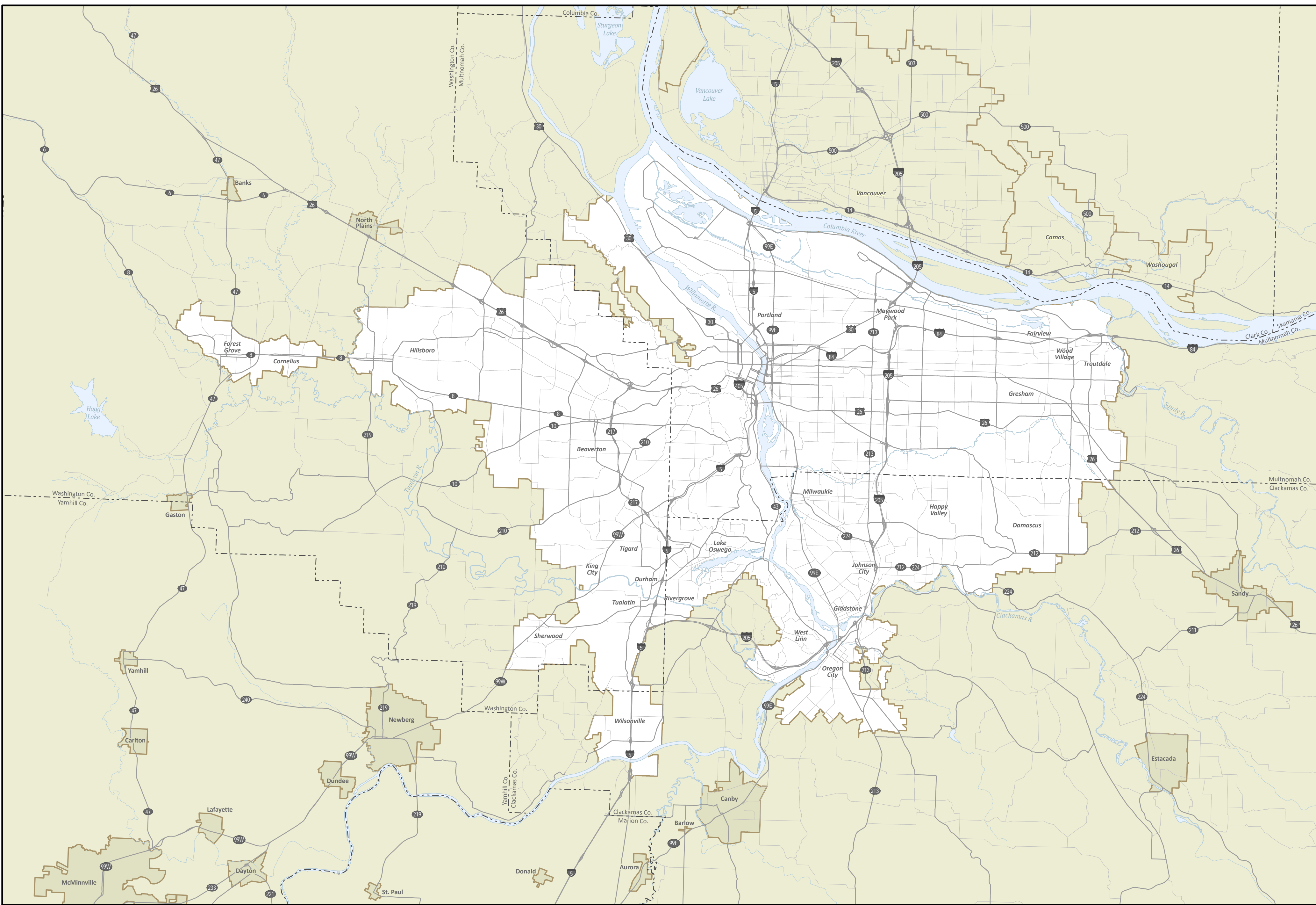
D. For a proposed minor adjustment under section 3.07.1445, the COO shall provide notice in the following manner:

1. In writing to the director of the Department of Land Conservation and Development at least 45 days before the issuance of an order on the proposal;
2. In writing at least 20 days before the issuance of an order on the proposal to:
 - a. The applicant and the owners of property subject to the proposed adjustment;
 - b. The owners of property within 500 feet of the property subject to the proposed adjustment;
 - c. The local governments in whose planning jurisdiction the subject property lies or whose planning jurisdiction lies adjacent to the subject property;
 - d. Any neighborhood association, community planning organization, or other organization for citizen involvement whose geographic area of interest includes the area subject to the proposed amendment and which is officially recognized as entitled to participate in land use decisions by the city or county whose jurisdictional boundary includes the subject property; and
 - e. Any other person requesting notification of UGB changes.

E. The notice required by subsection D of this section shall include:

1. A map showing the location of the area subject to the proposed amendment;
2. A description of the property reasonably calculated to give notice as to its actual location, with street address or other easily understood geographical reference if available;
3. A statement that interested persons may submit written comments and the deadline for the comments;
4. The name of the Metro staff to contact and telephone number for more information; and
5. A list of the applicable criteria for the proposal.

F. The COO shall notify each county and city in the district of each amendment of the UGB.



Title 14, Urban Growth Boundary

ORDINANCE 10-1244, EXHIBIT M
November 18, 2010



- County boundaries
- Urban growth boundaries
- Neighbor cities



Exhibit N to Ordinance No. 10-1244

CHAPTER 3.09 LOCAL GOVERNMENT BOUNDARY CHANGES

3.09.010 Purpose and Applicability

The purpose of this chapter is to carry out the provisions of ORS 268.354. This chapter applies to all boundary changes within the boundaries of Metro or of urban reserves designated by Metro and any annexation of territory to the Metro boundary. Nothing in this chapter affects the jurisdiction of the Metro Council to amend the region's Urban Growth Boundary (UGB).

3.09.020 Definitions

As used in this chapter, unless the context requires otherwise:

A. "Adequate level of urban services" means a level of urban services adequate to support the higher number of dwelling units and jobs specified for the appropriate design type in section 3.07.640A of Title 6 of the Urban Growth Management Functional Plan, or in the ordinance adopted by the Metro Council that added the area to be incorporated, or any portion of it, to the UGB.

B. "Affected entity" means a county, city or district for which a boundary change is proposed or is ordered.

C. "Affected territory" means territory described in a petition.

D. "Boundary change" means a major or minor boundary change involving affected territory lying within the jurisdictional boundaries of Metro or the boundaries of urban reserves designated.

E. "Deliberations" means discussion among members of a reviewing entity leading to a decision on a proposed boundary change at a public meeting for which notice was given under this chapter.

F. "District" means a district defined by ORS 199.420 or any district subject to Metro boundary procedure act under state law.

G. "Final decision" means the action by a reviewing entity whether adopted by ordinance, resolution or other means which is the determination of compliance of the proposed boundary change with applicable criteria and which requires no further discretionary decision or action by the reviewing entity other than any required referral to electors. "Final decision" does not include resolutions, ordinances or other actions whose sole purpose is to refer the boundary change to electors or to declare the results of an election, or any action to defer or continue deliberations on a proposed boundary change.

H. "Major boundary change" means the formation, merger, consolidation or dissolution of a city or district.

I. "Minor boundary change" means an annexation or withdrawal of territory to or from a city or district or from a city-county to a city. "Minor boundary change" also means an extra-territorial extension of water or sewer service by a city or district. "Minor boundary change" does not mean withdrawal of territory from a district under ORS 222.520.

J. "Necessary party" means any county; city; district whose jurisdictional boundary or adopted urban service area includes any part of the affected territory or who provides any urban service to any portion of the affected territory; Metro; or any other unit of local government, as defined in ORS 190.003, that is a party to any agreement for provision of an urban service to the affected territory.

K. "Petition" means any form of action that initiates a boundary change.

L. "Reviewing entity" means the governing body of a city, county or Metro, or its designee.

M. "Urban reserve" means land designated by Metro pursuant to ORS 195.137 et seq. for possible addition to the UGB.

N. "Urban services" means sanitary sewers, water, fire protection, parks, open space, recreation and streets, roads and mass transit.

3.09.30 Notice Requirements

A. The notice requirements in this section apply to all boundary change decisions by a reviewing entity except expedited decisions made pursuant to section 3.09.045. These requirements apply in addition to, and do not supersede, applicable requirements of ORS Chapters 197, 198, 221 and 222 and any city or county charter provision on boundary changes.

B. Within 45 days after a reviewing entity determines that a petition is complete, the entity shall set a time for deliberations on a boundary change. The reviewing entity shall give notice of its proposed deliberations by mailing notice to all necessary parties, by weatherproof posting of the notice in the general vicinity of the affected territory, and by publishing notice in a newspaper of general circulation in the affected territory. Notice shall be mailed and posted at least 20 days prior to the date of deliberations. Notice shall be published as required by state law.

C. The notice required by subsection (b) shall:

1. Describe the affected territory in a manner that allows certainty;
2. State the date, time and place where the reviewing entity will consider the boundary change; and

3. State the means by which any person may obtain a copy of the reviewing entity's report on the proposal.
4. A reviewing entity may adjourn or continue its final deliberations on a proposed boundary change to another time. For a continuance later than 28 days after the time stated in the original notice, notice shall be reissued in the form required by subsection (b) of this section at least five days prior to the continued date of decision.
5. A reviewing entity's final decision shall be written and authenticated as its official act within 30 days following the decision and mailed or delivered to Metro and to all necessary parties. The mailing or delivery to Metro shall include payment to Metro of the filing fee required pursuant to section 3.09.060.

3.09.040 Requirements for Petitions

A. A petition for a boundary change must contain the following information:

1. The jurisdiction of the reviewing entity to act on the petition;
2. A map and a legal description of the affected territory in the form prescribed by the reviewing entity;
3. For minor boundary changes, the names and mailing addresses of all persons owning property and all electors within the affected territory as shown in the records of the tax assessor and county clerk; and
4. For boundary changes under ORS 198.855(3), 198.857, 222.125 or 222.170, statements of consent to the annexation signed by the requisite number of owners or electors.
5. A city, county and Metro may charge a fee to recover its reasonable costs to carry out its duties and responsibilities under this chapter.

3.09.045 Expedited Decisions

A. The governing body of a city or Metro may use the process set forth in this section for minor boundary changes for which the petition is accompanied by the written consents of one hundred percent of property owners and at least fifty percent of the electors, if any, within the affected territory. No public hearing is required.

B. The expedited process must provide for a minimum of 20 days' notice prior to the date set for decision to all necessary parties and other persons entitled to notice by the laws of the city or Metro. The notice shall state that the petition is subject to the expedited process unless a necessary party gives written notice of its objection to the boundary change.

C. At least seven days prior to the date of decision the city or Metro shall make available to the public a report that includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extra-territorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
3. The proposed effective date of the boundary change.

D. To approve a boundary change through an expedited process, the city shall:

1. Find that the change is consistent with expressly applicable provisions in:
 - a. Any applicable urban service agreement adopted pursuant to ORS 195.065;
 - b. Any applicable annexation plan adopted pursuant to ORS 195.205;
 - c. Any applicable cooperative planning agreement adopted pursuant to ORS 195.020(2) between the affected entity and a necessary party;
 - d. Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services;
 - e. Any applicable comprehensive plan; and
 - f. Any applicable concept plan; and
2. Consider whether the boundary change would:
 - a. Promote the timely, orderly and economic provision of public facilities and services;
 - b. Affect the quality and quantity of urban services; and
 - c. Eliminate or avoid unnecessary duplication of facilities or services.

E. A city may not annex territory that lies outside the UGB, except it may annex a lot or parcel that lies partially within and partially outside the UGB.

3.09.050 Hearing and Decision Requirements for Decisions Other Than Expedited Decisions

A. The following requirements for hearings on petitions operate in addition to requirements for boundary changes in ORS Chapters 198, 221 and 222 and the reviewing entity's charter, ordinances or resolutions.

B. Not later than 15 days prior to the date set for a hearing the reviewing entity shall make available to the public a report that addresses the criteria in subsection (d) and includes the following information:

1. The extent to which urban services are available to serve the affected territory, including any extra territorial extensions of service;
2. Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and
3. The proposed effective date of the boundary change.

C. The person or entity proposing the boundary change has the burden to demonstrate that the proposed boundary change meets the applicable criteria.

D. To approve a boundary change, the reviewing entity shall apply the criteria and consider the factors set forth in subsections (d) and (e) of section 3.09.045.

3.09.060 Ministerial Functions of Metro

A. Metro shall create and keep current maps of all service provider service areas and the jurisdictional boundaries of all cities, counties and special districts within Metro. The maps shall be made available to the public at a price that reimburses Metro for its costs. Additional information requested of Metro related to boundary changes shall be provided subject to applicable fees.

B. The Metro Chief Operating Officer (COO) shall cause notice of all final boundary change decisions to be sent to the appropriate county assessor and elections officer, the Oregon Secretary of State and the Oregon Department of Revenue. Notification of public utilities shall be accomplished as provided in ORS 222.005(1).

C. The COO shall establish a fee structure establishing the amounts to be paid upon filing notice of city or county adoption of boundary changes, and for related services. The fee schedule shall be filed with the Council Clerk and distributed to all cities, counties and special districts within the Metro region.

3.09.070 Changes to Metro's Boundary

A. Changes to Metro's boundary may be initiated by Metro or the county responsible for land use planning for the affected territory, property owners and electors in the territory to be annexed, or other public agencies if allowed by ORS 198.850(3). Petitions shall meet the requirements of section 3.09.040 above. The COO shall establish a filing fee schedule for petitions that shall reimburse Metro for the expense of processing and considering petitions. The fee schedule shall be filed with the Council.

B. Notice of proposed changes to the Metro boundary shall be given as required pursuant to section 3.09.030.

C. Hearings shall be conducted consistent with the requirements of section 3.09.050.

D. Changes to the Metro boundary may be made pursuant to the expedited process set forth in section 3.09.045.

E. The following criteria shall apply in lieu of the criteria set forth in subsection (d) of section 3.09.050. The Metro Council's final decision on a boundary change shall include findings and conclusions to demonstrate that:

1. The affected territory lies within the UGB;
2. The territory is subject to measures that prevent urbanization until the territory is annexed to a city or to service districts that will provide necessary urban services; and
3. The proposed change is consistent with any applicable cooperative or urban service agreements adopted pursuant to ORS Chapter 195 and any concept plan.

F. Changes to the Metro boundary that occur by operation of law pursuant to ORS 268.390(3)(b) are not subject to the procedures or criteria set forth in this section.

3.09.080 Incorporation of a City that Includes Territory within Metro's Boundary

A. A petition to incorporate a city that includes territory within Metro's boundary shall comply with the minimum notice requirements in section 3.09.030, the minimum requirements for a petition in section 3.09.040, and the hearing and decision requirements in subsections (a), (c), and (e) of section 3.09.050, except that the legal description of the affected territory required by section 3.09.040(a)(1) need not be provided until after the Board of County Commissioners establishes the final boundary for the proposed city.

B. A petition to incorporate a city that includes territory within Metro's jurisdictional boundary may include territory that lies outside Metro's UGB. However, incorporation of a city with such territory shall not authorize urbanization of that territory until the Metro Council includes the territory in the UGB pursuant to Metro Code Chapter 3.07.

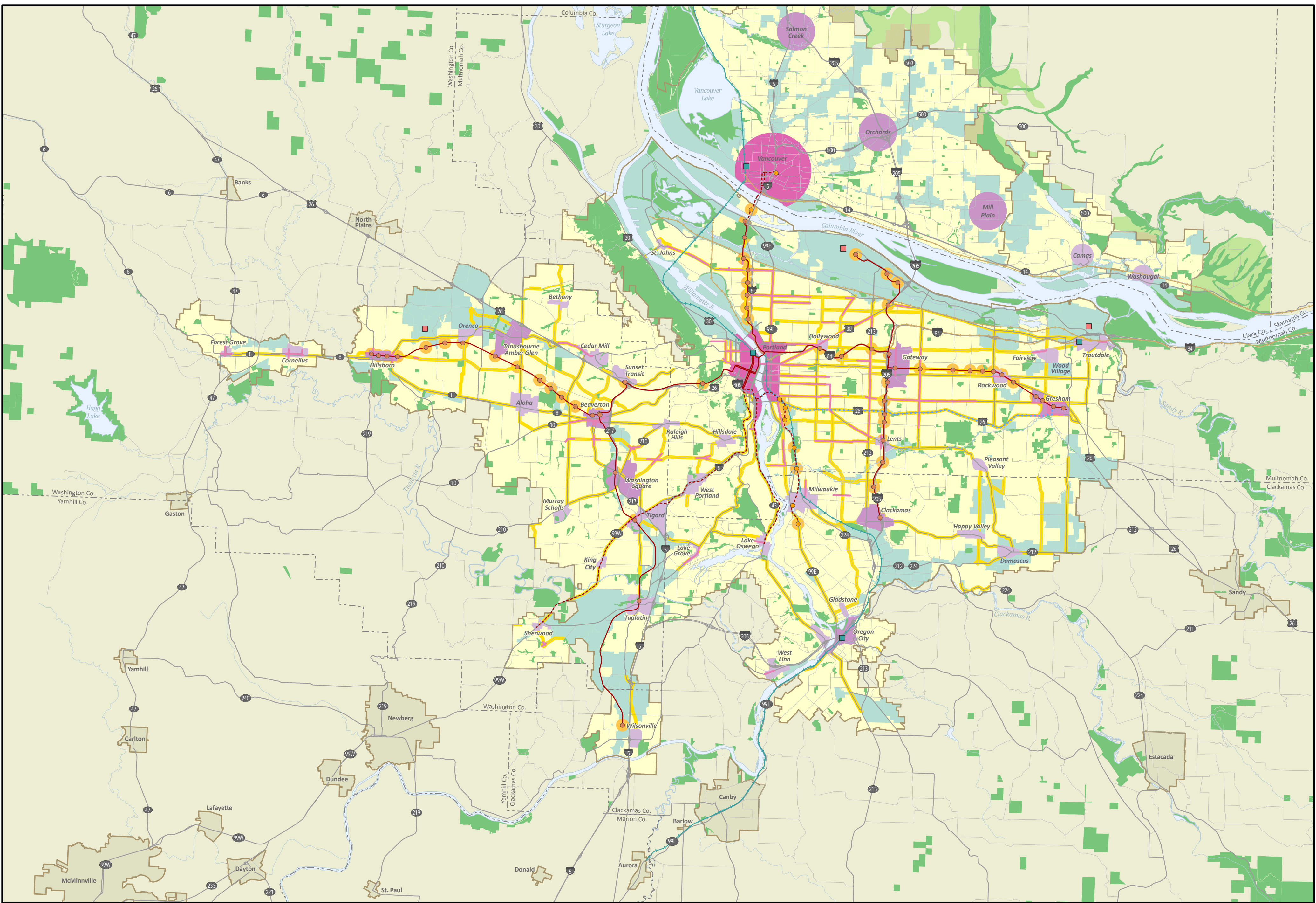
C. The following criteria shall apply in lieu of the criteria set forth in section 3.09.050(d). An approving entity shall demonstrate that:

1. Incorporation of the new city complies with applicable requirements of ORS 221.020, 221.031, 221.034 and 221.035;
2. The petitioner's economic feasibility statement must demonstrate that the city's proposed permanent rate limit would generate sufficient operating tax revenues to support an adequate level of urban services, as defined in this chapter and required by ORS 221.031; and

3. Any city whose approval of the incorporation is required by ORS 221.031(4) has given its approval or has failed to act within the time specified in that statute.

3.09.090 Extension of Services Outside UGB

Neither a city nor a district may extend water or sewer service from inside a UGB to territory that lies outside the UGB.



2040 Growth Concept Map

ORDINANCE 10-1244, EXHIBIT O
November 18, 2010



Overview: the Metro 2040 Growth Concept defines the form of regional growth and development for the Portland metropolitan region. The Growth Concept was adopted in December 1995 through the Region 2040 planning and public involvement process. This concept is intended to provide long-term growth management of the region.

The map highlights elements of parallel planning

efforts including: the 2035 Regional Transportation Plan that outlines investments in multiple modes of transportation, and a commitment to local policies and investments that will help the region better accommodate growth within its centers, corridors and employment areas.

For more information on these initiatives, visit <http://www.oregonmetro.gov/2040>

- Central city
- Employment land
- Existing high capacity transit
- County boundaries
- Regional center
- Parks and natural areas
- Planned high capacity transit
- Urban growth boundaries
- Town center
- Neighborhood
- Proposed high capacity transit tier 1
- Neighbor cities
- Station communities
- Main streets
- Mainline freight
- Airports
- Corridors
- High speed rail
- Intercity rail terminal



STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 10-1244, FOR THE PURPOSE OF MAKING A GREAT PLACE AND PROVIDING CAPACITY FOR HOUSING AND EMPLOYMENT TO THE YEAR 2030; AMENDING THE REGIONAL FRAMEWORK PLAN AND THE METRO CODE; AND DECLARING AN EMERGENCY

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Introduction

Purposes of the proposed legislation

Proposed Ordinance No. 10-1244 and its exhibits are intended to fulfill five primary purposes that are described in more detail in this report (section numbers refer to sections of this report, not the ordinance).

Section 1: Recommendations for residential capacity (to narrow the household forecast range and identify the actions that will address at least half the capacity gap identified in the 2009 UGR);

Section 2: Recommendations for employment capacity (to narrow the employment forecast range and to state an intent to add large-lot industrial capacity in 2011);

Section 3: Recommended amendments to the Regional Framework Plan, which articulates Metro Council policies;

Section 4: Recommended amendments to the Metro Code, which is intended to implement the regional vision, and;

Section 5: Recommended amendments to maps, including the 2040 Growth Concept map, the Title 4 map (Industrial and Other Employment Areas), the Title 6 map (Centers, Corridors, Station Communities and Main Streets), and the Title 14 map (Urban Growth Boundary).

Refinement of August 2010 Chief Operating Officer recommendation

In August 2010, Metro's Chief Operating Officer (COO) made a preliminary recommendation to the Metro Council on the contents of Ordinance No. 10-1244. Additional technical details on the topics summarized in this memo can be found in the August 2010 Growth Management Assessment. Since that recommendation was released, there have been a number of discussions at MPAC, MTAC, the Metro Council, amongst stakeholders, and with the general public. The version of Ordinance 10-1244 that is included in this legislative packet reflects staff's synthesis of input received to date. Its main components and staff's reasoning are described in this staff report.

MPAC recommendation

On November 17, 2010, MPAC unanimously recommended that the Council adopt Ordinance 10-1244. MPAC comments on specific portions of the proposed ordinance are noted throughout this staff report.

Public comment period and public hearings

On Aug. 10, 2010, Metro's COO released a set of recommendations in a report entitled, "Community Investment Strategy: Building a sustainable, prosperous and equitable region." A public comment period ran until Oct. 1, 2010.¹

A wide range of views were submitted from across the region in response to the COO recommendations. During the comment period, Metro staff engaged in a coordinated outreach and engagement strategy that included more than 30 stakeholder meetings, website and e-mail information distribution, media releases, newsfeeds and Twitter feeds, seven open houses, a non-scientific online survey, and compilation of letter and e-mail correspondence relating to the Community Investment Strategy and urban growth boundary expansion options. In all, Metro received more than 600 survey entries, 55 e-mails, 16 letters and 10 other public comments.

In advance of the Metro Council's December 16, 2010 decision on Ordinance No. 10-1244, the Council will hold four public hearings:

November 29: Oregon City
December 2: Hillsboro
December 9: Metro Regional Center
December 16: Metro Regional Center

¹ A report on public comments received is available on Metro's website at:
http://library.oregonmetro.gov/files//11173_cis-ugb_comment_report_final.pdf

Background on the regional capacity assessment

Statutory requirements

Oregon land use law requires that, every five years, Metro assess the region's capacity to accommodate the numbers of people anticipated to live or work inside the Metro urban growth boundary (UGB) over the next 20 years. To make this determination, Metro forecasts population and employment growth over a 20-year timeframe; conducts an inventory of vacant, buildable land inside the UGB; assesses the capacity of the current UGB to accommodate population and employment growth either on vacant land or through redevelopment and infill; determines whether additional capacity is needed; and documents the results of these analyses in an urban growth report (UGR). The UGR is the basis for subsequent consideration of the actions to be taken to close any identified capacity gap.

Metro Council intent to take an outcomes-based approach

In addition to addressing statutory obligations, on the advice of the Metro Policy Advisory Committee (MPAC), the Metro Council has indicated its desire to take an outcomes-based approach when it makes decisions. It is intended that the proposed legislation will help to foster the creation of a region where:

1. People live and work in vibrant communities where they can choose to walk for pleasure and to meet their everyday needs.²
2. Current and future residents benefit from the region's sustained economic competitiveness and prosperity.
3. People have safe and reliable transportation choices that enhance their quality of life.
4. The region is a leader in minimizing contributions to global warming.
5. Current and future generations enjoy clean air, clean water and healthy ecosystems.
6. The benefits and burdens of growth and change are distributed equitably.

2009 forecast and urban growth report

In 2009, Metro completed range forecasts of population, household and employment growth through the year 2030.³ The use of a range forecast acknowledges uncertainty and allows for growth management decisions to focus on desired outcomes rather than a specific number. These range forecasts are incorporated into the UGR's analysis. The forecasts are for the seven-county primary metropolitan statistical area, which includes Clackamas, Multnomah, Washington, Yamhill, Columbia, Clark, and Skamania counties. These forecasts and the macroeconomic model that produces them have been peer reviewed by economists and demographers.

The 20-year forecast indicates that, by the year 2030, there will be a total of 1,181,300 to 1,301,800 households and a total of 1,252,200 to 1,695,300 jobs in the larger seven-county area. There is a 90 percent probability that growth will occur in the ranges identified in the forecast.

In addition to the 20-year range forecasts, the UGR determines how much of the 7-county growth may occur inside the Metro UGB and includes an analysis of the share of the UGB's zoned capacity that is likely to be developed by the year 2030. The UGR's analysis assumed a continuation of policies and investment trends in place at the time of the analysis. No changes to existing zoning were assumed, although it is likely that up-zoning will take place in the future as communities develop and implement their aspirations. The UGR's assessment of the likelihood of development was based on historic data,

² Note: these are the desired outcomes as adopted by the Metro Council in 2008. One effect of proposed Ordinance No. 10-1244 is to incorporate these desired outcomes into the Regional Framework Plan. MPAC has recommended that this desired outcome be modified to be more inclusive. Staff has proposed alternative language to satisfy MPAC concerns. Please see Exhibit A, section A for the proposed language.

³ A range forecast was also completed for the year 2060 in order to inform the urban and rural reserves process.

scenario modeling, and the professional expertise of Metro staff, local city and county staff, economic consultants, and business representatives. UGR results are portrayed for four different categories: residential, general industrial employment, general non-industrial employment, and large-lot employment.

Timeline for addressing regional capacity needs

On December 10, 2009, the Metro council, on the advice of MPAC, adopted Resolution No. 09-4094, which accepted the 2009 UGR and 20-year forecast as a basis for making growth management decisions.⁴ According to state law, the Metro Council must, by the end of 2010, address at least half of the residential capacity needs identified in the UGR. If any capacity needs are to be accommodated through efficiency measures⁵ inside the existing UGB, they must be accounted for by the end of 2010. If, after accounting for efficiency measures, there are any remaining capacity needs, the Council must address them with UGB expansions by the end of 2011.

On October 29, 2010, the state Land Conservation and Development Commission (LCDC) reached an oral decision on urban and rural reserves. LCDC remanded two of the urban reserves and all of the rural reserves in Washington County. As a consequence, the Council has directed that any needed UGB expansions will be made in 2011, which would allow time to finalize urban and rural reserves.

The 2009 UGR assessed regional capacity needs using a range demand forecast. Oregon Department of Land Conservation and Development (DLCD) staff has indicated that the Metro Council may carry a range through the decision that it makes in December 2010, but that the forecast range needs to be narrowed in order to demonstrate that at least half of the residential gap has been addressed. In order to finalize its growth management decision, the Council must, by the end of 2011, choose the point in the range forecast for which it wishes to plan. Depending on the point chosen, UGB expansions may be needed.

Under state statute, Metro can wait until 2011 to address all employment capacity needs identified in the UGR. For employment capacity, there is no requirement that at least half of the need be addressed by the end of 2010.

⁴ As indicated in the text of Ordinance No. 10-1244, the Council would, by adopting the ordinance, formally adopt the forecast and UGR as the basis for its growth management decisions.

⁵ Oregon Revised Statute 197.296 instructs Metro to expand the UGB and/or amend plans in ways that increase the likelihood of higher density development inside the existing UGB. "Efficiency measures" refer to the latter option.

Section 1: recommendations for residential capacity

Residential capacity gap identified in 2009 UGR

The 2009 UGR indicates that there will be demand for between 224,000 to 301,500 new dwelling units inside the Metro UGB from 2007 to 2030. While there is ample zoned capacity within the current UGB to accommodate the next 20 years of residential growth, the UGR's analysis indicates that, without additional infrastructure investments or other policy changes, a portion of the zoned capacity will not be market feasible. As a result, there is unmet demand for 27,400 to 79,300 dwelling units.⁶

Residential efficiency measures

Because a residential capacity gap is identified in the 2009 UGR, Oregon Revised Statute 197.296 instructs Metro to expand the UGB and/or amend plans in ways that increase the likelihood of higher density development inside the existing UGB. These latter actions are referred to as "efficiency measures." Reasonable efforts to implement efficiency measures must be undertaken before expanding the UGB. The statute states that efficiency measures may include, but are not limited to:

- Increases in the permitted density on existing residential land
- Financial incentives for higher density housing
- Provisions permitting additional density beyond that generally allowed in the zoning district in exchange for amenities and features provided by the developer
- Removal or easing of approval standards or procedures
- Minimum density ranges
- Redevelopment and infill strategies
- Authorization of housing types not previously allowed by the plan or regulations
- Adoption of an average residential density standard
- Rezoning or re-designation of nonresidential land

The August 2010 Growth Management Assessment⁷ includes staff's preliminary assessment of a variety of efficiency measures that have been adopted since the completion of the 2009 UGR. Staff's preliminary analysis indicates that efficiency measures contribute an additional 30,300 dwelling units of capacity beyond what was counted in the 2009 UGR⁸.

⁶ Refill is a share of total growth. The high end of the gap (79,300 units) reported here is different than what was identified in the 2009 UGR (104,900), which, for illustrative purposes, held constant the dwelling unit capacity generated through refill (rather than expressing it as a share of the high demand forecast). When the Council makes its growth management decision, they will identify the point in the forecast for which they are planning. Refill capacity will be calculated as a share of that number. As discussed more thoroughly in the August 2010 Growth Management Assessment, a 38 percent refill rate is a reasonable assumption with the policies and investments that have been adopted since the 2009 UGR.

⁷ Available at Metro's website:

http://library.oregonmetro.gov/files//2010_growth_management_assessment.pdf

⁸ The August 2010 Growth Management Assessment attributed 32,050 dwelling units of capacity to efficiency measures with 38% refill capacity tied to an assumption of medium growth (demand). Because capacity from redevelopment and infill (refill) is expressed as a share of total growth, staff cannot determine a final capacity number until the Council chooses the point in the forecast range for which to plan. The 30,300 units cited here is an

Recommendations for narrowing the residential forecast range

Background

Oregon statutes require that the Council, by the end of 2010, determine that it has addressed at least half of the residential capacity gap identified in the 2009 UGR. However, the Metro Council has indicated that it would like to maintain a range through its December 2010 decision. To accommodate the Council's request and to meet statutory obligations, staff proposes that the Council determine that the efficiency measures described in the August 2010 Growth Management Assessment have addressed at least half of the residential capacity gap identified in the 2009 UGR. To make that determination, the Council will need to narrow the forecast range for which it intends to plan.

In August 2010, Metro's Chief Operating Officer (COO) recommended planning for a point in the middle third of the forecast range. Since that recommendation was issued, the Council, MPAC, and others have had the opportunity to discuss the risks and opportunities of planning for different points in the range. Some of the topics considered include:

- Statistical likelihood of growth occurring at different points in the range
- Need for consistency between the urban and rural reserves decision and this growth management decision
- Need for consistency in expectations for residential and employment growth
- Implications for meeting carbon reduction goals
- Implications of changing demographics and housing preferences
- Adaptability if we aim too high or too low

MPAC recommendation

On October 27, 2010, MPAC discussed the question of where the Council should plan in the residential range forecast.⁹ MPAC recommends (13 in favor, 4 opposed) that the Council plan for at least the low end of the middle third of the forecast range. To provide more guidance to the Council, MPAC also discussed, through an informal show of hands, several portions of the range, with the following results:

- 3 committee members showed support, through a show of hands, for recommending that the Metro Council target the upper part of the middle third of the range.
- 6 committee members showed support, through a show of hands, for recommending that the Metro Council target below the middle third of the range.
- 4 committee members showed support, through a show of hands, for recommending that the Metro Council target the middle part of the middle third of the range.

Staff recommendation

With MPAC's recommendation, statutory requirements, and Council preferences in mind, staff proposes that the Council cap the range that it is considering at the high end of the middle third of the forecast range. This would entail planning for a marginal increase of 224,000 to 271,400 dwelling units inside the Metro UGB from the year 2007 through the year 2030. This proposed range can be in section 16 of Ordinance 10-1244.

adjusted figure that assumes 38% refill tied to low demand. See Table 1 for more details on how supply may change with different demand assumptions.

⁹ Minutes from the October 27, 2010 MPAC meeting are available on Metro's website.

Capacity for 196,600 dwelling units was accounted for in the 2009 UGR. As noted, an additional 30,300 dwelling units of capacity attributable to efficiency measures have been identified. Table 1 summarizes the potential capacity gaps (or surpluses) at different points in the forecast range after having accounted for efficiency measures identified in the August 2010 Growth Management Assessment.¹⁰ Additional detail on these gap calculations is available in Attachment 1 to this staff report. Under the scenarios depicted in Table 1, UGB expansions made in 2011 would need to provide from zero to 26,600 dwelling units of additional capacity, depending on the point in the demand forecast that is chosen. In all cases, the remaining potential gap is less than the 30,300 dwelling units of capacity already attributed to efficiency measures. Consequently, as required by statute, less than half the capacity gap identified in the UGR would remain for the Council to address in 2011.

Table 1: Dwelling unit gap or surplus at different points in the range forecast after accounting for efficiency measures (Metro UGB 2007 - 2030)

Point in demand forecast range	Remaining gap or surplus (dwelling units)
Low	2,900
Low end of middle 1/3 rd	(15,400)
Middle	(21,000)
High end of middle 1/3 rd	(26,600)

¹⁰ Because refill is a share of demand, using different points in the demand forecast will produce different capacity numbers. For this reason, determining the remaining gap at a particular point in the forecast range is not as straight forward as simply adding 30,300 dwelling units to the capacity identified in the 2009 UGR and deducting a demand number. Additional detail on these calculations is available in Attachment 1.

Section 2: recommendations for employment capacity

Employment range forecast

Background

The 2009 UGR indicates that there will be a total of 1.0 to 1.3 million total jobs inside the metro region UGB by the year 2030.

MPAC recommendation

On November 17, 2010, MPAC discussed the contents of Ordinance No. 10-1244. Metro staff proposed that the point chosen in the employment forecast range should be consistent with the point chosen in the residential range forecast.¹¹ MPAC had no comments on the employment range forecast.

Staff recommendation

Though there is no statutory obligation compelling the Council to do so, staff recommends that the Metro Council narrow this range to provide consistency with the recommendation on the residential range. As with the residential range, staff proposes capping the employment forecast range at the high end of the middle third of the forecast range. This would entail planning for between 1,083,200 and 1,211,600 total jobs inside the UGB by the year 2030.¹² When the Council ultimately picks a point in the residential and employment range forecasts, staff strongly recommends that the two points be consistent with one another.

Potential implications for non-industrial employment capacity

A portion of the UGR assesses the current UGB's capacity to accommodate non-industrial (e.g. office, retail, institutional) job growth on vacant land or through refill. The UGR finds that at the low end of the forecast range there is no need for additional non-industrial employment capacity inside the UGB. At the high end of the forecast range there is a need for 1,168 acres of additional capacity. At the high end of the middle third of the range, there is a need for 30 acres of additional capacity for non-industrial employment.¹³

Implications for general industrial employment capacity

A section of the UGR assesses the current UGB's capacity to accommodate industrial job growth on vacant land or through redevelopment and infill (refill). The assessment of demand for large, vacant lots is handled separately and recommendations can be found below. The UGR finds that, at or below the high end of the employment range forecast, there is adequate capacity inside the current UGB to accommodate the next 20 years of general industrial job growth. Consequently, within the narrowed employment forecast range proposed by staff, there is also no need for additional capacity for general industrial employment.

¹¹ As noted in this report, on October 27, 2010, MPAC voted in favor of recommending that the Council plan for at the least the low end of the middle third of the residential range forecast.

¹² Section 16 of Ordinance No. 10-1244 refers to this proposed range.

¹³ Many of the residential efficiency measures identified in the August 2010 Growth Management Assessment are also likely to increase non-industrial employment capacity inside the existing UGB. This is because many non-industrial jobs are in population-serving fields such as education, health care, and retail and these employers need to be close to population centers. Consequently, actions that encourage more residential growth in centers and corridors will likely have the same effect on non-industrial employment. Staff has not, however, performed a quantitative assessment of those effects.

Large lot industrial employment capacity

Background

The “large lot” portion of the UGR’s analysis was completed in recognition of the fact that some firms in traded-sector industries require large, vacant lots.¹⁴ The UGR defines a large lot as a single tax lot with at least 25 vacant, buildable acres. The UGR’s forecast-based assessment determined that, over the 20-year period, there is demand for 200 to 800 acres of additional capacity for large-lot employment uses. This range depends on the amount of employment growth realized as well as whether assembly of adjacent lots of 25 acres or more was assumed.

MPAC recommendation

For several reasons listed below, at its November 18, 2009 meeting, the Metro Policy Advisory Committee (MPAC) recommended that the UGR identify a wider range of potential large lot demand:

- Large traded-sector firms are crucial to the region’s economy since they sell goods and services outside the region, thereby bringing wealth to the region.
- Large traded-sector firms create spinoff employment.
- Large lot demand will be the result of the decisions of individual firms, so it is inherently difficult to forecast.
- The use of an employment forecast may be an inadequate means of estimating large lot demand for freight, rail, and marine terminal uses, which are space-intensive uses with relatively few employees, which play a crucial economic role.

The final 2009 UGR reflects MPAC’s recommendation that the Metro Council consider demand for 200 to 1,500 acres of additional capacity for large-lot industrial uses.

Since the completion of the 2009 UGR, no cities or counties in the region have adopted strategies that will make additional large-lot capacity available. In August 2010, Metro’s COO recommended that the Council address this need by expanding the UGB by 310 acres north of Hillsboro. MPAC endorsed this recommendation on October 13, 2010 with a vote of 9 in favor and 8 opposed. Committee discussion included:

- Reasons why the Metro COO has recommended incorporating 310 acres when the need for 200-1500 has been identified;
- The fact that Metro will have to demonstrate a need for more large-lot parcels in the region when justifying UGB expansion to the State;
- Whether it is more prudent to be conservative in expanding the UGB for large-lot industrial land, due to the continuing recession and other factors;
- Whether incorporating more land than the recommended 310 acres makes the region more economically competitive;
- Whether parcels can be consolidated to create large-lot sites within the UGB;
- The importance of thinking regionally when making this policy decision and not only considering individual jurisdictions;
- How we can learn from past experiences with UGB expansion and subsequent use of large-lot sites; and

¹⁴ Existing sites with significant acres of vacant land may give the initial impression that large-lot need is overestimated. However, firms seeking large sites often construct their facilities in phases. Recent examples of this phased approach can be found in the Metro region, including facility expansions completed or planned by large industrial firms such as Genentech, SolarWorld and Intel. This legitimate business practice factors into the UGR’s calculations of need for large lots.

- The decision of how many acres to incorporate into the UGB for large-lot industrial purposes is intertwined with the concept of a replenishment mechanism for parcels that get used up.

At the October 27, 2010 MPAC meeting, Mayor Lou Ogden of Tualatin requested that the Council also consider a UGB expansion, which would add 177 acres outside of Tualatin for large-lot industrial uses. MPAC did not make a recommendation on this request, but will discuss it in 2011.

Staff recommendation

Because urban and rural reserves in Washington County have been remanded by LCDC, the Council has directed that UGB expansions will be postponed until 2011. Staff recommends that, in 2011, the Council address regional needs for large lots for industrial uses by expanding the UGB to include at least the 310-acre area north of Hillsboro (assuming that urban and rural reserves are adopted and acknowledged).

Section 3: recommended amendments to the regional framework plan

Background

The Regional Framework Plan, originally adopted in 1997, is a statement of the Metro Council's policies concerning land use, transportation, and other planning matters that relate to implementing the 2040 Growth Concept. While the Regional Framework Plan has helped guide efforts to implement the 2040 Growth Concept, it has become clear that these implementing plans need to be updated to better support community and regional goals. Based on Council and advisory committee discussion and experience during the past few years, staff proposes a number of updates to the policies in the Land Use chapter of the Framework Plan to more clearly articulate Metro Council policy positions. The changes are summarized below.

MPAC recommendation

MPAC discussed the Regional Framework Plan on September 8 and 22, 2010, including several proposed amendments. MPAC indicated preliminary support for staff's proposed changes to the Regional Framework Plan. The Council discussed MPAC's comments on the Regional Framework Plan at a work session in October and provided staff with direction. MPAC had a final discussion of proposed changes to the Regional Framework Plan on November 17, 2010. MPAC's recommendations are summarized below for each topic.

Staff recommendation

The proposed Regional Framework Plan is included as Exhibit A to the ordinance. Following is a summary of the proposed language, organized by topic.

Use the defined six desired outcomes for a successful region to guide growth management decisions (Exhibit A, section A)

Background

In June 2008, the Metro Council, with the endorsement of MPAC, adopted Resolution No. 08-3940 which defined six desired outcomes for a successful region. The six desired outcomes are intended to guide decisions.

MPAC recommendation

MPAC recommended that the first desired outcome be changed to be more inclusive of those unable to walk and to reflect other non-motorized forms of transportation. MPAC also discussed adding "equitably" to the second outcome but did not make a recommendation.

Staff recommendation

Staff proposes incorporating the six desired outcomes into the Framework Plan to give them more official status as Metro Council policy. These would replace the fundamentals currently in the Framework Plan. Staff also proposes amending the wording of the first desired outcome in order to address concerns expressed by MPAC. The proposed six desired outcomes are:

- People live, work and play in vibrant communities where their everyday needs are easily accessible.
- Current and future residents benefit from the region's sustained economic competitiveness and prosperity.
- People have safe and reliable transportation choices that enhance their quality of life.
- The region is a leader in minimizing contributions to global warming.

- Current and future generations enjoy clean air, clean water and healthy ecosystems.
- The benefits and burdens of growth and change are distributed equitably.

Measure performance to guide growth management decisions (Exhibit A, policy 1.2.5)

Background

The Metro Council has expressed its desire to take an outcomes-based approach to growth management. Reporting the region's historic and forecasted performance is an important element of implementing that type of decision-making model.

MPAC recommendation

MPAC did not comment on this recommendation.

Staff recommendation

Staff proposes that the Framework Plan should express the intent to provide performance information to help guide growth management decisions.

Prioritize public investments in Centers, Corridors, Station Communities, Main Streets, Employment and Industrial Areas (Exhibit A, policy 1.2)

Background

The region intends to focus population and employment growth in centers, corridors, station communities, main streets and employment areas, but has not yet expressly stated its intent to strategically invest scarce public dollars in these specific 2040 design types.

MPAC recommendation

MPAC discussed an amendment to Policy section 1.2.2 through 1.2.5 that would add “developing residential areas” and “other industrial areas” as priorities for investments as part of the investment strategy for Centers, Corridors, Station Communities, and Main Streets. MPAC did not support this amendment because it would dilute the effectiveness of investing in those four design types.

Staff recommendation

Staff proposes that the Council should make explicit its policy intent to prioritize investments in centers, corridors, station communities, main streets, and employment areas.

Encourage elimination of barriers to compact, mixed-use, pedestrian-friendly and transit supportive development in centers, corridors, station communities, and main streets (Exhibit A, policy 1.1)

Background

Since the adoption of the 2040 Growth Concept, some of the barriers to compact development have become more apparent (such as some parking requirements).

MPAC recommendation

MPAC did not comment on this recommendation.

Staff recommendation

Staff proposes that the Framework Plan should be amended to expressly state that it is the policy of the Metro Council to encourage the elimination of such barriers in targeted 2040 design types. Staff also proposes that the Framework Plan should underline the importance of creating the conditions for infill and redevelopment to occur in targeted 2040 design types.

Address housing affordability through a combination of actions, including investments in transportation facilities and transit services that make transportation more affordable, which in turn makes more household income available for housing and other needs (Exhibit A, policy 1.3)

Background

Second to housing costs, many households spend a substantial portion of their income on transportation expenses.

MPAC Recommendation

MPAC discussed changes to this policy, including adding an investment in affordable housing as a strategy to reduce household transportation costs leaving more household income for other expenses. MPAC did not come to a consensus on a policy change.

MPAC also discussed Policy 1.3.1 (provide housing choices). Although staff had previously not recommended any changes to this policy, MPAC recommended that this policy be changed to focus on households with incomes at or below 80 percent of median family income. The language MPAC recommended is as follows:

“1.3.1 That housing choices in the region include single family, multi-family, ownership and rental housing; and housing offered by the private, public and nonprofit sectors for households with incomes at or below 80, 50, and 30 percent of median family income.”

Staff recommendation

Metro staff proposes that it be the policy of the Metro Council to take a holistic approach to ensuring an affordable cost-of-living that acknowledges both housing and transportation costs. This would be an addition to existing housing affordability policies. In response to MPAC suggestions and a discussion with the Metro Council, staff is recommending a slightly modified version of policy 1.3.1:

“1.3.1 Provide housing choices in the region, including single family, multi-family, ownership and rental housing, and housing offered by the private, public and nonprofit sectors, paying special attention to those households with fewest housing choices.”

Provide affordable housing in UGB expansion areas (Exhibit A, policy 1.3.10)

Background

Planning for new urban areas offers a unique opportunity to ensure that development forwards community and regional goals. A commonly-held goal is that households of a variety of incomes have choices of where to live.

MPAC recommendation

MPAC did not comment on this recommendation.

Staff recommendation

Metro staff proposes that it should be the policy of the Metro Council to ensure that affordable housing is addressed in planning for new urban areas.

Provide urban areas with access to parks, trails and natural areas (Exhibit A, policy 1.1.6)

Background

Currently, the Land Use chapter of the Framework Plan addresses access to parks, trails and natural areas in several sections. Staff believes that the Framework Plan should take a stronger position on an integrated system.

MPAC recommendation

MPAC did not comment on this recommendation.

Staff recommendation

Staff proposes that an integrated system of parks, trails and natural areas is essential for fostering vibrant communities and that it should be a clearly stated Metro Council policy to provide urban areas with access to these amenities. The proposed change would add a section to the Land Use chapter that would specifically address this policy.

Strengthen employment in the region's traded-sector industries (Exhibit A, policies 1.4.3 to 1.4.7)

Background

Attracting and retaining traded-sector industrial firms is important to the region's economic prosperity. Traded-sector industrial firms sell products to consumers elsewhere in the country and world, bringing wealth into the Metro region.

MPAC recommendation

MPAC and its 2010 employment subcommittee proposed that the Metro Council adopt a policy to maintain a supply of large sites for traded-sector industrial uses inside the UGB. MPAC discussed two amendments to Policy 1.4.6 (maintain supply of large industrial sites). MPAC suggested amending the proposed language for Policy 1.4.6 to read:

"1.4.6 Consistent with policies promoting a compact urban form, ensure that the region maintains a sufficient and geographically diverse supply of tracts 50 acres and larger to meet marketplace demand of traded sector industry clusters and that the region protects those sites from conversion to non-industrial uses and conversion into smaller lot sizes."

MPAC also discussed adding to policy 1.4.6 the following clause:

"transit availability shall be a critical factor in determining which sites are included"

MPAC ultimately opposed including this clause because transit is unlikely to serve the area when a site is undeveloped and demand for transit does not yet exist.

Staff recommendation

The Council discussed MPAC's suggestions at a work session. Based on Council direction, staff proposes several policy statements that seek to strengthen employment in traded-sector industries. These proposals include establishing programs to clean up brownfields and consolidate smaller parcels, creating an

inventory of large tracts of land that may be suitable for traded-sector industrial uses, and protecting large sites from conversion to non-industrial uses.

Section 4: recommended amendments to the Metro Code

Background

The Urban Growth Management Functional Plan (UGMFP) is part of Metro Code (Chapter 3.07) and implements the policies contained in the Regional Framework Plan. City and county comprehensive plans and implementing ordinances must be consistent with the Functional Plan and have two years from any amendments to the Code to conform. MPAC reviewed proposed changes in October and November 2010. Changes to the Functional Plan included in Ordinance No. 10-1244 are summarized below.

Each of the titles of the UGMFP that is proposed for amendment is included as a separate exhibit to the ordinance. The contents of the proposed titles and MPAC's recommendations are summarized below.

Title 1: Housing Capacity (Exhibit B)

Background

Currently, Title 1 specifies minimum zoned capacity for jobs and housing for each city and unincorporated area with the UGB. Metro staff has heard a number of concerns from local government staff about the existing Title 1 Requirements for Housing and Employment Accommodation – that it was time-consuming and staff intensive to produce an annual report on changes to housing and employment capacity as well as a biennial report on actual density of new residential density per net developed acre, that it was impossible to calculate an accurate employment number, that there was no consistency in how each local government calculated their zoned capacity, and that Table 1 was out-of-date because it did not include additions to the urban growth boundary or zone changes.

MPAC recommendation

On November 10, MPAC recommended approval of the revised Title 1 to the Metro Council, with several recommended changes:

- MPAC recommends clarifying that small property-specific zoning changes are not subject to the “no-net-loss” provision to reduce the regulatory burden of this requirement. Staff has added subsection 3.07.120(E) to address this recommendation.
- MPAC recommends clarifying that the “no-net-loss” policy focuses on changes to minimum zoned density rather than other actions such as revisions to design standards. Staff has revised the wording of section 3.07.120(C) in response.
- MPAC recommends re-instating the provision allowing transfers of capacity between jurisdictions, which is in the existing Title 1 but was proposed for deletion by staff due to lack of use. Staff has re-instated this language as section 3.07.120(F).
- MPAC recommends giving credit to jurisdictions for their recent actions to increase zoned capacity, allowing for future downzonings in those jurisdictions based on that work. MPAC noted that establishing a new minimum zoned capacity could be seen as “penalizing” jurisdictions that had recently upzoned and were considering downzones. Staff has not proposed any changes to Title 1 on this topic because of uncertainty about how to pick a point in time, whether the backdating would only include upzonings (some jurisdictions have recently completed downzonings), and related implementation concerns.
- MPAC recommends allowing more flexibility in both the timing and sequencing of allowing downzones in exchange for upzones. In the proposed Title 1, upzoning must occur before downzoning and jurisdictions have two years to downzone following upzones. MPAC recommends allowing more than two years and allowing downzones to occur first, to give more flexibility to local jurisdictions. Staff understands MPAC's desire for flexibility and agrees that

the vast majority of local government actions will not cause concern under this section. However, staff believes that two years is an adequate period and is concerned that allowing downzoning first could occasionally create difficult enforcement situations. It's also not clear what Metro's recourse would be if a jurisdiction reduces zoning, builds at that reduced density and then takes no action to replace that lost capacity.

Staff recommendation

Staff proposes that the Council revise Title 1 while continuing to implement the Regional Framework Plan policies of a compact urban form, efficient use of land, and a "fair-share" approach to meeting regional housing needs. The proposed Title 1 Housing Capacity moves to a "no-net-loss" approach for housing based on a project amendment basis, eliminates Table 1 and the need to calculate capacity city-wide, and eliminates the requirements for calculating and tracking job capacity.

Title 4: Industrial and Other Employment Areas (Exhibit C)

Background

Title 4 seeks to protect a regional supply of sites for industrial uses. In recent years, several industrial-designated sites have been developed for non-industrial uses.

MPAC recommendation

On October 13, 2010 MPAC recommended that the Council amend Title 4 to prohibit new schools, places of assembly, recreational facilities and parks (with exceptions for habitat protection) in Regionally Significant Industrial Areas.

During fall, 2010, MPAC requested that Metro staff develop a proposal for a system that would maintain an inventory of large sites for industrial uses. MPAC also indicated that the site inventory should be organized in tiers to identify any obstacles to development readiness of sites inside the UGB. Metro staff has convened a small group of MTAC members to sort out the details of the proposal. Having met twice, it appears that, while there is considerable interest in the concept, additional time and expertise are needed to refine the proposal. The Metro Council also recently discussed the concept and indicated a desire to spend the time to get it right. Consequently, staff does not propose changes to Title 4 that would implement this concept at this time. Instead, staff proposes changes to the Framework Plan that would state the Council's policies on the topic (see above discussion of Framework Plan). Staff also proposes additional work on the concept and its details in 2011.

Several MPAC members indicated that they regarded industrial land protections, the proposed UGB expansion, and the inventory maintenance concept as a package. Dedicating additional time to refining the concept would allow for integration of the concept with the more comprehensive overhaul of the Title 4 map that was proposed by the MPAC employment subcommittee (following the recommendations of the Greater Metropolitan Employment Lands Study). It would also allow the Metro Council to consider those proposals concurrently with a UGB expansion for large-lot industrial capacity, which is now delayed in light of LCDC's decision on urban and rural reserves.

Staff recommendation

Staff proposes that Title 4 be amended to prohibit new schools, places of assembly, recreational facilities and parks (with exceptions for habitat protection) in Regionally Significant Industrial Areas. As described under MPAC's recommendations, staff does not, at this time, recommend that the Council adopt the previously-contemplated system for maintaining a supply of large sites for industrial uses. A summary of proposed changes to the Title 4 map (Industrial and Other Employment Areas) is included later in this report. In response to MPAC recommendations, staff also proposes a new Title 14 (see Exhibit L), which includes an expedited process for adding large industrial sites to the UGB.

Title 6: Centers, Corridors, Station Communities and Main Streets (Exhibit E)

Background

The existing version of Title 6 requires local governments to develop a strategy to enhance all centers by December 2007 and to submit progress reports to Metro every two years. Only one local government developed a strategy for one of its centers. This approach has not been effective in encouraging center development and development in centers has not achieved the results originally anticipated.

An MTAC subcommittee spent considerable time earlier this year discussing possible revisions to Title 6. The subcommittee included staff from local governments, Department of Land Conservation and Development, Oregon Department of Transportation (ODOT) and TriMet. Metro staff worked extensively with ODOT to find mutually acceptable language concerning the 30% trip reduction credit and new auto dependent uses in centers, corridors, station communities, and main streets (3.07.630(B)(2)).

MPAC recommendation

MPAC discussed the amount of work that a local government might have to undertake to be eligible for the incentives listed in Title 6 and agreed that the incentive approach was appropriate. Some members of MPAC also expressed some concern that limiting the definition of regional investment to new High Capacity Transit lines may be too narrow. MPAC recommended that the Metro Council adopt the proposed Title 6.

Staff recommendation

Staff recommends changing Title 6 to an incentive approach to encourage cities and counties to develop centers and recommends expanding Title 6 to include corridors and main streets. The changes to Title 6 are intended to:

- Add corridors to Title 6 because of their potential for redevelopment and infill. Title 6 would link strategies for centers and corridors to a community investment strategy.
- Align local and regional investments to support local aspirations in centers, corridors, station communities, and main streets and make progress toward achieving the region's six desired outcomes
- Reflect a desire to focus development in all centers (central city, regional and town centers, and station communities) as well as along corridors and main streets
- Better link land use and transportation to support mixed-use, pedestrian-friendly, and transit-supportive development
- Provide incentives to local governments that adopt a plan of actions and investments to enhance their center, corridor, station community, or main street. These incentives include:

- Eligibility for a regional investment,¹⁵
- Ability to use a higher volume-to-capacity standard under the Oregon Highway Plan when considering amendments to comprehensive plans or land use regulations, and
- Eligibility for an automatic 30 percent trip reduction credit under the Transportation Planning Rule when analyzing traffic impacts of new development in plan amendments for a center, corridor, station community, or main street
- Address the problems that transportation impacts have on achieving mixed-use, pedestrian-friendly, and transit-supportive development

Title 8: Compliance Procedures (Exhibit G)

Background

Title 8 sets up a process for determining whether a city or county complies with requirements of the Urban Growth Management Functional Plan. Experience has demonstrated that the compliance process and annual compliance reporting place burdens on local governments who have limited staff resources and Metro. The Metro Council has indicated its desire to emphasize a more collaborative, outcomes-based approach to implementing the 2040 Growth Concept.

MPAC recommendation

MPAC suggested that “citizen” should be changed to “person” in section 3.07.860 and that JPACT and MPAC receive the annual compliance report. MPAC generally supported the changes to Title 8 but expressed concern about how citizen involvement in the compliance process would be affected by the recommended changes.

Staff recommendation

Staff proposes two primary changes for Title 8 to streamline the process. First, the current version of Title 8 requires the Metro Council to hold a public hearing to consider requests from local governments for extensions of compliance deadlines or exceptions from compliance. The Council may grant an extension or exception based on certain criteria (3.07.850 and 3.07.860). This process can be time-consuming for the Council and the local government involved. To streamline the process, proposed changes to Title 8 make these functions administrative but still allow an appeal to the Metro Council. The criteria for determining whether an extension or exception is granted would remain the same.

Second, Title 8 currently allows a local government to seek review by MPAC of noncompliance (3.07.830). This section is proposed to be removed. The Metro Council would be the final authority for determining noncompliance and it can seek MPAC advice without this provision. The Metro Council could request MPAC advice when an action raises policy issues.

Title 9: Performance Measures (Exhibit H)

Background

The Urban Growth Management Functional Plan contains requirements that are binding on cities and counties. Title 9 does not fit that category and is more appropriate as a regional policy statement.

¹⁵ Regional investments are currently limited to new high-capacity transit lines. In the future, the Council, in consultation with MPAC and JPACT, could add other major investments to this definition.

MPAC recommendation

MPAC did not comment on this title.

Staff recommendation

Staff proposes that the Council repeal Title 9 and include a performance measurement in the Regional Framework Plan (see Exhibit A, policy 1.2.5).

Title 10: Functional Plan Definitions (Exhibit I)

Background

Title 10 defines terms found in the Urban Growth Management Functional Plan.

MPAC recommendation

MPAC did not comment on this title.

Staff recommendation

Staff recommends that the Council update existing definitions to conform to the UGMFP revisions contemplated in Ordinance No. 10-1244.

Title 11: Planning for New Urban Areas (Exhibit J)

Background

An MPAC subcommittee chaired by Metro Councilor Liberty has met on several occasions to propose changes to Title 11. The committee was charged with making recommendations to MPAC and the Metro Council about adding specificity to the housing planning requirements for both concept planning of urban reserves and comprehensive planning for UGB expansion areas. Revisions discussed by the committee would emphasize affordable housing in the planning for urban reserve areas both before and they are added to the UGB. The revisions would also provide greater detail for planning by requiring attention to affordable types of housing and to strategies and incentive programs to facilitate the development of affordable housing once urban reserves are added to the UGB.

MPAC recommendation

MPAC discussed this topic in detail on November 17. All but one MPAC member supported three guiding principles proposed by the committee:

1. Plans should describe the variety of different housing types that are intended for the area;
2. Plans should describe how they would address housing needs in the prospective UGB expansion area, in the prospective governing city, and the region; and
3. Plans should identify the types of housing that are likely to be built in the 20-year planning period and describe additional strategies to encourage the development of needed housing types that would otherwise not be built.

Similarly, all but one MPAC member supported the general proposition that the planning process should require local governments to consider and describe which income groups would be expected to live in the areas when added to the UGB and describe strategies that would be used to make those housing opportunities possible.

MPAC and the subcommittee did not come to consensus on how best to implement these principles, and did not recommend language to the Council.

Staff recommendation

Councilor Liberty has proposed working with staff and subcommittee members in coming days to develop alternate language, hopefully in time for Council public hearings and decision-making. The current version of the capacity ordinance includes the proposed language for reference, but should not be interpreted as an MPAC recommendation, MPAC subcommittee recommendation, or staff recommendation.

Metro Code Chapter 3.01: Urban Growth Boundary and Urban Reserves Procedures (Exhibit K)

Background

Metro Code chapter 3.01 contains UGB and reserves procedures and criteria. Though part of the Metro Code, this chapter is not part of the Urban Growth Management Functional Plan.

MPAC recommendation

MPAC did not comment.

Staff recommendation

Metro staff proposes repealing Code Chapter 3.01 and moving the Urban Growth Boundary and reserves procedures and criteria Urban Growth Management Functional Plan (new Title 14) to join other growth management tools and strategies.

Title 14: Urban Growth Boundary (Exhibit L)

Background

Exhibit K would repeal Metro Code Chapter 3.01, but some portions of that Code chapter must be moved.

MPAC recommendation

MPAC did not comment on this title.

Staff recommendation

Staff proposes that the Council move the Urban Growth Boundary and reserves procedures and criteria currently found in Metro Code Chapter 3.01 to the Urban Growth Management Functional Plan (new Title 14) to join other growth management tools and strategies. In addition, Title 14 would include an expedited process for adding large industrial sites to the UGB.

Metro Code Chapter 3.09: Local Government Boundary Changes (Exhibit N)

Background

The Oregon Legislature recently made amendments to the law concerning local boundary changes. Those legislative changes necessitate amendments to the Metro Code for conformity.

MPAC recommendation

MPAC did not comment on this proposed change.

Staff recommendation

Staff proposes revisions to Metro Code Chapter 3.09 (Local Government Boundary Changes). The revisions conform Metro's criteria and procedures for city and service district boundary changes with changes to the law recently made by the Oregon Legislature. The revisions would also require petitioners to incorporate a new city to demonstrate that the city will have the fiscal capability to provide adequate urban services.

Section 5: recommended map amendments

Staff recommends that the Metro Council make several map amendments as part of Ordinance No. 10-1244. Summaries of the proposed changes follow. The maps that would be affected by the proposed legislation include:

- 2040 Growth Concept map
- Title 4 Industrial and Other Employment Areas map
- Title 6 Central City, Regional Centers, Town Centers, and Station Communities map
- Title 14 Urban Growth Boundary map (new Functional Plan Title and map)

2040 growth concept map (Exhibit O)

Background

Initially adopted in 1995, the 2040 Growth Concept presents a vision that guides development in the region. The 2040 Growth Concept Map illustrates this regional vision through the designation of centers, corridors, employment and industrial areas and other regional transportation, parks, trails and natural area features. Though local jurisdictions determine the boundaries of their centers and corridors, changes to the location or type of Center on the map require Metro Council action. In making their determination, Council must consider consistency between the changes and adopted center and corridor policies. The August 2010 Growth Management Assessment describes how the proposed changes are consistent with existing policies.

MPAC recommendation

MPAC discussed the COO recommendation to change these centers designations at their meeting on October 13, 2010 and voted to support the changes. During the discussion, MPAC members supported a motion to have a deeper policy discussion next year about the 2040 Growth Concept that would address questions such as:

- How many centers are too many?
- Does an area that is predominately shopping/retail function as a center
- How are we doing in achieving our vision for centers?

During MPAC's final discussion of Ordinance No. 10-1244, Tri-Met's representative requested two changes to staff's proposed map:

- Retain the distinction between inner and outer neighborhoods
- Depict fixed high-capacity transit along the southwest corridor

Staff recommendation

Metro staff recommends that the Metro Council approve the center designation changes illustrated in a revised 2040 Growth Concept Map (Exhibit O to the Capacity Ordinance). These requests are to:

- Relocate the existing Town Center in Happy Valley from King Road to Sunnyside and SE 172nd Avenue, about two miles to the east.
- Change the Main Street designation in downtown Cornelius to a Town Center designation.
- Expand the existing Tanasbourne Town Center to include the adjacent AmberGlen area and change the designation from a Town Center to Regional Center.

Staff suggests that the region should have high expectations for all centers, not just those that are proposed for new designations as part of Ordinance No. 10-1244.

The revised 2040 Growth Concept Map in Exhibit O also includes some changes to the depiction of the major highways and arterials, high capacity transit lines, parks, trails, and open space in order to reflect the new Regional Transportation Plan investments, changes to Vancouver and Clark County Plans and other updates. In addition to identifying the urban growth boundary location, the 2040 Map will depict urban and rural reserves once they are adopted and acknowledged by LCDC. These changes also follow the direction given by the Council at their November 4, 2010 work session, in which the Council expressed its desire for the map to depict center boundaries more realistically.

Recommended Title 4 map amendments (Exhibit D)

Background

The Regional Framework Plan calls for a strong regional economy. To improve the regional economy, Title 4 of the Urban Growth Management Functional Plan (“Industrial and Other Employment Areas”) seeks to provide and protect a supply of sites for employment by limiting the types and scale of non-industrial uses in Regionally Significant Industrial Areas (RSIAs), Industrial and Employment Areas. These areas are depicted on the Industrial and Other Employment Areas Map. Title 4 also seeks to provide the benefits of "clustering" to those industries that operate more productively and efficiently in proximity to one another than in dispersed locations. Title 4 further seeks to protect the capacity and efficiency of the region’s transportation system for the movement of goods and services and to encourage the location of other types of employment in Centers, Employment Areas, Corridors, Main Streets and Station Communities. Title 4 is implemented through city and county comprehensive plans and zoning.

MPAC recommendation

In keeping with past practice regarding Title 4 map amendment requests, MPAC was not consulted on the proposed Title 4 map amendments that are found in Ordinance No. 10-1244.

Staff recommendation

Staff proposes changes to Title 4 map designations in two locations – Washington Square Regional Center and the Beavercreek concept plan area – described below:

Washington Square Regional Center

The City of Tigard has submitted a request for an amendment to the Title 4 map. Metro staff recommends that the Council amend the Title 4 map as requested by the City of Tigard. The petition is assessed in detail in Attachment 2 following the criteria found in the Metro Code. The petitioner requests that the Council amend the Employment and Industrial Areas Map to authorize changing portion of the Washington Square Regional Center from “Industrial Area” to “Employment Area” so that the Title 4 Map will be consistent with the mixed use zoning that has been in place on the properties since 2002.

The proposed amendment would apply to 39-acre site consisting of 15 properties roughly bounded by Highway 217, North Dakota Street, and the Portland & Western Railroad/WES Commuter Rail tracks. Most of the site is zoned Mixed Use Commercial (MUC) with a 5.77 acre area zoned Mixed Use Employment-2 (MUE-2.) This mixed-use zoning was adopted to implement the Washington Square Regional Center Plan in 2002. The site is almost completely developed with retail and office park uses.

Beavercreek concept plan area

Metro staff proposes that the Council amend the Employment and Industrial Areas Map to authorize a mix of uses in the city of Oregon City’s Beavercreek concept Plan area. Staff reasoning for the proposal is described in detail in Attachment 3. The proposed amendment would apply to the 308 gross acres of land

(245 acres in 2002 and 63 acres in 2004) that the urban growth boundary (UGB) was expanded into (Ordinance No. 02-969B and Ordinance No. 04-1040B) and an additional 151 gross acres already in the UGB before these expansions. The expansion and additional areas are part of the Beaver Creek Concept Plan area completed and adopted by the City of Oregon City Council on September 17, 2008.

The applicable criteria for this proposed amendment to the Employment and Industrial Areas Map are contained in Metro Urban Growth Management Functional Plan, section 3.07.450 G, which states that: *“The Metro Council may amend the Employment and Industrial Areas Map by ordinance at any time to make corrections in order to better achieve the policies of the Regional Framework Plan.”* Metro staff proposes that the basis of the proposed change is two-fold: a) the community’s proposal for how the area should be developed in order to achieve the local and regional goals; and b) the findings of the 2009 Urban Growth Report, which determined that the UGB has a surplus of general industrial capacity and a deficit of residential capacity.

Recommended Title 6 map amendments (Exhibit F)

Background

In order for the incentive-based approach described in Title 6 to work properly, center, corridor, station community, and main street boundaries would need to be identified. Currently, several cities and counties have not officially adopted boundaries for these areas.

MPAC recommendation:

MPAC did not comment on this proposal.

Staff recommendation

To identify investment priorities and to provide local jurisdictions with a means to address Transportation Planning Rule requirements, staff proposes that the Metro Council adopt a revised Title 6 map, which would depict center boundaries and indicate instances where a city had officially adopted center boundaries. The proposed map also depicts centers without adopted boundaries as “conceptual centers.” Proposed revisions to Title 6 would make eligible for regional investments those cities that have adopted official boundaries for their centers, corridors, station communities and main streets. Regional investments include high capacity transit lines and could in the future include other major investments designated as such in the future by the Metro Council. Designation of other investments in the future would be subject to further discussion and recommendation by MPAC (and approval by JPACT, if a transportation investment). Adopted boundaries would also help to determine eligibility for alternative mobility standards and the 30 percent trip reduction credit described in proposed Title 6.

Recommendations on Title 14 map (Exhibit M)

Background

Currently, urban growth boundary and urban reserves procedures are located in Metro Code Chapter 3.01. Staff proposes repealing Chapter 3.01 and moving its contents to a new Title 14 (Exhibit L) of the Urban Growth Management Functional Plan. This change will make it easier for local government staff and the public to find the requirements associated with the UGB and reserves. The proposed Title 14 refers to a Title 14 map, which depicts the current urban growth boundary. If the Council chooses to adopt the new Title 14, it is also necessary to adopt the map. The map would be amended in 2001 if the Council chooses to expand the UGB.

MPAC recommendation

MPAC did not comment on this proposal. MPAC will be consulted further in 2011 if UGB expansions are contemplated.

Staff recommendation

Staff proposes that the Council adopt a new Title 14 map to depict the UGB.

ATTACHMENTS

- Attachment 1: Summary of residential supply and demand scenarios within the proposed narrowed forecast range
- Attachment 2: Staff report on a proposed Title 4 map amendment in the Washington Square Regional Center
- Attachment 3: Staff report on a proposed Title 4 map amendment in the Beaver Creek concept plan area

ANALYSIS/INFORMATION

1. Known Opposition

This ordinance covers a variety of topics, including Framework Plan, Functional Plan, map amendments, and growth management determinations. As such, it cannot be expected to inspire universal support. Several components of the proposed legislation have strong advocates and critics with valid concerns. Staff believes that the proposed legislation strikes a good balance that is in keeping with the region's agreed-upon vision.

2. Legal Antecedents

- Statewide Planning Goals 2 (Land Use Planning), 9 (Economic Development), 10 (Housing) and 14 (Urbanization)
- Oregon Revised Statutes 197.296, 197.299, and 197.303 (Needed Housing in Urban Growth Areas)
- Oregon Administrative Rules, Division 24 (Urban Growth Boundaries)
- Metro Regional Framework Plan, Chapter 1 (Land Use)
- Metro Urban Growth Management Functional Plan

3. Anticipated Effects

Adoption of the proposed legislation would:

- Satisfy Metro's statutory requirements related to growth management;
- Narrow the forecast range that the Council will consider as it completes its growth management decisions in 2011;
- Amend the Regional Framework Plan;
- Amend Titles 1, 4, 6, 8, 10, and 11 of the Urban Growth Management Functional Plan;
- Repeal Title 9 of the Urban Growth Management Functional Plan;
- Repeal Metro Code section 3.01;
- Add Title 14 to the Urban Growth Management Functional Plan;
- Add a Title 14 map;
- Amend Metro Code section 3.09;
- Amend the Titles 4 and 6 maps;
- Amend the 2040 Growth Concept Map, and;
- Make a great place.

4. Budget Impacts

If the UGB is ultimately expanded in 2011, Metro would incur expenses associated with staff time working on concept planning for new urban areas. The level of expense would depend on which, if any, UGB expansion areas are chosen by the Council. The level of expense would also depend on whether any concept planning has already been completed for an area as well as any complications that may arise in the course of concept planning.

Metro would also incur expenses associated with the implementation of proposed changes to the Urban Growth Management Functional Plan. These expenses are expected to be primarily associated with staff time. In some cases, these expenses are not expected to be substantially different from the costs of implementing the current version of the Functional Plan. However, in other cases, the proposed changes would require additional staff time.

RECOMMENDED ACTION

Staff recommends that the Council adopt Ordinance No. 10-1244.

Attachment 1:

Summary of residential supply and demand scenarios within the proposed narrowed forecast range

Staff analysis indicates that that policies and investment plans currently in place (including efficiency measures) will result in a 38% refill (redevelopment and infill) rate. Since refill is expressed as a share of total demand, higher points in the demand forecast range will result in additional capacity. The table below summarizes the potential gap that the Metro Council would need to address if it chooses to plan for different points in the range forecast.

Dwelling unit supply and demand scenarios at different points in the range forecast after accounting for efficiency measures (Metro UGB 2007 - 2030)

		Supply			
		MID 1/3 rd HIGH	MEDIUM	MID 1/3 rd LOW	LOW
		244,800	241,400	238,000	226,900
Demand (marginal increase)					
MID 1/3 rd HIGH	271,400	(26,600)			
MEDIUM	262,400		(21,000)		
MID 1/3 rd LOW	253,400			(15,400)	
LOW	224,000				2,900

Staff Report for the Washington Square Regional Center Title 4 Map Change

Prepared by Gerry Uba (503) 797-1737

BACKGROUND INFORMATION

Petitioner: City of Tigard

Proposal: The petitioner requests that Metro amend the Employment and Industrial Areas Map to authorize changing portion of the Washington Square Regional Center from “Industrial Area” to “Employment Area” so that the Title 4 Map will be consistent with the mixed use zoning that has been in place on the properties since 2002. The proposed change is depicted in Attachment 2a.

The proposed amendment would apply to 39-acre site consisting of 15 properties roughly bounded by Highway 217, North Dakota Street, and the Portland & Western Railroad/WES Commuter Rail tracks. Most of the site is zoned Mixed Use Commercial (MUC) with a 5.77 acre area zoned Mixed Use Employment-2 (MUE-2.) This mixed use zoning was adopted to implement the Washington Square Regional Center Plan in 2002. The site is almost completely developed with retail and office park uses.

Location: The 39 acre site consists of 15 properties roughly bounded by Highway 217, North Dakota Street, and the Portland & Western Railroad/WES Commuter Rail tracks.

Application Review Criteria: Metro Code section 3.07.450.H

The petitioner’s application for the proposed Title 4 Map amendment is included as Attachment 2b of this staff report.

APPLICATION REVIEW CRITERIA

The criteria for amendments to the Employment and Industrial Areas Map are contained in Metro Urban Growth Management Functional Plan, section 3.07.450 H. It states that the Metro Council may amend the Employment and Industrial Areas Map by ordinance if the Council concludes the proposed amendment meets certain criteria. Below are the criteria (**in bold**), petitioner responses to the criteria (*in italics*), and staff analysis.

Criterion 1: Would not reduce the jobs capacity of the city or county below the number shown on Table 3.07-1 of Title 1 of the Urban Growth Management Functional Plan;

Petitioner Response

The proposed amendment to the Title 4 Employment and Industrial Areas Map is unlikely to reduce Tigard's jobs capacity below the number (17,801) shown on Table 3.07-1 of Title 1 of the Urban Growth Management Functional Plan. The Washington Square Regional Center Plan was intended to ensure a mix of housing, retail, and employment. The Plan estimated that new development would provide 7,443 new jobs for the portion of the Regional Center within Tigard and the unincorporated Metzger area.

Specifically, the Plan's Development and Redevelopment Opportunities Report allocated 1455 jobs to an area that roughly corresponds to Area 1. A mix of office, retail, and lodging jobs were specified. Industrial jobs were not included, likely because of their lower job per acre density.

Comprehensive Plan and Development Code amendments were adopted in 2002 to implement the Washington Square Regional Center Plan. The area in question was rezoned from Industrial Park (I-P) to Mixed Use Commercial (MUC) and Mixed Use Employment 2 (MUE-2). These zones, specifically created for the Center, allow a mix of denser employment and housing, as well as retail (subject to some restrictions.)

The job projections of the Washington Square Regional Plan were developed to help meet Tigard's target growth allocations and the job capacity of Table 3.07-1 of the Urban Growth Management Functional Plan. The City believes that the proposed amendment would not reduce job capacity, but would bring the Title 4 Map into accord with zoning that has already been implemented.

Metro Staff Analysis

The 39-acre site is part of the Washington Square Regional Center that is envisioned to increase capacity for more jobs in the City of Tigard. Metro staff concurs with the petitioner's assessment that keeping the Title 4 Industrial Area designation for the area, with the required restrictions on retail and professional services could hamper development and job creation in the Regional Center as envisioned. The proposed change to the Title 4 map would not reduce the jobs capacity for the city below the number shown on Table 3.07-1 of Title 1 of the Urban Growth Management Functional Plan.

In conclusion, Metro staff believes that the proposed change to the Title 4 map would not have the effect of reducing the jobs capacity of the City of Tigard below the number shown on Table 3.07-1 of Title 1 of the Urban Growth Management Functional Plan. This criterion is met.

Criterion 2: Would not allow uses that would reduce off-peak performance on Major Roadway Routes and Roadway Connectors shown on Metro's 2004 Regional Freight System Map below standards in the Regional Transportation Plan ("RTP"), or exceed volume-to capacity ratios on Table 7 of the 1999 Oregon Highway Plan ("OHP") for state highways, unless mitigating action is taken that will restore performance to RTP and OHP standards within two years after approval of uses;

Tigard Staff Response

The Metro 2004 Regional Freight System Map facilities that are located within or border Area 1 include Highway 217 (Main Roadway Route), Scholls Ferry Road (Roadway Connector), and the Portland & Western Railway (Branch Railroad Line and Spur Track.)

The 2004 Regional Transportation Plan presumably reflected the land uses and zoning of the Washington Square Regional Center that were in place as of 2002. The Washington Square Regional Center Plan included suggested transportation upgrades, some of which appear on the on the RTP's Financially Constrained System. The Plan also called for multi-modal transportation improvements, including the recently started Westside Express Service peak-hour commuter rail.

The proposed map amendment is necessary to resolve an inconsistency between the local zone adopted through the implementation of the Washington Square Regional Center Plan and the Title 4 map. This proposed map amendment will not change the uses that are allowed on the site, thus adoption of this map amendment will not allow new uses that would reduce off-peak performance on Major Roadway Routes and Roadway Connectors shown on Metro's 2004 Regional Freight System Map below standards in the Regional Transportation Plan ("RTP"), or exceed volume-to capacity ratios on Table 7 of the 1999 Oregon Highway Plan ("OHP") for state highways.

Metro Staff Analysis

The petitioner explained that the land uses and zoning (Mixed Use Commercial and Mixed Use Employment) that was in place in 2002 when the Washington Square Regional Center Plan was adopted has not changed and that the city do not have any intention of changing the zoning as the current zoning is adequate for implementing the Washington Square Regional Center Plan. Metro staff concurs with the petitioner that since the proposed change in Title 4 designation will not allow new uses on the site, the approval of the change of the Industrial Area designation to Employment Area will not reduce off-peak performance on Major Roadway Routes and Roadway Connectors shown on Metro's 2004 Regional Freight System Map below standards in the Regional Transportation Plan, or exceed volume-to-capacity ratios on Table 7 of the 1999 State Highway Plan for state highways.

In conclusion, Metro staff believes that this criterion is met.

Criterion 3: Would not diminish the intended function of the Central City or Regional or Town Centers as the principal locations of retail, cultural and civic services in their market areas;

Tigard Staff Response

The area in question is within the boundaries of the Washington Square Regional Center, one of three designated regional centers in Washington County and one of eight in the region in Metro's 2040 Growth Concept.

After completing the Washington Square Regional Center Plan, in 2002 the City rezoned the area from industrial zoning to Mixed Use Commercial (MUC) and Mixed Use Employment-2 (MUE-2). This zoning permits a wide range of uses and was designed to reinforce and encourage the Washington Square Regional Center’s development of concentrated retail, cultural, and civic services to serve its market area. Keeping the Title 4 Industrial Area designation for the area, with its restrictions on retail and professional service uses, could diminish the intended function of the Regional Center. For this reason the City believes that the Title 4 Map should be amended to change the area’s designation to Employment Area, which is more compatible with a Regional Center.

Metro Staff Analysis

Washington Square Regional Center has a clear boundary and development in the area will be guided by the plan adopted in 2002, recently adopted economic development policy in the updated city’s Comprehensive Plan, and new development strategies the city and region may consider for the area in the future. The proposed change in the Title 4 designation for the area will assist the city to capture and retain the regional vision intended for the area, and encourage more retail, civic activities and services, and cultural services in the market area.

In conclusion, Metro staff believes that the proposed change to the Title 4 map would not have the effect of diminishing the intended function of the Washington Square Regional Center as the principal location of retail, cultural and civic services in this market area.

Criterion 4: Would not reduce the integrity or viability of a traded sector cluster of industries;

Tigard Staff Response

The 2006 Regional Business Plan identified seven traded sector clusters: (1) high-tech, (2) metals, machinery, and transportation equipment, (3) forest products, (4) food processing, (5) creative services, (6) nursery products, and (7) sporting goods and apparel.

A review of the Tigard Business License data for Area 1 revealed that traded sector clusters are minimally represented in this area. The chart below summarized the types of businesses located in Area 1.

Type of Business	# of businesses
<i>Motor vehicle sales</i>	<i>2</i>
<i>Motor vehicle repair</i>	<i>1</i>
<i>Communications (cable provider)</i>	<i>1</i>
<i>Storage facility</i>	<i>1</i>
<i>Bakery (non retail)</i>	<i>1</i>
<i>Building Supplies</i>	<i>1</i>
<i>Other retail</i>	<i>3</i>
<i>Medical Technology Manufacturer</i>	<i>1</i>
<i>Electrical Goods Manufacturer</i>	<i>1</i>
<i>Church</i>	<i>1</i>
<i>State Government Offices</i>	<i>1</i>

ATTACHMENT 2

While the seven traded sector clusters are currently minimally represented in the area, the Mixed Use Employment-2 (MUE-2) and Mixed Use Commercial (MUC) zoning classifications would permit many of these kinds of businesses, subject to some restrictions (See Appendix B for more information on zoning.)

The area south of North Dakota Street (Area 2 on Map A) is zoned Industrial Park (I-P). According to Tigard Business License data there appears to be at least one identified traded sector company located in Area 2. The City believes that the "Industrial Area" designation is appropriate for these properties, which are outside the Washington Square Regional Center boundaries.

Traded sector clusters appear to be minimally represented in the area in question. As stated previously the proposal is unlikely to affect the freight routes that serve traded sector clusters in the region. Staff believes the proposed amendment will not reduce the integrity or viability of a traded sector cluster of industries.

Metro Staff Analysis

Traded-sector industries are those in which member firms sell their goods or services into markets for which national or international competition exists. Firms in these sectors are important to the regional economy since they bring wealth into the region by exporting goods or services. The petitioner indicated that the traded sector cluster of industries is minimally represented in this area. The petitioner also indicated that its research shows that they appear to be at least one identified traded sector company in the area. Metro staff agrees with the petitioner that the current zoning presents an opportunity for increasing traded sector clusters in the area.

In conclusion, Metro staff believes that the proposed change in Title 4 area in the Washington Square Regional Center would not reduce the integrity or viability of a traded sector cluster of industries.

Criterion 5: Would not create or worsen a significant imbalance between jobs and housing in a regional market area.

Tigard Staff Response

The City of Tigard as a whole has a job/household ratio of 2.03 (about 2 jobs for every household) compared to a ratio of 1.22 for Washington County as a whole (2004 data.)

While this is a healthy jobs/household ratio, the City recognizes that many employees must commute into Tigard and many residents must commute to jobs outside of the City.

One intention of the Washington Square Regional Center Plan was to improve the balance between jobs and housing in the South Washington County market. The Plan estimated 7,443 new jobs and 1,871 residential units for the portion of the Regional Center within Tigard (and a section of the unincorporated Metzger area.) The mixed use zoning allows high density housing in proximity to the major regional retail center of Washington Square Mall, and office complexes at Lincoln Center and the Nimbus area. The MUC zone has a minimum density of 50 units/acre and no maximum density, and MUE-2 has a minimum density of 25 units/acre and a maximum of 50 units/acre. While only a limited number of housing units have been built to date in the Regional Center, the capacity for

housing exists. The zoning provides the Center the potential to develop into a place where people can “live, work, and play.”

Metro Staff Analysis

The general location of the site in the Washington Square Regional Center and the current city zoning makes it one of the most suitable places in the region to transform suburban type of development into a vibrant community with jobs, housing, and urban amenities such as shopping, entertainment and services. Staff believes that the promising job-housing balance of the city will get better as the right partnerships and policies are created to improve the area’s transportation infrastructure, build mixed use development that includes housing, and create more jobs.

In conclusion, Metro staff believes that the proposed change to the Title 4 map would not create or worsen a significant imbalance between jobs and housing in the City of Tigard area sub-regional market.

Criterion 6: If the subject property is designated Regionally Significant Industrial Area, would not remove from that designation land that is especially suitable for industrial use due to the availability of specialized services, such as redundant electrical power or industrial gases, or due to proximity to freight transport facilities, such as trans-shipment facilities.

Tigard Staff Response

This is not applicable; the subject properties are designated Industrial Area, not Regionally Significant Industrial Area.

Metro Staff Analysis

No portion of the 39-acre site is designated as Regionally Significant Industrial Area.

In conclusion, this criterion does not apply to the proposed Title 4 Map amendment.

ANALYSIS/INFORMATION

Known Opposition [identify known opposition to the proposed legislation]

There is no known opposition.

Legal Antecedents [identify legislation related to the proposed legislation, including federal, state, or local law and Metro Code, using appropriate resolution or ordinance numbers, ballot measure numbers, etc.]

Statewide Planning Goals 2 (Land Use Planning) and 9 (Economic Development); Metro Code section 3.07.450 (Employment and Industrial Areas Map).

ATTACHMENT 2

Anticipated Effects [identify what is expected to occur if the legislation is adopted]

Proposed changes to the City of Tigard zoning map and comprehensive plan map would become effective, allowing additional commercial uses in the Washington Square Regional Center.

Budget Impacts [identify the cost to implement the legislation]

There is no significant budget impact. Implementation would consist of updating the Employment and Industrial Areas Map.

RECOMMENDED ACTION

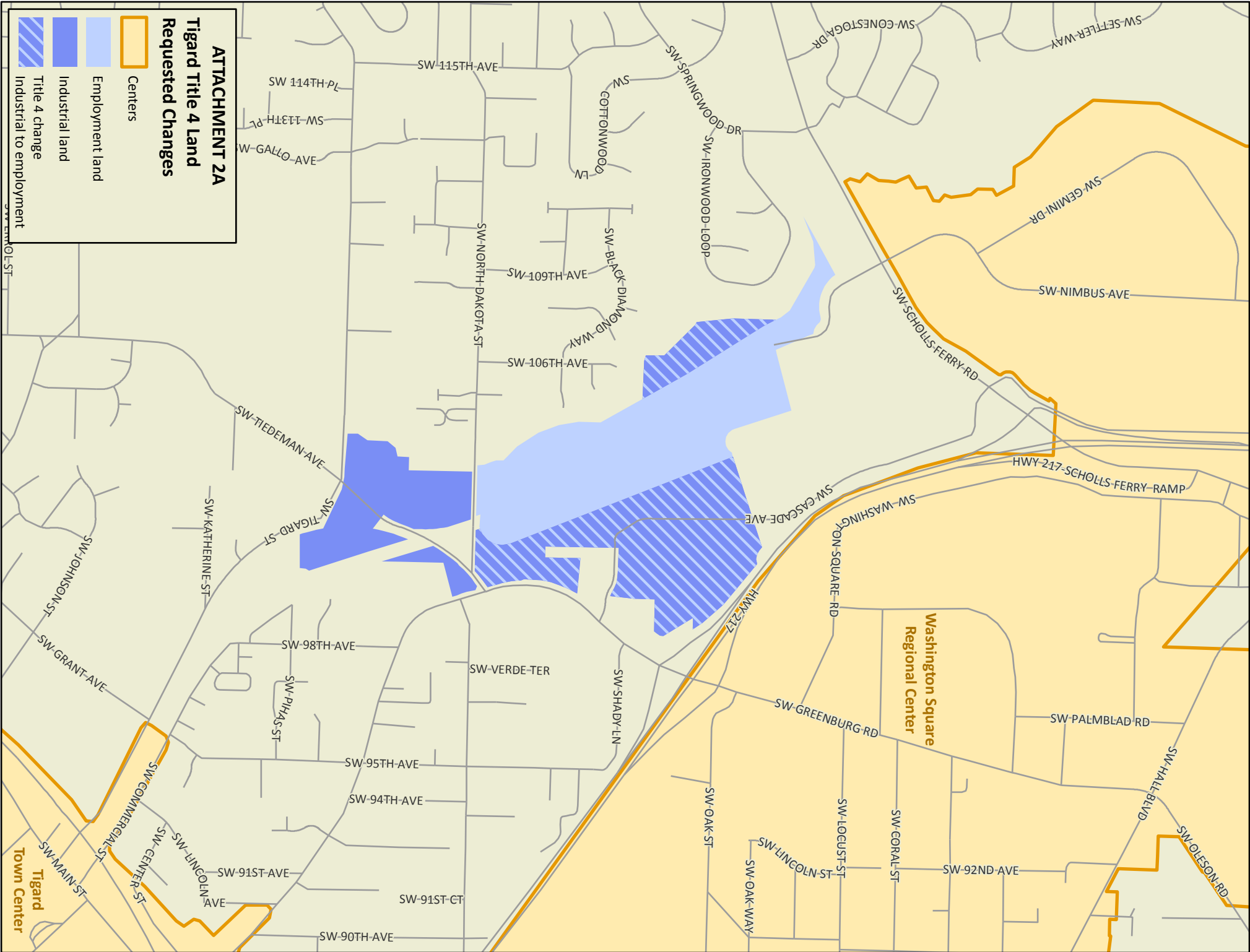
The petitioner requests the amendment of the Title 4 Employment and Industrial Areas Map. Metro Staff believes that the petitioner has provided sufficient evidence to demonstrate that the criteria are satisfied.

Staff recommends, therefore, that the Metro Council approve this ordinance.

ATTACHMENTS

Attachment 2a (map of the proposed Title 4 map amendment)

Attachment 2b (city's application)



City of Tigard, Oregon • 13125 SW Hall Blvd. • Tigard, OR 97223



February 20, 2009

Christina Deffebach, Manager, Long Range Planning
Metro
600 NE Grand Avenue
Portland, OR 97232

Dear Ms. Deffebach,

This letter is in regard to the City of Tigard's compliance with Title 4 (Industrial and Other Employment Areas) of Metro's Urban Growth Management Functional Plan. The City has taken a number of steps to comply with Title 4, including adopting two Economic Development policies in its updated Comprehensive Plan stating its intention to implement the Title 4 map designations. However, there is an outstanding issue that the City would like resolved prior to incorporating the Title 4 map and associated restrictions into its Development Code.

We are requesting an Amendment to the Title 4 Employment and Industrial Areas Map under Metro Urban Growth Management Functional Plan section 3.07.450 H. The City is requesting that the designation for a 39-acre area of the Washington Square Regional Center ("Area 1" on Map A) be changed from "Industrial Area" to "Employment Area." City staff believes that this proposed amendment will remove an existing inconsistency that will make the Title 4 Map more accurate. Applying the Industrial Area restrictions to this area would not be in accordance with the envisioned character detailed in the Washington Square Regional Center Plan and implemented in the zoning which has been in place for the past six years.

Please see the attached memo, dated February 18, 2009, for the City's detailed response to the criteria of 3.07.450 H.

Thank you for your attention to this matter. If you have any other questions please call me at 503-718-2443.

Sincerely,

A handwritten signature in black ink that reads "Ron Bunch". The signature is written in a cursive style.

Ron Bunch
Community Development Director



MEMORANDUM

TO: Ron Bunch, Community Development Director

FROM: Sean Farrelly, Associate Planner

RE: Proposed Amendment to the Title 4 Employment and Industrial Areas Map

DATE: February 18, 2009

Background:

The City of Tigard is requesting an amendment to the Employment and Industrial Areas Map in Title 4 (“Industrial and Other Employment Areas”) of Metro’s Urban Growth Management Functional Plan. The City is requesting that the designation for a 39-acre area of the Washington Square Regional Center (“Area 1” on Map A) be changed from “Industrial Area” to “Employment Area.” Making this change would make the Title 4 Map consistent with the mixed use zoning that has been in place on the properties since 2002.

The 39-acre area in question consists of 15 properties roughly bounded by Highway 217, North Dakota Street, and the Portland & Western Railroad/WES Commuter Rail tracks. The area is almost completely developed with retail and office park uses. One 1.34 acre property and another small portion of a developed property are on the Tigard Buildable Lands Inventory. The 5.77 acre property that lies to the west of the other properties is vacant, however it does not appear on the Tigard Buildable Lands Inventory, because of its wetland status.

Most of the area is zoned Mixed Use Commercial (MUC) with a 5.77 acre area zoned Mixed Use Employment-2 (MUE-2.) This mixed use zoning was adopted to implement the Washington Square Regional Center Plan in 2002.

The zone description of the Mixed Use Commercial (MUC) District in the Tigard Development Code is:

The MUC zoning district includes land around the Washington Square Mall and land immediately west of Highway 217. Primary uses permitted include office buildings, retail, and service uses. Also permitted are mixed-use developments and housing at densities of 50 units per

acre. Larger buildings are encouraged in this area with parking under, behind or to the sides of buildings.

The MUC zone, permits some General Retail uses. Sales Oriented and Personal Services are permitted outright, other retail uses are limited to under 60,000 gross leasable area per building.

The zone description of the Mixed Employment Districts in Tigard Development Code is:

The MUE-1 and 2 zoning district is designed to apply to areas where employment uses such as office, research and development and light manufacturing are concentrated. Commercial and retail support uses are allowed but are limited, and residential uses are permitted which are compatible with employment character of the area. Lincoln Center is an example of an area designated MUE-1, the high density mixed use employment district. The Nimbus area is an example of an area designated MUE-2 requiring more moderate densities.

The MUE-2 zone restricts retail uses to under 60,000 gross leasable area per building. Light Industrial, Research and Development, Warehouse/Freight Movement, and Wholesale Sales are permitted as long as all activities associated with these uses, except employee and customer parking, are contained within buildings.

Proposed Title 4 Map Amendment

Section 3.07.430.A of the Urban Growth Management Functional Plan states that for properties designated as Industrial Areas, jurisdictions take measures-

“to limit new buildings for retail commercial uses—such as stores and restaurants—and retail and professional services that cater to daily customers—such as financial, insurance, real estate, legal, medical and dental offices—in order to ensure that they serve primarily the needs of workers in the area. One such measure shall be that new buildings for stores, branches, agencies or other outlets for these retail uses and services shall not occupy more than 5,000 square feet of sales or service area in a single outlet, or multiple outlets that occupy more than 20,000 square feet of sales or service area in a single building or in multiple buildings that are part of the same development project...”

The City believes that applying such restrictions to this section of the Washington Square Regional Center would not be in accordance with the area’s envisioned character, which is detailed in the Washington Square Regional Center Plan (Attachment A) and not in keeping with the present zoning (adopted in 2002.) “Employment Area” is a more appropriate designation.

Once the Map is amended by designating the properties “Employment Area”, the City will be able to make the Comprehensive Plan and Development Code amendments necessary to adopt the Employment and Industrial Areas Map and its requirements. Tigard’s recently updated Comprehensive Plan contains an Economic Development Policy which signals its intent to do this. Economic Development Policy 9.1.7 states “The City shall limit the development of retail and service land

uses in Metro-designated industrial areas to preserve the potential of these lands for industrial jobs.”

Amendment Review Criteria:

The criteria for an amendment to the Employment and Industrial Areas Map are found in Metro Urban Growth Management Functional Plan section 3.07.450 H. It states that the Metro Council may amend the Employment and Industrial Areas Map by ordinance if the Council concludes the proposed amendment meets certain criteria.

The following is the criteria (in *italics*) from Metro Code 3.07.450.H followed by Tigard staff response.

- 1. Would not reduce the jobs capacity of the city or county below the number shown on Table 3.07-1 of Title 1 of the Urban Growth Management Functional Plan;*

Tigard Staff Response

The proposed amendment to the Title 4 Employment and Industrial Areas Map is unlikely to reduce Tigard’s jobs capacity below the number (17,801) shown on Table 3.07-1 of Title 1 of the Urban Growth Management Functional Plan. The Washington Square Regional Center Plan was intended to ensure a mix of housing, retail, and employment. The Plan estimated that new development would provide 7,443 new jobs for the portion of the Regional Center within Tigard and the unincorporated Metzger area.

Specifically, the Plan’s Development and Redevelopment Opportunities Report allocated 1455 jobs to an area that roughly corresponds to Area 1. A mix of office, retail, and lodging jobs were specified. Industrial jobs were not included, likely because of their lower job per acre density.

Comprehensive Plan and Development Code amendments were adopted in 2002 to implement the Washington Square Regional Center Plan. The area in question was rezoned from Industrial Park (I-P) to Mixed Use Commercial (MUC) and Mixed Use Employment 2 (MUE-2). These zones, specifically created for the Center, allow a mix of denser employment and housing, as well as retail (subject to some restrictions.)

The job projections of the Washington Square Regional Plan were developed to help meet Tigard’s target growth allocations and the job capacity of Table 3.07-1 of the Urban Growth Management Functional Plan. The City believes that the proposed amendment would not reduce job capacity, but would bring the Title 4 Map into accord with zoning that has already been implemented.

2. Would not allow uses that would reduce off-peak performance on Major Roadway Routes and Roadway Connectors shown on Metro's 2004 Regional Freight System Map below standards in the Regional Transportation Plan ("RTP"), or exceed volume-to capacity ratios on Table 7 of the 1999 Oregon Highway Plan ("OHP") for state highways, unless mitigating action is taken that will restore performance to RTP and OHP standards within two years after approval of uses;

Tigard Staff Response

The Metro 2004 Regional Freight System Map facilities that are located within or border Area 1 include Highway 217 (Main Roadway Route), Scholls Ferry Road (Roadway Connector), and the Portland & Western Railway (Branch Railroad Line and Spur Track.)

The 2004 Regional Transportation Plan presumably reflected the land uses and zoning of the Washington Square Regional Center that were in place as of 2002. The Washington Square Regional Center Plan included suggested transportation upgrades, some of which appear on the on the RTP's Financially Constrained System. The Plan also called for multi-modal transportation improvements, including the recently started Westside Express Service peak-hour commuter rail.

The proposed map amendment is necessary to resolve an inconsistency between the local zone adopted through the implementation of the Washington Square Regional Center Plan and the Title 4 map. This proposed map amendment will not change the uses that are allowed on the site, thus adoption of this map amendment will not allow new uses that would reduce off-peak performance on Major Roadway Routes and Roadway Connectors shown on Metro's 2004 Regional Freight System Map below standards in the Regional Transportation Plan ("RTP"), or exceed volume-to capacity ratios on Table 7 of the 1999 Oregon Highway Plan ("OHP") for state highways.

3. Would not diminish the intended function of the Central City or Regional or Town Centers as the principal locations of retail, cultural and civic services in their market areas;

Tigard Staff Response

The area in question is within the boundaries of the Washington Square Regional Center, one of three designated regional centers in Washington County and one of eight in the region in Metro's 2040 Growth Concept.

After completing the Washington Square Regional Center Plan, in 2002 the City rezoned the area from industrial zoning to Mixed Use Commercial (MUC) and Mixed Use Employment-2 (MUE-2). This zoning permits a wide range of uses and was designed to reinforce and encourage the Washington Square Regional Center's development of concentrated retail, cultural, and civic services to serve its market area. Keeping the Title 4 Industrial Area designation for the area, with its restrictions on retail and professional service uses, could diminish the intended function of the

Regional Center. For this reason the City believes that the Title 4 Map should be amended to change the area’s designation to Employment Area, which is more compatible with a Regional Center.

4. Would not reduce the integrity or viability of a traded sector cluster of industries;

Tigard Staff Response

The 2006 Regional Business Plan identified seven traded sector clusters: (1) high-tech, (2) metals, machinery, and transportation equipment, (3) forest products, (4) food processing, (5) creative services, (6) nursery products, and (7) sporting goods and apparel.

A review of the Tigard Business License data for Area 1 revealed that traded sector clusters are minimally represented in this area. The chart below summarized the types of businesses located in Area 1.

Type of Business	# of businesses
Motor vehicle sales	2
Motor vehicle repair	1
Communications (cable provider)	1
Storage facility	1
Bakery (non retail)	1
Building Supplies	1
Other retail	3
Medical Technology Manufacturer	1
Electrical Goods Manufacturer	1
Church	1
State Government Offices	1

While the seven traded sector clusters are currently minimally represented in the area, the Mixed Use Employment-2 (MUE-2) and Mixed Use Commercial (MUC) zoning classifications would permit many of these kinds of businesses, subject to some restrictions (See Appendix B for more information on zoning.)

The area south of North Dakota Street (Area 2 on Map A) is zoned Industrial Park (I-P). According to Tigard Business License data there appears to be at least one identified traded sector company located in Area 2. The City believes that the “Industrial Area” designation is appropriate for these properties, which are outside the Washington Square Regional Center boundaries.

Traded sector clusters appear to be minimally represented in the area in question. As stated previously the proposal is unlikely to affect the freight routes that serve traded

sector clusters in the region. Staff believes the proposed amendment will not reduce the integrity or viability of a traded sector cluster of industries.

5. Would not create or worsen a significant imbalance between jobs and housing in a regional market area.

Tigard Staff Response

The City of Tigard as a whole has a job/household ratio of 2.03 (about 2 jobs for every household) compared to a ratio of 1.22 for Washington County as a whole (2004 data.)

While this is a healthy jobs/household ratio, the City recognizes that many employees must commute into Tigard and many residents must commute to jobs outside of the City.

One intention of the Washington Square Regional Center Plan was to improve the balance between jobs and housing in the South Washington County market. The Plan estimated 7,443 new jobs and 1,871 residential units for the portion of the Regional Center within Tigard (and a section of the unincorporated Metzger area.) The mixed use zoning allows high density housing in proximity to the major regional retail center of Washington Square Mall, and office complexes at Lincoln Center and the Nimbus area. The MUC zone has a minimum density of 50 units/acre and no maximum density, and MUE-2 has a minimum density of 25 units/acre and a maximum of 50 units/acre. While only a limited number of housing units have been built to date in the Regional Center, the capacity for housing exists. The zoning provides the Center the potential to develop into a place where people can “live, work, and play.”

6. If the subject property is designated Regionally Significant Industrial Area, would not remove from that designation land that is especially suitable for industrial use due to the availability of specialized services, such as redundant electrical power or industrial gases, or due to proximity to freight transport facilities, such as trans-shipment facilities.

Tigard Staff Response

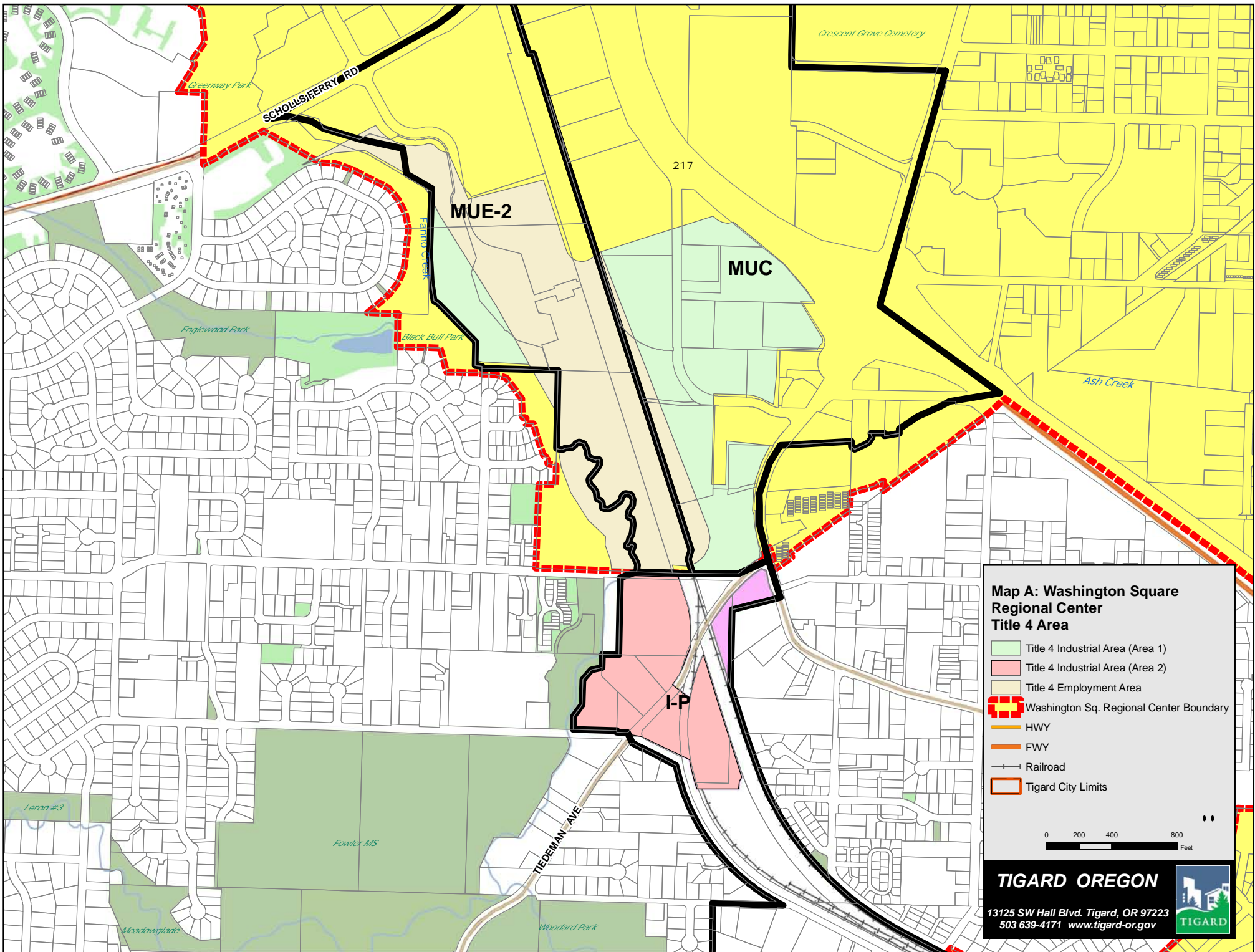
This is not applicable; the subject properties are designated Industrial Area, not Regionally Significant Industrial Area.

Conclusion:

City staff believes that this proposed amendment will remove an existing inconsistency that will make the Title 4 Map more accurate. Applying the Industrial Area restrictions to this area would not be in accordance with the envisioned character detailed in the Washington Square Regional Center Plan and implemented in the zoning which has been in place for the past six years.

Attachment 2b

Employment Area is a more appropriate designation for the 39-acre area in question (Area 1). The area directly borders a 21.4 acre designated Employment Area (Area 3 on Map A.) The designation as part of a Regional Center, its current zoning, and the existing development in Area 1 is more in line with an Employment Area than an Industrial Area.



Attachment 3

Staff Report for the Beavercreek concept plan area Title 4 Map change

Prepared by: Gerry Uba (503) 797-1737

BACKGROUND INFORMATION

Petitioner: Metro

Proposal: Metro intends to amend the Employment and Industrial Areas Map to authorize a mix of uses in the city of Oregon City's Beavercreek concept Plan area.

The proposed amendment would apply to the 308 gross acres of land (245 acres in 2002 and 63 acres in 2004) that the urban growth boundary (UGB) was expanded into (Ordinance No. 02-969B and Ordinance No. 04-1040B) and an additional 151 gross acres already in the UGB before these expansions. The expansion and additional areas are part of the Beavercreek Concept Plan area completed and adopted by the City of Oregon City Council on September 17, 2008.

Location: The 459 gross acres site consists of 57 tax lots or properties (based on Metro's 2010 Regional Land Information System).

Application Review Criteria

The criteria for amendments to the Employment and Industrial Areas Map is contained in Metro Urban Growth Management Functional Plan, section 3.07.450 G. It states that:

"The Metro Council may amend the Employment and Industrial Areas Map by ordinance at any time to make corrections in order to better achieve the policies of the Regional Framework Plan."

Metro Staff Analysis

As a background, Metro's 2002-2022 Urban Growth Report: Employment Land Need Analysis identified a demand for 4,285 net acres of industrial land, and Metro Council's December 2002 regional capacity decision included roughly half of the industrial land need (818 net acres of industrial land and 1,499 net acres of Regionally Significant Industrial Land). Thus, within the 2002 UGB expansion there was 1,968 net acres of industrial land need. In 2004, adjustments were made on the commercial refill rate, Cities of Wilsonville and Oregon City industrial zones, and City of Gresham's Springwater industrial land, and the result was the reduction of industrial land need to 1,180 net acres. The Metro Council expanded the UGB in 2004 by adding 1,047 gross acres of land to satisfy the need for industrial land over the next 20 years. The Council completed the fulfillment of employment capacity by adding 876 gross acres of industrial land by Ordinance No. 05-1070A in 2005.

Metro's broad expectation for urbanization of these areas was set in Title 11 of the Urban Growth Management Functional Plan. The purpose of this title is to ensure that areas brought into the UGB are urbanized efficiently and become or contribute to mixed-use, walkable, transit-friendly communities, and to provide interim protection of the new areas until the city and county likely to provide governance or urban service for the area amends their land use regulations to allow urbanization become applicable to the areas. Title 11 requires city and county, in conjunction with Metro and appropriate service districts,

Attachment 3

to develop and adopt a concept plan for the area. The concept planning process created an opportunity for the city to provide governance or urban service for the area and comply with the requirements of Metro's Title 11.

Beavercreek Concept Plan

Oregon City initiated the Beavercreek Concept Plan process in spring of 2006 to ensure that the 308 gross acres brought into the UGB (245 acres in 2002 and 63 acres in 2004) provide needed employment capacity, are urbanized efficiently in a way that reasonably provides public facilities and services, offers transportation and housing choices, supports economic development and protects natural resources. The total land area included in the concept plan area was 459 gross acres. Attachment 3a shows the Title 4 map of the area before the Beavercreek Concept Plan process was started.

The Concept Plan was developed by a Citizen Advisory Committee and Technical Advisory Committee that met between June 2006 and July 2007. Metro participated in the concept planning process, including membership on the Technical Advisory Committee. In addition, the city conducted study area tours, market focus group, sustainability focus group, public open houses, and community design workshop.

The concept plan provided explanation of the existing condition of the area, including the detailed natural resources, infrastructure, transportation system, buildable land, demographics, market, employment and industrial land analysis that formed the factual basis for determining trends in the area and developing future land use policies and strategies for the area. In addition, the concept plan provided land for the need identified with the various rigorous analyses conducted for the area, including the need to provide for mix of uses that will contribute to family-wage jobs and general economic welfare of the city and improve the region's economic conditions. The city's planning commission report stated that the final product "is a reflection of the needs, desires, attitudes and conditions of the community and represents the vision, direction and improvements that are necessary to accommodate the changing demographics and economics of the community."

Metro staff reviewed the proposed Beavercreek Concept Plan comprehensive plan amendment and Metro compliance findings, and sent comment to Mayor Alice Norris on March 19, 2008 (Attachment 3b), after concluding that the proposal, if adopted by the city council, would comply with the requirements of Title 11 of the Urban Growth Management Functional Plan. On September 17, 2008, the Oregon City Council adopted the Beavercreek Concept Plan as an ancillary document to the city's Comprehensive Plan with the provision that the ancillary document would become effective until February 1, 2009 or upon adoption of zoning regulations implementing the plan amendments, whichever comes first. Attachment 3c shows the Title 4 map of the area after the Beavercreek Concept Plan was adopted.

Changes to Employment and Industrial land inside the Beavercreek Concept Plan Area

Proposed changes to the employment and industrial area inside the Beavercreek Concept Plan area is regulated by Title 4 of the Urban Growth Management Functional Plan, under section 3.07.450 G, which states that the Council may amend the Employment and Industrial Areas Map "...at any time to make corrections in order to better achieve the policies of the Regional Framework Plan."

The basis of the proposed change is two-fold: a) the community's proposal for how the area should be developed in order to achieve the local and regional goals; and b) the findings of the 2009 Urban Growth Report (Employment).

Attachment 3

During the Beavercreek concept planning process, the city addressed economic opportunities and activities vital for the city and the region, and worked with consultant EcoNorthwest to inventory and analyze local and regional market conditions within and adjacent to the area. The inventory included profile of industrial, commercial and office land supply and local employment, and the potential for industrial and commercial development within the area. The consultant analysis concluded “that under the right conditions it is not unreasonable to expect 150 net acres of industrial and business park development to build out on the site over a 20-year period. Thus, the Beavercreek Concept Plan provided 53% (156 net acres) of total net acreage of the area (292 net acres) for employment and industrial land. Attachment 3d shows the proposed changes to the Title 4 map, indicating that 151 gross acres of industrial land is still available in the concept plan area. The 151 gross acres will supply approximately 121 net acres which was Metro’s expectation, as stated in a letter that Metro Council President sent to the Board of Directors for the Hamlet of Beavercreek and the City on May 14, 2007 (Attachment 3e).

Reflecting changes in employment needs and demands between the 2002 UGR (Employment) and the 2009 UGR (Employment, Metro’s 2009 assessment found there is adequate capacity inside the current UGB to accommodate the next 20 years of general employment and general industrial job growth even at the high end of the employment forecast range. This proposed change to the Title 4 Employment and Industrial Areas map will conform the map to the updated information about employment needs in the 2009 UGR (Employment). The change will also respond to the identification of a need for residential capacity in the 2009 UGR (Residential) by increasing the residential capacity of the Beavercreek planning area by 36 dwelling units above the level expected at the time the Metro Council added the areas to the UGB.

ANALYSIS/INFORMATION

Known Opposition

There is no known opposition. However, it is important to state here that a city resident, Elizabeth Grazer-Lindsey, challenged the consistency of the Beavercreek Concept Plan with Metro’s regional planning goals for the area that the Metro Council included in the UGB in 2002 and 2004, and appealed to the Oregon Land Use Board of Appeals.

Legal Antecedents

Statewide Planning Goal 2 (Land Use Planning); Metro Code section 3.07.450 (Employment and Industrial Areas Map).

Anticipated Effects

Proposed changes to the Title 4 map area in the City of Oregon City will make it possible for the area to be urbanized efficiently and contribute the livability in the city, county and the region, consistent with local

Attachment 3

aspirations. The change will also increase residential capacity by shifting some unneeded employment capacity to needed residential capacity, as determined by the 2009 UGR.

Budget Impacts

There is no significant budget impact. Implementation would consist of updating the Employment and Industrial Areas Map.

RECOMMENDED ACTION

Metro Staff believes that the changes to the Title 4 map area will not have any impact on the supply of industrial land. Staff recommends, therefore, that the Metro Council approve this ordinance.

ATTACHMENTS

Attachment 3a (map of the area before the Beaver creek Concept Plan was started)

Attachment 3b (Metro staff (Ray Valone) letter to Mayor Alice Norris and City Commissioners)

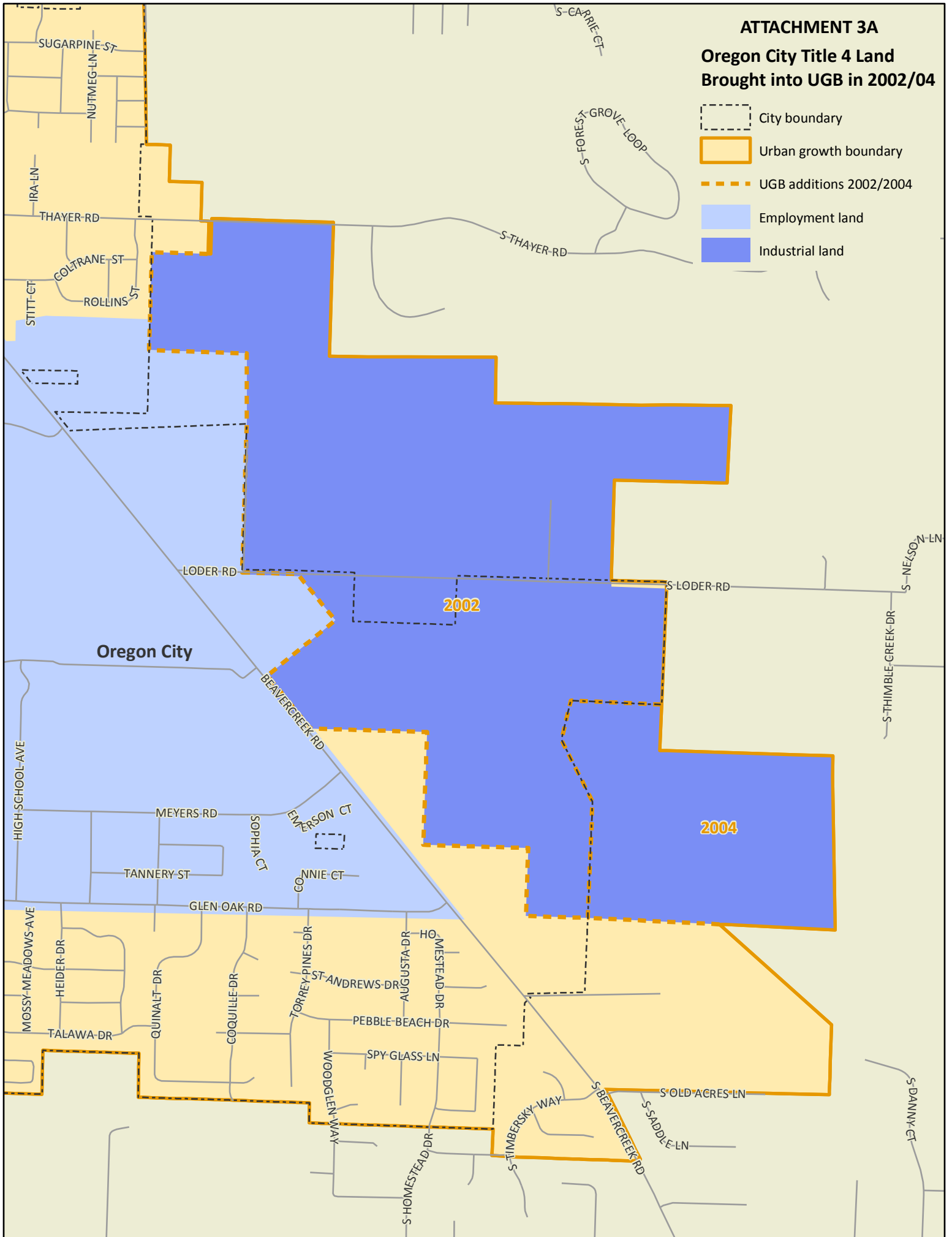
Attachment 3c (map of the Beaver creek Concept Plan area)

Attachment 3d (map of the area after the Beaver creek Concept Plan was completed)

Attachment 3e (Metro Council President (David Bragdon) letter to the Board of Directors for the Hamlet of Beaver creek and the City)

ATTACHMENT 3A Oregon City Title 4 Land Brought into UGB in 2002/04

-  City boundary
-  Urban growth boundary
-  UGB additions 2002/2004
-  Employment land
-  Industrial land



ATTACHMENT 3B



METRO

March 19, 2008

Mayor Alice Norris and City Commissioners
City of Oregon City
320 Warner-Milne Road
Oregon City, OR 97045

RE: File L 07-02, Beaver Creek Road Concept Plan

Dear Mayor Norris and Commissioners:

Thank you for the opportunity to review and comment on the proposed Beaver Creek Road Concept Plan comprehensive plan amendment that will begin the process leading to urbanization of the expansion area brought into the UGB in 2002 and 2004. Please enter this letter into the hearing record.

After review of the final recommended concept plan and Metro compliance findings, as detailed by Tony Konkol in his March 8, 2008, memo to the Commission, Metro staff concludes that the proposal, if adopted, would comply with the intent of Metro Ordinance No. 02-969B, Ordinance No. 04-1040B and the Urban Growth Management Functional Plan. As you know, the two Metro ordinances brought the Beaver Creek Road site into the UGB in December 2002 and June 2004, respectively. Title 11 of the Functional Plan requires the City to consider and adopt certain provisions to guide urbanization of new urban areas.

The adoption of the recommended concept plan by the City at this time sets the context for urbanizing the Beaver Creek Road site. The plan and accompanying language seem consistent with Metro policies and regulations. Metro reserves the right, however, to review the future implementation measures, as they come before the Commission, before determining compliance with the two ordinances and Title 11.

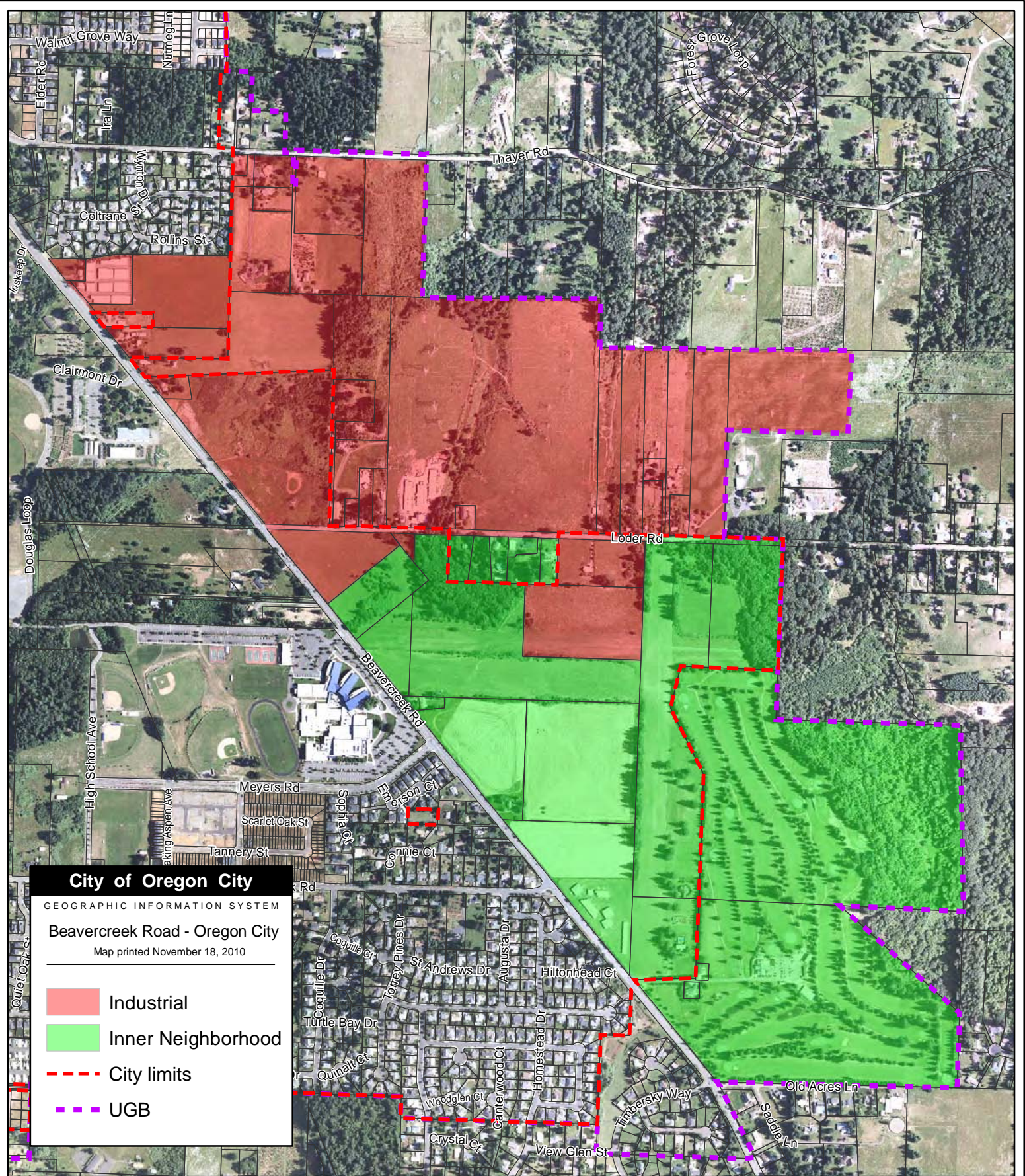
As a participant on the Beaver Creek Road Technical Advisory Committee and attendee of the public open houses during the development of the concept plan, I commend City staff and the consultant team for conducting a thorough process in working with the Citizen Advisory Committee and other stakeholders. While the 2002 and 2004 UGB area was originally designated for job use to support the City's needs, Metro realizes that modifications during local government planning are part of the refinement process. We also appreciate the flexibility shown by all parties in achieving a compromise plan that includes housing and retail services along with a substantial job base.

Sincerely,

Handwritten signature of Ray Valone in black ink.

Ray Valone
Principal Planner

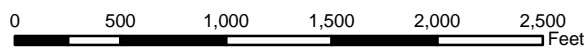
cc: Dan Drentlaw
Tony Konkol
Darren Nichols, DLCD
David Bragdon, Metro Council President
Carlotta Collette, Metro Council District #2
Michael Jordan, Metro COO



City of Oregon City
 GEOGRAPHIC INFORMATION SYSTEM
Beaver Creek Road - Oregon City
 Map printed November 18, 2010

- Industrial
- Inner Neighborhood
- City limits
- UGB

The City of Oregon City makes no representations, express or implied, as to the accuracy, completeness and timeliness of the information displayed. This map is not suitable for legal, engineering, or surveying purposes. Notification of any errors is appreciated.









ATTACHMENT 3C

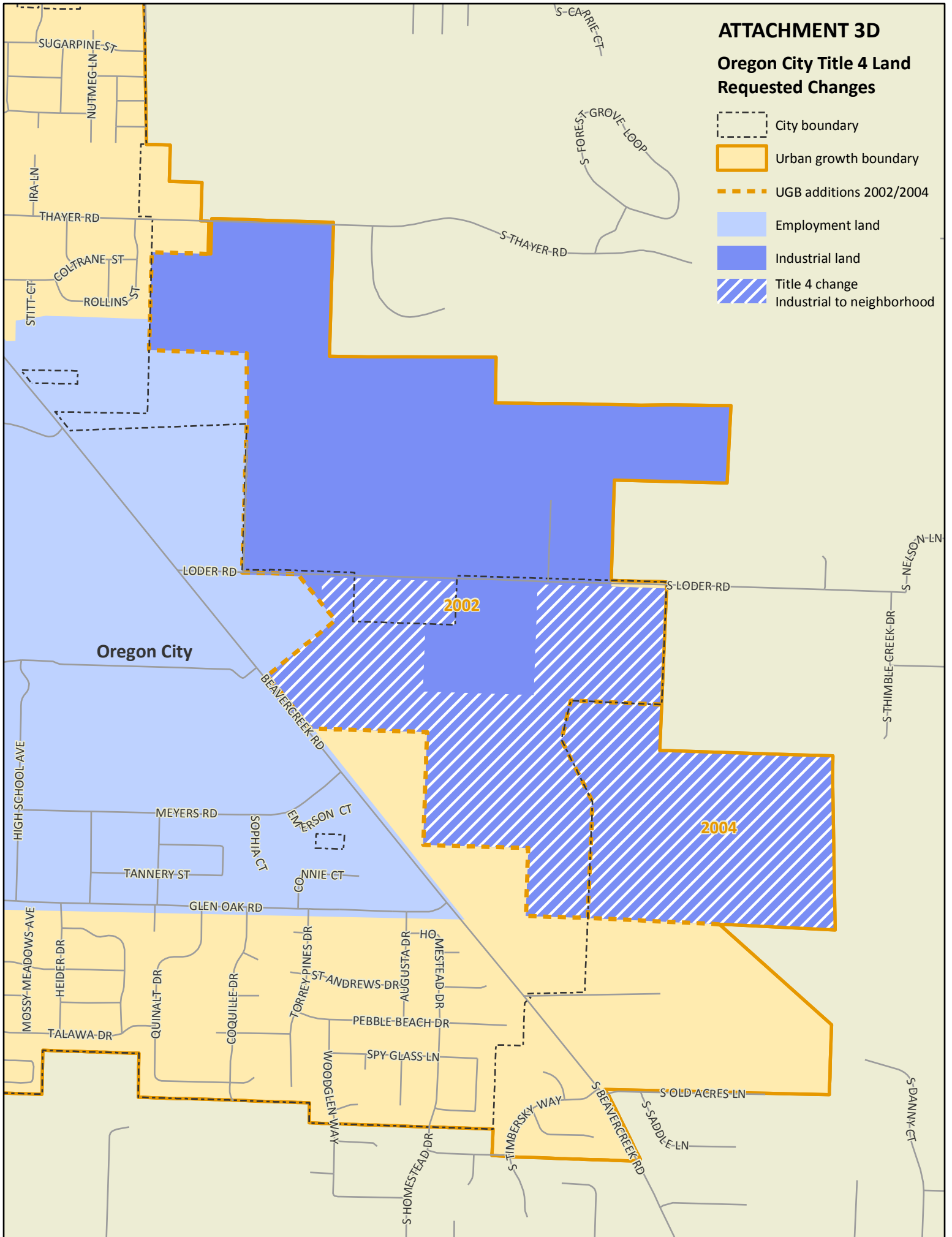
City of Oregon City
 P.O. Box 3040
 625 Center St
 Oregon City, OR 97045
 503-657-0891 phone
 503-657-6629 fax
 www.orcity.org



ATTACHMENT 3D

Oregon City Title 4 Land Requested Changes

-  City boundary
-  Urban growth boundary
-  UGB additions 2002/2004
-  Employment land
-  Industrial land
-  Title 4 change Industrial to neighborhood





METRO

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1889 | FAX 503 797 1793

COUNCIL PRESIDENT DAVID BRAGDON

May 14, 2007

Bill Merchant
Chair, Board of Directors for the Hamlet of Beaver Creek

Elizabeth Graser-Lindsey
Speaker and Corresponding Secretary, Board of Directors for the Hamlet of Beaver Creek
The Hamlet of Beaver Creek
PO BOX 587
Beaver Creek, OR 97004

Dear Mr. Merchant and Ms. Graser-Linsey:

Thank you for your recent letter outlining your concerns about the planning and future development of the 300 acres of property along Beaver Creek Road that were included in the 2002 and 2004 urban growth boundary expansions. The Metro Council had targeted 120 net acres of industrial job land for the 300 acres. It is my understanding that the latest proposed plan meets this requirement.

I have forwarded a courtesy copy of your letter to the City of Oregon City, and it is my understanding that Dan Drentlaw, Director of Community Development has also responded to your letter.

Metro staff Ray Valone serves as Metro's representative on the technical advisory committee for this project and can be reached at 503-797-1808 or valoner@metro.dst.or.us if you have further questions regarding the Metro Council's industrial land targets and the concept and comprehensive planning process.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Bragdon".

David L. Bragdon
Metro Council President

Cc: Mayor Alice Norris, City of Oregon City
Dan Drentlaw, Director of Community Development, City of Oregon City
Michael Jordan, Chief Operating Officer, Metro
Ray Valone, Principal Planner, Metro

Materials following this page were distributed at the meeting.



**Testimony of Burton Weast
Monday, November 29, 2010
Ordinance 10-1244
Public Service Building
Oregon City, OR**

General Comments

On behalf of the Clackamas County Business Alliance (CCBA), I appreciate the opportunity to comment on the proposed ordinance.

Overall, CCBA appreciates and supports the purposes and intents of the ordinance, and believe that many of the changes proposed will be to the benefit of employers in the region. However, we are disappointed that the ordinance does not include a method for replenishing the large lot employment areas as was proposed by the Chief Operating Officer (COO). This proposal was introduced to our board by the COO, and was strongly supported as recognition that we need large lot industrial sites in the region, and if we are to remain competitive we need to keep the supply current, and not wait for plan updates. Having choices for siting of industrial uses is a critical factor in recruiting new companies and keeping current employers.

It is our understanding and hope, that this concept is going to be adopted in 2011, and we will be pleased to continue to work on this issue with the Council and staff.

Also, while we have members who work in the residential development area, other groups will be testifying on housing issues, and with our limited time I will narrow my comments to industrial and employment lands.

Specific Comments

1. Staff recommends that the "...employment forecast range should be consistent with the point chosen in the residential range forecast." However, there is little in the staff report that indicates why this is a sound choice. Housing demand, while certainly affected by a strong employment base, is also influenced by other needs such as retirement living, downsizing, commuting changes, transportation and public demands for new housing choices. None of these demands necessarily correspond to a need for employment lands. CCBA recommends that these forecasts be separated, and based on the relevant factors at the time of the forecast, not an arbitrary attachment to each other.

2. A specific change to Title 4 is new language that prohibits in Regionally Significant Industrial Areas new schools, places of assembly, recreational facilities and in most cases parks. CCBA supports this change, as we have seen lands appropriate for industrial use used for schools and places of worship. While we understand the need for these uses, we do not support their placement in industrial areas.

3. CCBA also supports the amendment to Title 4, Section H (1) which requires the Council to conclude that a proposed amendment to the Employment and Industrial Areas Map would not reduce the employment capacity of a county or city.

4. CCBA strongly supports the existing requirement in Title 4 that the COO make an annual report to the Council on the cumulative effects on employment lands during the previous year, and provide recommendations if necessary. We also support the current Section G, which allows the Council to amend the Employment and Industrial Areas Map to better achieve the policies of the Regional Framework Plan.

In conclusion, CCBA appreciates the opportunity to testify. I personally also want to thank the Metro staff for keeping CCBA advised and up to date on the ordinance.

November 29, 2010

TO: Metro Council

FROM: Susan Mckenna

22800 South Ferguson Road

Beavercreek, Oregon 97004

The interest I take in the Beavercreek Road Concept Plan is that I need to take the same road home as new Oregon City residents for whom the plan would provide. That road is State Highway 213 between Interstate 205 and Beavercreek Road.

The inadequacies of Highway 213 to support more traffic, along with the topographic features and financial constraints which preclude altering the capacity of Highway 213 have been well documented by the Oregon Department of Transportation and cited by Metro (e.g. April 9, 2009 report of the Metro Reserves Steering Committee). Those inadequacies and constraints have figured significantly into the decisions of Metro over the past fourteen-sixteen years not to plan for greater population density in and around the area featured in the Beavercreek Road Concept Plan.

Furthermore, on August 20, 2009, Oregon's Land Use Board of Appeal remanded the Beavercreek Road Concept Plan, noting that it was inconsistent with Metro codes 3.07.430 and 3.07.1140. That inconsistency has not changed.

In short, Metro's codes, ODOT's findings, and LUBA's action make proceeding with the Beavercreek Road Concept Plan ill-advised.

Metro
1/3

Metro Hearing on Ordinance 10-1244:
Should Metro Change OC Title 4 land to Residential?
November 29, 2010
Presented by Elizabeth Graser-Lindsey

In 2002 Metro selected 245 acres along Beaver Creek Rd. for industrial land. It justified this inclusion on the basis of need for industrial lands. Metro Ordinance 02-969B. LCDC's partial remand due to insufficient industrial lands, led to Metro selecting more industrial lands in 2004 including 63 acres of resource land which were included in the Beaver Creek Road concept plan. Metro Ordinance 04-1040. Oregon City planned the Metro Title 4 industrial lands along Beaver Creek Rd. in its Beaver Creek Rd. Concept Plan mostly as residential. Oregon City's concept plan was appealed to LUBA and LUBA remanded the concept plan due to the erroneous planning of Title 4 industrial lands. Rather than correcting its concept plan to conform with Metro Title 4 as LUBA anticipated, OC opted to ask Metro to change the 2040 Design Type designation of these lands, which Metro Ordinance 10-1244 would do.

In 2002 and 2004 Metro told the public and LCDC that this rural land including resource land was critically needed by the region for industrial use. Metro claimed this purpose couldn't be better met by other land including non-resource land. It was explained that Oregon City's Comprehensive Plan specifically addresses that this land near the community college is needed as industrial. It is unacceptable – illegal – to bring in land for industrial use and then a couple of years later without any serious effort to plan it as industrial, for Metro to change it from industrial to residential on its Title 4 maps. You, Metro, needs to be principled in its land use planning and to not join in this public deception where the City gives every appearance of never having intended to zone the land as industrial, but to have pulled a bait and switch deception on the public and on Metro. I fail to understand why your staff would cooperate with a misuse of new UGB expansion land, but it is your duty as elected officials to honor the public trust to conduct principled land use planning and to reject the change in Metro's Title 4 Map which violates the UGB expansion law and which compromises the region's planning efforts.

The Staff Report for Metro Ordinance 10-1244 Section 5 Attachment 3 ("Staff Report for the Beaver Creek [Road] concept plan area Title 4 Map change" electronic page numbers 47-55) is largely comprised of old, erroneous arguments made by Oregon City and rejected by LUBA in *Graser-Lindsey v. Oregon City*, 2009 (LUBA No. 2008-170), although LUBA's decision was not appealed by the city:

1. The Staff Report indicates that the Beavercreek Road Concept Plan was adopted by Oregon City Council in 2008, without mentioning that the concept plan was remanded by LUBA due to gross violations of Metro Codes Title 4 and Title 11. P. 26.
2. The Staff Report suggests Oregon City zoned industrial “approximately 121 net acres... [as] was Metro’s expectation...” (electronic p. 49 or p. 3 of Attachment 3), but LUBA rejected that argument. 120 acres number not in record. “If either metro or the city actually applied that five-step methodology to the 308 acres and determined that only 120 acres of buildable land remained after Step 5 was completed, no one has identified where that exercise can be found in the record.” P. 22
3. The Staff Report argues that Oregon City got an adequate yield out of the 308 industrial acres brought into the UGB in 2002 and 2004 and seems to suggest that 151 of those acres resulted as industrial, but LUBA rejected that argument. LUBA concludes after examining the evidence that

“Approximately 46 of the North Employment Campus’s 127 buildable acres came from the part of the 453-acre concept plan area that was previously designated Employment design type by Metro, before the 2002 and 2004 Industrial design type amendments. That means that only approximately 81 buildable acres in the North Employment Campus were derived from the 308 acres that carry the Industrial design concept.” P. 20

The judge stated, after considering and dismissing all possible explanations why Oregon City neglected to follow Metro Code Titles 4 and 11, reasoning and conclusions Oregon City did not appeal,

“...we conclude above that the city’s decision to designate only approximately 74 acres out of the total 308 acres that carry the Industrial design type for industrial use in accordance with MC 3.07.430 is not consistent with that design type and is not consistent with the city’s obligation under MC 3.07.1140 to conduct its Title 11 planning consistently with Metro’s design types. Remand is therefore required.” *Elizabeth Graser-Lindsey vs. City of Oregon City and Oregon City Golf Club*, ___ Or ___ (2009) LUBA No. 2008-170.

4. LUBA rejected Staff Report Attachments 3E and 3B: “We [LUBA] do not believe a reasonable person would rely on those undocumented statements [“by the Metro Council President and planner”] to conclude that Metro intended only 120 of the 308 acres to be planned and developed in accordance with MC 3.07.430.” p. 21
5. LUBA concludes that the city is diverting the best, most developable land from industrial rather than unusable land:

“...it seems highly unlikely to us [LUBA] that the mixed use residential and commercial development that the concept plan proposes for the large southern portion of the 308 acres is to be located on developed or constrained lands that would be eliminated by Steps 1 through 5 [of “methodology for assessing vacant buildable lands”, p. 21] . Petitioner contends that many of the Industrially designated acres in the southern part of the concept plan area that the concept plan designates for mixed commercial and residential uses are actually the flattest and best land for industrial development. The city’s economic consultant appears to agree: “the south half of the property, flat and assembled, has not significant constraints on design and development.” P. 22

Oregon City retains a canyon and a extensive regional transmission line network for industrial and proposes to divert an airport and part of a golf course for residential. The remaining industrial lands from the 2002 and 2004 expansions are essentially unuseable.

6. LUBA inherently agreed that the Title 4 industrial standard is not satisfied by commercial employment or residential.
7. The Staff Report suggests that the concept plan “is a reflection of the needs, desires, attitudes and conditions of the community and represents the vision, direction and improvements that are necessary to accommodate the changing demographics and economics of the community”, but the evidence does not support this conclusion. LUBA’s decision anticipated a revision of the concept plan on remand and did not approve the City’s inadequate approach to infrastructure or funding sources or its Goal 1 non-compliant citizen involvement. On the final page of its 26 page final opinion issued some time after the statutory deadline, LUBA stated, “The petition for review also includes two more assignments of error that we have not addressed. The issues presented by those arguments may or may not arise if the city on remand adopts a new concept plan that complies with MC 3.07.1120 and 3.07.430.” Two polls of citizens at the final open house, one conducted by the City, measured large majority citizen opposition to the plan. The UGB expansion considered the infrastructure for industrial and not residential/commercial. ODOT’s review of the concept plan determined that the traffic assumptions erroneously assumed unrealistically low traffic amounts – the project was assumed “green” with half of normal driving without any means to achieve such a goal. Even if Metro’s Title 4 map were to be able to conform with the City’s flawed concept plan, the concept plan still has other serious defects, not sustained by LUBA, that would have to be corrected before the concept plan could go into effect.
8. The Staff Report makes this proposal based on Oregon City’s desires whereas this is a regional decision and a subregional analysis is not in the rules.

The concept plan decision may have other errors that the LUBA judge did not examine expecting the decision to be reworked

The staff Report suggests this land is no longer needed without adequate evidence:

1. Although the Staff Report suggests Oregon City's concept planning process indicated it did not need more industrial land than it planned in the concept plan (electronic page number 49), LUBA did not reach that conclusion after looking at the evidentiary record, but to the contrary LUBA concluded the land is needed as Industrial:

"Although the ECONorthwest study may be substantial evidence that market demand for industrial land in Oregon City could be expected to result in development of 150 of the 308 acres, it is not substantial evidence that there is not a regional demand for the 308 acres that carry the Industrial design type."

"...the evidentiary record does not establish that there is a surplus of industrial land to meet Metro's 20-year regional need for such lands. To the contrary, the ECONorthwest market analysis seems to conclude that there is a shortage of Industrial land to meet Metro's 20-year need for Industrial land." P. 25

"...ECONorthwest market analysis is not a sufficient basis for the city to proceed with its Title 11 planning to divert some of the 308 Industrially designated acres to allow non-industrial development of those acres. If the city were permitted to do so, and Metro simply conformed its mapping to the city's concept plan under MC 3.07.450(B), the regional shortage of Industrially designated land would simply be exacerbated." P. 26.

2. The amount of Industrial land needed is a guess. To say this land is unneeded locally or regionally for 20 years is a guess. More land may be needed or less; it is unlikely the guess is perfectly precise. Some land is planned to be vacant and waiting for development later in the planning horizon. The regional land need does not end in 20 years. There is not enough need to expand the UGB for industrial land, but that does not mean land should be repurposed over and over again as each new guess is made or each revision of the target within the employment forecast range. But diverting the land to other purposes becomes final when it is developed. Currently Metro is selecting new industrial land in the Reserves process for a 50-year time frame and it is picking Foundational farmland, because it says nothing else suitable is available. Saying there is plenty of Industrial land, ignores the long-term, regional context.
3. The ODOT reviewer commented on the Concept Plan: "The City's 2030 jobs-housing ratio of 1.52 is only about 10% higher than the 2005 jobs-housing ratio of 1.38. it would still be quite a bit lower than the regional jobs-housing ratio of 1.69." The City fails to

utilize this opportunity to improve its job-housing ratio and as a result it disproportionately burdens the region's road network and the City fails to diversify and strengthen its mostly residential tax base with revenue generating industrial." *Graser-Lindsey v. Oregon City*, P. 23

4. The Staff Report did not consider the value of this land for the difficult-to-obtain large-lot industrial uses. 50-acre Industrial parcels can be put together from this Industrial land area as the tax lots are owned by two main owners, the airport and the golf course. The Urban Reserves process before LCDC made clear that the 50 acres does not need to be one tax lot.
5. The new LCDC-acknowledged 2010 Urban Reserves were selected with this Industrial land as part of the basis of available Industrial lands for the 50-year land supply. This change would reduce regional industrial lands and could require replacement with of foundational farm lands that were put in Urban Reserves or undesignated lands.
6. LCDC indicated by its remand of Metro's 2002 decision for more industrial land to be added that the land is needed as industrial. The industrial land added to the concept plan area in 2004 was part of the land added as required by the remand. With the new industrial land, LCDC then acknowledged Metro's 2002/2004 UGB decision

The staff report ignores the requirements of the UGB expansion process. If Metro erred in bringing this land into the UGB as industrial and it was not needed, then the legal course of action is to put the land back out of the UGB because this land was only justified on the basis of being industrial.

Industrial land and residential/commercial land have different impacts on agriculture and the need for agricultural buffers (which haven't been planned despite such precedents elsewhere in Oregon) with industrial land having less conflict with ag than high-density residential (ODA Jim Johnson and WA Co. Brent, 10-22-10, LCDC hearing); on the regional transportation infrastructure; and so forth. This land has not met the UGB expansion residential justification standard. There has been no demonstration that residential land is needed at this location nor that this land including the resource land is more suitable than other lands considered on a local and regional basis including in terms of infrastructure, funding and so forth. Metro may not change the 2040 designation of lands away from the 2040 designation that was justified when the lands were brought into the UGB without justifying the land be brought into the UGB on the new justification – here as residential. To do otherwise does not comply with state law and is a bait and switch. Baring these justifications including the higher standard for resource land, this land must be put out of the UGB.

If residential land is needed, it must be selected from the new urban reserves.

The staff report justifies this map change as a correction:

"The Metro Council may amend the Employment and Industrial Areas Map by ordinance at any time to make corrections in order to better achieve the policies of the Regional Framework Plan." Metro Urban Growth Management Functional Plan, section 3.07.450 G.

This is not a correction of the type Title 4 G envisions (and even if it were, it would have to reach the justification standard of new UGB expansions):

1. This land was brought into the UGB very deliberately and in response to LCDC's remand.
2. The Staff Report says "the 2009 UGR [Urban Growth Report]... found there is adequate capacity inside the current UGB to accommodate the next 20 years of general employment and general industrial job growth even at the high end of the employment forecast range." The Urban Growth Report does not actually say there is too much Industrial land.
3. The Staff Report, saying employment needs and demands changed between 2002 and 2009 (ignoring 2004) (electronic p. 49), seems to be suggesting unpredictable land use planning associated with revision of the target points in the employment forecast range and associated moving land in and out of design types as the targets fluctuate. The Staff Report does not consider the serious consequences of frivolous redesignation of land between the design types. The forecast range is only approximations and the adjusted guess in the forecast range may not actually be what happens. Industrial land is hard to come by as is stated in Title 4 and it may be needed locally or regionally after the 20 year time frame, but it will no longer be available if it is removed from Title 4 designation and is developed in some other way. An avoidable future shortage of Industrial land could require Resource land because Industrial land is not protected now e.g. right now in the Reserves process LCDC has told Metro it has selected too much Foundational farmland/resource land for industrial use.
4. There is no evidence having less industrial land would "better achieve the policies of the Regional Framework Plan".

The staff report also creates new errors:

1. The Staff Report, which misspells my name and mis-identifies me, claims, "There is no known opposition." despite the concept plan being appealed to LUBA and LUBA remanding the decision. The Staff Report also ignores other clear opposition to the concept plan and the mis-planning that led to it: a Hamlet of Beaver Creek letter of opposition precipitated the discredited Attachment 3E on electronic page 55 (see #4

above), the two surveys documenting citizen opposition and my contacts of Gerry Uba by phone and email on Sept. 10, 2010 when I requested notice of the process and explained the city should correct the concept plan to comply with Title 7 and by phone on Oct. 7, 2010 at which time he still said that the issue was “not framed yet” and there would be “maybe an ordinance

2. Metro staff developed this proposal apparently in consultation with the Oregon City staff without the involvement of Oregon City’s elected commission and without notice to the affected public¹. The Staff Report refers to discredited documents to an elected Oregon City official who is being replaced by the election. The *Oregon City News* reports the election shifts “the balance of power” concerning development.

LUBA determined that Oregon City erred in adopting the illegal Beaver Creek Road Concept Plan. Oregon City should correct its error by bringing its concept plan in compliance with Title 4. Metro should not create its own new error by cooperating with Oregon City’s error and trying to relieve Oregon City of its responsibility to comply with Title 4 and making a new Metro error of violating the UGB expansion process

If Metro Ordinance No. 10-1244 were adopted, as it stands, in which in Sections 2 and 5 recommend changing the Title 4 map in the Beaver Creek Road Concept Plan area, Metro would move into an unprincipled direction and violate the public trust. Metro is on a slippery slope if, any time a City doesn’t want to comply with Metro planning, it simply asks Metro to change the governing maps to reflect the City’s wishes. Metro enables a City, making the easier justification for bringing industrial land into the UGB, when the City really wants residential/commercial land, to complete its “bait and switch”, if Metro simply modifies the maps upon request.

Don’t make OC’s error and failure to comply with Metro Code as confirmed in court into Metro’s error and failure to comply with and respect your own code. If this were to be the case, then Metro would become the Respondent rather than Oregon City and Metro would be defending Oregon City’s error as well as its own.

¹ In a recent land use action, Oregon City’s staff said to its planning commission (August 30, 2010): “Tony Konkol, Community Development Director, said the City was in the process of having the Concept Plan that was approved by the Commission comply with and address the reason for the remand.” Such a comment might lead a person to think that the concept plan was being brought into compliance with Title 4, rather than that Title 4 is being corrupted to reflect a ill-conceived concept plan

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

ELIZABETH GRASER-LINDSEY,
Petitioner,

AUG20'09 AM10:48 LUBA

vs.

CITY OF OREGON CITY,
Respondent,

and

OREGON CITY GOLF CLUB,
Intervenor-Respondent.

LUBA No. 2008-170

FINAL OPINION
AND ORDER

Appeal from City of Oregon City.

Elizabeth Graser-Lindsey, Beavercreek, filed the petition for review and argued on her own behalf.

Carrie A. Richter, Portland, filed the response brief. Carrie A. Richter and Jennifer M. Bragar argued on behalf of respondent. With her on the brief were Edward J. Sullivan and Garvey Schubert Barer, PC.

Kelly S. Hossaini, Portland, represented intervenor-respondent.

HOLSTUN, Board Member; RYAN, Board Member, participated in the decision.

BASSHAM, Board Chair, did not participate in the decision.

REMANDED

08/20/2009

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals a city ordinance that amends the city's comprehensive plan to adopt a concept plan for an area that was recently included within the Metro urban growth boundary (UGB).¹ The city has not yet amended its comprehensive plan and zoning maps to make them consistent with the concept plan. The city proposes to adopt those amendments separately.

MOTION TO FILE AN OVERLENGTH PETITION FOR REVIEW

Petitioner filed a petition for review that is 50 pages long. Under OAR 661-010-0030(2)(b), a petition for review may not exceed 50 pages unless LUBA gives permission to file a petition for review with more than 50 pages. Petitioner included five more pages of argument at the end of the petition for review, and requests permission to include those additional five pages in her petition for review.

If petitioner had focused her arguments and written more concisely she could easily have included the five pages of argument and her other arguments in a petition for review with fewer than 50 pages. Petitioner's request to include the additional five pages of argument in her petition for review is denied.

In opposing petitioner's request to file an overlength petition for review, the city moves to strike three appendicies (Appendicies C, F and G). According to the city those appendicies include calculations made by petitioner, and they should have been included in the 50-page petition for review rather than attached as an appendix to the petition for review.

¹ The Oregon City Comprehensive Plan (OCCP) explains:

"Concept plans are land-use plans for areas of the city that have just been included in the Urban Growth Area. Before these areas can be zoned or subdivided, a concept plan must be completed and adopted by the City Commission and accepted by Metro. Concept plans require a detailed assessment of the area to determine the most appropriate intensity and type of land use, and when completed, are adopted as part of the comprehensive plan." OCCP 4.

1 Appendix F is simply a copy of a zoning map, and the city does not explain what is
2 objectionable about that map. The city is correct, with regard to Appendix C and Appendix G
3 that those appendices include material that is best viewed as additional argument that should
4 have been included in the 50-page petition for review. However, Appendices C and G assist
5 us in understanding the parties' arguments, and we therefore deny the city's motion to strike
6 the three appendices.

7 **MOTION TO FILE A REPLY BRIEF**

8 Petitioner moves for permission to file a reply brief. The first part of the reply brief
9 quibbles with some of the city's statement of facts. That part of the reply brief is not allowed.
10 The balance of the reply brief is captioned "New Arguments." But that part of the reply brief
11 is most fairly characterized as a mixture of responses to alleged new matters in the city's brief
12 and embellishments of arguments that were already presented in the petition for review.
13 Under OAR 661-010-0039, reply briefs are permitted to respond to new issues in the
14 respondent's brief; reply briefs are not permitted to embellish upon arguments that were
15 presented in the petition for review. *Wissusik v. Yamhill County*, 20 Or LUBA 246, 250
16 (1990). However, given the nature of the petition for review, it would be difficult to sort out
17 embellishment arguments from responses to new matters in the respondent's brief. We
18 decline to do so, and elect simply to allow the "New Arguments" portion of the reply brief.

19 **FACTS**

20 Metro amended the Metro UGB in 2002 to include 245 acres of land next to Oregon
21 City. Metro amended the UGB again in 2004 to include 63 additional adjoining acres, for a
22 total of 308 acres. Those 308 acres have been included on Metro's Employment and
23 Industrial Lands Map, and have been designated for Industrial use. Sometime before those
24 UGB amendments, Metro applied Employment or Outer Neighborhood map designations to

1 another 145 acres in the same general area.² Altogether, this area includes 453 acres
2 designated Industrial, Employment or Outer Neighborhood. The city concept plan that is
3 before us in this appeal applies to this 453-acre area. That concept plan calls for a 175-acre
4 North Employment Campus to satisfy the city's planning obligations for the 308-acre
5 Industrial area. The balance of the concept plan calls for a variety of mixed employment,
6 commercial and residential development. According to petitioner, the concept plan is
7 inconsistent with Metro's designation of the 308 acres for Industrial use, and is also
8 inconsistent with city comprehensive plan policies that encourage industrial development.

9 **INTRODUCTION**

10 The primary issue in this appeal is whether the challenged concept plan is consistent
11 with Metro's regional planning for the subject property. Specifically, the dispute centers on
12 the legal effect of Metro's decision to include 308 acres of property in the urban growth
13 boundary and to designate those acres for industrial use. As briefed, this appeal is
14 exceedingly complicated. Resolution of this appeal, in large part, requires us to resolve the
15 parties' differing views regarding the correct interpretation of Titles 4 and 11 of Metro's
16 Urban Growth Management Functional Plan (UGMFP), which is codified at Metro Code
17 (MC) Chapter 3.07. Our review and resolution of those arguments has been difficult, because
18 those Titles of MC Chapter 3.07 are ambiguous, and Metro is not a party to this appeal and
19 has not filed a brief.

20 A basic understanding of the relevant Metro regional planning framework is necessary
21 to sort out the parties' arguments. We discuss key sections of the MC before turning to the
22 parties' arguments.

² We discuss these Metro map designations further later in this opinion.

1 **A. Metro 2040 Growth Concept Design Types**

2 The UGMFP (Metro Code Chapter 3.07) sets out how cities and counties are to
3 incorporate regional planning into their local comprehensive planning. The UGMFP
4 explains:

5 “The regional policies which are adopted by this [UGMFP] recommend and
6 require changes to city and county comprehensive plans and implementing
7 ordinances. The purpose of this functional plan is to implement regional goals
8 and objectives adopted by the Metro Council as the Regional Urban Growth
9 Goals and Objectives (RUGGO), including the Metro 2040 Growth Concept
10 and the Regional Framework Plan. The comprehensive plan changes and
11 related actions, including implementing regulations, required by this
12 functional plan as a component of the Regional Framework Plan, shall be
13 complied with by cities and counties as required by Section 5(e)(2) of the
14 Metro Charter.” MC 3.07.010.

15 Metro’s 2040 Growth Concept is made up of a number of components, called “design types,”
16 which are applied to properties within the Metro region. The UGMFP requires that City and
17 County comprehensive planning for property within the city or county must be amended to
18 make that planning consistent with the Metro 2040 Growth Concept design types (hereafter
19 design types) that have been applied to that property. MC 3.07.130.³

³ MC 3.07.130 provides:

“For each of the following 2040 Growth Concept design types, city and county comprehensive plans shall be amended to include the boundaries of each area, determined by the city or county consistent with the general locations shown on the 2040 Growth Concept Map or on maps adopted by ordinances adding territory to the UGB:

“Central City--Downtown Portland is the Central City which serves as the major regional center, an employment and cultural center for the metropolitan area.

“Regional Centers--Seven regional centers will become the focus of compact development, redevelopment and high-quality transit service and multimodal street networks.

“Station Communities--Nodes of development centered approximately one-half mile around a light rail or high capacity transit station that feature a high-quality pedestrian environment.

“Town Centers--Local retail and services will be provided in town centers with compact development and transit service.

1 **B. UGMFP Title 11—Planning for New Urban Areas**

2 When Metro amends the UGB to bring rural land into the urban area, additional local
3 planning must be done because the formerly rural land becomes urbanizable land that is
4 available for urban development. UGMFP Title 11 (MC 3.07.1105 through MC 3.07.1140)
5 sets out local government planning requirements for new urban areas. In this opinion we
6 refer to this planning as Title 11 planning. MC 3.07.1120 sets out specific requirements for
7 planning for areas that Metro brings within the UGB. Under MC 3.07.1120, that planning
8 must, among other things, be “consistent with the requirements of all applicable titles of the
9 Metro Urban Growth Management Functional Plan” and be in “compliance with * * * the
10 Metro Council adopted 2040 Growth Concept design types.”⁴ Under MC 3.07.1120(A), a

“Main Streets--Neighborhoods will be served by main streets with retail and service developments served by transit.

“Corridors--Along good quality transit lines, corridors feature a high-quality pedestrian environment, convenient access to transit, and somewhat higher than current densities.

“Employment Areas--Various types of employment and some residential development are encouraged in employment areas with limited commercial uses.

“Industrial Areas--Industrial areas are set aside primarily for industrial activities with limited supporting uses.

“Regionally Significant Industrial Areas--Industrial areas with site characteristics that are relatively rare in the region that render them especially suitable for industrial use.

“Inner Neighborhoods--Residential areas accessible to jobs and neighborhood businesses with smaller lot sizes are inner neighborhoods.

“Outer Neighborhoods--Residential neighborhoods farther away from large employment centers with larger lot sizes and lower densities are outer neighborhoods.”

⁴ As relevant, MC 3.07.1120 provides:

“All territory added to the UGB as either a major amendment or a legislative amendment pursuant to Metro Code Chapter 3.01 shall be subject to adopted comprehensive plan provisions *consistent with the requirements of all applicable titles of the Metro Urban Growth Management Functional Plan* and in particular this Title 11. The comprehensive plan provisions shall be fully coordinated with all other applicable plans. The comprehensive plan provisions shall contain an urban growth plan diagram and policies that demonstrate compliance with the RUGGO, *including the Metro Council adopted 2040 Growth Concept design types*. Comprehensive plan amendments shall include:

1 local government's comprehensive plan map designations must be consistent with the
2 "general boundaries of design type designations." Under MC 3.07.1120(F), local government
3 comprehensive plans must provide "for sufficient commercial and industrial development for
4 the needs of the area to be developed consistent with 2040 Growth Concept design types."⁵

5 **C. UGMFP Title 4—Planning for Industrial and Employment Areas**

6 For areas that are subject to the Regionally Significant Industrial, Industrial or
7 Employment design types, UGMFP Title 4 (MC 3.07.410 through MC 3.07.450) imposes
8 additional planning requirements to protect these areas and encourage industrial development
9 that benefits from clustering and freedom from potentially incompatible non-industrial uses.⁶
10 In this opinion we sometimes refer to these planning requirements as Title 4 requirements or
11 Title 4 planning. Within areas subject to the Industrial design type, non-industrial

"A. Specific plan designation boundaries derived from the general boundaries of design
type designations assigned by the Council in the ordinance adding the territory to the
UGB.

"* * * * *

"F. Provision for sufficient commercial and industrial development for the needs of the
area to be developed consistent with 2040 Growth Concept design types.
Commercial and industrial designations in nearby areas inside the Urban Growth
Boundary shall be considered in comprehensive plans to maintain design type
consistency.

"* * * * *" (Emphasis added.)

⁵ Other subsections of MC 3.07.1120 impose requirements to plan for housing, transportation, areas to be protected from development, public facilities, and schools. MC 3.07.1120 requires that local governments adopt an urban growth diagram that displays the general location of "streets," "unbuildable lands," "Habitat Conservation Areas," "mixed use areas, commercial and industrial lands," "single and multi-family housing," "public open space, plazas and neighborhood centers," and "needed school, park or fire hall sites."

⁶ MC 3.07.410 describes the purpose and intent of Title 4:

"The Regional Framework Plan calls for a strong economic climate. To improve the region's economic climate, Title 4 seeks to provide and protect a supply of sites for employment by limiting the types and scale of non-industrial uses in Regionally Significant Industrial Areas (RSIAs), Industrial and Employment Areas. Title 4 also seeks to provide the benefits of 'clustering' to those industries that operate more productively and efficiently in proximity to one another than in dispersed locations. * * *"

1 development must be limited to commercial uses that “serve primarily the needs of workers
2 in the [industrial] area.” MC 3.07.430.⁷ Non-industrial development is also strictly limited
3 in areas subject to the Employment design type. MC 3.07.440.⁸

4 For purposes of this appeal, the UGMFP Title 4 requirements that are set out in the
5 subsections of MC 3.07.450 supply important context. Those subsections explain how Metro
6 allows local governments to deviate from the Employment and Industrial Areas Map and
7 maintains consistency between the Employment and Industrial Areas Map and local
8 comprehensive planning. We have attached the complete text of MC 3.07.450 as an
9 appendix to this opinion. We discuss the key subsections of MC 3.07.450 below.

10 **1. MC 3.07.450(A) Employment and Industrial Areas Map**

11 MC 3.07.450(A) provides that the Employment and Industrial Areas Map (the E&IAs
12 Map) “is the official depiction of the boundaries of Regionally Significant Industrial Areas,
13 Industrial Areas, and Employment Areas.”

14 **2. MC 3.07.450(B) – Conforming E&IAs Map Changes After Title 11**
15 **Planning**

16 After initial Title 11 planning has been completed, MC 3.07.450(B) requires the
17 Metro Chief Operating Officer to conform the E&IAs Map to the comprehensive plan map

⁷ MC 3.07.430 provides in part:

“Cities and counties shall review their land use regulations and revise them, if necessary, to include measures to limit new buildings for retail commercial uses - such as stores and restaurants - and retail and professional services that cater to daily customers – such as financial, insurance, real estate, legal, medical and dental offices – in order to ensure that they serve primarily the needs of workers in the area. * * *”

⁸ None of the subject property is designated Regionally Significant Industrial Area, but as we have already noted, the 308 acres that were added to the UGB in 2002 and 2004 carry the Industrial design type and the Employment design type was applied to other property in the concept plan area sometime before 2002. The limits imposed on commercial uses on lands subject to the Industrial and Employment design types by MC 3.07.430 and 3.07.440 are fairly detailed and are more stringent for the Industrial design type than for the Employment design type. For purposes of this appeal the precise details of these limits on commercial uses are not important. In both cases, the limits are designed to ensure that any commercial development is appropriate for serving employees in the Industrial and Employment areas, rather than the general public.

1 boundaries that are established by local governments in their Title 11 planning. *See*
2 Appendix.

3 **3. MC 3.07.450(C) – Small Changes in Local Government Planning**
4 **for Industrial and Employment Areas to Allow Non-Title 4 Uses**

5 MC 3.07.450(C) authorizes cities and counties to change their comprehensive
6 planning for areas that are subject to Title 4, to allow non-industrial uses that would not
7 otherwise be allowed by Title 4. However, for land that is subject to the Industrial design
8 type, the area affected may not exceed 20 acres and additional restrictions apply to such
9 amendments. *See* Appendix. We will refer to these changes as “small changes,” to
10 distinguish them from the “large changes,” authorized by MC 3.07.450(H), which is
11 discussed below.

12 The decision that is before us in this appeal is the city’s initial Title 11 planning for
13 the 453-acre concept plan area. We note here that a key question is whether the requirements
14 of MC 3.07.450(C) and the other subsections of MC 3.07.450 that follow MC 3.07.450(C)
15 apply to the city’s initial Title 11 planning or only apply to comprehensive plan amendments
16 that may be adopted after the initial Title 11 planning has been completed. If they do apply
17 to Title 11 planning, they significantly constrain a local government’s authority to deviate
18 from the requirements of Metro’s design types when conducting Title 11 planning. If they do
19 not apply to initial Title 11 planning, they do not constrain Title 11 planning and only
20 severely constrain a local government’s authority to deviate from Metro’s design types *after*
21 Title 11 planning has been completed. We return to that question after we summarize the
22 remaining key MC 3.07.450 subsections.

23 **4. MC 3.07.450(D) – Unbuildable and Previously Developed Lands**

24 MC 3.07.450(D) authorizes local governments to amend their comprehensive plans
25 and land use regulations to allow land that is subject to Title 4 to be put to uses that are not
26 allowed by Title 4, if the “entire property is not buildable.” Additionally, under MC

1 3.07.450(D), land may be put to uses that are not allowed by Title 4 if the property was
2 previously developed and the property as developed meets a specified improvement value to
3 land value ratio.

4 **5. MC 3.07.450(E) – Conforming E&IA Map Changes After Small**
5 **Changes in Local Planning for Title 4 Land Under MC**
6 **3.07.450(C)**

7 If a local government takes advantage of MC 3.07.450(C) to make one of the
8 permitted small changes in planning for Title 4 lands, MC 3.07.450(E) directs the Metro
9 Chief Operating Officer to conform the Metro E&IAs Map to the changed local planning
10 after the deadline for appealing the small change amendment to LUBA expires or after the
11 small change amendment is upheld if appealed to LUBA. We do not know why MC
12 3.07.450(E) does not also require conforming changes to the E&IAs Map following local
13 mapping changes under subsection D of MC 3.07.450. Our guess is that omission was
14 simply an oversight.

15 **6. MC 3.07.450(F) – Suspension of MC 3.07.450(C) “Small”**
16 **Amendments**

17 MC 3.07.450(F) provides that the Metro Council may suspend operation of MC
18 3.07.450(C), if the cumulative local government small changes authorized by that subsection
19 have exhausted the 20-year industrial land surplus. MC 3.07.450(F) appears to have been
20 adopted to allow the Metro Council to suspend the authority for small changes under MC
21 3.07.450(C), if those changes would cause the regional vacant industrial land supply to fall
22 below a 20-year supply.

23 **7. MC 3.07.450(G) Metro Council May Amend the E&IAs Map At**
24 **Any Time**

25 The Metro Council may amend the E&IAs Map at any time “to better achieve the
26 policies of the Regional Framework Plan.”

1 **8. MC 3.07.450(H) – Large Changes in Local Government Planning**
2 **for Industrial and Employment Areas to Allow Non-Title 4 Uses**

3 MC 3.07.450(H) authorizes the Metro Council to amend the E&IAs Map to permit
4 local governments to adopt “large changes” that exceed the size limit imposed by MC
5 3.07.450(C), if certain criteria that are designed to ensure the continued adequacy of the
6 industrial and employment land supply are satisfied.

7 **D. Summary**

8 Title 4 is not ambiguous in how it applies to comprehensive plan amendments after
9 Title 11 planning is complete. As to post-Title 11 planning, Title 4 clearly grants local
10 governments very limited authority to amend their comprehensive plans to allow non-
11 industrial and non-employment uses on lands that carry the Industrial and Employment
12 design type. Small changes (up to 20 acres) are authorized by MC 3.07.450(C) for property
13 subject to the Industrial design type, provided that the criteria in MC 3.07.450(C) are met.
14 MC 3.07.450(D) provides another limited exception for unbuildable land and land that is
15 already developed. Finally, for larger properties that exceed the 20-acre size limit in MC
16 3.07.450(C)(6), MC 3.07.450(H) authorizes the Metro Council to amend the E&IA Map to
17 allow non-industrial development if the criteria in MC 3.07.450(H) are met. Those criteria
18 include standards designed to protect the quantity and quality of industrially designated lands.
19 Beyond MC 3.07.450(C), MC 3.07.450(D) and MC 3.07.450(H), after a local government’s
20 Title 11 planning is complete, it appears that the only way a local government would be
21 permitted to amend its comprehensive plan and land use regulations to authorize non-
22 industrial use of lands that carry the Industrial design type, would be to request that the Metro
23 Council first exercise its authority under MC 3.07.450(G) to apply a different design type that
24 would allow planning and zoning such lands for non-industrial uses.

25 One of the questions that we must answer in resolving petitioner’s first assignment of
26 error, is whether MC 3.07.450(C) through (G) also apply during Title 11 planning when a

1 local government first applies its comprehensive planning to land that has been added to the
2 UGB and designated Industrial and Employment by Metro.

3 **FIRST ASSIGNMENT OF ERROR**

4 Petitioner’s first assignment of error is 29 pages long and very difficult to follow in
5 places. A recurring theme under the first assignment of error is that the city is obligated
6 under MC 3.07.1120 and other laws to ensure that its Title 11 planning for the entire 308
7 acres that carry the Industrial design type complies with MC 3.07.430.⁹ Many of the
8 authorities petitioner cites in her argument under the first assignment of error appear to have
9 little or nothing to do with petitioner’s central theme. We have simplified petitioner’s
10 arguments under the first assignment of error and delve no more deeply into the facts than is
11 necessary to resolve this assignment of error.

12 MC 3.07.1120 requires that the city’s Title 11 planning must “demonstrate
13 compliance with * * * the Metro Council adopted 2040 Growth Concept design types.” *See n*
14 4. MC 3.07.1120 also requires that such local planning must be “consistent with the
15 requirements of all applicable titles of the [UGMFP].” *Id.* We do not understand the city to
16 dispute that MC 3.07.430 requires that its Title 11 planning for the 453-acre concept plan
17 area must protect the parts of that area that will ultimately retain the Industrial design type.
18 We understand the city to concede that for those parts of the 453-acre concept planning area,
19 the city must limit non-industrial uses to commercial uses that “serve primarily the needs of
20 workers in the [industrial] area.” *See n* 7.

21 On the other hand, we do not understand petitioner to dispute that the 175 acres that
22 make up the North Employment Campus have been planned for industrial uses, in accordance
23 with MC 3.07.430.¹⁰ Petition for Review 6. Petitioner’s dispute is with the Industrially

⁹ As we have already explained, MC 3.07.430 only allows very limited non-industrial use of land that carries Metro’s Industrial design type.

¹⁰ As we explain later, those 175 acres include approximately 120 acres that are buildable.

1 designated lands to the south of the North Employment Campus. Petitioner contends that
2 those Industrially designated lands have been planned for uses that do not comply with MC
3 3.07.430.¹¹ We understand the city to concede that those lands have not been planned for
4 industrial uses in accordance with MC 3.07.430. Respondent’s Brief 6. But the city contends
5 that it was not obligated by MC 3.07.1120 or 3.07.430 or any of the many other laws cited by
6 petitioner, to plan all 308 acres that carry the Industrial design type in accordance with
7 3.07.430.¹²

8 **A. The City’s Preliminary Arguments**

9 The city offers two arguments that, if meritorious, would require that we deny the first
10 assignment of error. We address those arguments first.

11 **1. MC 3.07.430 Applies Exclusively to Land Use Regulations**

12 As we noted earlier in this opinion, the challenged ordinance amends the city’s
13 comprehensive plan to adopt the concept plan. The city chose not to adopt contemporaneous
14 amendments to its land use regulations that will be needed to implement the concept plan.
15 Because the city’s land use regulations will not be amended until a future date, we understand
16 the city to argue that MC 3.07.430 does not apply.

17 We reject the argument. It is true that MC 3.07.430 directs that local governments
18 must “review their land use regulations and revise them, if necessary, to include measures to
19 limit new buildings for retail commercial uses * * *.” See n 7. But the direction in MC
20 3.07.430 is broad enough to require that local governments also adopt any conforming
21 comprehensive plan amendments that might be necessary to allow the local government to
22 adopt revised land use regulations that are consistent with Title 4 and remain consistent with

¹¹ Determining the precise number of acres is not easy, but it appears clear that more than half of the 308 acres that carry the Industrial design type have not been planned in accordance with MC 3.07.430.

¹² The city states “the mixed use and employment areas are not required (and were never intended) to qualify as industrial areas protected by MC 3.07.430.” Respondent’s Brief 9.

1 the local government's comprehensive plan. We conclude that the city may not adopt a
2 concept plan for lands that are subject to MC 3.07.430, as part of its comprehensive plan, if
3 that concept plan would allow uses that are inconsistent with MC 3.07.430.

4 **2. Petitioner's Failure to Appeal Metro's Decision**

5 MC 3.07.1130 requires that a local government give Metro 60 days prior notice
6 before it adopts a comprehensive plan amendment. In addition, Title 8 of the UGMFP (MC
7 3.07.810 through MC 3.07.890) sets out a process by which Metro can review city and county
8 comprehensive plans and land use regulations to determine whether they are consistent with
9 the requirements of the UGMFP. Respondent suggests that Metro issued a decision that
10 approved the city's proposal to plan many of the 308 acres for non-industrial uses. We
11 understand respondent to argue that decision is final, and that LUBA must defer to that
12 decision. Respondent's Brief 12-13.

13 We reject this argument as well. The process that Metro has adopted in Title 8 has
14 some similarities to LCDC acknowledgment review under ORS 197.251, but it also has some
15 differences. An important difference is that compliance review under Title 8 is initiated by
16 the Metro Chief Operating Officer. MC 3.07.820. If the Metro Chief Operating Officer
17 believes a proposed comprehensive plan amendment complies with Metro's functional plan,
18 the Chief Operating Officer does nothing. Only if the Chief Operating Officer believes the
19 proposed amendment "does not comply with the functional plan," is the Chief Operating
20 Officer required to advise the local government of any revisions that may be necessary. MC
21 3.07.820(B).¹³ If the Chief Operating Officer takes the position that the proposed amendment

¹³ MC 3.07.820(B) provides:

"If the Chief Operating Officer concludes that the proposed amendment does not comply with the functional plan, the Chief Operating Officer shall advise the city or county that it may (1) revise the proposed amendment as recommended in the Chief Operating Officer's analysis; (2) seek an extension of time, pursuant to Section 3.07.850, to bring the proposed amendment into compliance with the functional plan; or (3) seek review of the noncompliance by MPAC and the Metro Council, pursuant to Sections 3.07.830 and 3.07.840."

1 “does not comply with the functional plan,” that decision is appealable and could ultimately
2 result in a decision by the Metro Council regarding “compliance or noncompliance.” MC
3 3.07.840(C). Such a Metro Council order is appealable to LUBA. MC 3.07.840(E). The
4 Chief Operating Officer is also authorized to seek review of a proposed comprehensive plan
5 amendment by the Metropolitan Policy Advisory Committee. MC 3.07.830(B). Such a
6 review might also result in an appealable final order by the Metro Council under MC
7 3.07.840(C).

8 In this case, it appears that Metro never had any objections to the city’s proposal. The
9 city cites no evidence that any review that Metro may have conducted under MC 3.07.1130 or
10 MC Chapter 3.07 Title 8 resulted in an appealable decision by the Metro Council under MC
11 3.07.840(C). The letter signed by the Metro President and the statements of a Metro planner
12 that the city cites are certainly not appealable Metro Council orders under MC 3.07.840(C)
13 and (D). Record 566, 691.

14 **B. The City’s Planning Obligation Concerning the 308 Industrially**
15 **Designated Acres**

16 In support of its position that it need not plan all 308 Industrially designated acres in
17 accordance with MC 3.07.430, the city relies on (1) MC language that it believes gives the
18 city the flexibility to plan those acres for non-industrial uses, (2) its findings that Metro only
19 planned for the 308 acres to result in 120 buildable acres and (3) a city study that determines
20 that Oregon City only needs approximately 150 buildable acres of land for industrial
21 development in the concept plan area in the next 20 years. Although those arguments are
22 interrelated, we discuss them separately below.

23 **1. MC Text**

24 The city contends that the text of the MC supports its view that the city has flexibility
25 under the MC to designate some of the 308 Industrially designated acres for uses that are not
26 allowed under Title 4. The city points out that MC 3.07.1120(A) only requires that the city’s

1 comprehensive plan designation be “derived from the *general* boundaries of design type
2 designations assigned by the Council in the ordinance adding the territory to the UGB.”
3 (Emphasis added.) *See* n 4.¹⁴ We do not believe that any *flexibility* that the city has under the
4 “general boundaries” language allows the city to designate a substantial portion of the 308
5 Industrially designated acres for non-industrial use, as the city has done here.

6 The city next cites MC 3.07.1120(F), which the city contends establishes that the
7 quantity of land that must be planned in accordance with Title 4 is to be based on the “needs
8 of the area.” *See* n 4. The city contends there is evidence in the record that the needs of the
9 area can be accommodated on approximately 150 acres.¹⁵ The problem with that argument is
10 that MC 3.07.1120(F) does not say the city need only consider the needs of the concept plan
11 area or the needs of the city. The 308 acres are part of Metro’s inventory of Industrial land to
12 meet regional needs. We conclude below that there is not substantial evidence in the record
13 to support a conclusion that the portions of the 308 acres that the city has planned for non-
14 industrial development are not needed to meet the region’s 20-year needs for industrial land.

15 The city also cites and relies on MC 3.07.030, which expressly provides that local
16 governments are to have “flexibility” in how they go about meeting UGMFP requirements.¹⁶

¹⁴ Similarly, MC 3.07.130 directs that comprehensive plans must be “consistent with the *general* locations shown on the 2040 Growth Concept Map or on maps adopted by ordinance adding territory to the UGB.” (Emphasis added.) *See* n 3.

¹⁵ We address the city’s reliance on that study to conclude that only 150 acres are needed for Industrial Development later in this opinion.

¹⁶ MC 3.07.030 provides:

“The Urban Growth Management Functional Plan is a regional functional plan which contains ‘requirements’ that are binding on cities and counties of the region as well as recommendations that are not binding. ‘Shall’ or other directive words are used with requirements. The words ‘should’ or ‘may’ are used with recommendations. In general, the plan is structured so that local jurisdictions may choose either performance standard requirements or prescriptive requirements. The intent of the requirements is to assure that cities and counties have a significant amount of flexibility as to how they meet requirements. Performance standards are included in most titles. If local jurisdictions demonstrate to Metro that they meet the performance standard, they have met that requirement of the title. Standard methods of compliance are also included in the plan to establish one very specific way that

1 But that flexibility is the flexibility to use performance standards rather than prescriptive
2 requirements. MC 3.07.030 does not give the city the flexibility to simply plan Industrially
3 designated land for non-industrial uses.

4 Perhaps the MC text that potentially lends the most support to the city's position is
5 MC 3.07.450(B), which requires that "after completion of Title 11 planning by the
6 responsible city or county, the Chief Operating Officer shall issue an order to conform the
7 map to the boundaries established by the responsible city or county." See Appendix. MC
8 3.07.450(B) would not be necessary, unless local governments have some authority to deviate
9 from the planning that is required by Metro's design types.

10 Petitioner suggests that MC 3.07.450(B) only envisions minor changes that may be
11 necessitated by the small scale of Metro's mapping (less detailed mapping) and the larger
12 scale of local government planning maps (more detailed mapping). It is hard to imagine what
13 purpose would be served by those kinds of scale-reconciling amendments and we reject the
14 argument. We do not believe the changes envisioned by MC 3.07.450(B) are limited to
15 reconciling differences that can be attributed to the different scales of Metro and local
16 government mapping. But our conclusion that the city has some authority to plan the 308
17 acres of Industrially designated lands for uses that are not allowed by Title 4 does not
18 necessarily mean the city is free to plan significant portions of the land that carries the
19 Industrial design type for whatever uses the city wishes or for whatever uses the city may
20 determine there is a market.

21 As we indicated earlier in this opinion, there is a significant question in our mind
22 whether MC 3.07.450(C) through (H), which under limited circumstances allow a city or
23 county to amend its comprehensive plan and land use regulations to allow use of lands that
24 are on the E&IAs map that would otherwise be prohibited by Title 4, also apply to the city's

jurisdictions may meet a title requirement, but these standard methods are not the only way a
city or county may show compliance. In addition, certain mandatory requirements that apply
to all cities and counties are established by this functional plan."

1 initial Title 11 planning. It could be that the limited deviations authorized by those
2 subsections of MC 3.07.450 are the same changes to which the Metro Chief Operating
3 Officer is to conform Metro's mapping under MC 3.07.450(B). We understand the city to
4 take the position that those subsections of MC 3.07.450 only apply *after* initial Title 11
5 planning has been completed and that those subsections of MC 3.07.450 do not apply to
6 constrain the city's initial Title 11 planning.

7 MC 3.07.450(C) through (H) clearly apply to post-Title 11 plan and land use
8 regulations amendments. It is much less clear whether they also apply to adoption of the
9 city's initial Title 11 planning. Although we cannot think of a principled reason why MC
10 3.07.450(C) through (H) should *not* apply to Title 11 planning, based on the text and
11 structure of MC 3.07.450 viewed as a whole we conclude that MC 3.07.450(C) through (H)
12 do not apply to limit initial Title 11 planning. Those subsections of MC 3.07.450 appear
13 immediately after 3.07.450(B), which requires the Metro Chief Operating Officer to conform
14 Metro's mapping to local government initial Title 11 mapping. The language of MC
15 3.07.450(C) through (H) seems to be directed at post-Title 11 comprehensive plan
16 amendments, and those subsections have their own separate subsection for conforming
17 Metro's mapping to the plan amendments authorized by these subsections of MC 3.07.450.
18 MC 3.07.450(E). *See* Appendix. To conclude that MC 3.07.450(C) through (H) apply to
19 initial Title 11 planning would require us to overlook this text and structure. If Metro
20 intended the limits in subsections (C), (D) and (H) of MC 3.07.450 to apply to initial Title 11
21 planning, Metro will need to amend the MC to more clearly state that intent.

22 In conclusion, we agree with the city that nothing cited by petitioner necessarily
23 obligates a local government, in its Title 11 planning, to in all cases plan every Industrially
24 designated acre in accordance with MC 3.07.430. MC 3.07.450(B) seems to anticipate that
25 the city has some authority to plan at least some part of those 308 acres for uses that are not
26 allowed by Title 4. But that does not mean the city is necessarily free to plan a substantial

1 number of those 308 acres for uses that are not permitted under MC 3.07.430, which is what
2 the city has done here. We consider that question next.

3 **2. Metro's Intent in Adding the 308 Acres and Designating Them for**
4 **Industrial Uses**

5 The North Employment Campus apparently includes a total of 175 gross acres and of
6 those 175 gross acres 120 are net buildable acres. Those 120 acres have been planned in
7 accordance with MC 3.07.430. The city takes the position that when Metro amended the
8 UGB in 2002 and 2004 to add the disputed 308 acres to the UGB, and applied the Industrial
9 design type to those 308 acres, it only anticipated or intended that 120 of those 308 acres
10 would be put to industrial use in accordance with MC 3.07.430. If the record established that
11 such is the case, we likely would agree with the city that it need not plan all 308 acres for
12 Industrial use. But as we explain below, the record does not establish that such is the case.

13 The city adopted the following findings to explain its decision to only plan 127 acres
14 in accordance with MC 3.07.430:

15 "Metro brought 245 gross acres in the UGB in 2002 and an additional 63 acres
16 were added in 2004. The remaining acreage was in the UGB and/or Oregon
17 City limits prior to 2002. These areas (308 gross acres) are designated as the
18 Industrial Design Type on Metro's 2040 Growth Concept Map. Given the
19 expected net acreage once non-buildable areas such as power lines, natural
20 areas, were removed from the buildable lands inventory, Metro intended 120
21 net acres of the concept plan area would be used for employment uses. Metro
22 noted that it was important to fulfill the original intent for providing industrial
23 lands and that there was flexibility for the local process to evaluate creative
24 ways to meet the intent. See Metro's vacant lands methodology.^[17] This
25 approach was blessed by [the] Metro Council President, in a letter dated May
26 14, 2007 as well as [a] Metro planner * * * in a letter dated March 19, 2008.

27 "The [Citizen Advisory Committee] created several alternatives and finally
28 chose a hybrid that included about 127 net acres of North Employment
29 Campus (NEC), which is consistent with Metro's intent and similar to Oregon
30 City's existing Campus Industrial designation, about 29 acres of Mixed
31 Employment Village and Main Street, which allows a variety of uses in a

¹⁷ Apparently this is a reference to the Metro vacant lands methodology that we discuss below.

1 village-oriented transit hub and mixed use neighborhoods to the south that
2 also provide jobs tailored to the neighborhood setting.

3 “The North Employment Campus is to provide for the needed family wage
4 employment that strengthens and diversifies the economy and will be
5 compliant with Metro’s Title 4 regulations. The NEC allows a mix of clean
6 industries, offices serving industrial needs, light industrial uses, research and
7 development and large corporate headquarters. The uses permitted are
8 intended to improve the region’s economic climate, promote sustainable and
9 traded sector businesses, and protect the supply of site for employment by
10 limiting incompatible uses.” Record 18.

11 The first serious problem with the above findings is that they suggest that the 127
12 buildable acres that are designated Industrial and included in the North Employment Campus
13 and planned consistently with MC 3.07.430 were derived from the 308 acres that Metro has
14 designated for Industrial use. That is not the case. Approximately 46 of the North
15 Employment Campus’s 127 buildable acres came from the part of the 453-acre concept plan
16 area that was previously designated Employment design type by Metro, before the 2002 and
17 2004 Industrial design type amendments. That means that only approximately 81 buildable
18 acres in the North Employment Campus were derived from the 308 acres that carry the
19 Industrial design concept.

20 Petitioner estimates that only 54.7 of the 127 acres mentioned in the city’s findings
21 coincide with the 308 acres that carry the Industrial design type. Petitioner may not have the
22 acreages exactly right, but she is correct that a substantial number of the 127 buildable acres
23 in the North Employment Campus come from Employment design type lands, not the 308
24 acres of Industrial design type land that were included in the UGB in 2002 and 2004.
25 Therefore, even if the record established that it was Metro’s intent that the 308 acres only
26 result in 120 acres of buildable land to be developed in accordance with MC 3.07.430, the
27 concept plan only plans about 81 of those 308 acres in accordance with MC 3.07.430.

28 A second and more serious problem with the above findings is that the record does
29 not include substantial evidence that Metro intended that only 120 acres of the 308 acres be
30 planned for Industrial use in accordance with MC 3.07.430. The record includes statements

1 made in 2007 and 2008 to that effect by the Metro Council President and a Metro planner.
2 Record 566; 691. The record also includes two staff reports, in which a city planner takes the
3 position that only 120 acres were intended for industrial use and that Metro intended that the
4 city have the flexibility to plan the other acres for non-industrial uses. Record 644-45; 842-
5 43. Finally, the record includes an e-mail message from a Metro planner with an attached
6 five-step methodology that Metro uses for assessing buildable lands. Record 739-42. This
7 five-step methodology, or one like it, seems to be the basis for Metro's and the city's position
8 that Metro assumed at the time the UGB was amended in 2002 and 2004 that only 120 acres
9 of the 308 acres would actually be developed for Industrial use in accordance with MC
10 3.07.430.

11 The statements by the Metro Council President and planner include no reference to
12 the ordinances that added the 308 acres to the UGB and applied the Industrial designation or
13 the findings in support of those ordinances that might support the statements. Those
14 statements make no attempt to explain how the 120-acre figure was computed. We do not
15 believe a reasonable person would rely on those undocumented statements to conclude that
16 Metro intended that only 120 of the 308 acres be planned and developed in accordance with
17 MC 3.07.430. *See Younger v. City of Portland*, 305 Or 346, 351-52, 752 P2d 262 (1988)
18 (substantial evidence exists to support a finding of fact when the record, viewed as a whole,
19 would permit a reasonable person to make that finding). For the same reason, the two city
20 planner staff reports that rely on those letters are not substantial evidence that Metro intended
21 that only 120 of the 308 acres it added to the UGB and designated for Industrial use be
22 planned and developed in accordance with MC 3.07.430.

23 Metro's and the city's apparent belief that the five-step methodology for assessing
24 vacant buildable lands supports a conclusion that only 120 acres of the 308 acres were
25 anticipated to be actually developed for industrial uses is particularly hard to understand.
26 Under that methodology, vacant lands are identified (Step 1), environmentally constrained

1 lands are eliminated (Step 2), steeply sloped areas are eliminated (Step 3), lands needed for
2 “streets, parks, schools and churches/fraternal organizations” are eliminated (Step 4) and
3 vacant lands on tax lots with higher value homes are eliminated (Step 5). If either Metro or
4 the city actually applied that five-step methodology to the 308 acres and determined that only
5 120 acres of buildable land remained after Step 5 was completed, no one has identified where
6 that exercise can be found in the record. Moreover, it seems highly unlikely to us that the
7 mixed use residential and commercial development that the concept plan proposes for the
8 large southern portion of the 308 acres is to be located on developed or constrained lands that
9 would be eliminated by Steps 1 through 5. Petitioner contends that many of the Industrially
10 designated acres in the southern part of the concept plan area that the concept plan designates
11 for mixed commercial and residential uses are actually the flattest and best land for industrial
12 development. The city’s economic consultant appears to agree: “the south half of the
13 property, flat and assembled, has no significant constraints on design and development.”
14 Record 1789-1790.

15 3. The ECONorthwest Market Analysis

16 The record includes a market analysis that was prepared by ECONorthwest. Record
17 1781-1808. The city argues that study “concluded that 150 acres of industrial and
18 employment lands would be sufficient to meet the regional demand over a 20 year period. R.
19 1781 – 1808.” Respondent’s Brief 11. What the ECONorthwest market analysis actually
20 concludes is that “[u]nder the right conditions, it is not unreasonable to expect 150 acres of
21 industrial and business park development to build out on the site over a 20-year period.”
22 Record 1800. If the ECONorthwest market analysis concludes that only 150 of the 308 acres
23 are needed to meet regional demand for industrial and other employment development we
24 have been unable to find that conclusion in the market analysis. In fact, the ECONorthwest
25 analysis in several places states that the region currently does not have enough developable
26 industrial land:

1 "Metro's employment land needs analysis reports that about 9,300 net acres of
2 industrial land is needed between 2002 and 2022. This includes about 3,000
3 acres of *'refill'* or existing developed land for future reuse, business
4 intensification or relocation. Thus, about 6,300 net acres of *vacant* land is
5 needed for industrial development between 2002 and 2022. Metro's analysis
6 concludes that the region has a shortage of large and small industrial lots and
7 has a significant shortfall of about 5,700 net acres of *both* refill and vacant
8 land through 2022.

9 "Considering the amount of immediately developable land industrial land—
10 2,100 net acres—the *vacant* shortfall is about 4,200 net acres through 2022.
11 With absorption at about 200 acres of industrial land per year, the existing
12 supply of immediately developable net acres could be exhausted between 2012
13 and 2015. Record 1791 (emphases in original; footnotes omitted).

14 Although the ECONorthwest study may be substantial evidence that market demand
15 for industrial land in Oregon City could be expected result in development of 150 of the 308
16 acres, it is not substantial evidence that there is not a regional demand for the 308 acres that
17 carry the Industrial design type.

18 4. Conclusion

19 On the one hand, MC 3.07.1120 commands that the city's Title 11 planning must
20 "demonstrate compliance with * * * 2040 Growth Concept design types" and must be
21 "consistent with the requirements of all applicable titles of the Metro Urban Growth
22 Management Functional Plan." On the other hand, MC 3.07.450(B) commands Metro to
23 conform its mapping to local government mapping that is adopted under Title 11. We have
24 had a great deal of difficulty reconciling those two commands. MC 3.07.450(B) seems to
25 envision that local governments may plan property in ways that are inconsistent with the
26 design types that Metro applied to those properties, whereas MC 3.07.1120 seems to
27 command that Title 11 planning be consistent with Metro's design types. We can see three

1 possible explanations for this apparent inconsistency in the Metro Code, which give effect to
2 both commands. We discuss each of those explanations below.¹⁸

3 **a. Non-developable Lands**

4 MC 3.07.1120(F) directs local governments to identify unbuildable lands and other
5 lands that will be protected from development. *See* n 5. Presumably lands that are
6 unbuildable for industrial use and lands that will be protected from industrial development
7 pursuant to other Metro environmental protection mandates, need not be planned for
8 industrial development in accordance with MC 3.07.430, even if those lands carry Metro's
9 Industrial design type. MC 3.07.450(B) could have been adopted in whole or in part to
10 permit the Metro Chief Operating Officer to amend Metro's E&IAs map to conform to a
11 local government's more detailed mapping that identifies non-developable lands.

12 However, even if this is a partial or complete explanation for MC 3.07.450(B), as we
13 have already noted, the city did not establish in the decision that is before us in this appeal
14 that the Industrially designated lands that have been planned for non-industrial uses cannot be
15 developed with industrial uses. Nor, based on this record, does it seem likely the city could
16 establish that those lands are not suitable for the uses permitted by Title 4 of UGMFP.

17 **b. The UGB Amendment and Industrial Designation**

18 If the Metro decisions that amended the UGB in 2002 and 2004 expressly envisioned
19 that the 308 acres that now carry the Industrial design concept would not all be planned in
20 accordance with MC 3.07.430, then we believe it would follow that the city would not have
21 to plan and develop all 308 acres in accordance with MC 3.07.430. In that circumstance, so
22 long as a concept plan that designated some of those 308 acres for uses that are not allowed
23 by MC 3.07.430 was consistent with any limits that were placed on such non-industrial
24 planning by the UGB amendment and Industrial designation decisions for the 308 acres, such

¹⁸ As we noted earlier, Metro is not a party to this appeal. We do not mean to foreclose the possibility that there are additional explanations for the apparent inconsistency.

1 non-industrial planning would not violate MC 3.07.1120. In that circumstance, MC
2 3.07.450(B) would direct the Metro Chief Operating Officer to conform Metro's mapping to
3 the local government's mapping at the end of the Title 11 planning process. But even if such
4 express language in the 2002 and 2004 decisions might have permitted what the city has done
5 here, no party has identified any such express language in those decisions, and we have found
6 none.

7 **c. Lack of Regional Need for Land with the Industrial Design**
8 **Type**

9 If the evidentiary record that supports the city's Title 11 planning included substantial
10 evidence that the Metro region has a 20-year surplus of land with the Industrial design type,
11 such that all 308 acres are not needed to maintain a 20-year supply of developable industrial
12 land, we believe the city might be able in its Title 11 planning to plan the unneeded acres for
13 uses that are not allowed by MC 3.07.430. In that event, MC 3.07.450(B) would operate to
14 allow the Metro Operating Officer to conform Metro's mapping to (1) the city's Title 11
15 mapping and (2) Metro's actual 20-year need for land with the Industrial design type.

16 But the evidentiary record does not establish that there is a surplus of industrial land
17 to meet Metro's 20-year regional need for such lands. To the contrary, the ECONorthwest
18 market analysis seems to conclude that there is a shortage of Industrial land to meet Metro's
19 20-year need for Industrial land. While the ECONorthwest market analysis concludes that
20 under assumed market conditions there will be a market demand for only 150 acres of land
21 for industrial development within the concept plan area, that does not show there is a regional
22 surplus of Industrial land to meet the regional 20-year need. At most the ECONorthwest
23 market analysis might support a conclusion that despite the existing shortage of Industrial
24 land to meet the region's 20-year need for Industrial land, only 150 acres of land within the
25 concept plan area will likely be developed over the next 20 years under expected market
26 conditions. That market analysis, if accurate, might provide a reason for Metro to reconsider
27 whether the Industrial design concept should continue to apply to all 308 acres. But the

1 ECONorthwest market analysis is not a sufficient basis for the city to proceed with its Title
2 11 planning to divert some of the 308 Industrially designated acres to allow non-industrial
3 development of those acres. If the city were permitted to do so, and Metro simply conformed
4 its mapping to the city's concept plan under MC 3.07.450(B), the regional shortage of
5 Industrially designated land would simply be exacerbated.

6 For the reasons explained above, we conclude above that the city's decision to
7 designate only approximately 74 acres out of the total 308 acres that carry the Industrial
8 design type for industrial use in accordance with MC 3.07.430 is not consistent with that
9 design type and is not consistent with the city's obligation under MC 3.07.1140 to conduct its
10 Title 11 planning consistently with Metro's design types. Remand is therefore required.

11 We have addressed some, but not all of petitioner's arguments under her first
12 assignment of error. The petition for review also includes two more assignments of error that
13 we have not addressed. The issues presented by those arguments may or may not arise if the
14 city on remand adopts a new concept plan that complies with MC 3.07.1120 and 3.07.430.

15 ORS 197.835(11)(a) provides:

16 "Whenever the findings, order and record are sufficient to allow review, and
17 to the extent possible consistent with the time requirements of ORS 197.830
18 (14), the board shall decide all issues presented to it when reversing or
19 remanding a land use decision described in subsections (2) to (9) of this
20 section or limited land use decision described in ORS 197.828 and 197.195."

21 The statutory deadline established by ORS 197.830(14) for LUBA's final opinion in this
22 appeal expired some time ago. We therefore remand the decision without considering
23 petitioner's remaining arguments.

24 The city's decision is remanded.

Appendix
MC 3.07.450

3.07.450 Employment and Industrial Areas Map

A. The Employment and Industrial Areas Map is the official depiction of the boundaries of Regionally Significant Industrial Areas, Industrial Areas and Employment Areas.

B. If the Metro Council adds territory to the UGB and designates all or part of the territory Regionally Significant Industrial Area, Industrial Area or Employment Area, after completion of Title 11 planning by the responsible city or county, the Chief Operating Officer shall issue an order to conform the map to the boundaries established by the responsible city or county. The order shall also make necessary amendments to the Habitat Conservation Areas Map, described in Section 3.07.1320 of Title 13 of this chapter, to ensure implementation of Title 13.

C. A city or county may amend its comprehensive plan or zoning regulations to change its designation of land on the Employment and Industrial Areas Map in order to allow uses not allowed by Title 4 upon a demonstration that:

1. The property is not surrounded by land designated on the map as Industrial Area, Regionally Significant Industrial Area or a combination of the two;

2. The amendment will not reduce the jobs capacity of the city or county below the number shown on Table 3.07-1 of Title 1 of the Urban Growth Management Functional Plan, or the amount of the reduction is replaced by separate and concurrent action by the city or county;

3. If the map designates the property as Regionally Significant Industrial Area, the subject property does not have access to specialized services, such as redundant electrical power or industrial gases, and is not proximate to freight loading and unloading facilities, such as trans-shipment facilities;

4. The amendment would not allow uses that would reduce off-peak performance on Major Roadway Routes and Roadway Connectors shown on Metro's 2004 Regional Freight System Map below standards in the Regional Transportation Plan ("RTP"), or exceed volume-to capacity ratios on Table 7 of the 1999 Oregon Highway Plan for state highways, unless

1 mitigating action is taken that will restore performance to RTP
2 and OHP standards within two years after approval of uses;

3 5. The amendment would not diminish the intended function of
4 the Central City or Regional or Town Centers as the principal
5 locations of retail, cultural and civic services in their market
6 areas; and

7 6. If the map designates the property as Regionally Significant
8 Industrial Area, the property subject to the amendment is ten
9 acres or less; if designated Industrial Area, the property subject
10 to the amendment is 20 acres or less; if designated Employment
11 Area, the property subject to the amendment is 40 acres or less.

12 D. A city or county may also amend its comprehensive plan or zoning
13 regulations to change its designation of land on the Employment and
14 Industrial Areas Map in order to allow uses not allowed by Title 4
15 upon a demonstration that:

16 1. The entire property is not buildable due to environmental
17 constraints; or

18 2. The property borders land that is not designated on the map as
19 Industrial Area or Regionally Significant Industrial Area; and

20 3. The assessed value of a building or buildings on the property,
21 built prior to March 5, 2004, and historically occupied by uses
22 not allowed by Title 4, exceeds the assessed value of the land
23 by a ratio of 1.5 to 1.

24 E. The Chief Operating Officer shall revise the Employment and
25 Industrial Areas Map by order to conform to an amendment made by a
26 city or county pursuant to subsection C of this section within 30 days
27 after notification by the city or county that no appeal of the amendment
28 was filed pursuant to ORS 197.825 or, if an appeal was filed, that the
29 amendment was upheld in the final appeal process.

30 F. After consultation with Metropolitan Policy Advisory Committee, the
31 Council may issue an order suspending operation of subsection C in
32 any calendar year in which the cumulative amount of land for which
33 the Employment and Industrial Areas Map is changed during that year
34 from Regionally Significant Industrial Area or Industrial Area to
35 Employment Area or other 2040 Growth Concept design type
36 designation exceeds the industrial land surplus. The industrial land
37 surplus is the amount by which the current supply of vacant land
38 designated Regionally Significant Industrial Area and Industrial Area
39 exceeds the 20-year need for industrial land, as determined by the most

1 recent 'Urban Growth Report: An Employment Land Need Analysis',
2 reduced by an equal annual increment for the number of years since the
3 report.

4 G. The Metro Council may amend the Employment and Industrial Areas
5 Map by ordinance at any time to make corrections in order to better
6 achieve the policies of the Regional Framework Plan.

7 H. Upon request from a city or a county, the Metro Council may amend
8 the Employment and Industrial Areas Map by ordinance to consider
9 proposed amendments that exceed the size standards of paragraph 6 of
10 subsection C of the section. To approve an amendment, the Council
11 must conclude that the amendment:

12 1. Would not reduce the jobs capacity of the city or county below
13 the number shown on Table 3.07-1 of Title 1 of the Urban
14 Growth Management Functional Plan;

15 2. Would not allow uses that would reduce off-peak performance
16 on Major Roadway Routes and Roadway Connectors shown on
17 Metro's 2004 Regional Freight System Map below standards in
18 the Regional Transportation Plan ("RTP"), or exceed volume-
19 to capacity ratios on Table 7 of the 1999 Oregon Highway Plan
20 ("OHP") for state highways, unless mitigating action is taken
21 that will restore performance to RTP and OHP standards within
22 two years after approval of uses;

23 3. Would not diminish the intended function of the Central City
24 or Regional or Town Centers as the principal locations of retail,
25 cultural and civic services in their market areas;

26 4. Would not reduce the integrity or viability of a traded sector
27 cluster of industries;

28 5. Would not create or worsen a significant imbalance between
29 jobs and housing in a regional market area; and

30 6. If the subject property is designated Regionally Significant
31 Industrial Area, would not remove from that designation land
32 that is especially suitable for industrial use due to the
33 availability of specialized services, such as redundant electrical
34 power or industrial gases, or due to proximity to freight
35 transport facilities, such as trans-shipment facilities.

36 I. Amendments to the Employment and Industrial Areas Map made in
37 compliance with the process and criteria in this section shall be
38 deemed to comply with the Regional Framework Plan.

- 1 J. The Council may establish conditions upon approval of an amendment
2 to the Employment and Industrial Areas Map under subsection F to
3 ensure that the amendment complies with the Regional Framework
4 Plan and state land use planning laws.
- 5 K. By January 31 of each year, the Chief Operating Officer (COO) shall
6 submit a written report to the Council and the Metropolitan Policy
7 Advisory Committee on the cumulative effects on employment land in
8 the region of the amendments to the Employment and Industrial Areas
9 Map made pursuant to this section during the preceding year. The
10 report shall include any recommendations the COO deems appropriate
11 on measures the Council might take to address the effects.

Certificate of Mailing

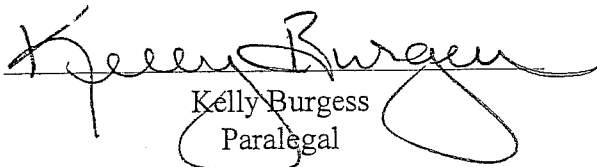
I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2008-170 on August 20, 2009, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

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Dated this 20th day of August, 2009.


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BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

ELIZABETH GRASER-LINDSEY)
)
Petitioner,)
)
v.)
)
CITY OF OREGON CITY)
)
Respondent)
)
and)
)
OREGON CITY GOLF CLUB)
)
Intervenor-Respondent.)

LUBA No. 2008-170

PETITION FOR REVIEW

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IV. ARGUMENT 2

FIRST ASSIGNMENT OF ERROR 2

Oregon City Erred In Adopting Oregon City Ordinance 07-1008 And, By This Adoption, (1) Violated Applicable Law Requiring Protection Of Industrial Land For Industrial Use Such As Metro Title 4 Especially Metro Code 3.07.430 And 3.07.450, Title 11 Especially 3.07.1120 F And Metro Code 3.01.040, And Oregon City Comprehensive Plan (OCCP) Goals 2.6 And 2.7 And Related Policies; (2) Misconstrued These Laws Pertaining To Protection Of Industrial Land For Industrial Use; (3) Did Not Support Its Decision With Correct Analysis Of Industrial Land Use And Did Not Support Its Decision With Adequate Findings Or Reasons Or With Substantial Evidence In The Whole Record In Violation of OAR 661-010-0071 And 661-010-0073; (4) Acted Outside Its Jurisdiction Concerning A Boundary Change Resulting In An Acknowledged Industrial Designation And Determination Of The Buildable Land Supply Made By Metro In Violation of Relevant Laws Such As OAR 661-01-0071 and 73, ORS 195, 197 and 268; (5) Violated The Laws And Precedent Governing The Process Of Bringing Lands Into The Urban Growth Boundary For Industrial Use and Governing The Lands Brought Into The Urban Growth Boundary For Industrial Use Such As Statewide Planning Goal 2, 3, 4 And 14, OAR 660-009, Metro Ordinance 02-969B And Metro Ordinance 04-1040B, Metro Code 3.01.040, 3.07.810, OCCO Goals 2.6 And 14.1 And Related Policies And *Opus Development Corp. v. City of Eugene, Concerned Citizens v. Jackson County, And 1000 Friends of Oregon v. City of North Plains*; And (6) Violated Relevant Law Requiring Maintaining Consistency And Coordination Of Government Planning Such As ORS 268.354(2)(d), Statewide Planning Goal 2 And 14, Metro Code 3.01, 3.07 Titles 8 and 11 And OCCP.

SECOND ASSIGNMENT OF ERROR 30

Oregon City Erred In Adopting Oregon City Ordinance 07-1008 Which Violated Relevant Laws Such As Statewide Planning Goals 11 and 12, OAR 660 Divisions 9, 11 and 12, Metro Code 3.07.1120, OCCP Goals 2, 5, 11 and 14 and Related Policies When It (1) Failed To Provide Or Reference A Conceptual Transportation Plan, Conceptual Public Facilities And Services Plan Including Parks, Police, Fire And Solid Waste, A Conceptual School Plan, And A Natural Resource Protection Plan That Would Serve The Site And Integrate It With Other Plans; (2) Failed To Estimate When Each Planned Public Facility Project Will Be Needed, What The Trigger Would Be Such As Population Level, Service Level Standards, Date And Provide Detailed Strategies For Preparing The Total Land Supply; (3) Failed To Provide Rough Cost Estimates For Some Public Facilities And Services Such As Parks, Police And Fire And Part Of Transportation; (4) Failed To Adequately Evaluate The Ability Of Potential Funding Mechanisms To Fund The Development, To Discuss Local Fiscal Policies; And To Evaluate Likely Financing Approaches; To Coordinate With Its Capital Improvement Program Or Discuss How The Concept Plan Would Be Integrated Into It; And To Ensure Measures Will Be In Place To Ensure Cost Is Borne By The Developer; (5) Failed To Consider, Evaluate, Plan Implementation Approaches Or Otherwise Ensure Extension Of New Services Does Not Diminish Delivery Of Those Same Services To Existing Areas And Residents In The City As A Whole Where Substantial Evidence In The Record Indicates That Delivery Of Services To The Existing City As A Whole Will Be Diminished; (6) Failed To Show Compliance With Findings Of Resolution 07-24 Which Deferred Annexation Compliance To The Concept Plan As Decided By *Graser-Lindsey V. Oregon City*; (7) Failed To Comply With Statewide Planning Goals 5 And 7; (8) Failed To Provide The Basis For Specific Implementation Measures; (9) Failed To Be Able To Plan Public Services Properly While The Uses Are Unknown, Due To Being Contested, As Decided In *1000 Friends Of Oregon V. North Plain*; And (Throughout) Failed To Provide Adequate Findings.

THIRD ASSIGNMENT OF ERROR 45

Oregon City Erred In Adopting Oregon City Ordinance 07-1008 When (1) The Concept Plan Is Out Of Compliance With OCCP P. 16 #3 And The Findings Are Insufficient And Not Supported By Substantial Evidence In The Record; (2) The Process Violated The Substantial Rights Of The Petitioner, And (3) The Citizen Involvement Process For Adopting The Concept Plan Did Not Comply With The Acknowledged Citizen Involvement Program Or Statewide Planning Goal 1, The Findings Were Insufficient To Support The Decision And Not Supported By An Adequate Factual Basis, And Substantial Evidence In The Whole Record Shows The Citizen Involvement As Out Of Compliance.

V. CONCLUSION 50

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9 http://www.oregonmetro.gov/files/planning/2040_growth_concept.pdf.
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33
34 Urban Growth Management Agreement: Clackamas County-City of Oregon City
35
36 Findings to Oregon City Resolution 07-24

1
2
3 **I. PETITIONER'S STANDING**

4 Petitioner has standing under ORS 197.830(2) to petition this Board for review of
5 this land use decision made by the Respondent, Oregon City, because Petitioner (1) filed a
6 notice of intent to appeal with LUBA, and (2) appeared before Oregon City through oral and
7 written testimony in the proceedings leading to the land use decision appealed in this action.
8 Rec. 661-803, 853-893, 1094-1185, 1495-1593 et al.

9 **II. STATEMENT OF THE CASE**

10 **A. Nature of the Land Use Decision and Relief Sought**

11 The decision appealed is Oregon City's Ordinance No. 07-1008 adopted September
12 17, 2008. Rec. 5-6. This decision adopted the Beaver Creek Road Concept Plan and
13 amended the Oregon City Comprehensive Plan (OCCP) and its ancillary documents.

14 Pursuant to ORS 197.835, the Petitioner seeks reversal of Oregon City's decision
15 adopting 07-1008.

16 **B. Summary of Arguments**

17 Oregon City violated state law, Metro Code and its own Comprehensive Plan when
18 1) it planned Title-4 Industrial land for commercial and residential rather than protected
19 industrial use by limiting non-industrial uses; it did not comply with Metro Ordinances 02-
20 969 B and 04-1040 B which expanded the UGB; it acted outside its jurisdiction concerning
21 a UGB change and determination of the buildable land supply where Metro has jurisdiction;
22 and it did not maintain consistency and coordination of planning; (2) it failed to provide
23 appropriate plans, to project timing, to estimate costs, to evaluate likely funding, to plan
24 implementation so the rest of the city would not have diminished service, to comply with the
25 findings of its Resolution 07-24, to plan when the uses were unsettled ; and (3) it failed to
use evidence to determine popular sentiment; it violated the substantial rights of petitioner;

1 and it violated the acknowledged citizen involvement program.

2 **C. Summary of Facts**

3 In 2002 and 2004 respectively, Metro expanded the Urban Growth Boundary (UGB)
4 to include 245- and 63-acres of industrial land. Rec. 7, 1524. These lands are mapped on
5 Metro's Employment and Industrial Land Map. Appendix B. The 453-acre Beaver creek
6 Road Concept Plan plans the 308 Title-4 Industrial acres as well as a smaller amount of
7 2040 Growth Concept Title-4 Employment and Outer Neighborhood land which was already
8 in the UGB and/or City. Rec. 42. The concept plan describes 127 net acres as Title-4
9 compliant with the balance a mix of commercial/retail and residential uses. Rec. 50. The
10 site, bordered by Beaver creek Rd. to the west, is connected to I-205 and the regional road
11 network by Highway 213. Rec. 411.

12 **III. LUBA'S JURISDICTION**

13 The appealed decision is a final land use decision of local government concerning
14 application of statewide planning goals, comprehension plan provisions, and land use
15 regulations. As provided by ORS 197.825, LUBA has exclusive jurisdiction to review local
16 government land use decisions, within the meaning of ORS 197.015(10)(a)(A).

17 **IV. ARGUMENT**

18 **FIRST ASSIGNMENT OF ERROR**

19 **Oregon City Erred In Adopting Oregon City Ordinance 07-1008 And, By This**
20 **Adoption, (1) Violated Applicable Law Requiring Protection Of Industrial Land**
21 **For Industrial Use Such As Metro Title 4 Especially Metro Code 3.07.430 And**
22 **3.07.450, Title 11 Especially 3.07.1120 F And Metro Code 3.01.040, And Oregon**
23 **City Comprehensive Plan (OCCP) Goals 2.6 And 2.7 And Related Policies; (2)**
24 **Misconstrued These Laws Pertaining To Protection Of Industrial Land For**
25 **Industrial Use; (3) Did Not Support Its Decision With Correct Analysis Of**
26 **Industrial Land Use And Did Not Support Its Decision With Adequate Findings**
27 **Or Reasons Or With Substantial Evidence In The Whole Record In Violation of**
28 **OAR 661-010-0071 And 661-010-0073; (4) Acted Outside Its Jurisdiction**
29 **Concerning A Boundary Change Resulting In An Acknowledged Industrial**
30 **Concerning A Boundary Change Resulting In An Acknowledged Industrial**
31

1 **Designation And Determination Of The Buildable Land Supply Made By Metro**
2 **In Violation of Relevant Laws Such As OAR 661-01-0071 and 73, ORS 195, 197**
3 **and 268; (5) Violated The Laws And Precedent Governing The Process Of**
4 **Bringing Lands Into The Urban Growth Boundary For Industrial Use and**
5 **Governing The Lands Brought Into The Urban Growth Boundary For**
6 **Industrial Use Such As Statewide Planning Goal 2, 3, 4 And 14, OAR 660-009,**
7 **Metro Ordinance 02-969B And Metro Ordinance 04-1040B, Metro Code**
8 **3.01.040, 3.07.810, OCCO Goals 2.6 And 14.1 And Related Policies And *Opus***
9 ***Development Corp. v. City of Eugene, Concerned Citizens v. Jackson County, And***
10 ***1000 Friends of Oregon v. City of North Plains*; And (6) Violated Relevant Law**
11 **Requiring Maintaining Consistency And Coordination Of Government**
12 **Planning Such As ORS 268.354(2)(d), Statewide Planning Goal 2 And 14, Metro**
13 **Code 3.01, 3.07 Titles 8 and 11 And OCCP.**

14
15 **Subassignment of Error A**

16
17 Although relevant law such as Statewide Planning Goal 2, Metro Code 3.01 and 3.07
18 Titles 8 and 11 and Oregon City Comprehensive Plan requires that local governments in
19 their planning maintain consistency with regional plans¹, Oregon City erred in adopting
20 Ordinance 07-1008 adopting the Beaver Creek Road Concept Plan and incorporating it into
21 its Comprehensive Plan without the concept plan and comprehensive plan amendments
22 complying with Metro Code 3.01 and 3.07. Metro Code 3.07.450, the Employment and
23 Industrial Areas Map, shows that the majority of the concept planning area is industrial and
24 must be planned as industrial and 3.07.430 tells how non-industrial development will be
25 limited in industrial areas, but the concept plan does not comply with this law planning more
26 of the industrial land residential and commercial/retail² than the law allows. State³,
27 Metro and Oregon City's own law require that the City maintain consistency with Metro
28 planning. Statewide Planning Goal 2 states:

¹ The City recognizes, "Compliance with the Statewide Planning Goals is a specific requirement for changes to the Comprehensive Plan..." Rec. 14.

² The City itself recognized in delaying the effective date of the plan due to the absence of implementing measures that the plan fell short of the standard "to assure... consistency and adequacy" and hence the editorial remark was "couch" which erroneously was typed into the text. Rec. 8 line 2.

³ ORS 268.354 (2) (d) states "(2) For a boundary change that is subject to the jurisdiction of the district pursuant to ORS 268.347 the district shall:... (d) Ensure that a boundary change is in compliance with the Metro regional framework plan..." OAR 660-009-0030.

1 “City... plans and actions related to land use shall be **consistent** with the
2 comprehensive plans of cities and counties and regional plans adopted under ORS
3 Chapter 268... Each plan and related implementation measure shall be **coordinated**
4 with plans of affected governmental units.” (bold added)
5

6 Metro Code 3.01 including 3.01.040 requires the Growth Concept design types to be
7 established by Metro and followed by local governments:

8 “(a) Land added to the UGB by legislative amendment... or by major amendment...
9 shall be subject to the requirements of Title 11, Planning for New Urban Areas, of the
10 Urban Growth Management Functional Plan...” and

11 “(b) ...when the Council adopts a legislative or major amendment to the UGB, the
12 Council shall:...

13 (1) ...designate the city... responsible for adoption of amendments to
14 comprehensive plans... pursuant to Title 11...

15 (2) Establish the 2040 Growth Concept design type designations applicable to
16 the land added to the UGB, including the specific land needed, if any, that is
17 the basis for the amendment.”
18

19 Metro Code 3.07 Title 8 especially 3.07.810 especially D states:

20
21 “Cities... that amend their comprehensive plans or land use regulations... shall make
22 the amendments in compliance with the functional plan.”
23

24 Metro Code 3.07.1105 states, “It is the intent of Title 11 that development of areas brought
25 into the UGB implement the Regional Framework Plan and 2040 Growth Concept. Metro
26 Code 3.07.1120 elaborates,

27 “The comprehensive plan provisions shall be **fully coordinated** with all other
28 applicable plans. The comprehensive plan provisions **shall** contain an urban growth
29 plan diagram and policies that **demonstrate compliance with the RUGGO**,
30 including the Metro Council adopted 2040 **Growth Concept design types**. (bold
31 added)
32

33 Oregon City’s Comprehensive Plan p. 1 states:

34 “Oregon City’s Comprehensive Plan and implementation ordinances must comply
35 with applicable Statewide Planning Goals adopted by the Land Conservation and
36 Development Commission as the result of a 1973 state law. The plan must also
37 comply with the relevant portions of Metro’s 1998 Urban Growth Management
38 Functional Plan.”
39

40 Consequently, the City must be in compliance with Metro’s Functional Plan, Code

1 3.07 Title 4, the 2040 Growth Concept design types and other law.

2 Metro's Urban Growth Management Functional Plan gives provisions for industrial

3 land at Metro Ordinance 3.07 Title 4. Title 4's stated purpose and intent is:

4 "to provide and protect a supply of sites for employment by limiting the types and
5 scale of non-industrial uses in... Industrial... areas". Metro Code 3.07.410.

6
7 Metro Code 3.07.430 describes the "Protection of Industrial Areas":

8 "A. Cities and counties shall review their land use regulations and revise them... to
9 limit new buildings for retail commercial uses--such as stores and restaurants-- and
10 retail and professional services that cater to daily customers--such as financial,
11 insurance, real estate, legal, medical and dental offices--in order to ensure they serve
12 primarily the needs of workers in the area. One such measure shall be that new
13 buildings for stores, branches... for these retail uses and services shall not occupy
14 more than 5,000 square feet of sales or service area in a single outlet, or multiple
15 outlets that occupy more than 20,000 square feet of sales or service area in a single
16 building or in multiple buildings that are part of the same development project...

17 "B. Cities and Counties shall review their land use regulations... to limit new
18 buildings for the uses described in subsection A to ensure that they do not interfere
19 with the efficient movement of freight...

20 "D. Cities and counties may allow division of lots or parcels into smaller lots or
21 parcels as follows:...

22 "2. Lots or parcels larger than 50 acres may be divided into smaller lots... so long as
23 the resulting division yields at least one lot or parcel of at least 50 acres in size."
24 Metro Ordinance 3.07.430.

25
26 Metro Ordinance 3.07.450 Employment and Industrial Areas Map specifies:

27
28 "A. The Employment and Industrial Areas Map is the official depiction of the
29 boundaries of Regionally Significant Industrial Areas, Industrial Areas and
30 Employment Areas." Metro Code 3.07.450 A. Appendix B. Rec. 1525 & 1097.

31
32 Of the 453-acre concept plan⁴, most of the plan area is Title-4 Industrial -- 308 acres

33 from the 2002 and 2004 UGB expansions⁵ (Appendices B and C) -- as shown on the Metro

⁴ "Total Project Area Gross Acres 453" Rec. 91, 7. "There are 448 gross acres in the project area, not including the right-of-way for Loder Road (approximately five acres)." Rec. 44.

⁵ Oregon City says, "Metro brought 248 gross acres in the UGB in 2002 and an additional 63 acres were added in 2004. The remaining acreage was in the UGB and/or Oregon city limits prior to 2002. These areas (308 gross acres) are designated as the Industrial Design Type on Metro's 2040 Growth Concept Map." Rec. 18. The concept plan and findings correctly give the 2002 and 2004 UGB expansion areas at Rec. 42, 18, 7, but at Rec. 47 and 23 they omitted the 2004 acreage of 63 acres: "Metro brought the majority of the concept plan area (245 gross acres) into the UGB in 2002 and 2004 to fulfill regional industrial employment needs." Rec. 47, 23. The meaning is garbled and erroneous at Rec. 23 (despite being correct in an earlier draft at Rec. 645);

1 Code 3.07.450 Employment and Industrial Areas Map. Appendices B and C, Rec. 1524 &
2 725. About 64 additional acres^{6,7} are Title-4 Employment Land with similar rules to Title-4
3 Industrial Land limiting commercial. Metro Code 3.07.440. Appendices B and C. Rec. 44,
4 42. Altogether that yields about 372 acres of Metro Title-4 Industrial and Employment
5 Lands in the 453-acre concept plan⁸. The concept plan, however, only plans 175 gross acres
6 (Rec. 91 middle box under hybrid) in the north part of the concept plan area, called the
7 North Employment Campus, as Title-4 compliant and industrial and states "The [North
8 Employment Campus] subdistrict is intended to comply with Metro's Title 4 regulation."
9 Rec. 49, 50, 24⁹, 47 right bottom. This petition does not find error with how the City
10 planned the Title-4 Employment lands which are lumped with the Industrial lands in the
11 concept plan; the violation of Title 4 occurs wholly in the Title-4 Industrial lands to the
12 south of the North Employment Campus. Compare Rec. 49 with Appendix B. Oregon City
13 violates Metro Code 3.07.450 and 3.07.430 in not planning the entire area indicated on
14 Metro's Employment and Industrial Areas map as Title-4 compliant, and, consequently, the
15 Finding of "coordination" (Rec. 14) is not factually based, so, for this reason, the decision
16 must be reversed.

"These areas (308 gross acres including those already within the UGB) are designated as the Industrial Design Type on Metro's 2040 Growth Concept Map"; none of the 308 acres were in the UGB prior to 2002.

⁶ The acreages have been difficult to figure out because the city and its consultant who did the mapping and acreage calculations did not make the data easily or completely available despite numerous requests. Rec. 1101-1109, 1500, 1505. See Appendix C for more details on the acreages.

⁷ "A portion of the study area (approximately 50 acres) is currently within the existing city limits and zoned Campus Industrial." Rec. 44. About 14 acres in the county are the balance of the Title-4 Employment lands. Appendices B and C.

⁸ The balance of the concept plan area – land to the south of the site, jagged lots along diagonal Beaver Creek Road to the west of the site, and a tiny lot in the north -- was apparently brought into the UGB in 1979 and remains in the county. It is Metro design-type Outer Neighborhood. Appendices B and C. Rec. 1524 & 725, 42, 801.

⁹ The Findings state: "The North Employment Campus is to provide for the needed family wage employment that strengthens and diversifies the economy and will be compliant with Metro's Title 4 regulations." Rec. 24.

1 The uses indicated in Metro Code 3.07.430 A, such as commercial and retail, are to
2 be limited to "serve primarily the needs of workers in the [industrial] area"¹⁰ and to comprise
3 less than 5,000 or 20,000 sq. feet in the development. Metro Code 3.07.430 A and C. The
4 City only intends to limit incompatible uses in the North Employment Campus. Rec. 24.
5 Non-industrial uses, of the type specifically mentioned in Metro Code 3.07.430 A to be
6 limited such as "retail commercial uses... and retail and professional uses... offices" and
7 residential¹¹, are not limited by the concept plan but, instead, non-industrial uses extensively
8 and illegally displace industrial uses, making up just over half the gross acres and almost
9 half the unconstrained acres, that is,

- 10 • Title-4 uses are planned to comprise only 175 of 372 gross Title-4 acres (47%)
- 11 • Title-4 uses are planned to comprise only 123 of 225.7 buildable/unconstrained Title-
12 4 acres¹² (54%)

¹⁰ The "area" being referred to ("primarily the needs of the workers in the area") is the area where the workers are, the industrial area. The "area" is discussed in a Title (Metro Code 3.07) and section (Metro Code 3.07.430) both with titles focused on "Industrial Areas" and it speaks of "workers" in the area, not "residents" or other people making clear that it is the "industrial area" being referred to.

¹¹ Metro made no provision for residential displacing industrial as it did for small incursions of retail commercial. Metro Ordinance 3.07.430.

¹² The North Employment Campus (NEC) yields 123 unconstrained acres (Rec. 91 FN *); the other numbers are explained at FN 27. The Beaver Creek Road Concept Plan and Findings do not state how much of the 372-acres of Title-4 land is buildable (FN 6), so this number must be determined from the data given. Constrained Title-4 land shown at Rec. 46 (compare Appendix B and Rec. 49) consists of 146.3 acres: 5 acres for Loder Rd. (Rec. 44), 13.9 acres of "low impact development" (Rec. 46 legend; "a minimum of 50% of the conservation area must be open space. No residential uses are permitted", Rec. 56 item a, 16 bottom, 49 light green in south), and 127.4 acres of constrained land from Rec. 46 (3.6 + 3.4 + 94.3 + 1.3 + 16.3 + 8.5). The 372 gross, Title-4 acres less the 146.3 constrained acres yields 225.7 acres of buildable Title-4 acres (including local roads other than Loder Rd. The 123 unconstrained NEC acres divided by the 225.7 unconstrained Title-4 acres is 54%.

Net buildable acres would remove 15% from both numbers: 105 net unconstrained Title-4-compliant acres/192 net unconstrained Title-4 acres = 54%. Rec. 90 footnote *. OAR 660-007-0005 defines "net buildable acre" without rights-of-way).

These calculations concur reasonably well with other acreage data given. "When land for power lines, the natural gas line, natural resources and committed structures are removed, the net buildable acreage is approximately 292 acres." Rec. 8, 45. The 292 net buildable acres less 225.7 of buildable Title-4 acres yields 66.3 buildable Outer Neighborhood acres. Rec. 46 and Appendix C. The 76-acres of Outer Neighborhood (Appendix C) less the 3.8 acres of constraints shown at Rec. 46 (1.8 + 1.5 + an estimated 0.5 under the diagonal gas line, Ref. 46, Appendix C) yields 72.2 buildable acres. Despite some estimated acreages (FN 6),

Viewing Appendix C and Rec. 49, the jagged pink Title-4 Industrial land becomes over half the Mixed Employment Village (MEV)¹³ and part of Main Street (MS)¹⁴ and West Mixed Use Neighborhood (WMUN) and the orange Title-4 Industrial land and considerable pink Title-4 Industrial land to the north and west become East Mixed Use Neighborhood (EMUN). Rec. 53, 77. The City extensively displaces Title-4 Industrial with limited uses.

1 Oregon City makes no effort to ensure the limited uses "serve primarily the needs of
2 workers" such as by limiting their size and demonstrating that the size complies with the
3 requirement, either by locating them within an industrial subdistrict, by planning various
4 implementation measures such as ensuring concurrency of limited uses with industrial
5 construction, or by using other necessary measures. There is no analysis of the amount of
6 limited uses and the needs of the workers and no comparison of the two. The location of the
7 retail/commercial is well away from the industrial area requiring a special trip, so the worker
8 may be more likely to go to an existing shopping center just northwest of the industrial site
9 on the 4- to 5-lane Beaver creek Road than travel south to the new shopping center on the 2-
10 to 3-lane Beaver creek Road (Rec. 24 & 57, 60 top right, 36 – Clairmont to NW).
11 Substantial evidence in the record indicates the new shopping center, MS and MEV, which
12 would have residential on much of 3 sides and borders industrial over a tiny segment, is
13 intended for "residents" and surrounding neighborhoods to use, not "workers". Rec. 49,
14 731¹⁵, 736, 51-52.

the two approaches agree within 5.9 acres.

¹³ Mixed Employment Village: "retail, office, civic, and residential" Rec. 51, 76.

¹⁴ Main Street: "commercial, mixed use and services" Rec. 52, 76.

¹⁵ The retail commercial was to be for Title-4 "workers" rather than residents of this and surrounding neighborhoods, retail/commercial workers, or users of this roadway, but evidence in the record indicates they will not be: (1) The State reviewer disbelieved that the site planning (where Alternates A and D were similar to the Hybrid (Rec. 88, 49)) would prevent half of potential car trips. Rec. 731 #12. The City's consultant acknowledges that there was no modeling, but the trip reductions was speculation. Rec. 736 box 4 (response to Rec. 731 #12). (2) The consultant also states the retail/commercial will be used for residents: "a significant proportion of existing and future residents of the Oregon City area will work, shop, and recreate at this site"

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1 The substantial evidence in the record, together with the lack of implementation
2 measures such as concurrency requirements and two large annexation applications for
3 residential and commercial¹⁶, indicate that the non-industrial uses would not serve primarily
4 the needs of workers but would proceed the industrial uses by years or decades, which
5 would ensure these uses will not to serve workers at all. Rec. 48¹⁷, 854 middle, 1094
6 bottom, 655 bottom. The failure of the retail/commercial to primarily serve the workers puts
7 the concept plan in violation of Metro Code 3.07.430 A.

8 The limited uses far exceed the 5,000 or 20,000 sq. ft. limits Metro Code 3.07.430
9 specifies: (a) the limited uses may occur in the North Employment Campus, (b) although an
10 estimated half of the 26-acre Mixed Use Village and the 10-acre Main Street subdistricts is
11 Title-4 Industrial (Appendices B and C, Rec. 49, 91), the limited uses are planned to
12 comprise the entire 36 acres and the limited uses would comprise up to half of the 27.8-acre
13 "Conservation and Low-Impact Development" district despite its being all Title-4 Industrial
14 (Rec. 46, 56 "a"), totaling all together about 31.9 acres¹⁸ or 1,389,564 sq. ft.¹⁹ of

(bold added) (Rec. 736 box 4). (3) The concept plan states: The "Mixed Employment Village... [would] serve the daily needs of **adjacent neighborhoods** and Beaver Creek Road sub-districts" and the "Main Street... [would] serve the daily needs of **the surrounding area.**" (bold added). Rec. 51, 52.

¹⁶The City has already approved two annexation applications (without revision) that indicate an intent, consistent with the contested concept plan, to develop large portions of the industrial land with no industrial at all, in violation of the law. The first annexation, called Cordillera A Cascadian Village, of "122 acres", although mostly Title-4 lands from the 2002 expansion, proposes no industrial but "proposes approximately 2 million square feet of commercial development and approximately 1,500 units of residential development." *Graser-Lindsey v. Oregon City*. 56 Or LUBA 504 (2008), p. 3, 22 FN 14. The developer described it, "Half might be residential and half might be pure commercial with no industrial." Rec. 1177. The concept plan only placed "a small area of industrial lands within the proposed annexation" (Rec. 1515) of approximately 20 acres (Findings to Resolution 07-24, p. 4 of 7), but a detention pond (Rec. 723) is shown occupying this potential industrial land. Rec. 306 middle. The second annexation application, called Conservation Community at Thimble Creek (Rec. 1382), which includes the 63-acre 2004 industrial expansion and which was approved by the City Commission, but twice voted down by voters, doesn't include any land planned as industrial. *Graser-Lindsey v. Oregon City*. LUBA 2007-257. Final Opinion and Order and *Kehoe v. Oregon City*, LUBA 2008-169, Final Order and Opinion.

¹⁷ The concept plan anticipates phased development over greater than 20 years. Rec. 48.

¹⁸ ½ (26-acre Mixed Use Village + 10-acre Main Street) and ½ (27.8-acre Low-Impact Development)

¹⁹ 43,560 ft²/acre is the conversion from Webster's New Collegiate Dictionary, 1975.

1 commercial/retail²⁰ on Title 4 land²¹. (c) Residential completely displaces Title-4 Industrial
2 over an estimated (FN 6) two-thirds or 50 acres or 2,178,000 sq. ft. (FN 19) of the 77-acre
3 East (and a little West) Mixed Use Neighborhood²². Rec. 91 Hybrid. (d) Two large
4 annexation applications, located largely on Title-4 Industrial lands, which have proposed
5 projects or developments wholly not industrial and vastly exceeding the commercial limits,
6 have already been approved. FN 16. The concept plan violates Metro Code 3.07 Title 4
7 particularly 3.07.430 because in it extensive non-industrial uses, not for the workers nor
8 within the sq. ft. limits, displace industrial uses on Title-4 lands, consequently Ordinance 07-
9 1008 must be reversed or remanded.

10 Oregon City did not "ensure" "the uses described in subsection A" "do not interfere
11 with the efficient movement of freight" as required by Metro Code 3.07.430B, but, instead,
12 such interference is likely given the tens of thousands of new mostly non-industrial vehicle
13 trips per day projected from the development of the concept plan (Rec. 420) due to
14 problems with capacity, levels of service and funding addressed in Assignment of Error 2.

15 Oregon City failed to ensure land "division yields at least one lot or parcel of at least
16 50 acres in size" as required by Metro Code 3.07.430 D and Statewide Planning Goal 14²³.
17 The concept plan states: "There are 51 total properties ranging in size from 0.25 acres to
18 63.2 acres." Rec. 44. Large ownerships combine properties. Rec. 45, 1781. The City has
19 not addressed preserving large buildable parcels of 50 acres or larger for industrial in

²⁰ The MEV is planned to be 3-5 story buildings (Rec. 34) and MS is to be over 2 stories (Rec. 52), but the areas given reflect the land area only.

²¹ The City tallies these jobs (Rec. 90), but they are not industrial nor the type intended by Title 4. FN 26.

²² The concept plan says, "Jobs in residential areas (Work at home Jobs) estimated at 4%..." (Rec. 90 FN ***) and mentions "live work units" and "in home work options" (Rec. 53), but, by Oregon City Municipal Code 17.04.290, "Home occupation, "an occupation... in connection with... no commodities are sold other than services... includes such occupations as lawyer..." is for professional jobs and is restricted to exclude industrial jobs and the concept plan does not intend to change this. Rec. 1497, 628 (Konkol, Graser-Lindsey).

²³ "The size of the parcels of urbanizable land that are converted to urban land should be of adequate dimension so as to maximize the utility of the land resource..."

1 violation of Metro Code 3.07.430 D and Goal 14.

2 In conclusion, the city violated Statewide Planning Goal 2 and related law by not
3 maintaining consistency with Metro law and violated Metro Code Titles 4 especially
4 3.07.430 and 3.07.450 in not planning according to the 2040 Growth Concept design types
5 and the Title-4 map when planning Title-4 Industrial land as commercial and residential.
6 The City's decision is prohibited as a matter of law, so the decision must be reversed. The
7 city also improperly construed applicable law, when it permits residential and commercial to
8 be exclusive users of many industrially-designated parcels whereas the law requires the land
9 to be used industrially with only tiny pockets of commercial of less than 5,000 and 20,000
10 sq. ft., if at all, and when it fails to ensure limited uses are for workers, to protect freight
11 movement and to protect a 50-acre lot, so this decision must be reversed or remanded.

12 **Subassignment of Error B**

13
14 The city errs in not providing Findings or evidence or reasons or a correct analysis to
15 demonstrate compliance with Metro Title 4 and Goal 2.

16 OAR 661-010-0071 2a and 661-010-0072 2a state:

17 “(2) The Board shall remand a land use decision for further proceedings when: (a)
18 The findings are insufficient to support the decision... (b) The decision is not
19 supported by substantial evidence in the... record.”
20

21 Goal 2 requires,

22
23 “The required information shall be contained in the plan document or in supporting
24 documents... The plans shall be the basis for specific implementation measures.
25 These measures shall be consistent with and adequate to carry out the plans.”
26

27 Although Goal 2 requires consistency of government planning, the City does not
28 include Title 4 in its “Decision-Making Criteria” (Rec. 9-10), nor does it address
29 compliance of the complete concept plan with Title 4²⁴ nor does it provide evidence of

²⁴ In discussing its own Comprehensive Plan Criteria, without providing evidence or discussion, the City
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1 compliance or reasons or a correct analysis nor can it. The city, as an aside in its discussion
2 of Title 11 E, gives a mere assertion of compliance of one subdistrict with Title 4:

3 "The North Employment Campus is to provide for the needed family wage
4 employment that strengthens and diversifies the economy and will be compliant with
5 Metro's Title 4 regulations." Rec. 24 top.

6
7 The City's Findings on Title 11 E (Rec. 23-24) do not actually address or replace findings on
8 Metro Ordinance 3.07 Title 4 nor does this aside address compliance of the concept plan
9 besides the one subdistrict.

10 The City fails to clearly compile and make available the plan's supporting documents
11 ("under separate cover", Rec. 33) as required by Goal 2. Concerning Goal 2, the City
12 concludes, "It contains adequate implementation measures to ensure that upon taking effect
13 (when the implementing zoning is subsequently adopted) sufficient means will carry out the
14 plan." (Rec. 15); however, it does not discuss what the implementing measures are and, in
15 fact, discusses that the Commission has not yet reviewed the implementing measures. FN 2,
16 Rec. 7 bottom, 3. A challenged decision must not become final before compliance with
17 relevant rules is assured. *Concerned Citizens v. Jackson Co.*, 33 Or LUBA 70 (1997).

18 Local government findings are inadequate when they fail to interpret an applicable
19 regulation and fail to identify facts upon which it relied in reaching its conclusion. LUBA
20 will not overlook such inadequacies in the Findings, when no party cites evidence in the
21 record that compels the interpretation or conclusion made by the local government. *DLCD*
22 *v. Clatsop Co.*, 31 Or LUBA 90 (1996);

23 Because the Findings and evidence concerning Title 4 and Goal 2 are insufficient to
24 support the decision, City Ordinance 07-1008 must be remanded.

25 **Subassignment of Error C**

makes the general, conclusionary assertion: "The Beaver Creek Road Concept Plan and regulations are in compliance with Metro's Functional Plan..." Rec. 11.

1 The City must comply with Metro's Functional Plan including Metro Code 3.07 Title
2 11 and related law which requires the Growth Concept design type boundaries and
3 regulations to be followed and the City failed to adopt adequate findings.

4 Goal 14 states: "Establishment and change of the UGBs shall be based on the
5 following: ... (2) Demonstrated need for employment...".

6 Metro Code 3.07.1105 states, "It is the intent of Title 11 that development of areas
7 brought into the UGB implement the Regional Framework Plan and 2040 Growth Concept.
8 Metro Code 3.07.1120 elaborates,

9 "The comprehensive plan provisions shall be fully coordinated with all other
10 applicable plans. The comprehensive plan provisions shall contain an urban growth
11 plan diagram and policies that demonstrate compliance with... 2040 Growth Concept
12 design types. Comprehensive plan amendments shall include:...

13 A. Specific plan designation boundaries derived from the **general boundaries** of
14 design type designations assigned by the Council in the ordinance adding the
15 territory to the UGB.

16 F. **Provision for sufficient** commercial and industrial development for the **needs** of
17 the area to be developed consistent with 2040 Growth Concept design types."

18
19 Oregon City Comprehensive Plan states:

20
21 "Policy 2.7.3 **Recognize the design types of Metro's 2040 Growth Concept.**
22 Establish boundaries for ... Industrial areas..."

23
24 According to Statewide Planning Goal 2 and related law (as discussed in AOE 1 A),
25 the City must comply with Metro's Functional Plan. As discussed previously, 308 acres of
26 the concept plan are Title-4 Industrial design type of Metro's 2040 Growth Concept. Metro
27 Code 3.07.450, Appendices B and C, 42, 44, 18. Oregon City violated Metro Code
28 3.07.1120 A and OCCP Policy 2.7.3, because its "comprehensive plan amendments",
29 comprised of the Beaver Creek Road Concept Plan, "shall include" "specific plan designation
30 boundaries derived from the general boundaries of design type designations assigned by the
31 Council in the ordinance adding the territory to the UGB", but the concept plan does not

1 follow the general boundaries given by Metro's Employment and Industrial Land Map, but
2 instead only plans a portion of the concept plan (North Employment Campus) as industrial
3 (Rec. 24), which violates Metro Code 3.07.1120 A and must be reversed.

4 While Metro Code 3.07.1120 F, defines "sufficient ... industrial development"
5 "shall" be provided as meeting "the needs of the area to be developed consistent with 2040
6 Growth Concept design types" referring to consistency with the Title-4 design type map and
7 to the Goal-14 needs justification acknowledged in the UGB expansion, the City mis-defines
8 "sufficient" as being 120 acres:

9 "Metro intended 120 net acres of the concept plan area would be used for
10 employment uses. Metro noted that it was important to fulfill the original intent for
11 providing industrial lands and that there was flexibility for the local process to
12 evaluate creative ways to meet the intent." Rec. 18. "Metro estimated 120 net acres
13 of the concept plan area would be used for employment uses..." Rec. 23, 47.

14
15 The city does not provide the source or evidence of the 120-acres number and errors in
16 many ways concerning this number²⁵ including some accounting sleight of hand:

²⁵ The City claims it had Metro's permission to violate Metro's Code. The City says: "This approach was blessed by David Bragdon, Metro Council President, in a letter dated May 14, 2007 as well as Metro planner Ray Valone in a letter dated March 19. (sic) 2008." Rec. 18, 23. The city errs in interpreting "flexibility" to mean that the "original intent" or the Metro Code can be violated; instead there are many flexible ways to comply with the "original intent" and the Metro Code. The City did not choose to explore or adopt flexible ways to comply, but chose to interpret "flexibility" to mean the City did not need to comply.

Metro President, writing a year and a half before the adoption (Rec. 691), does not give legal advice in his letter, he is not legally able to personally waive a law, and, in expressing his "understanding", he is relying on his consultations with unmentioned others, but, having referred to the City before writing (Rec. 694-696, 697-698 – the City responded to the Hamlet before Metro to whom its letter was sent), he has obtained erroneous information: the 120 acres number was not a target but presumably a buildable land estimate and was for 2002 only with the estimate for 2004 not being included. These errors, made by the City, are addressed.

Metro Planner in his letter to the City (Rec. 566) does not address Metro Code 3.07 Title 4 or the other points above. His letter is not legal advice; he says "the plan...seem[s] consistent with Metro policies and regulations" (bold added); he is not qualified to determine the "intent" of a previous Metro Council and he was not in his current position in 2002, and, even if he were, complying with what is purported to have been intended is not compliance with the law; and neither he nor his staff can personally waive Metro Code despite his obvious eagerness for progress on the UGB expansion lands.

In 2002, Metro's intention was to strengthen its industrial land law. Ordinance 02-969B, which expanded the UGB to include Area 26, now part of the concept plan area, as industrial land (Rec. 1537, 1542), states,

"Analysis of results of local implementation of Title 4 indicates that commercial uses and other non-industrial uses are converting land designated for industrial use to non-industrial use." Rec. 1541.

Therefore Metro adopted "Exhibit F: Amends Metro Code (UGMFP) to increase the efficiency of the use of land within the UGB for industrial use" which includes "3.07.430 Protection of Industrial Areas". Rec. 1527 #5, 1544, 1532-1535.

1 (1) The 120-acres number was not Metro’s target for employment use²⁶ but
2 presumably a buildable-land estimate for the new UGB industrial land. The City errors in
3 deciding that, if more lands were buildable within this Growth Concept design type than
4 were estimated by Metro to be, then the additional lands could be diverted to different
5 purposes such as commercial, retail and residential²⁷. All the buildable land shown on
6 Metro’s Industrial lands map must be developed to be Title-4 compliant, not just the first
7 120 buildable acres. Appendix B. It was estimated earlier that about 50 and 31.9 acres of
8 buildable Title-4 Industrial land (the southerly part of the 2002 expansion and the 2004
9 expansion, see AOE 1 A) were diverted to other uses in the concept plan, but instead this
10 land needs to be planned industrially.

11 (2) The City seems to suggest, such as when it said “about 127 net acres of North
12 Employment Campus (NEC)... is consistent with Metro’s intent” (Rec. 18, 23), that it has
13 planned 127 new acres of buildable industrial land to reach a Metro 120-acre target for new
14 land; however, the 120 acres weren’t reached solely with either buildable or new industrial
15 land. First, this 127 net acres includes 26 acres of power-line corridor which is not

²⁶ Or, rather, industrial use (Appendix B); the City acknowledged the intent of “providing industrial lands”, but it continues to cloud the distinction between “employment” and Title-4 Industrial. The City considers employment to include any jobs (Rec. 51, 52, 90 43 right; FN 41) rather than distinguishing Title-4 Industrial and Employment jobs from commercial/retail jobs. Metro Code 3.07.430 and 3.07.440. Substantial evidence in the Record distinguishes jobs. FN 39, 41. Rec. 1146, 1176 (Westfall), 1522. Metro defines family-wage jobs as having “an annual income greater than or equal to the average annual in the region.” Rec. 1522.

²⁷ The concept plan describes how the unconstrained industrial 123 acres can be augmented to include constrained land – “useable portion of powerline overlay (50%) 26 [acres]” i.e. one half the “useable” (not canyon) regional powerline corridor where building and even bushy vegetation is not allowed – to yield a gross acreage of 149 acres. Appendix D; Rec. 91 (middle box under hybrid), 863, 1831-1832, 54, 723, 15. The net acreage with roads deducted but still with one half the constrained powerline corridor included is 127 acres. Rec. 90 (hybrid net acres). Various approaches had been tried to include more of the power-line corridor as buildable. Rec. 46 vs. 980 (6-30-07) or 1779 (7-2006). By inflating the industrial in the north, the City intends to divert industrial in the south to other uses.

1 buildable. Rec. 91; FN 27. Second, the City substituted about 46.3 **pre-existing** net acres²⁸
 2 already in the city and/or the UGB for part of the new UGB-expansion Title-4 Industrial net
 3 acres when assembling the 127 acres to try to reach the City's erroneous 120-net-acre
 4 industrial-lands target²⁹. As a result, instead of planning 120 new buildable acres as
 5 industrial, as the City seems to suggest, it is planning about 54.7 new buildable acres³⁰ from
 6 the Title-4 Industrial land. Rec. 1505, 1506³¹.

7 (3) Significantly, the Metro 120-acre buildable land estimate was for 2002 only. The
 8 city ignores that more Title-4 Industrial land was brought into the UGB in 2004 and it did
 9 not include a Metro buildable land estimate for 2004. Petitioner estimated that 30 buildable
 10 acres were added to the UGB in 2004 (Rec. 1505, 1506), before the City decided the low
 11 impact area was 50% buildable yielding 12 net acres³² (Rec. 56, 46), so approximately 42
 12 net buildable acres were added in 2004.

13 About 150 new buildable Title-4 acres (120 + 30 or, as much as, 120 + 42), brought
 14 into the UGB in 2002 and 2004, are being planned to yield just 54.7 acres.

Year of UGB Expansion	Growth Concept Design Type	Gross Acres of Expansion	Metro Buildable Land Estimate – A Guess	Yield of Concept Plan of Net Buildable Title-4 Industrial Acres
2002	Industrial	245	120	54.7
2004	Industrial	63	30	0

15 Rec. 18, 1505, 1580 ¶2 – 60 acres.

²⁸ Appendix C shows pre-existing Employment land (50 + 14 acres) and Outer Neighborhood land (2 acres) giving 66 pre-existing acres less 11.5 constrained acres shown at Rec. 46 (3.6 + 1.3) or estimated from Rec. 46 (6.6 acres in two pieces under powerlines, FN 6) yielding 54.5 pre-existing buildable acres. Deducting 15% for local roads yields 46.3 pre-existing net acres.

²⁹ "There are 7 properties within the concept plan that are currently within the city and zoned campus industrial. These properties were included in the study and the total acreage of employment lands calculation for the plan included these properties even though they were already in the city." Rec. 721.

³⁰ That is, $127 - 26 - 46.3 = 54.7$

³¹ Petitioner revises the 80 acres, as stated at the hearings, downward to 55 acres as explained in the text.

³² $\frac{1}{2}$ of 27.8 acres less 15% for local roads yields 11.6 acres.

1 (4) Although the City consultant's Market Analysis determined that the "large
2 parcels with consolidated ownership" of "flat, buildable, undeveloped land" particularly in
3 "the south half" of the concept plan area were major advantages of this site (Rec. 1781,
4 1789-1790), because the City was only intent on reaching its minimum 120-acre target of
5 industrial acres, it located the industrial NEC in the north on the least buildable, most
6 dissected part of the site with the regional powerline corridor network, canyons and even a
7 large retention pond. Rec. 36 & 49 blue NEC, Appendices B and C, 46, 724 E3, 723, 785,
8 863, Appendix D, 1831, 1832, 1147 middle; FN 31. The commercial, retail and residential
9 are planned on flat, buildable land to the south.

10 The 120-acre target does not define sufficient nor needs, but the "needs of the area"
11 for industrial land are clear as originally demonstrated in 2002³³. The City in its 2002 letter
12 to Metro explained its need for this land for industrial:

- 13 "1. Creating industrial land and providing jobs within Oregon City.
14 "2. Diversifying the city's... residential tax base to generate higher property tax
15 revenues to better serve local public safety, parks, recreation, and library needs...
16 "5. Limiting additional housing" Rec. 1517-1519.

17
18 Substantial evidence in the record shows the need:

19 (1) Oregon City's jobs-to-housing ratio is far below the regional average (Rec. 729³⁴,
20 2153 ¶5, 1094) which causes it to disproportionately burden the region's failing road
21 network (e.g. Rec. 411, 1871, 1866³⁵, 1582³⁶, 1178³⁷, 1174³⁸) as a result of so much

³³ OCCP Policy 2.6.1 directed the City to pick enough appropriate land based on market factors, proximity to express ways, and site requirements of specific types of industry, etc.

³⁴ ODOT Reviewer commented on the Concept Plan, "The City's 2030 jobs-housing ratio of 1.52 is only about 10% higher than the 2005 jobs-housing ratio of 1.38. It would still be quite a bit lower than the regional jobs-housing ratio of 1.69." The concept plan falls considerably short of utilizing this opportunity to plan the strong jobs-housing ratio the City needs. Rec. 729 & 1578.

³⁵ Kittleson and Associates, the traffic consultant for the Beavercreek Road Concept Plan, state: "Highway 213 is a major connection to the regional transportation system for residents of Oregon City. Traffic on Highway 214 is highly directional in nature, as it is used heavily by commuters in the a.m. and p.m. peak hours each
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1 commuting out of the area (Rec. 1146³⁹, 42 top right⁴⁰, 1497, 1094, 1147, 1172, 854.

2 (2) As the City explained in 2002, it needs to diversify its tax base. Rec. 1517. Dan
3 Drentlaw, City Community Development Director, and Gary Barth, Deputy Director of
4 Business and Community Service for Clackamas County, concurred that industrial tends to
5 generate revenues while housing stresses public services. Rec. 1156, 1146⁴¹.

6 (3) The lack of business with good jobs has lead to Oregon City's budget woes
7 impacting its ability to provide fire service, police service, a pool, a library and so forth
8 making the problem of an adequate business tax base of great importance. Rec. 1516, 1152-
9 1154⁴², 1176 Mr. O'Brien, 1148 top⁴³.

weekday, with congestion occurring during both peak periods." Rec. 1866, Appendix E.

36 Kittleson and Associates, Inc., the traffic consultant for the Beaver Creek Road Concept Plan, indicate that even without development at the concept plan location, \$75 to 125 million in road improvements are needed to Highway 213 which is one of Oregon City's two routes of access to Highway 205 which connects Oregon City to regional jobs. Rec. 1582.

37 City Commissioner confirmed "the failure of Hwy 213 and Beaver Creek Road" and "What had to be addressed was the flow of traffic onto Hwy 213 from Beaver Creek Road." Rec. 1178.

38 Ms. Kosinski said, "Hwy 213 was failing" and "Beaver Creek Road was at capacity. There was only one major and one minor arterial to serve this entire area." Rec. 1174, 1150.

39 Gary Barth, Deputy Director of Business and Community Services for Clackamas County, said, "Clackamas County [where Oregon City is located] has long been a net exporter of labor and talent, a bedroom community and was working hard to reverse that trend a bit to balance jobs, even though housing was growing dramatically." Rec. 1146.

40 The concept plan states: "There are relatively limited employment centers within this area of Oregon City and Clackamas County. This imbalance of jobs and housing contributes to Clackamas County's pattern of approximately 60% of the work force traveling outside the County to work." Rec. 42 top right.

41 Gary Barth, Deputy Director of Business and Community Services, said, "Service sector type job growth in Clackamas County would bring a lot of housing and below living wage income, which would continue to stress public services. The growth of strong development is needed; where light industrial, commercial and intellectual type jobs with higher than average living wages increase the citizens' net worth and give them more capacity to help provide for the essential public services of a community." Rec. 1146.

42 Planning Commissioner Dunn said, "There were shortcomings not only to police, fire and library services mentioned, but also regarding City services. Anyone touring the building would know City Hall was deficient as well." Rec. 1152. There was consensus among other Planning Commissioners that such services were failing. Rec. 1152-1154.

⁴³ Elizabeth Graser-Lindsey said, "problems exist involving poor response times and the City's ability to stay
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1 (4) The record indicates local demand for industrial land that remains and that the
2 City is not addressing. Rec. 1579⁴⁴, 1510-1511⁴⁵, 1098⁴⁶, 1110-1122, 1501⁴⁷.

3 (5) The Findings say, "employment lands... are greatly needed" (Rec. 13).

4 (6) This land was selected for a 20-year planning horizon, so it is not surprising if the
5 land need has not fully materialized in the first 5 years since 2002 just as Metro's 20-year
6 population forecast hasn't yet either.

7 (7) This land was not selected solely to meet Oregon City's industrial needs, but also
8 the Goal-14 demonstrated need of Clackamas County and Metro

9 Although the property owners and developers clearly did not want this property
10 zoned industrial (Rec. 803⁴⁸, 894, 719, 47⁴⁹, 1177, 1039), the City has not shown nor
11 adopted Findings that the Metro Industrial land is not all needed to meet the industrial
12 "needs of the area" and substantial evidence in the Record indicates it is needed.

13 The City selected an erroneous acreage target and the City's concept plan does not
14 select "sufficient" industrial land to meet "the needs of the area" nor comply with the design
15 type boundaries and regulations, but planned the industrial land for other uses in violation of
16 the law and the Findings are inadequate to show compliance with Metro Code 3.07 Title 11
17 especially 3.07.1120 F. Rec. 23-24. This constitutes a "bait and switch" where the City
18 asked for industrial acres, but its concept plan diverts them to other uses. In conclusion, the

in the fire district. Also, the library was not funded for a good part of one year, and was only held open a few hours by the County. The pool has also been threatened to be closed many years, which is where many area children, including her own, learn to swim." Rec. 1148 top, 1172:29-30.

⁴⁴ Coldwell Banker broker Kathy Berge wrote, "I am greatly concerned about the lack of property zoned General Industrial for use by family owned/locally owned businesses." Rec. 1579.

⁴⁵ One Real Estate broker said, "This city has currently been rezoned so that there is no place to build a new auto service garage. I have been involved with several... business owners who are looking for just such property." Rec. 1510-1511.

⁴⁶ "My business is a Dump Truck company... we require appropriately zoned land... we have had a difficult time finding affordable property in the Oregon City area." Rec. 1098.

⁴⁷ "Local businesses continue saying they cannot find industrial land that meets their needs." Rec. 1501.

⁴⁸ "My family and I do not want any of the Hall Family land to be zoned industrial." Rec. 803.

⁴⁹ The concept plan describes opposition to industrial during the planning: "The advice ranged... to strong opposition [to industrial lands] based on shorter term market factors and locations considerations." Rec. 47.

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1 concept plan violates Metro Code 3.07 Title 11, Goals 2 and 14, and OCCP 2.7.3 and
2 consequently the decision must be reversed.

3 **Subassignment of Error D**

4 The City misapplied Metro's residential densities to industrial land.

5 Metro Code 3.01.040 says,

6 "(a) Land added to the UGB by legislative amendment... or by major amendment...
7 shall be subject to the requirements of Title 11, Planning for New Urban Areas, of the
8 Urban Growth Management Functional Plan..." and

9 "(b) ...when the Council adopts a legislative or major amendment to the UGB, the
10 Council shall:...

11 (2) Establish the 2040 Growth Concept design type designations applicable to the
12 land added to the UGB, including the specific land needed, if any, that is the basis for
13 the amendment. **If the design type designation authorizes housing, the Council**
14 **shall designate the land to allow an average density of at least 10 units per net**
15 **developable acre or such other density that is consistent with the design type."**
16 (bold added)

17
18 Metro Code 3.07.170 A gives the Design Type Density Recommendations:

19
20 "Employment Areas – 20 persons per acre, Industrial Areas – 9 employees per acre,
21 Outer Neighborhoods – 13 persons per acre."

22
23 Metro Code 3.07.1120 C states,

24 "Provision for average residential densities of at least 10 dwelling units per net
25 developable residential acre or such other densities that the Council specifies
26 pursuant to section 3.01.040 of the Urban Growth Management Functional Plan."

27
28 The City states,

29 "The concept plan is required to comply with Metro's title 11 requirements regarding
30 residential density". Rec. 9.

31 "Based on the proposed densities, the plan has an estimated capacity of
32 approximately 1,000 dwellings, which is approximately 10.3 dwellings per net
33 developable acres. The Commission finds this requirement is satisfied." Rec. 22.

34
35 Because Metro Code only specifies residential densities "if the design type designation
36 authorizes housing" (Metro Code 3.01.040) and the Code specifies "other [non-residential]
37 densities" when the design type is not housing, the City errors when it mis-applies Metro's

1 residential densities to land with an industrial design type rather than Metro's industrial
2 densities when it determines compliance with Title 11. The City's decision must be reversed.

3 **Subassignment of Error E**

4 Oregon City in adopting the Beaver Creek Road Concept Plan is not complying with
5 Statewide Planning Goals 2, 3, 4 and 14, OAR 660-09, Metro Ordinances 02-969 B and 04-
6 1040 B, OCCP Goals 2.6, 14.1, Policies 2.6.1, 2.7.3, 14.1.1 and 14.1.2 and related law
7 which govern the Urban Growth Boundary expansion process of which this concept plan
8 and city comprehensive plan amendment are to be part, because the city is not planning the
9 2002 and 2004 expansion land as industrial although the expansion process selected,
10 justified, acknowledged and designated the design type of this particular land on the basis of
11 demonstrated industrial need only, so, consequently, this land must now be planned in
12 accord with the original industrial justification as shown by Statewide Planning Goal 2 and
13 similar laws discussed in Subassignment of Error 1. The City's Findings were inadequate to
14 demonstrate compliance. The City acted outside its jurisdiction when state law has UGB
15 expansion and determination of needs and land supply under Metro's jurisdiction.

16 Statewide Planning Goal 14 says⁵⁰:

17 "Urban growth boundaries shall be established to identify and separate urbanizable
18 land from rural land. Establishment and change of the boundaries shall be based
19 upon considerations of the following factors:

20 (1) Demonstrated need to accommodate long-range urban population growth
21 requirements consistent with LCDC goals;

22 (2) Need for housing, employment opportunities, and livability;...

23 The results of the above considerations shall be included in the comprehensive
24 plan. In the case of a change of a boundary, a governing body proposing such
25 change in boundary separating urbanizable land from rural land, shall follow the
26 procedures and requirements as set forth in the Land Use Planning goal (Goal 2)
27 for goal exceptions."
28

⁵⁰ Goal 14 Applicability Provisions (1) (b) allows the City to use the old rules since the UGB evaluation was initiated prior to April 28, 2005. The City does not discuss if it is using the old or new rules, which are similar in this part. The City does not discuss if it is using old or new rules which are similar in this part.

1 OCCP gives further guidance:

2
3 “Goal 2.6 Ensure an adequate supply of land for major industrial employers with
4 family-wage jobs.”

5
6 “Policy 2.61 Work with Metro to ensure that there is enough land available within
7 the Urban Growth Boundary to meet the need for industrial... development...”

8
9 “Policy 2.7.4 Recognize the design types of *Metro’s 2040 Growth Concept*...”

10
11 “Goal 14.1 Establish and amend when appropriate, the Urban Growth Boundary...
12 that contains sufficient land to accommodate growth during the planning period for a
13 full range of city land uses, including... industrial...”

14
15 “Policy 14.1.1 The Urban Growth Boundary shall conform to Title 11... and will
16 provide sufficient land to accommodate 20-year urban land needs...”

17
18 “Policy 14.1.2 Concept Plans... will be required prior to development...”

19
20 Metro Ordinances 02-969B and 04-1040B describe process and subsequent requirements.

21
22 Goal 14 requires that, when expanding an UGB, Metro go through the "exceptions"
23 process of Goal 2, Part II. That is, Metro had to take an exception to Goals 3⁵¹ and 4 to
24 bring rural land inside the UGB and urbanize it. To bring THESE pieces of land in, Metro
25 therefore had to show there was (1) a need for the land -- which here they justified as an
26 industrial need, (2) that no alternative areas existed to meet this industrial need, inside or
27 outside the UGB, that had less impact on agriculture lands, forest lands, etc. This land was
28 NOT analyzed as to its ability to meet a residential need. Rec. 1526, 1537, 1538, 1540,
29 1542 called area 26 by Metro, Rec. Item Retained B Metro Ordinances 02-969B and 04-
30 1040B (CD). Finally, Metro had to show the UGB expansion met Goal 14, including that
31 this site met factors 3-7 of Goal 14, which again, was based on a need for industrial land. So
32 as an example, Goal 14, factor 7, requires showing that the site is compatible with, or can be
33 made compatible with, surrounding farm land. Making that evaluation for future industrial
34 use is a different analysis than doing it for residential use: Metro separately analyzed for

⁵¹ The 2004 UGB expansion brought in TBR lands. Appendix F.

1 population, commercial and industrial land need. Metro Ordinances 02-969B and 04-
2 1040B; Metro Code 3.01.015 and 3.01.020, OAR 660-009; Rec. 1523⁵², 1536⁵³, 1540⁵⁴.
3 (for 2002) and 1545-1556 (for 2004), Rec. 1514.

4 In 2002, in its every-5-year UGB expansion process, Metro determined it needed
5 more land for industrial uses within the UGB to accommodate the region's forecasted
6 industrial land need⁵⁵ to the year 2022 and it brought land from outside the UGB into the
7 UGB based on a legally-prescribed process which required the land be selected and justified
8 for industrial use and acknowledged by the state as described in Statewide Planning Goals 2,
9 3, 4, and 14. 245 acres demonstrated to meet a need for industrial land in 2002 are in the
10 Beaver Creek Road Concept Plan area. Metro Ordinance 02-969B; Rec. 1538 from 1523-
11 1544, 1514. Metro Code 3.01.015 and 3.01.020, ORS 197, 215, 268, 527; OAR 660-015-
12 0000(1)-(14); Appendix C. During the acknowledgment process, LCDC determined that in
13 2002 Metro erred in not selecting enough industrial land to meet its needs assessment, so
14 LCDC issued its "Partial Approval and Remand Order 03-WKTASK-001524" and in 2004
15 Metro undertook a solely industrial land expansion to correct this industrial land shortage
16 and brought in more industrial land, 63 acres of which is in the Beaver Creek Road Concept
17 Plan area. Metro Ordinance 04-1040 B; Rec. 1545-1558 especially 1546, 1524.

18 Planning for lands brought into the UGB must comply with the legally-prescribed
19 process which justified the expansion and brought the lands in and must remain in

52 Metro provided for population/dwelling units and employment/jobs separately. Rec. 1523.

53 Study areas were analyzed separately for inner and outer neighborhoods (IN and ON), employment (EMP) and industrial (IND). Rec. 1536 and Item Retained B, 1538.

54 Metro's "Need for Land" indicated there was "a surplus of land (759.6 acres) for commercial employment and a deficit of land (5,684.9 acres) for industrial development." Rec. 1540.

55 Although residential land was also selected in the 2002 Metro Urban Growth Boundary expansion, the 2002 and 2004 UGB expansion land in the concept plan area was all selected as industrial. Rec. 18; Items Retained B Metro Ordinances 02-969 B and 04-1040B (CDs). "The lands within the Beaver Creek Road Concept Plan area were brought into the UGB to help address the lack of industrial and living wage jobs within Oregon City." Rec. 1514.

1 compliance with the laws governing that process which established how the land must be
2 used after its inclusion. As described in AOE 1 A, Statewide Planning Goal 2 requires
3 consistency among the planning decisions. The string of decisions from Metro's justification
4 and expansion of the UGB to the planning, zoning and using of this land must be consistent
5 with and based on the same substantial evidence and "shall be included in the
6 comprehensive plan." Goal 14, OAR 660-009-0025. The City is required to plan and keep
7 this land in compliance with Metro Ordinances 02-969B and 04-1040B and Metro Title 4.

8 LUBA has repeatedly found that land must be used as it was justified. Where an
9 amendment to a city's UGB is proposed in order to achieve a particular mix of uses and
10 population, the amendment must be conditioned on zoning and developing the subject
11 property to achieve the desired result. *Concerned Citizens v. Jackson County*, 33 Or LUBA
12 70 (1997). Where a city's decision to almost double its UGB relies on a study assuming a
13 particular combination of uses in the UGB expansion area, the city must ensure the plan
14 designations and zoning districts applied to land within the UGB expansion area will
15 accommodate those uses. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372
16 (1994). When adopting post-acknowledgment plan and zone map amendments affecting...
17 designated land within an urban growth boundary, a local government must demonstrate that
18 it continues to satisfy its Goal... obligation to maintain an adequate inventory of buildable
19 lands. *Opus Development Corp. v. City of Eugene*, 28 Or LUBA 670 (1995). LUBA
20 concluded similarly in *Collins v. Klamath County*, 26 Or LUBA 434 (1994) and *Penland v.*
21 *Josephine County*, 29 Or LUBA 213 (1995). Consequently, Oregon City's UGB expansion
22 for more industrial land must be followed by the concept plan ensuring the UGB expansion
23 accommodates that use and maintains adequate industrial land.

24 To request land for one purpose and then to attempt to use it for another purpose is a

1 "bait and switch"⁵⁶. To plan or zone the land for something other than industrial violates
2 Goal 2, 14, 3, and 4, Metro Ordinance 02-969B and 04-1040B and other applicable law and
3 is prohibited as a matter of law and the decision must be reversed.

4 The City discusses its obligations under Statewide Planning Goal 14 and related law:

5 "This goal [14] essentially defines the purpose of the concept plan. Oregon City's
6 Urban Growth Boundary was expanded in 2002 and 2004 through Metro's regional
7 review process to include more industrial land. This was the result of a demonstrated
8 need for additional land to accommodate a deficiency in available, vacant industrial
9 lands. The revised element of the updated plan calls for implementing Metro's
10 'concept plan' requirements under Title 11 of the Functional Plan that will result in
11 subarea planning of new areas added to the UGB... while monitoring the supply of
12 land to ensure its adequacy to accommodate growth." Rec. 21.

13
14 The City did not quantify the demonstrated need for industrial land or its monitoring of the
15 industrial land supply nor did it include the needs justification in the concept plan nor did
16 the City explain how it planned the expansion areas in keeping with the demonstrated
17 need^{57,58}. The city did not identify the facts it relied on in reaching its decision nor explain
18 its basis, analysis or evaluation; the finding regarding Goal 14 was conclusionary. Hence,

⁵⁶ The legally-prescribed process of bringing lands into the urban growth boundary selects and justifies lands for specific purposes. If the regional need were believed to have changed and this land were no longer needed as Industrial Land, Metro would need to go through the Needs Analysis process again and demonstrate that the land is no longer needed as industrial land. The land could then be put back out of the UGB. If Metro were to believe that this land were needed as commercial or residential rather than as industrial land, Metro would need to go through a Needs Analysis to demonstrate this land should be included on a new basis in an official amendment. Goals 2, 3, 4, and 14.

These lands would not qualify for such a change in demonstrated need even if the legal process were followed (AOE 1 C second half) and such a process has not been followed. These lands have only been justified for industrial use and must be planned as industrial during concept planning.

⁵⁷ The Findings are opaque and difficult to understand: "The revised element of the updated plan calls for implementing Metro's 'concept plan' requirements under Title 11 of the Functional Plan that will result in subarea planning of new areas added to the UGB." (Rec. 21), but seem to suggest that the "'concept plan' requirements" collapsed into "subarea planning" where one subarea will comply.

⁵⁸ The closest the City gets to quantifying demonstrated need in the concept plan (Rec. 29-91) is referencing "Metro 2002-2022 Urban Growth Report: An Employment Land Need Analysis" and mentioning "Metro's employment land needs analysis reports that about 9,300 net acres of industrial land is needed between 2002 and 2022, of which, approximately 6,300 net acres must be vacant and that the region has a shortage of large and small industrial lots", but not one local needs number, such as justified this land, is cited. Rec. 75 FN **, 90 FN **, 17.

1 the City did not comply with Goal 14, 2, 3, 4⁵⁹, Metro Ordinances 02-969 B or 04-1040 B,
2 OAR 660-009-0025 and other relevant law and the findings are inadequate to show
3 compliance and hence the decision must be remanded.

4 State law such as ORS 268.354, 197.296-197.302 and 195.020 (1) establish that
5 urban growth boundary changes and related analyses and determination of buildable land
6 supply are subject to the jurisdiction of Metro. Rec. 1523; Metro Code 3.01.015 (a). For
7 Oregon City to unilaterally attempt to skip the relevant process, neglect the land supply
8 analysis and determination, and plan this land for other than its Metro-justified and
9 designated and LCDC-acknowledged purpose is to illegally exceed its jurisdiction. The City
10 erred by acting outside its jurisdiction, and, consequently, this decision must be reversed.

11 For all these reasons, the City's concept plan decision must be reversed or remanded.

12 **Subassignment of Error F**

13 The City overlooks and violates its own Comprehensive Plan provisions concerning
14 industrial land, its protection, this specific location and coordination with Metro; the City
15 failed to adopt findings concerning the applicable laws.

16 Oregon City's Comprehensive Plan (OCCP) guides concept planning of this site:

17 "There is often pressure to convert industrially zoned land to easily developable sites
18 and other uses. The goals of the City are to **protect existing industrial land from**
19 **conversion**, where appropriate, to annex industrial land and expand the Urban
20 Growth Boundary to add urbanizable industrial land to the inventory, and to ensure
21 that public facilities can serve future development." (bold added) OCCP p. 13.

22
23 Goal 2.6 "**Ensure an adequate supply of land for major industrial employers**
24 **with family-wage jobs.**" (bold added)

25
26 Policy 2.6.1 "**Work with Metro to ensure that there is enough land available**
27 **within the Urban Growth Boundary to meet the need for industrial...**"
28

⁵⁹ The City finds that neither it nor its UGB contains resource land due to both being urban. Rec. 15. The Timber land brought into the UGB through the exception process must be used as justified regardless of when zoning changes relative to an UGB expansion.

1 Policy 2.6.2 “**Ensure that land** zoned or planned **for industrial use is used for**
2 **industrial** purposes, and that exceptions are allowed only where some other use
3 **supports** industrial development. New non-industrial uses should especially be
4 restricted in already developed, active industrial sites.” (bold added)
5

6 Policy 2.6.3 “**Protect** the city's supply of undeveloped and underdeveloped land
7 zoned for industrial uses by limiting non-industrial community uses, such as schools,
8 parks, and churches on such properties and by limiting larger commercial uses within
9 those areas.” (bold added)
10

11 Policy 2.6.4 “**Protect** existing and planned undeveloped and underdeveloped
12 industrial lands from incompatible land uses, and minimize deterrents to desired
13 industrial development.” (bold added)
14

15 Policy 2.6.8 “Require lands **east of Clackamas Community College** that are
16 designated as Future Urban Holding to be the subject of concept plans, which if
17 approved as an amendment to the Comprehensive Plan, would guide zoning
18 designations. The **majority** of these lands should be designated in a manner that
19 encourages **family-wage jobs** in order to generate new jobs and move towards
20 meeting the city's employment goals.” (bold added)
21

22 Policy 2.7.1 Maintain a sufficient land supply within the city limits and the Urban
23 Growth Boundary to meet local, regional, and state requirements for accommodating
24 growth.
25

26 The City's Comprehensive Plan, in the seven goals and policies and additional text
27 above, emphasizes the necessity of protecting industrial land from non-industrial uses,
28 minimizing deterrents to industrial development, and ensuring there is a “sufficient” and
29 “adequate” supply and “enough” land, but the Beavercreek Road Concept Plan fails to
30 comply with the City's own law by failing to plan or to protect much of the industrial land as
31 industrial or to ensure a sufficient supply to meet demonstrated need. (See AOE 1 A, 1 C).
32 For this reason alone, the decision must be reversed or remanded.

33 Both OCCP Policy 2.6.8, concerning the concept plan area, “east of Clackamas
34 Community College” (Rec. 42, 49 oval track to NW), and Goal 2.6, “ensure... adequate...
35 land... for family-wage jobs”, highlight family-wage jobs, but the City fails either to ensure
36 adequate land for them or to “designate” a “majority of these lands” “in a manner that

1 encourages family-wage jobs”. “Family-wage jobs” are “a permanent job with an annual
2 income greater than or equal to the average annual in the region” (Rec. 1522); they are not
3 retail. (FN 26, 41) When the City fails to distinguish type of job (Rec. 90), it violates
4 Policy 2.6.8 and Goal 2.6. As was previously argued (AOE 1 A and 1 C) the amount of
5 Title-4-compliant Employment and Industrial land planned is neither a “majority” of the
6 site⁶⁰ nor “adequate” which Metro defined by the Title-4 designations, consequently the City
7 failed to demonstrate compliance or to comply with Policy 2.6.8 and Goal 2.6.

8 OCCP Policy 2.6.2 provides that “exceptions are allowed only where some other use
9 **supports** industrial development”; however, it was argued previously (AOE 1 A second
10 half) that, in the absence of implementing measures, the substantial evidence in the record
11 shows the other uses will not support industrial development and the plan violates Policy
12 2.6.2. The concept plan does not comply with OCCP p. 13, Goal 2.6 and 2.7 and related
13 policies. Consequently Oregon City Ordinance 07-1008 must be reversed or remanded.

14 The City failed to adopt findings to address or explain its Plan regulations except
15 OCCP p. 16 and for this reason, the decision must be remanded. Rec. 9- 10.

16 **Subassignment of Error G**

17 The City failed to comply with Statewide Planning Goal 9 and OAR 660-009 or to
18 adopt adequate finding on Division 9.

19 Goal 9 states:

20 “Comprehensive plans and policies shall contribute to a stable and healthy economy
21 in all region of the state. Such plans shall be based on inventories of areas suitable...
22 Comprehensive plans for urban areas shall:...

23 3. Provide for at least an adequate supply of sites of suitable sizes, types, locations,
24 and service levels for a variety of industrial and commercial uses consistent with plan
25 policies;

⁶⁰ The 175-gross-acre North Employment Campus is not a majority of the 453-acre site, half of which is 227 gross acres; neither are 123 unconstrained acres the majority of the concept plan area’s 292 unconstrained acres with or without the 14 acres of low impact development. Rec. 45, Appendix C.

1 4. Limit uses on or near sites zoned for specific industrial and commercial uses to
2 those which are compatible with proposed uses.

3
4 OAR 660-009 states:

5
6 OAR 660-009-0015... Cities... must review and... amend their comprehensive plans
7 to provide economic opportunities analyses containing the **information** described in
8 sections (1) to (4) of this rule. This analysis will compare the demand for land for
9 industrial and other employment uses to the existing supply of such land.

10 (2) ... The economic opportunities analysis must identify the number of sites by type
11 reasonably expected to be needed to accommodate the expected employment...

12 (3) ... Comprehensive plans for all areas within urban growth boundaries must
13 include an inventory of ... lands within the planning area designated for industrial...

14
15 OAR 660-009-0025... Cities... must adopt measures adequate to **implement** policies
16 adopted pursuant to OAR 660-009-0020. Appropriate implementing measures
17 include amendments to plan and zone map designations, land use regulations...

18 (1) ... The Plan must identify the approximate number, acreage and site
19 characteristics... needed to accommodate industrial... uses to implement plan...

20 (2) ... Plans must designate serviceable land suitable to meet the site needs identified
21 in section (1) of this rule. ...the total acreage of land designated must at least equal
22 the total projected land needs for each industrial or other employment use category
23 identified in the plan during the 20-year planning period.”

24 The City failed to plan an adequate supply of industrial land and to limit
25

26 incompatible uses as required by Goal 9 and as was discussed in AOE 1 A and 1 C. The

27 City also failed to compare inventoried industrial sites and the demonstrated need for

28 industrial lands or to adopt implementation measures⁶¹ or add an amendment to the

29 comprehensive plan to identify and designate needed industrial sites for the 20-year

30 planning period as was discussed in AOE 1 E concerning Goal 14 and OAR 660-09-0025.

31 The City must demonstrate it remains in compliance with Goal 9. Opus Development v.

32 City of Eugene, 28 Or LUBA 670, points 8 and 9. In addition, the necessary inventory is not

33 seen in the concept plan or record and the Findings for Goal 9 state the consultant

34 inventoried the market conditions rather than the land⁶². Rec. 17. The Findings do not

⁶¹ Concurrency implementation measures appear necessary. AOE 1 A second half. Industrial land would appear to need the type of implementation measures given at Rec. 1094.

⁶² The report, “Beavercreek Road Concept Plan Market Analysis”, and doesn’t claim to detail “the supply of
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1 discuss or analyze the consultant's vague 20-year build-out projection ("it is not
2 unreasonable to expect 150 acres of industrial and business park development"⁶³) nor
3 compare it with Metro's demonstrated need for the entire UGB expansion (which is also
4 "not unreasonable to expect") nor explain why only 127 acres is planned and designated as
5 industrial nor do the Findings state how the demonstrated need will be met. Rec. 17-18.

6 The City violated Statewide Planning Goal 9 and OAR 660-009 and failed to provide
7 adequate findings, and its decision must be reversed.

8 SECOND ASSIGNMENT OF ERROR

9 **Oregon City Erred In Adopting Oregon City Ordinance 07-1008 Which**
10 **Violated Relevant Laws Such As Statewide Planning Goals 11 and 12, OAR 660**
11 **Divisions 9, 11 and 12, Metro Code 3.07.1120, OCCP Goals 2, 5, 11 and 14 and**
12 **Related Policies When It (1) Failed To Provide Or Reference A Conceptual**
13 **Transportation Plan, Conceptual Public Facilities And Services Plan Including**
14 **Parks, Police, Fire And Solid Waste, A Conceptual School Plan, And A Natural**
15 **Resource Protection Plan That Would Serve The Site And Integrate It With**
16 **Other Plans; (2) Failed To Estimate When Each Planned Public Facility Project**
17 **Will Be Needed, What The Trigger Would Be Such As Population Level, Service**
18 **Level Standards, Date And Provide Detailed Strategies For Preparing The Total**
19 **Land Supply; (3) Failed To Provide Rough Cost Estimates For Some Public**
20 **Facilities And Services Such As Parks, Police And Fire And Part Of**
21 **Transportation; (4) Failed To Adequately Evaluate The Ability Of Potential**
22 **Funding Mechanisms To Fund The Development, To Discuss Local Fiscal**
23 **Policies, And To Evaluate Likely Financing Approaches; To Coordinate With**
24 **Its Capital Improvement Program Or Discuss How The Concept Plan Would Be**
25 **Integrated Into It; And To Ensure Measures Will Be In Place To Ensure Cost Is**
26 **Borne By The Developer; (5) Failed To Consider, Evaluate, Plan**
27 **Implementation Approaches Or Otherwise Ensure Extension Of New Services**
28 **Does Not Diminish Delivery Of Those Same Services To Existing Areas And**
29 **Residents In The City As A Whole Where Substantial Evidence In The Record**
30 **Indicates That Delivery Of Services To The Existing City As A Whole Will Be**
31 **Diminished; (6) Failed To Show Compliance With Findings Of Resolution 07-**
32 **24 Which Deferred Annexation Compliance To The Concept Plan As Decided**
33 **By Graser-Lindsey V. Oregon City; (7) Failed To Comply With Statewide**
34 **Planning Goals 5 And 7; (8) Failed To Provide The Basis For Specific**
35 **Implementation Measures; (9) Failed To Be Able To Plan Public Services**
36 **Properly While The Uses Are Unknown, Due To Being Contested, As Decided In**

industrial, commercial and office land" nor does it do so contrary to what the City finds. Rec. 1781-1808, 17.

⁶³ This conclusion followed the assumption, "Assume, arbitrarily, that 1/3 of the acres are developed residentially. That would leave about 150 buildable acres for employment..." Rec. 1798.

1 *1000 Friends Of Oregon V. North Plain; And (Throughout) Failed To Provide*
2 *Adequate Findings.*

3
4 Statewide Planning Goal 2 states:

5
6 “All land use plans shall include identification of **issues and problems**, inventories
7 and other factual information for each applicable statewide planning goal, evaluation
8 of alternative courses of action and ultimate policy choices, taking into consideration
9 social, economic, energy and environmental needs. The required information shall
10 be contained in the **plan document or in supporting documents** and
11 implementation ordinances shall be filed in a public office or other place easily
12 accessible to the public. The plans shall be the **basis for specific implementation**
13 measures. These measures shall be consistent with and adequate to carry out the
14 plans. Each plan and related implementation measure shall be coordinated with the
15 plans of affected governmental units.” Goal 2 Part I – Planning.

16
17 Statewide Planning Goal 5 states: “To protect natural resources... Local governments shall
18 adopt programs that will protect natural resources...” Goal 7 states: “To protect people and
19 property from natural hazards... Local governments shall adopt comprehensive plans... to
20 reduce risk to people and property from natural hazards... **landslides...**”

21 Statewide Planning Goal 11 states:

22
23 “To plan and develop a timely, orderly and efficient arrangement of public facilities
24 and services to serve as a framework for urban and rural development. ...A
25 provision for key facilities shall be included in each plan. Cities ... shall develop
26 and adopt a **public facility plan** for areas within an urban growth boundary... To
27 meet current and long-range needs, a provision for **solid waste** disposal sites,
28 including sites for inert waste, shall be included in each plan.”

29
30 Statewide Planning Goal 12 states:

31
32 “To provide and encourage a safe convenient and economic transportation system. A
33 transportation plan shall (1) consider all modes of transportation...; (2) be based
34 upon an **inventory of local, regional and state transportation needs**...(8) **facilitate**
35 **the flow of goods and services** so as to strengthen the local and regional economy;
36 and (9) **conform** with local and regional comprehensive land use plans.”

37
38 OAR 660 Division 11 states:

39
40 “660-011-0010 The Public Facility Plan

41 (1) The **public facility plan** shall contain the following items:

42 (a) An inventory and general assessment of the condition of all the significant public
43 facility system... designated in the acknowledged comprehensive plan;

- 1 (b) A list of the significant public facility projects... descriptions or specifications...;
- 2 (c) Rough cost estimates of each public facility project;
- 3 (d) A map or written description...;
- 4 (e) Policy statement(s) or urban growth management agreement identifying the
- 5 provider of each public facility system...;
- 6 (f) **An estimate of when each facility project will be needed;** and
- 7 (g) A discussion of the provider's existing funding mechanisms and the **ability** of these
- 8 and possible new mechanisms **to fund** the development of each public facility...
- 9 (3) It is not the purpose of this division to cause duplication of or to supplant **existing**
- 10 **applicable facility plans and programs.** Where all or part of an acknowledged
- 11 comprehensive plan, facility master plan..., capital improvement program, regional
- 12 functional plan, similar plan... meets... the requirements of this division, those
- 13 **plans... may be incorporated by reference into the public facility plan required...**"

14
15 "660-011-0015 Responsibility for Public Facility Plan Preparation

- 16 (1) Responsibility for the preparation, adoption and amendment of the public facility
- 17 plan shall be specified within the urban growth management agreement...
- 18 (2) The jurisdiction responsible... shall provide for the coordination ..." (bold added).

19
20 OAR 660 Division 12 states:

21
22 "OAR 660-012-0040 Transportation Financing Program

- 23 (1) For areas within an urban growth boundary containing a population greater than
- 24 2,500 persons, the TSP shall include a transportation financing program.
- 25 (2) A transportation financing program shall include the items listed in (a)-(d)
- 26 (a) A list of planned transportation facilities and major improvements;
- 27 (b) A general estimate of the timing...;
- 28 (c) A determination of rough cost estimates...; and
- 29 (d) In metropolitan areas, policies to guide selection ... for funding..."

30
31 "OAR 660-012-0060 Plan and Land Use Regulation Amendments

- 32 (1) Where an amendment to a functional plan, an acknowledged comprehensive
- 33 plan... would significantly affect a... transportation facility, the local government
- 34 shall put in place measures as provided in section (2) of this rule to assure that
- 35 allowed land uses are consistent with the identified function, capacity, and
- 36 performance standards (e.g. level of service, volume to capacity ratio, etc.) of the
- 37 facility. A plan or land use regulation amendment significantly affects a
- 38 transportation facility if it would:...
- 39 (c) As measured at the end of the planning period.....
- 40 (B) Reduce the performance of an existing or planned transportation facility
- 41 below the minimum acceptable performance standard identified in the TSP or
- 42 comprehensive plan:...
- 43 (2) Where a local government determines that there would be a significant effect,
- 44 compliance with section (1) shall be accomplished..."

45
46 Metro Code 3.07.1120 says:

1 “All territory added to the UGB as either a major amendment or a legislative
2 amendment pursuant to Metro Code Chapter 3.01 shall be subject to adopted
3 comprehensive plan provisions consistent with the requirements of all applicable
4 titles of the Metro Urban Growth Management Functional Plan and in particular this
5 Title 11. The comprehensive plan provisions shall be fully coordinated with all other
6 applicable plans... Comprehensive plan amendments shall include:

7 G. A **conceptual transportation plan** consistent with the applicable provision of
8 **the Regional Transportation Plan...** The plan shall, consistent with OAR
9 Chapter 660, division 11, included preliminary cost estimates and funding
10 strategies, **including likely financing approaches.**

11 H. Identification and mapping of areas to be protected from development due to fish
12 and wildlife habitat protection, water quality enhancement and mitigation, and
13 natural hazards mitigation... A **natural resource protection plan...** shall be
14 completed as part of the comprehensive plan and zoning for lands added to the
15 Urban Growth Boundary... The plan shall include zoning strategies to avoid and
16 minimize the conflicts... the plan shall also include a preliminary cost estimate
17 and funding strategy, including **likely financing approaches..** to ensure that all
18 significant natural resources are protected.

19 I. A **conceptual public facilities and services plan** for the provision of sanitary
20 sewer, water, storm drainage, transportation, **parcs and police and fire**
21 **protection.** The plan shall, consistent with OAR Chapter 660, Division 11,
22 include preliminary cost estimates and funding strategies...

23 J. A **conceptual school plan** that provides for the amount of land and
24 improvements needed, if any, for school facilities on new or existing sites that
25 will serve the territory added to the UGB. The estimate of need shall be
26 coordinated with the affected local governments and special districts...

27 M. The plan amendments shall be coordinated among the city, county, school
28 district and other service districts.”

29
30 The Clackamas County-Oregon City Urban Growth Management Agreement states:

31 “2. Comprehensive Planning, Plan Amendments and Public Facilities Planning...

32 A. ...CITY shall be responsible for preparing all legislative comprehensive plan
33 amendments in the UGMB [Urban Growth Management Boundary]...

34 B. CITY shall be responsible for the preparation, adoption, and amendment of the
35 public facility plan within the UGMB required by OAR Chapter 660, Division
36 11, Public Facilities Planning...” Appendix Local Laws.

37
38 Oregon City Comprehensive Plan provides rules relevant to the concept plan:

39
40 Policy 2.6.7 “Establish priorities to ensure that adequate public facilities are available
41 to support the desired industrial development.”

42
43 Policy 5.4.5 “Ensure that riparian corridors along streams and rivers are conserved...”

44
45 Policy 5.4.7 “The City shall encourage preservation over mitigation when making
46 decisions that affect wetlands and a “no net loss” approach to wetland protection.”

1
2 Policy 5.4.14 "Comply with federal and state regulations for protecting, conserving
3 and restoring threatened and endangered species and critical habitat."
4

5 Policy 5.4.16 "Protect surface water quality by:

- 6 • Providing a vegetated corridor to separate protected water features from
7 development..."

8
9 Goal 11.1 Provision of Public Services

10 "Serve the health safety, education, welfare, and recreational needs of all Oregon City
11 residents through the planning and provision of adequate public facilities."
12

13 Policy 11.1.1 "Ensure adequate public funding for the following public facilities and
14 services, if feasible:

- Transportation infrastructure
- Wastewater collection
- Stormwater management
- Police protection
- Fire protection
- Parks and recreation
- Water distribution
- Planning, zoning and subdivision regulation
- Library services
- Aquatic Center
- Carnegie Center
- Pioneer Community Center
- City Hall
- Buena Vista House
- Ermatinger House"

15 Policy 11.1.7 "Develop and maintain a coordinated Capital Improvement Plan that
16 provides a framework, schedule, prioritization, and cost estimate for the provision of
17 public facilities and services within the City... and its Urban Growth Boundary."
18

19 "Concept plans must include a conceptual transportation plan; natural resources
20 protection plan to protect areas with fish and wildlife habitat, water quality
21 enhancement and mitigation and natural hazards mitigation; a conceptual public
22 facilities and services plan for wastewater, water, storm drainage, transportation, parks
23 and police and fire protection, and a conceptual school plan." p. 118
24

25 Goal 14.3 Orderly Provision of Services to Growth Areas. "Plan for public services to
26 lands within the Urban Growth Boundary through adoption of a concept plan and
27 related Capital Improvement Program, as amendments to the Comprehensive Plan."
28

29 Policy 14.3.2 "Ensure that the extension of new services does not diminish the
30 delivery of those same services to existing areas and residents in the city."
31

32 Policy 14.3.4 "Ensure the cost of providing new public services and improvements to
33 existing public services resulting from new development are (sic) borne by the entity
34 responsible for the new development to the maximum extent allowed under state law
35 for Systems Development Charges."
36

37 Goal 14.4 "Annex lands to the city through a process that considers the effects on

1 public services and the benefits to the city as a whole...”

2
3 Policy 14.4.2 “Include an assessment of the fiscal impacts of providing public services
4 to unincorporated areas upon annexation, including the costs and benefits to the city as
5 a whole as a requirement for concept plans.”
6

7 **Subassignment of Error 1**

8 Oregon City erred in failing to provide or reference a conceptual transportation plan,
9 conceptual public facilities and services plan including parks, police, fire and solid waste, a
10 conceptual school plan, a natural resource protection plan that would serve the site and
11 integrate into the city’s, service district or regional plans.

12 Statewide Planning Goal 11, OAR 660-011-0010 (1), Metro Code 3.07.1120 I, and
13 OCCP p. 118 require the public facility plan including a provision for parks, police, fire,
14 and solid waste disposal; Goal 12, OAR 660-012-0060, Metro Code 3.07.1120 G, and
15 OCCP p. 118 require the transportation plan based upon an inventory of local, regional and
16 state transportation needs and in conformity with the regional plan; Metro Code 3.07.1120 J
17 and OCCP p. 118 require a conceptual school plan; and Metro Code 3.07.1120 H and
18 OCCP p. 118 require the natural resource protection plan. Many of these plans are also
19 required by the City’s Findings to Resolution 07-24⁶⁴.

20 The City failed to provide the required plans or reference an existing, updated plan.

21 *Transportation.* The concept plan failed to provide the necessary Transportation
22 System Plan (TSP) for the concept plan area and made it clear the City TSP had not been

⁶⁴ "The city's findings addressing OCCP 14.4 are set out below: 'The city annexation process is set out in Chapter 14 of the [OCMC]. By requiring compliance with that code, the Metro Code, and the statewide Planning Rules, the city is identifying the effects of the full build-out of these annexed properties will have on public services and any benefit to the city as a whole. As part of the Beavercreek Road Concept Plan adoption, appropriate Master Plans, such as the Transportation System Plan, Water and Sewer Master Plans for example, will be updated to address the anticipated impacts.' Record 63." *Graser-Lindsey v. Oregon City*, 56 Or LUBA 504, p. 19 FN 11.

1 updated to include the concept plan area as required by Goal 12, OAR 660-012-0060, Metro
2 Code 3.07.1120 G, and OCCC p. 118. Rec. 57 – “Update OC Transportation System Plan”;
3 Rec. 20⁶⁵ – “future amendments to the Transportation System Plan and Capital Improvement
4 Plan”. The City acknowledges that the concept plan is not currently in compliance with the
5 Transportation Planning Rule, OAR 660-012-0060, and does not explain what it means by
6 “limit development until compliance”. Rec. 19-20; FN 65. OAR 660-012-0060 provides
7 that “compliance... shall be accomplished” not compliance will be accomplished. A
8 challenged decision must not become final before compliance with relevant rules is assured.
9 *Concerned Citizens v. Jackson Co.*, 33 Or LUBA 70 (1997).

10 Various transportation studies were done (Rec. Table of Contents Exhibits 69, 87,
11 and 88) and the concept plan mentioned improvements “within the concept plan area” (Rec.
12 20 – FN 65) such as on-site and near-frontage roads (Rec. 59, 64), their cross-section (Rec.
13 60-63), and their cost (Rec. 64), but the concept plan leaves a gap in planning without a TSP
14 to address or plan compliance with regulations such as level-of-service performance
15 standards when development of the concept plan area generated transportation impacts to
16 the City’s transportation system such as from tens of thousands of projected daily vehicle
17 trips. Rec. 420. Substantial evidence in the record documented this lack of existing
18 capacity in the road system. In bright red typeface, the consultant identifies this stunning
19 gap in the level-of-service and volume/capacity planning between existing conditions and
20 those fundamentally necessary for development of the concept plan, a gap, which is being

⁶⁵ The City says, ““In order to meet the requirements of this regulation, needed improvements and funding mechanisms have been identified for properties **within** the concept plan area that will mitigate impacts of the amendment in a manner that avoids **further degradation** to the performance of the facilities. The proposed transportation infrastructure improvements, financing and funding estimates, identified in the plan, along with **future amendments** to the Transportation System Plan and Capital Improvement Plan provide adequate basis on which to **limit development until compliance** with the Transportation Planning Rule is shown.” p. 19-20.

1 considered external to planning: “this analysis assumes that the improvements recommended
2 under the 2027 Mitigated No-Build conditions are in place...”. Rec. 1582, Rec. 423 red
3 type, Rec. 413—schematics for 16 interchange/ intersection modifications. The gap is
4 ignored as the consultant continued with on-site transportation planning as if it could
5 magically disappear. Coordination and integration of the concept plan with regional
6 transportation planning is consequently lacking as well. Clearly transportation planning law
7 does not intended solely for on-site planning when Goal 12 says the plan shall “facilitate the
8 flow of goods” and “conform with regional land use plans”; OAR 660-012-0060 applies
9 when “an amendment... would significantly affect an existing... transportation facility”;
10 Metro Code 3.07.1120 has the “transportation plan consistent with the... Regional
11 Transportation Plan...”; and OCCP Policies 14.3.2 concerns impacts to “existing areas” and
12 Goal 14.4 and Policy 14.4.2, “the city as a whole”.

13 *Public Facilities and Services.* The Goal 11 findings mention a stormwater
14 infrastructure plan, the water infrastructure plan and mention sanitary though not a plan; no
15 police, fire nor solid waste plan is mentioned or referenced. Rec. 19. The Metro findings
16 for “H. Public Facilities and Services” say that parks were included in the conceptual public
17 facility planning (Rec. 25), but the plan is not apparent except the Goal 5 mentions the Open
18 Space Framework plan; however, the plan appears to consist of nothing more than the
19 outline on the map for open space but does not provide park facilities (Rec. 54-55, 625
20 Konkol) and Goal 8 mentions the City’s parks and recreation, open space and trail master
21 plans have not been updated to include the concept plan nor what changes might be made
22 (Rec. 11, 17) and, hence, there is not the required park plan. Goal 11 findings are
23 inexplicable and conclusionary in saying without evidence:

1 “The updated Land Use, Water, Stormwater, Sewer, and Transportation elements
2 address the following public facilities and services: wastewater, water distribution,
3 stormwater management, transportation infrastructure, **police protection, fire**
4 **protection**, parks and recreation, health services, and other civic facilities.” (bold
5 added) Rec. 19.

6 The Metro “H” findings appear to attempt to make up for the lack of a plan by discussing
7 police and fire services for several sentences but fail to provide any inventory, needs, costs
8 or plan. Rec. 25-26. Solid waste is not addressed.

9 *School.* No school plan is prepared nor cited and no consideration nor provision is
10 made for the children from over a thousand planned residences. Rec. 26. *Natural Resource.*
11 The Goal 5 findings mention a Natural Resource Inventory upon which the plan is to be
12 based, but no plan is given. Rec. 15.

13 In conclusion, the City failed to provide the necessary transportation, public facility
14 and services, school and natural resource protection plans violating Statewide Planning
15 Goals 11 and 12, OAR 660-011-0010 and 660-012-0060, Metro Code 3.07.1120, OCCP p.
16 118 and the decision must be remanded.

17 **Subassignment of Error 2**

18 The City failed to estimate when each planned public facility project will be needed,
19 what the trigger would be such as population level, service level standards, date and provide
20 detailed strategies for preparing the total land supply. These project timing estimates to
21 carry out the plan and preparation strategies are required by Goal 2, OAR 660-009-0020,
22 OAR 660-011-0010, OCCP Policy 11.1.7, Goal 14.3 and 14.4 and related Policies. The City
23 failed to estimate when the public facilities will be needed or what will trigger development
24 of the public facilities such as population level, service level like reaching a vehicle per day

1 standard or time⁶⁶ (OAR 660-011-0025) or strategies for how the land is to be prepared.

2 Due to this error, Ordinance 07-1008 must be remanded.

3 **Subassignment of Error 3**

4 The City failed to provide rough cost estimates for some public facilities and services
5 such as parks, police and fire and part of transportation. These cost estimates are required
6 by OAR 660-011-0010 (1) (c), Metro 3.07.1120 G, H and I, OCCP Policies 11.1.1, 11.1.7,
7 14.3.4, and 14.4.2. The rough cost estimates were not provided for parks, police and fire.
8 For transportation the on-site/frontage costs were estimated (Rec. 64), but not for off-site
9 impacts. Rec. 1582, 1879-1880. Hence Ordinance 07-1008 must be remanded.

10 **Subassignment of Error 4**

11 The City failed to adequately evaluate the ability of potential funding mechanisms to
12 fund the development, to discuss local fiscal policies and to evaluate likely financing
13 approaches; it failed to coordinate with capital improvement program or discuss how the
14 concept plan would be integrated into it; and it failed to ensure measures will be in place to
15 ensure cost is borne by the developer.

16 Goal 2, OAR 660-011-0010 (1) (g) and (2), Metro Code 3.07.1120 G, H, and I and
17 OCCP Goal 14.3 and Policies 11.1.1, 11.1.7, 14.3.4, and 14.4.2 require a discussion of the
18 ability and likelihood of funding mechanisms to fund the public facilities and how the
19 concept plan relates to the capital improvement program, and measures to ensure
20 development costs are borne by the developer to the maximum possible extent.

⁶⁶ Evidence in the record suggests a band aid approach, rather than a standard-based trigger, is likely to be taken, but this is not demonstrated and is unlikely to comply with level-of-service standards. Rec. 798, 854.
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1 The City did not adequately evaluate the ability or likelihood of various funding
2 strategies being able to fund the public facilities and infrastructure nor did it discuss its local
3 fiscal policies. Rec. 70-71. The consultant, though not the concept plan, indicates SDCs
4 will be insufficient to pay for on-site infrastructure. Rec. 1123, 70. While the City
5 mentioned that the concept plan area has “improvement-to-land values [that] are likely low
6 enough to” meet the “blight” standard for urban renewal/tax increment financing, it did not
7 evaluate its access to such funding or the extent to which such funds have already been
8 committed to other projects. The City seems to suggest LID funding is unlikely. It did not
9 discuss if bond measures in support of this concept plan are likely to be approved by popular
10 vote. It didn’t give any details on other named possibilities. Specifically on transportation
11 the City mentioned there are other sources which “are limited and extremely competitive.”
12 Rec. 71. The record does not contain evidence of likely financing approaches (Rec. 862⁶⁷,
13 659, 1516, 854 ¶2) and the City does not identify “likely financing approaches” as required
14 by Metro Code 3.07.1120.

15 The City indicates that its Capital Improvement Plan (CIP) has not been amended to
16 account for the concept plan as is required by OCCP 14.3 and as can satisfy OAR 660-011-
17 0100 and OAR 660-012-0040, and Metro Code 3.07.1120. Rec. 20. The findings are
18 conclusionary when they assert Goal 14.3 is satisfied without adoption of the CIP. Rec. 11.

19 The City also did not address compliance of its System Development Charges (SDC)
20 with OCCP 14.4.3, although substantial evidence in the record indicated the SDCs are
21 insufficient for compliance. Rec. 196-K (Neeley, Drentlaw), 1132, 1123, 1175 (Kosinski).

⁶⁷ The Clackamas County Deputy County Administrator and the Director of the Department of Transportation and Development, together, said, “At this point in time there is a growing regional and statewide recognition that there is just not enough money available for transportation road improvements in Oregon.” Rec. 862.

1 The necessary public utility systems are not currently available (Rec. 1123) and the
2 City has not demonstrated with which likely funding sources that they can be extended.
3 Planning needs to demonstrate that adequate public utility systems are available or could be
4 extended to service the area. *Highland Condominium Assoc. v. City of Eugene*, 37, Or
5 LUBA 13 (1999).

6 Because the city failed to evaluate its potential funding mechanisms as likely or able,
7 to discuss its local fiscal policies, to coordinate integration of the concept plan into the
8 capital improvement program or to evaluate its SDC if it violates Goal 2, OAR 660-011-0010
9 (1) (g) and (2), Metro Code 3.07.1120 G, H, and I and OCCP Goal 14.3 and Policies
10 11.1.1, 11.1.7, 14.3.4, and 14.4.2 and the decision must be remanded.

11 **Subassignment of Error 5**

12 The City failed to consider, evaluate, plan implementation approaches or otherwise
13 ensure extension of new services does not diminish delivery of those same services to
14 existing areas and residents in the city as a whole despite substantial evidence in the record
15 which indicates that delivery of services to the existing city as a whole will be diminished.

16 OCCP Policy 14.3.2, Goal 14.4, and Policy 14.4.2 concern how development of the
17 concept plan will affect services to existing areas and costs and benefits to the city.

18 The City addresses conveying sewage (Rec. 19, 25), but it does not address that area
19 sewage plant capacity problems (Rec. 856, 857) could diminish City services or recreation.

20 Some of the concept plan assumptions are unreliable and could cause complete
21 traffic failure and diminishment of the ability of the whole City to use its roads e.g. the
22 failure to plan needed off-site road improvements (Rec. 423 red) and the assumption half the

1 residents road trips won't occur⁶⁸. Rec. 420,731. Because the City has not demonstrated
2 that it has the funds to implement the necessary transportation and other public facility
3 improvements, this alone would cause development of the concept plan to diminish public
4 facilities for the existing city; Rec. 429 (left column) illustrates conditions if the concept
5 plan were built without the improvements at Rec. 432 (assuming \$125M in improvements
6 were already made). Rec. 1582.

7 Substantial evidence in the record indicates that, even with all the assumed and
8 planned improvements at a cost of near \$200 million (Rec. 412, 432, 1582), the level of
9 service (LOS) will diminish for existing residents at nearly every intersection, because the
10 City had the consultant develop the plan with a target level of service D⁶⁹, while existing
11 levels of service are more often above level of service D. Compare 1876 (Existing Traffic
12 LOS) and 431 (Mitigated Build LOS), 447; Appendix G. The study also shows the level of
13 service dipping below the required level of D to E at two intersection. Appendix G.

14 The City has not compared the costs and benefits to the city as a whole.

15 There must be adequate plans in place or at least an adequate factual basis to
16 demonstrate that facilities and services can reasonably be provided to the UGB expansion
17 area without leaving the area already included within the UGB with inadequate facilities and
18 services. *Concerned Citizens of the Upper Rogue v. Jackson County*, LUBA 95-173.

⁶⁸ The Updated Future Traffic Conditions Analysis assumes 15,140 of 29,685 new trips wouldn't affect area roads. Rec. 420. The state reviewer disbelieved this. Rec. 731 Comments 11 and 12.

⁶⁹ "Commissioner Wuest did not catch one thing. What was the level of service you designed the intersection for or plan for? Mr. Brehmer replied what we were trying to do with minimum operating standards level of service D. That was the minimum target we were trying to get to." Rec. 196-F. "Commissioner Mabee said...Kittleston did the study to our level of service, our acceptable level of service... We told them that was the minimum acceptable... Mr. Konkol said the Code spell out level of service acceptable." Rec. 196-G. "Mr. Brehmer... One of the big picture goals... was to the extent possible keep the size of Beavercreek down to a three-lane arterial... We were trying not... to widen Beavercreek... Commissioner Mabee said that would make it an A. Mr. Brehmer said that was one of the overriding goals we were trying to do... meet those minimum operating standards..." Rec. 196-E.

1 Because substantial evidence in the record demonstrates that the development of the
2 concept plan will diminish public facilities and services including transportation to the city
3 as a whole and the city has not considered and assessed the costs and benefits to the city in
4 violation of OCCP Policy 14.3.2, Goal 14.4, and Policy 14.4.2, the decision must be
5 reversed.

6 **Subassignment of Error 6**

7 The City failed to show compliance with the Findings of Resolution 07-24 which
8 deferred annexation compliance to the concept plan as decided by *Graser-Lindsey v. Oregon*
9 *City*, 56 Or LUBA 504 (2008).

10 LUBA stated concerning this post-annexation planning process:

11 "the Beaver Creek Road Concept Plan planning process... will establish the nature of
12 that urbanization and how the necessary public facilities will be provided and paid
13 for..." 27:23-25

14 "... how those needed public facilities and services will be paid for when the subject
15 property does urbanize. Those determinations will be made in the Beaver Creek Road
16 Concept Plan planning process. 29:19-30:2

17 "The underlying purpose of OCCP Goal 14.4 and related... provisions appears to be
18 to ensure... concept plans will provide... adequate and sufficient public facilities are
19 extended to annexed areas as they urbanize in a way that does not financially burden
20 or adversely affect public facilities and services in other parts of the city." 20:4-9.

21 As previously discussed above, the City did not show how the necessary public facilities
22 will be provided and paid for in a way that does not financially burden or adversely affect
23 public facilities and services in other parts of the city as required by its Findings to
24 Resolution 07-24. Consequently, the City's decision must be remanded.

25 **Subassignment of Error 7**

26 The City failed to comply with Statewide Planning Goals 5 and 7.

1 Goal 5 and OCCP 5.4.5, 5.4.7, and 5.4.16 require protection of streams and wetlands
2 and Goal 7 deals with natural hazards and landslides.

3 Metro's Goal 5 Map shows a green-colored stream across the site. (North of Loder
4 Rd., this stream is the canyon labeled E3). Rec. 1512, 724. The concept plan says, "The
5 location and linearity of the park was first indicated by Metro's Goal 5 mapping." Rec. 54-
6 55. However, the park and creek are not co-located⁷⁰ and no such implementation measure
7 is planned. To the contrary, developers got the park shrunk (Rec. 1077-1078, 293, 295, 314
8 Konkol) and the findings state "the code will allow flexibility...". Rec. 16. The plan does
9 not comply with Goal 5 and the Findings do not address this disconnect.

10 The concept plan violated Goal 7 concerning reducing the risk to people and property
11 from landslides, when at the developers' request (Rec. 721 "490", 1077) but without
12 geological landslide data (e.g. Rec. 687 Thayer N), it changed the plan (Rec. 1328-1330,
13 where 490 feet was mis-written as "190") to permit development on the steep slope of
14 Thimble Creek canyon below 490-foot elevation. Rec. 16, 56, 724 E5. The plan does not
15 comply with Goal 7.

16 Because of its Goal 5 and 7 violations, the decision must be reversed or remanded.

17 **Subassignment of Error 8**

18 The City failed to provide the basis for specific implementation measures in that the
19 concept plan give little indication what implementation measures there might be. Goal 2
20 requires the concept plan serve as a basis for implementation measures. The city relies on

⁷⁰ E.g. "Central Park was not based on what was quoted... Metro's Goal 5 mapping..." Rec. 1077 and personal communication between Petitioner and Joe Dills of Otak in 2007 around Rec. 683.

1 about half the new traffic using area roads (Rec. 420; 731 Comments 11 and 12; FN 68) and
2 implementation measures would be necessary to assure this happens. There is no park
3 implementation measure to comply with Goal 5. The Findings are conclusionary when
4 stating there are “adequate implementation measures” when the text is vague about any and
5 it acknowledges none have been adopted. Rec. 15; FN 2. Consequently, the concept plan
6 does not comply with Goal 2 and the decision must be remanded.

7 **Subassignment of Error 9**

8 The City is not able to properly plan public facilities and services for the concept
9 plan area, because complying uses remain unknown. Goals 2, 11, 12, Metro Code 3.07.1120
10 and related law require public facilities and services be planned. Because the City is out of
11 compliance with Metro 3.07 Title 4 and related law and the concept plan subdistricts need to
12 be reconceived, the resulting, complying uses are currently unknown. The uses of land
13 must be known for the City to be able to properly plan public facilities and services as the
14 law requires. *1000 Friends of Oregon v. North Plain*, LUBA 93-154, p. 23 and *Graser-*
15 *Lindsey v. Oregon City*, 56 Or LUBA 504⁷¹. Consequently, the decision must be reversed.

16 **THIRD ASSIGNMENT OF ERROR**

17
18 **Oregon City Erred In Adopting Oregon City Ordinance 07-1008 When (1) The**
19 **Concept Plan Is Out Of Compliance With OCCP P. 16 #3 And The Findings Are**
20 **Insufficient And Not Supported By Substantial Evidence In The Record; (2)**
21 **The Process Violated The Substantial Rights Of The Petitioner, And (3) The**
22 **Citizen Involvement Process For Adopting The Concept Plan Did Not Comply**
23 **With The Acknowledged Citizen Involvement Program Or Statewide Planning**
24 **Goal 1, The Findings Were Insufficient To Support The Decision And Not**
25 **Supported By An Adequate Factual Basis, And Substantial Evidence In The**
26 **Whole Record Shows The Citizen Involvement As Out Of Compliance.**

⁷¹ “Until the city knows how the annexed area will urbanize, *i.e.* until the Beaver Creek Road Concept Plan is completed, it is not possible [to] consider the effects on public services and the benefits to the city as a whole in any meaningful way. That is why the city has effectively deferred that consideration to the Beaver Creek Road Concept Plan process.” *Graser-Lindsey v. Oregon City*. ____ 18:8-19, 23:11-15.

1
2 Statewide Planning Goal 1 requires governmental units:
3

4 “To develop a citizen involvement program that **insures** the opportunity for citizens
5 to be involved in **all phases** of the planning process. The governing body charged
6 with preparing and adopting a comprehensive plan **shall** adopt and publicize a
7 program for citizen involvement **that clearly defines the procedures by which the**
8 **general public will be involved** in the on-going land-use planning process. The
9 citizen involvement program **shall be appropriate to the scale** of the planning
10 effort. The program **shall provide for continuity** of citizen participation and of
11 information that enables citizens to identify and comprehend the issues... The citizen
12 involvement program shall incorporate the following components:

13 “1. Citizen Involvement -- To provide for **widespread citizen involvement**. The
14 citizen involvement program **shall involve a cross-section of affected citizens in all**
15 **phases of the planning process...**”

16 “3. Citizen Influence -- **To provide the opportunity for citizens to be involved in**
17 **all phases of the planning process**. Citizens shall have the opportunity to be
18 involved in the phases of the planning process ... including Preparation of Plans and
19 Implementation Measures, Plan Content, Plan Adoption, Minor Changes and Major
20 Revisions in the Plan, and Implementation Measures.”

21 “6. Financial Support – **To insure funding** for the citizen involvement program.”

22 “A. CITIZEN INVOLVEMENT 1. **A program for stimulating citizen involvement**
23 **should be developed using a range of available media...**”
24

25 Oregon City Comprehensive Plan states:

26
27 Section 1 “This section is intended to show compliance with...LCDC... Statewide
28 Planning Goal 1, Citizen Involvement...” OCCP p. 5.
29

30 Goal 1.1 “Implement a Citizen Involvement Program that **will provide an active**
31 **and systematic process for citizen participation in all phases of the land-use**
32 **decision-making process to enable citizens to consider and act upon a broad**
33 **range of issues affecting the livability, community sustainability, and quality of**
34 **neighborhoods and the community as a whole.**”
35

36 Goal 1.2 “**Ensure that citizens**, neighborhood groups, and affected property owners
37 are involved in **all phases** of the comprehensive planning program.”
38

39 Goal 1.3 “Provide education for individuals, groups, and communities to ensure
40 effective participation in decision-making processes that affect the livability of
41 neighborhoods.”
42

43 Goal 1.4 “Provide complete information for individuals, groups, and communities to
44 participate in public policy planning and implementation of policies.”
45

46 Policy 1.4.1 “**Notify citizens about community involvement opportunities when**
47 **they occur.**”

1
2 Goal 1.8 “Establish and support citizen advisory committees and commissions.”

3
4 Policy 1.8.1 “Identify the areas of City government in which the counsel of a formal
5 citizen advisory committee or commission is warranted...”

6
7 Policy 1.8.2 “Solicit and support citizen participation on citizen advisory committees
8 and commissions.”

9
10 In addition the OCCP gives a related criterion⁷² for evaluating the comprehensive plan:

11
12 “Whether the Plan still reflects community needs, desires, attitudes and conditions.
13 This shall include changing demographic patterns and economics.” OCCP p. 16.

14
15 **Subassignment of Error 1**

16 The concept plan does not comply with OCCP p. 16#3 and findings to the contrary
17 are conclusionary and disregard substantial evidence in the record.

18 OCCP p. 16 #3 identifies community desires and attitudes about the plan as relevant
19 to amending the comprehensive plan.

20 Concerning OCCP p. 16 criterion #3, the findings claim: “Citizen input was critical
21 to ensure that the community’s desires and attitudes would be reflected in the Concept
22 Plan... The concept plan is a reflection of the needs, desires, attitudes and conditions of the
23 community...” Rec. 12-13. As discussed in AOE 3 B below, the City failed to consider the
24 bulk⁷³ of the citizen input which occurred in early stages of the concept-plan process during
25 the citizen involvement activities the Findings list⁷⁴. Rec. 12-13. The findings are
26 conclusionary when they claim the concept plan complies with OCCP p. 16 #3, when they
27 present no evidence of “the community’s desires and attitudes” to support this claim,
28 evidence of “the community’s desires and attitudes” has largely been omitted from the
29 record, and the substantial evidence in the Record indicates “the community’s desires and

⁷² The Findings mention this criterion. Rec. 10, 12-13.

⁷³ More citizens participated in the early process (Rec. 93-101), while only a very few attended and/or testified at the city commission hearings.

⁷⁴ “Twelve meetings... two open houses... a design workshop...” Rec. 12-13.

1 attitudes” ran in opposition to the concept plan. Rec. 1496, 786 & 1587-1593 (second open
2 house), 758, 709, 710, 850-851, 895-896, 1099; Second Rec. Supp. 179-180. Local
3 governments are to explain the rule, the consideration of it and the weighing in the findings.
4 *Tollefson v. Jackson County*. 51 Or LUBA 790 (2006); *Kautson Family, LLC v. City of*
5 *Eugene*. 48 Or LUBA 399 (2005); *Lathop v. Wallowa County*. 25 Or LUBA 693 (1993).

6 The decision violates OCCP p. 16 #3 for the reasons stated and the findings are
7 inadequate to support the decision and it must be reversed or remanded.

8 **Subassignment of Error 2**

9 The process violated the substantial rights of the petitioner.

10 OAR 661-010-0071 provides for decisions to be remanded when they prejudice the
11 substantial rights of the petitioner.

12 The substantial rights of the petitioner were violated when she did not get notice of
13 the final resumed hearings on the Beaver Creek Road concept plan and consequently could
14 not attend the hearings due to the road sign not being updated and being removed around the
15 time of the first city commission hearing (Appendix D -- the picture dated “11/14/07”
16 shows the “Sept. 24, 2007” planning commission hearing being advertised rather than the
17 10/22/07 meeting), Rec. 863, Rec. Table of Contents Exhibits 38-40., due to not receiving
18 mailings and due to the continuity of the process being lost by the long delay between Jan.
19 and Sept. (e.g. 1st S Rec. 11 and 14 -- “Staff requests... continues...”). Goal 1 requires “the
20 program shall provide for continuity of citizen participation” and OCCP requires “notify
21 citizens”.

22 Petitioner’s substantial rights were violated when the adopted decision is not clear in
23 the Record and she cannot find the concept plan “Technical Appendix (Under Separate
24 Cover)” (Rec. 33) or the “Ancillary Documents” adopted by the Ordinance (Rec. 5) in the

1 Record nor the many references throughout the plan e.g. C6 and H3 at Rec. 68 or C3, D, and
2 E at Rec. 73; as a result of not finding the relevant documents, she left certain arguments
3 out of her brief. During Record Objections, when she asked where C2 and G were in the
4 record (Precautionary Record Objections, page 6:4-5), she was given 2 options for C2
5 (Response to Petitioner's Record Objections, page 4:19-20), she does not have a concrete
6 idea what has been adopted. The comprehensive plan including its ancillary documents is
7 the fundamental document that governs land use planning. Citizens must be able to rely of
8 the fact that the acknowledged comprehensive plan and information integrated I that plan
9 will serve as the basis for land use decisions, rather than running the risk of being
10 "sandbagged" by government's reliance on new data that is inconsistent with the
11 information on which the comprehensive plan was based. *1000 Friends of Oregon v. City of*
12 *Dundee*. 203 Ore. App. 207 (2005).

13 The Petitioner's substantial rights were violated when the City accepted new
14 evidence and testimony (e.g. in Aug. 2008, Rec. 293-294, 447-453) after the public
15 testimony part of the hearing was closed April 16, 2008 (Rec. 555) and the record was
16 closed June 4, 2008 (Appendix H; Rec. Items Retained C April 16, 2008 Tape 2 Side 1
17 Count 637) and the Commission Reports prepared by the staff indicated the process had
18 moved to the First Reading on June 4, 2008 (Rec. 533), so she was not able to provide
19 testimony about these new items.

20 Because the City committed procedural errors which prejudiced the substantial rights
21 of the petitioner, the decision must be remanded.

22 [Subassignment of Error 3 C will be argued on page 51 if LUBA allows this Petition
23 for Review to go over length.]

24 V. CONCLUSION

Page 49 -- PETITION FOR REVIEW

Elizabeth Graser-Lindsey
21341 S. Ferguson Rd.
Beavercreek, OR 97004
(503) 632-5568

F. J. ...
shawntay

1 In this decision, Oregon City disregarded laws at all levels including on proper
2 planning of industrial lands, providing for public facilities and services and following an
3 acknowledged citizen involvement plan, so the decision to adopt Ordinance 07-1008 and the
4 Beaver Creek Road Concept Plan should be reversed.

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DATED this 15th day of May, 2009.

By: Elizabeth Graser Lindsey
Elizabeth A. Graser-Lindsey

ORDINANCE NO. 07-1008

AN ORDINANCE ADOPTING THE BEAVERCREEK ROAD CONCEPT PLAN AND AMENDMENTS TO THE OREGON CITY COMPREHENSIVE PLAN AND ITS ANCILLARY DOCUMENTS

WHEREAS, the residents and public advisory groups of Oregon City have worked to develop the overall vision, policies and goals for the future growth and development of the Beaver Creek Concept Plan area; and

WHEREAS, The Beaver Creek Concept Plan is intended to guide the growth and management of the Beaver Creek Concept Plan Area, to support natural, recreational, and economic benefits for the community of Oregon City, and to provide a framework for implementation of identified goals and policies; and

WHEREAS, the Beaver Creek Concept Plan complies with and is consistent with Statewide Planning Goals, the Metro Regional Framework Plan, specifically Title 11 and other applicable law; and

WHEREAS, the City will continue to work with Clackamas County to recommend long-term urban and rural reserves during the Metro reserves project for future expansion of the Urban Growth Boundary or designation of urban reserves pursuant to 660 Oregon Administrative Rules, Division 21; and

WHEREAS, notice was mailed to all Oregon City property owners in conformance with Measure 56 requirements and notice was published in the local newspaper. Public meetings and workshops were held where the objectives and concepts of the Beaver Creek Concept Plan were presented and discussed; and

WHEREAS, the Planning Commission and the City Commission both held publicly noticed work sessions on the proposed amendments; and

WHEREAS, the Planning Commission held three public hearings on the proposed amendments; and

WHEREAS, the Planning Commission, based on the oral and written testimony they received at the public hearings, adopted minor revisions to the amendments and unanimously recommended it be adopted; and

WHEREAS, further amendments to the Oregon City Comprehensive Plan and Map and Zoning Code and Map will be necessary in order to implement the Beaver Creek Road Concept Plan, and these Amendments will be considered and reviewed in duly noticed Public Hearings before the Planning Commission and City Commission; and

WHEREAS, adopting the Beaver Creek Road Concept Plan, narrative, appendices and Concept Plan Goals and Policies, amending the City of Oregon City Comprehensive Plan and adopting updates to the ancillary documents to the Comprehensive Plan in order to implement the Beaver Creek Road Concept Plan; including the Oregon City Transportation System Plan, Oregon City Water Master Plan, Oregon City Sanitary Sewer Master Plan, Oregon City Parks

and Recreation Plan and the Oregon City Trails Master Plan is in the best interest of Oregon City to ensure that the goals and policies of the City can be realized; and

NOW, THEREFORE, OREGON CITY ORDAINS AS FOLLOWS:

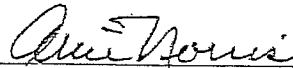
Section 1. The Beaver Creek Concept Plan and Appendix, attached as Exhibit 2, is hereby adopted as an Ancillary Document to the Oregon City Comprehensive Plan based on the findings and evidence contained in the Staff Report and record for Planning File L 07-02.

Section 2. The Ancillary Documents to the Oregon City Comprehensive Plan, as amended, attached as Exhibit 2, are hereby adopted based on the findings and evidence contained in the Staff Report and record for Planning File L 07-02.

Section 3. The Beaver Creek Road Concept Plan and Ancillary Documents shall not be effective until February 1, 2009 or upon adoption of zoning regulations implementing these plan amendments, whichever comes first. The Commission may extend the effective date beyond this period by resolution.

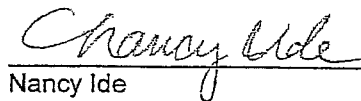
Section 4. The City shall create a Green Standards Task Force to review and make recommendations concerning Green Building Standards for residential, commercial and industrial uses.

Read for the first time at a regular meeting of the City Commission held on the 3rd day of September 2008, and the City Commission finally enacted the foregoing ordinance this 17th day of September 2008.



ALICE NORRIS, Mayor

ATTESTED to this 17th day of September 2008



Nancy Ide
City Recorder

BEFORE THE CITY COMMISSION

In the Matter of)
Adoption of the) Findings of Fact
Beavercreek Road Concept Plan)
File No. 07-02)

I. INTRODUCTION

This matter comes before the City Commission (Commission) of Oregon City to approve the Beavercreek Road Concept Plan. After a review of the facts, the City Commission finds that the applicable decision-making criteria are satisfied. Therefore, the City Commission APPROVES the above-reference plan amendments. Unless otherwise provided for, these plan amendments shall not take effect until February 1, 2009 or upon adoption of zoning regulations implementing these plan amendments, whichever comes first.

The Beavercreek Road Concept Plan is a guide to the creation of a complete and sustainable community in southeast Oregon City. The concept plan includes 453-acres located along the east side of Beavercreek Road from Old Acres Lane, north to Loder Road. The majority of the site (245 acres) was added to the UGB in December of 2002 and an additional 63 acres were added in 2004. The remaining acreage was in the UGB and/or Oregon City limits prior to 2002. During the update of the Oregon City Comprehensive Plan, a policy was adopted acknowledging the jobs-related importance of the site to Oregon City and the region, while also allowing flexibility in the project area's land use. Comprehensive Plan policy 2.6.8 states:

Require lands east of Clackamas Community College that are designated as Future Urban Holding to be the subject of concept plans, which is approved as an amendment to the Comprehensive Plan, would guide zoning designations. The majority of these lands should be designated in a manner that encouraged family-wage jobs in order to generate new jobs and move towards meeting the City's employment goals.

The plan furthers this end by creating an area where families can work, as well as live by providing a diverse mix of uses (an employment campus north of Loder Road, mixed use districts along Beavercreek Road, and two mixed use neighborhoods) all woven together by open space, trails, a network of green streets and sustainable development practices - all attributes necessary to provide a successful family-wage employment area. Transit-oriented land uses have been strategically located to increase the feasibility of transit service in the future. The plan has been carefully crafted to create a multi-use community that has synergistic relationships with Clackamas Community College, Oregon City High School and adjacent neighborhoods.

This proposal is to take the next step toward urbanizing this area including amending the 2004 Oregon City Comprehensive Plan to include the adoption of the Beavercreek Road Concept Plan (Attachment A, Exhibit 2) with new, rewritten and reorganized elements, to change certain comprehensive plan designations on the Oregon City Comprehensive Plan Map, and make changes to the Oregon City Zoning Map that support the changes to the Comprehensive Plan Map. The final step will be to update the Oregon City Zoning Ordinances to implement the Concept Plan. Because the City Commission must still review the draft implementing zoning regulations and other implementing measures, it has determined it necessary to delay the

effective date of this Plan to assure these measures are consistent with and adequate to carry out this Plan and has provided for extensions, if necessary, to assure couch consistency and adequacy.

New Water and Sanitary Sewer master plans are proposed to be adopted as ancillary documents to the updated Comprehensive Plan. Additionally, updates to the Transportation System Plan (2001), Parks and Recreation Plan (1999), Trails Master Plan (2004), are proposed for adoption.

II. FACTS

A. Existing Conditions

The primary existing land uses in the concept plan area are low-density residential housing, rural farms, home occupations, storage facility, an airport and a golf course. The majority of the housing in the plan area is located between Thayer Road and Loder Road. The plan area is surrounded by residential lands within the city limits to the north and east and County designated rural residential lands located outside the urban growth boundary to the north, east and south. There has been substantial residential development in the Thayer Road/Maple Lane area to the north of the site and in the Glen Oak Road area to the west of the site, contributing to the population increase in Oregon City that has grown from 25,754 in 2004 to 36,060 in 2007 (Source: Portland State University). The nearest commercial area is the Berry Hill Shopping Center at the intersection of Beaver Creek Road and Highway 213. Clackamas Community College, which has the nearest Tri-Met service, and Oregon City High School are located across Beaver Creek Road, which is adjacent to the site. These institutional uses offer a unique opportunity to plan synergistic land uses that connect the properties, reinforce an identity for the area and help localize trips.

The protection of natural resources and water quality in urbanizing areas has become more important with new regulations at the regional, state, and federal levels. Additional concerns specific to the Beaver Creek Road Concept Plan are traffic congestion, street designs, stormwater facilities, green building design, and the interconnectedness of neighborhoods, open space and activity centers through a variety of transportation modes. Subsequently, the Beaver Creek Road Concept Plan will incorporate new standards and updated regulations for these areas that need to be reflected in the Comprehensive Plan.

B. Buildable Lands Inventory

The consulting team inventoried all of the property within the study area to determine the amount of developed, constrained vacant and underdeveloped land (Exhibit 2, pages 11-13 for a detailed breakdown of the methodology and results). This "buildable lands analysis" was generated from the city's Geographic Information System, Metro data and mapping and available real estate and tax assessor databases. "Buildable" lands, for the purpose of the concept plan, are defined as the gross site area minus wetlands, steep slopes, other Goal 5 resources, public utility easements, road rights-of-way, and committed properties (developed properties with an assessed improvement value greater than \$350,000.) When land for power lines, the natural gas line, natural resources and committed structures are removed, the net buildable acreage is approximately 292 acres. The Commission finds this is consistent with Goal 10 and its implementing rules.

7

10/1/07

C. **Public Involvement and Public Comment**

The Concept Plan was developed by a 15-member Citizen Advisory Committee (CAC) and 9-member Technical Advisory Committee (TAC). The committees met twelve times between June 2006 and July 2007. In addition to the committee meetings, the public involvement process included a study area tour for CAC and TAC members, two public open houses, market focus group, sustainability focus group, employment lands coordination with Metro, Community Design Workshop, a project website, project posters, informational sign, email notice and extensive mailings to property owners and interested parties prior to each meeting and public event. Notice of the public hearing for the proposal was published in the newspaper and mailed to all Oregon City property owners on June 22, 2007, in accordance with the requirements of Measure 56. The Planning Commission took public testimony at three hearings on September 24, 2007, October 22, 2007, and November 12, 2007. In addition to reviewing all of the evidence in the record, the City Commission also took public testimony at its hearings on January 16, 2008, March 5, 2008, March 19, 2008 and April 16, 2008.

D. **Summary of Revisions**

The City of Oregon City proposes to adopt the Beavercreek Road Concept Plan. New comprehensive plan map designations and development code changes are not proposed. As mentioned earlier, these concept plan policies will not go into effect until the new zoning designations apply to specific parcels.

Adoption of the Beavercreek Road Concept Plan is subject to all of the applicable Statewide Planning Goals including the Transportation Planning Rule (OAR 660-012-0060). In order to meet the requirements of this regulation, needed improvements and funding mechanisms have been identified for properties within the Concept Plan area that will mitigate impacts of the amendment in a manner that avoids further degradation to the performance of the facilities. The proposed transportation infrastructure improvements, financing and funding estimates, identified in the Plan, along with future amendments to the Transportation System Plan and Capital Improvement Plan provide adequate basis to limit development until compliance with the Transportation Planning Rule is shown.

Oregon City must comply with the relevant portions of Metro's Urban Growth Management Functional Plan (Functional Plan). The Functional Plan is a regional land use plan that implements the 2040 Growth Concept. The Concept Plan is required to comply with Metro's title 11 requirements regarding residential density. Findings regarding Metro Title 11 are detailed below.

III. **DECISION-MAKING CRITERIA:**

A. **Comprehensive Plan Criteria**

The following considerations, goals and policies apply to amendment of the Comprehensive Plan and Concept Plans.

Comprehensive Plan Maintenance and Implementation - Regular Review and Update.

Section 2 – Land Use of the 2004 Oregon City Comprehensive Plan indicates that the regular review and updated of the Comprehensive Plan should consider the following:

1. *Plan implementation process.*
2. *Adequacy of the Plan to guide land use actions, including an examination of trends.*
3. *Whether the Plan still reflects community needs, desires, attitudes and conditions. This shall include changing demographic patterns and economics.*
4. *Addition of updated factual information including that made available to the City of regional, state and federal governmental agencies.*

B. Statewide Planning Goals

Compliance with the Statewide Planning Goals is a specific requirement for changes to the Comprehensive Plan or Comprehensive Plan map. For the plan to be approved by DLCD it must comply with applicable statewide planning goals. The analysis below is provided for the City and the public to understand how the proposed update complies with Statewide Planning Goals.

C. Metro Title 11.

Concept Plans are regulated by Title 11 in Metro's Urban Growth Management Functional Plan. Title 11 and Concept Plans are intended to lay a foundation for urbanization of areas added to the region's Urban Growth Boundary (UGB) in a way that reasonably provides public facilities and services, offers transportation and housing choices, supports economic development, and protects natural resources. The following land use elements of Metro's Title 11 regulations governing concept planning within Metro's jurisdiction, "3.07.1120 Urban Growth Boundary Amendment Urban Reserve Plan Requirements" which generally include the following:

- A. Annexation;
- B. Housing density;
- C. Variety of housing types;
- D. Housing affordability;
- E. Commercial/Industrial development;
- F. Transportation;
- G. Mapping;
- H. Public Facilities and Services;
- I. Schools;
- J. Urban Growth Diagram; and
- K. Plan Amendments.

*Planning for the region
Added to the UGB*

IV. ANALYSIS AND FINDINGS

A. Comprehensive Plan Criteria

Comprehensive Plan Maintenance and Implementation - Regular Review and Update.

Another method of Plan maintenance and updating is a continuous technical review of the Plan by the Planning staff. This review and any subsequent recommendations for Plan updating should be presented to the Neighborhood Associations, Planning Commission and City Commission for input and discussion in the same manner as requested Plan changes. The continuous review should consider:

1. *Plan implementation process;*

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Analysis: The main reason for amending the Comprehensive Plan is to adopt appropriate zoning for the new Beavercreek Road Concept Plan in response to Metro Title 11 Requirements. The concept planning process was initiated in order to ensure the appropriate mix of uses in the concept plan area, and so that public facilities and services can be planned to serve future development within the study area.

Completion of the concept plan and amendment of the Comprehensive Plan complies with the City's Comprehensive Plan Goal 14.3 - Orderly Provision of Services to Growth Areas, which provides that the City plan for public services to lands within the Urban Growth Boundary through adoption of a concept plan and related Capital Improvement Program, as amendments to the Comprehensive Plan. The Beavercreek Road Concept Plan and regulations are in compliance with Metro's Functional Plan and the amendments to the comprehensive plan must be adopted through DLCD's post-acknowledgement process.

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The Commission finds this criterion is satisfied.

2. *Adequacy of the Plan to guide land use actions, including an examination of trends.*

Analysis: The Existing Conditions report of the Concept Plan includes detailed market, infrastructure, transportation system, natural resources, demographics and industrial lands analyses in order to determine trends to guide future land use actions. The results of this analysis need to be incorporated into the Comprehensive Plan. The plan provides a thorough explanation of the existing conditions pertaining to this analysis and provides recommendations and preliminary cost estimates for improvements that will be necessary in order for the concept plan to be carried out.

The Zoning and Comprehensive Plan amendments are necessary in order for land use actions to be carried out within the concept plan area subsequent to the annexation of property. Adoption of the concept plan does not rezone property within the planning area until said property is annexed into the City and the implementing zoning regulations are in place. Comprehensive Plan map designations, relevant code amendments, and text and maps required for when these events take place. Likewise, the amendments to the ancillary documents and plans assure that the necessary improvements in the concept plan may be incorporated into the appropriate ancillary plan, as well as be included in the City's Capital Improvement Program and Transportation System Plan.

The Concept Plan provides a comprehensive and cohesive guide to future development in three parts:

- 1) Framework plan maps, goals and policies – These elements are adopted as part of the Oregon City Comprehensive Plan. Compliance with the plan is

required for all land use permits and development beyond that allowed by existing land use regulation. The framework plan is comprised of generalized maps and policies that integrate land use, transportation, open space and green infrastructure. The framework maps and policies are supported by detailed code and requirements for master planning and design review. This approach sets a broad framework and intent on the figures and text in the plan that ensures that the vision, goals and standards are required in all land use decisions, provides flexibility in site specific design and implementation and allows for phased development over a longer period of time.

- 2) Ancillary report materials – The descriptive text, graphics and technical appendix of this report are adopted as an “ancillary document” to the Comprehensive Plan, which provides “operational guidance to city departments in planning and carrying out city services” (Oregon City Comprehensive Plan, page 4). These documents include information for updating the City’s utility master plans and Transportation System Plan.
- 3) Development code amendments – Revisions to the development code are being prepared as part of the Concept Plan. Once final, it will be adopted as part of the Oregon City Municipal Code. Compliance with these amended provisions will be required for all land use permits and development.

Not part

The opportunities and constraints, market, infrastructure, natural resources and buildable lands analysis provided in the Beavercreek Road Concept Plan provide an adequate factual basis for determining trends within the study area, and the proposed amendments to the Zoning Code, Comprehensive Plan and Ancillary Documents will provided an adequate basis for making future land use decision and can be found in compliance with this criterion.

The Commission finds this criterion is satisfied..

3. *Whether the Plan still reflects community needs, desires, attitudes and conditions. This shall include changing demographic patterns and economics.*

Analysis: Citizen input was critical to ensure that the community’s desires and attitudes would be reflected in the Concept Plan. A public involvement program was developed and conducted from June 2006 through July 2007. A 15-member Citizen Advisory Committee (CAC) and 9-member Technical Advisory Committee (TAC) developed the concept plan. The purpose of the CAC was to serve as the forum for stakeholder representatives to work with each other and act as an advisory body to the Consulting Team, City Staff, Planning Commission, and City Commission regarding the Concept Plan. The CAC comprised residents, representatives of neighborhood associations, the Hamlet of Beavercreek, local businesses, the development community, property owners within the study area, the school district, Clackamas Community College, Transportation Advisory Committee, environmental interests, and the Planning Commission. The TAC included representatives from Metro, Clackamas County, ODOT, Tri-Met, DLCD, and City Planning Staff. Twelve meetings were held over the 13 months and there

were two open houses, a market and sustainability focus group and a design workshop that were intended to provide information to citizens and to solicit their input.

The overall vision for the concept plan is to create "A Complete and Sustainable Community", and the CAC utilized the definition of sustainability originally developed by the United Nations Brandtland Commission:

"A sustainable society meets that needs of the present without sacrificing the ability of future generations to meet their own needs".

Based on public input, the committee created 10 Project Goals and 10 Principles of Sustainable Community Design that were used in the visioning and development of the concept plan. The Goals and Principles are on pages 7 and 8 of the Concept Plan (Attachment A, Exhibit 2). Utilizing these Goals and Principles, the committee created several alternative plans that were reviewed and combined into one preferred alternative plan, which is identified as the Beaver Creek Road Concept Plan. The plan has land use and transportation connections that support future transit, trails and greenspaces have been crafted to provide direct and convenient internal pedestrian connections and link to the broader regional network, lower densities near the edges and buffer treatments have been incorporated and a street network that provides for internal circulation, minimizing impacts on Beaver Creek Road and providing for future connections to the north and south have been identified.

The plan meets the needs of Oregon City for providing employment lands, which are greatly needed. The plan provides 156 net acres of employment lands in two forms: 127 net acres of tech flex campus industrial land and 29 acres of more vertical mixed use village and main street employment. The employment is incorporated into a sustainable, complete community that includes jobs, varied housing types, green streets, open spaces, trails, mixed uses, focal points for activity, linkages to logical streets and activity centers (Clackamas Community College and Oregon City High School) and access to nature. The concept plan is a reflection of the needs, desires, attitudes and conditions of the community and represents the vision, direction and improvements that are necessary to accommodate the changing demographics and economics of the community.

The Commission finds this criterion is satisfied.

4. *Addition of updated factual information including that made available to the City by regional, state and federal governmental agencies.*

Analysis: The proposed changes respond to needs revealed by the Buildable Land inventory for the concept plan. These needs are documented in the technical appendix on housing and economic development, as well as in the background discussions in each of the Comprehensive Plan elements. Participation on the TAC by representatives of Metro and the State Department of Land Conservation and Development informed the Regulatory Framework which the Concept Plan must comply with, including the primary elements: Governance, Housing, Transportation and protection of Natural Resources. For example, policies support the provision of a variety of housing types and income levels, creation of mixed use zones to encourage more employment and housing, and the designation of Metro Design Types (Industrial and Employment). Metro data and the City's own GIS data was utilized to develop a variety of maps, notably the habitat

conservation areas, steep slopes areas, urban growth potential, transportation (street system, transit, functional classification, street sizing, bicycle and pedestrian needs, trails), water, stormwater and sewer system maps. Policies in the Concept Plan support Metro and DLCD requirements and factual information is reflected in the plan.

The Commission finds this criterion is satisfied.

B. Compliance with Statewide Planning Goals

Compliance with the Statewide Planning Goals is a specific requirement for changes to the Comprehensive Plan or Comprehensive Plan map. For the plan to be approved by DLCD it must comply with statewide planning goals. The analysis below is provided for the Planning Commission and the public to understand how the proposed update complies with Statewide Planning Goals.

Goal 1 Citizen Involvement

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

Analysis: A brief summary of the public involvement program for the CAC/TAC and the general public was provided above. In accordance with this goal, the public involvement program involved affected Neighborhood Associations and groups, utilized community education measures to enhance participation (open houses, focus groups, design workshop, website, open access to planners at City Hall, timely provision of draft material mailed to the CAC/TAC in advance of meetings and on the web, mailings), and provided timely and accurate information to individuals, groups, communities and neighborhoods. After the CAC/TAC recommended a draft plan language, the Planning Commission and City Commission held a number of work sessions and public hearings where public testimony was considered. At all times the draft plan was available for review by the public. This open process encouraged participation by any interested citizen and all evidence submitted into the written record was considered.

The Commission finds this Goal is satisfied.

Goal 2 Land Use Planning

To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

Analysis: The Draft Concept Plan includes identification of facts, issues, and problems in the "Background" discussion for each element. Updated and market relevant documentation in the technical report provided the basis for the Land Use, Parks, Transportation, Water, Stormwater, Sanitary Sewer and Natural Resources elements, helping assure the proper factual basis for decisions in updating the maps, goals, policies and implementation measures. Inventories, such as for economic development, employment and natural resources, have been provided in the technical appendices to the plan. Based on this information, the Commission finds that this plan amendment is coordinated, as defined by state law. It has been reviewed and coordinated with

the plans of other governmental units. It contains adequate implementation measures to ensure that upon taking effect (when the implementing zoning is subsequently adopted) sufficient means will carry out the plan. Although Goal 2 also implements periodic review, the amendments are not triggered as a result of periodic review. Finally, after a number of public hearings where alternative courses of action were considered, the Commission finds that the proposed plan amendments are consistent with public policy taking into account social, economic, energy and environmental needs.

The Commission finds this Goal is satisfied.

Goal 3 Agricultural Lands and Goal 4 Forest Lands

Analysis: By definition, Oregon City does not have rural resource lands such as for agricultural or forest use within its city limits or UGB and therefore those goals are not applicable.

The Commission finds these Goals are not applicable.

Goal 5 Open Spaces, Scenic and Historic Areas, and Natural Resources

To protect natural resources and conserve scenic and historic areas and open spaces.

Analysis: Goal 5 resources are addressed in detail in the Natural Resource Inventory (Attachment A, Exhibit 2, pages 12 and 22 and Technical Data). A detailed review of the Goal 5 resources within the study area, including wetlands, streams, riparian area, wildlife habitat and other resources was conducted. The inventory consisted of two parts:

- 1) An examination of existing resource information for the plan area; and
- 2) A field study to verify the location and evaluate resource habitat quality.

The first phase of the inventory included review of existing documents, such as Metro Goal 5 Inventory Maps, National Wetland Inventory maps, Natural Resource Conservation Service Soils Survey of Clackamas County, Stream Net fisheries data and other sources. Phase two consisted of a field verification of the plan area by a team of biologists. The team visited each of the previously mapped natural resource areas to confirm the location, size and quality. The natural areas determined to be of high resource value were distinguished from natural areas of lesser resource value and the lower quality natural areas were given a designation of enhancement potential in order to identify both the highest quality natural resource and provide a determination of the feasibility of enhancement.

The Beavercreek Road Open Space Framework plan provides a network of green spaces that are intended to provide a system of connected parks, opens spaces and natural areas, provide access to nature, preserve existing natural resources and provide green spaces near the system of trails and pedestrian connections. The power line corridors comprise approximately 52 acres of land north of Loder Road and have been utilized to provide publicly accessible opens space, trails and links to the broader open space network. The City's Parks and Recreation Master Plan requires between 6 and 10 acres of parkland per 1,000 population, requiring a range of parkland in the concept plan area of between 16 and 27 acres. A park is proposed to extend through the central

Attachment

and southern areas of the plan. The location and linearity of the park was first indicated by Metro's Goal 5 mapping, (Attachment A, Exhibit 2, page 12). This open space feature is intended as a continuous green space that links the districts and neighborhoods south of Loder Road.

The code will allow flexibility in the width, shape and acreage of the open space, provided there remains a clearly identifiable and continuous open space. The buildable lands identified 292 acres of Tier A or 'unconstrained' lands, 28 acres of Tier B or "Low Impact Development Allowed with Review" and 131 acres of Tier C or "Constrained". The Low Impact area was later evaluated and recommended for conservation under an Environmentally Sensitive and Resource Area designation on the plan. New development will be required to comply with the City's Environmental Overlay Zoning in compliance with this goal.

Concept Plan goals and policies for preserving open space and tree cover, protecting scenic views, preserving and conserving natural resources and water quality have been provided.

The Commission finds this Goal is satisfied.

Goal 6 Air, Water and Land Resources Quality

To maintain and improve the quality of the air, water and land resources of the state.

Analysis: Existing Comprehensive Plan policies that apply to the concept plan require development practices to comply with regional, state, and federal standards for air and water quality, to protect water quality from erosion and sediment, to minimize the effects of noise, and to protect mineral resources.

These goals and policies are implemented through the City's grading and erosion control ordinances, water quality resource protection regulations, development standards, and nuisance laws. DEQ regulates air quality but Oregon City's TSP recognizes the link between air quality and transportation (through vehicle emissions) and works to reduce impacts from single-occupancy vehicles. The TSP and Capital Improvements Fund will be updated to reflect transportation improvements recommended in the plan.

The Commission finds this Goal is satisfied.

Goal 7 Areas Subject to Natural Disasters and Hazards

To protect life and property from natural disasters and hazards.

Analysis: The Commission finds that the area does contain steep slopes. The east ridge of the concept plan area was identified as an area of steeper slopes that could be at risk for landslides and slumping. In order to address this, the plan calls for establishing a protected open space area along the west side of Thimble Creek and designating the area between the edge of that open space and the 490-foot elevation to the west, along the east ridge, as a conservation area within which a number of restrictions will development apply, including protecting a minimum of 50% of the conservation area, and building height and impact restrictions. The plan also requires a "window" of at least 700 feet of continuous area along the ridge to be publicly accessible. Any

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development in this area will also be subject to the City's existing geologic hazard requirements. In the future, the City may also consider creating a combined Environmental Overlay Zone to simplify administration of the various overlay zones (steep slopes, floodplain, and water resources). No other natural disaster or hazard areas have been identified and the Commission finds there are none.

The Commission finds this Goal is satisfied.

Goal 8 Recreational Needs

To satisfy the recreational needs of the citizens of the state and visitors, and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

Analysis: The concept plan provides for an interconnected series of trails, parks and open spaces areas throughout the study area to implement this Goal. Specific plan policies related to this Goal include amending the parks and recreation, open space and trail master plans to be consistent with the concept plan, implementation of a hierarchy of connections (roads and trails of various types), create two scenic view points that are small public parks along the East Ridge, open space, and extensive trail systems that provides pedestrian and bicycle connectivity throughout the site and to adjoining trail systems. Additionally the concept plan recognizes the opportunity for acquisition and/or dedication of sensitive areas for open space and habitat by private landowners.

The Commission finds this Goal is satisfied.

Goal 9 Economic Development

To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

Analysis: As part of the concept plan process, Oregon City worked with a consultant to inventory and evaluate the local and regional market conditions within and adjacent to the concept planning area. This report details patterns in the community, the profile of local employment, the supply of industrial, commercial and office land, and potential for industrial and commercial development within the area. Metro's employment land needs analysis reports that about 9,300 net acres of industrial land is needed between 2002 and 2022, of which, approximately 6,300 net acres must be vacant and that the region has a shortage of large and small industrial lots. The EcoNorthwest market analysis identified the advantages and disadvantages of industrial development within the study area and concluded that under the right conditions it is not unreasonable to expect 150 acres of industrial and business park development to build out on the site over a 20-year period.

A key issue for the committee was how much employment, what type and where. The Oregon City Comprehensive Plan requires that a majority of the lands be designated in a manner that encourages family-wage jobs in order to generate new jobs and move towards meeting the City's employment goals.

Metro brought 245 gross acres in the UGB in 2002 and an additional 63 acres were added in 2004. The remaining acreage was in the UGB and/or Oregon City limits prior to 2002. These areas (308 gross acres) are designated as the Industrial Design Type on Metro's 2040 Growth Concept Map. Given the expected net acreage once non-buildable areas such as power lines, natural areas, were removed from the buildable lands inventory, Metro intended 120 net acres of the concept plan area would be used for employment uses. Metro noted that it was important to fulfill the original intent for providing industrial lands and that there was flexibility for the local process to evaluate creative ways to meet the intent. See Metro's vacant lands methodology. This approach was blessed by David Bragdon, Metro Council President, in a letter dated May 14, 2007 as well as Metro planner Ray Valone in a letter dated March 19, 2008.

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The CAC created several alternatives and finally chose a hybrid that included about 127 net acres of North Employment Campus (NEC), which is consistent with Metro's intent and similar to Oregon City's existing Campus Industrial designation, about 29 acres of Mixed Employment Village and Main Street, which allows a variety of uses in a village-oriented transit hub and mixed use neighborhoods to the south that also provide jobs tailored to the neighborhood setting.

The North Employment Campus is to provide for the needed family wage employment that strengthens and diversifies the economy and will be compliant with Metro's Title 4 regulations. The NEC allows a mix of clean industries, offices serving industrial needs, light industrial uses, research and development and large corporate headquarters. The uses permitted are intended to improve the region's economic climate, promote sustainable and traded sector businesses, and protect the supply of site for employment by limiting incompatible uses.

The concept plan provides land for an identified need within the region and state, and provides for a mix of other uses that will contribute to the economic welfare of the city, state and the citizens.

The Commission finds this Goal is satisfied.

Goal 10 Housing

To provide for the housing needs of citizens of the state.

Analysis: The concept plan recommends and provides for a mix of residential areas that allow and/or require different densities and housing types, including low, medium and high densities, single-family homes on a range of lot sizes, townhouses, duplexes, multi-family units and mixed commercial/residential uses. The West Mixed Use Neighborhood will be a walkable, transit-oriented neighborhood with an overall average of residential uses not to exceed 22 dwelling units per acre. The East Mixed Use Neighborhood will be a walkable and tree lined neighborhood with a variety of housing types that will not exceed densities permitted in the R-5 zone (8.7 units per acre).

The concept plan provides for housing affordable to a range of incomes and will utilize sustainable building designs and green development practices. As noted above, the concept plan provides or allows for a range of housing types and densities, including those that are most likely to be affordable to households or families with lower incomes, including single-family homes on small lots, townhouses, duplexes and multi-family units. The plan also identifies strategies for

distributing less expensive housing units among different areas rather than concentrating them all in one place, specifically calling for a variety of densities within the East Mixed Use Neighborhood that move from higher densities to lower densities from north to south across the site.

The Commission finds this Goal is satisfied.

Goal 11 Public Facilities and Services

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

Analysis: This goal applies to urban areas within the city limits of Oregon City and to urbanizable areas within the city's UGB. "Urban Facilities and Services" means appropriate types and levels of, at a minimum, the following: police protection; sanitary facilities; storm drainage facilities; planning, zoning and subdivision control; health services; recreation facilities and services; energy and communication services; and community governmental services. r/s ?

The stormwater infrastructure plan utilizes the application of low-impact development practices that mimic natural hydrologic processes and minimize impacts to existing natural resources. A three tier stormwater management system has been created that is focused on managing stormwater in a naturalistic manner at three separate scales: site, street and neighborhood/regional. The stormwater infrastructure is estimated to cost between \$9.0 million and \$9.7 million for base costs.

The proposed water infrastructure plan creates a network of water supply pipelines that will need to be expanded with local service when development occurs. The estimated total capital costs for the network is \$5.4 million within the study area and an additional \$6.9 million of programmed capital improvement projects needed to extend the water system to the concept plan area. The sanitary will primarily be a gravity system, with the need for a sanitary lift station for a section of the northern half of the concept plan area. The estimated total capital cost is \$4.2 million within the study area and an additional \$2.3 million of programmed capital improvement projects needed to extend the sanitary system to the concept plan area.

The updated Land Use, Water, Stormwater, Sewer, and Transportation elements address the following public facilities and services: wastewater, water distribution, stormwater management, transportation infrastructure, police protection, fire protection, parks and recreation, health services, and other civic facilities.

The plan identifies five funding sources and strategies that will be used to ensure adequate water, sewer storm water services and parks to serve this area. These include system development charges, urban renewal, the creation of local improvement districts, bonds, and developer funded infrastructure.

The Commission finds this Goal is satisfied.

Goal 12 Transportation

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To provide and encourage a safe, convenient, and economic transportation system.

Analysis: The concept plan forecasts future travel and provides a horizon year study of 2027. The transportation analysis indicates that the region will grow to more than two million residents over a planning horizon of 20 years, the region is expected to add nearly 367,000 new households and 900,000 new jobs over the next 25 years and the existing road system is inadequate, and regional solutions are required. The concept plan is responsible for resolving any problems caused by its implementation. The plan describes solutions and provides methods of funding to accomplish this task. Elements of the transportation system plan include recognition of regional improvements such as improvements to the I-205 corridor, rebuilding of the I-205/Highway 213 interchange, and improvements to the Highway 213 corridor. Due to the variety of impacts of regional traffic, local improvements are necessary within the concept plan area regardless of whether development occurs. These include the need to widen and signalize Beaver Creek Road, create a north-south route within the study area that provides the opportunity to completely avoid use of Beaver Creek Road for trips between Old Acres Lane and Thayer Road, the extension of Clairmont, Meyers, and Glen Oak Roads and the south entrance through to the Ridge Parkway and the realignment of Loder Road at the west end to create a safer "T" intersection with Beaver Creek Road.

Alternative modes of transportation have also been discussed and addressed as part of the transportation element of the concept plan and three options have been identified, including: 1) Modifying the existing route from CCC to continue down Beaver Creek Road; 2) A new local loop route that connects to the CCC transit hub; and 3) A new "express" route is created from the downtown Oregon City transit center to the site.

Adoption of the Beaver Creek Road Concept Plan is subject to Oregon's Transportation Planning Rule (OAR 660-012-0060). In order to meet the requirements of this regulation, needed improvements and funding mechanisms have been identified for properties within the concept plan area that will mitigate impacts of the amendment in a manner that avoids further degradation to the performance of the facilities. The proposed transportation infrastructure improvements, financing and funding estimates, identified in the plan, along with future amendments to the Transportation System Plan and Capital Improvement Plan provide adequate basis on which to limit development until compliance with the Transportation Planning Rule is shown.

Implementation strategies and financing tools for the needed transportation improvements have been identified at a preliminary level and will be further defined as part of the TSP and Capital Improvement Plan updates.

The Commission finds this Goal is satisfied.

Goal 13 Energy Conservation

To conserve energy.

Analysis: One of the adopted goals of the concept plan is that the area will be a model of sustainable design, development practices, planning and innovative thinking. The plan assumes that sustainable practices will be a combination of private initiatives (LEED certification), public

requirements (green streets) and public-private partnerships. The Commission recommends that the City use incentives, education and policy support as much as possible for promoting sustainability in the study area. Some initiatives will require mandates, but at the end of the day, it is up to the private sector to invest in sustainable development. The Beaver Creek Road site's legacy as a model of sustainable design will depend on the built projects that are successful in the marketplace and help generate the type of reputation that the community desires and deserves. The concept plan identifies sustainability design strategies that address energy efficiency, water conservation, compact development, mixed use, solar orientation, green streets/infrastructure, alternative transportation options, pedestrian and cyclist system, use of the natural systems and minimizing impervious surfaces.

The Commission finds this Goal is satisfied.

Goal 14 Urbanization

To provide for an orderly and efficient transition from rural to urban land use.

Analysis: This goal essentially defines the purpose of the concept plan. Oregon City's Urban Growth Boundary was expanded in 2002 and 2004 through Metro's regional review process to include more industrial land. This was the result of a demonstrated need for additional land to accommodate the deficiency in available, vacant industrial lands. The revised element of the updated plan calls for implementing Metro's "concept plan" requirements under Title 11 of the Functional Plan that will result in subarea planning of new areas added to the UGB. The concept plan establishes policies to convert rural to urban land within the UGB while monitoring the supply of land to ensure its adequacy to accommodate growth. Oregon City coordinates with Clackamas County through an intergovernmental agreement that guides land uses and extension of public services in the unincorporated UGB. In addition, the transportation, parks, trails, water, and sewer master plans address orderly extension of services to accommodate growth.

The Commission finds this Goal is satisfied.

C. Compliance with Metro Title 11.

A. Annexation

Provision for annexation to the district and to a city or any necessary service district prior to urbanization of the territory or incorporation of a city or necessary service district to provide all required urban services.

Analysis: Chapter 14 of the Oregon City Municipal Code establishes the regulations and requirements for the annexation of properties into the city, including provisions requiring that the subject site be annexed into the appropriate service districts (such as the Tri-city service district) and that the site is removed from certain districts (such as Clackamas River Water). The annexation process includes notice to the appropriate agencies, including Metro, public hearings before the planning commission and city commission, and a vote of the people. The approval criteria include the applicant to demonstrate that there is adequate access to the site, public facilities and services can be provided, any impacts to Goal 5 resources, identification of natural

no evidence
hazard areas, that the overall impacts to the economic, social and physical community are minimal and that the proposal complies with the Comprehensive Plan.

The Commission finds this requirement is satisfied.

B. Housing Density

Provision for average residential densities of at least 10 dwelling units per net developable residential acre or lower densities which conform to the 2040 Growth Concept Plan design type designation for the area.

Analysis: The West Mixed Use Neighborhood will be a walkable, transit-oriented neighborhood with an overall average residential uses not to exceed 22 dwelling units per acre. The East Mixed Use Neighborhood will be a walkable and tree lined neighborhood with a variety of housing types that will not exceed densities permitted in the R-5 zone (8.7 units per acre). Based on the proposed densities, the plan has an estimated capacity of approximately 1,000 dwellings, which is approximately 10.3 dwellings per net developable acre (Attachment A, Exhibit 2, page 40).

The Commission finds this requirement is satisfied.

C. Variety of Housing Types

Demonstrable measures that will provide a diversity of housing stock that will fulfill needed housing requirements as defined by ORS 197.303. Measures may include, but are not limited to, implementation recommendations in Title 7 of the Urban Growth Management Functional Plan.

Analysis: The concept plan recommends and provides for a mix of residential areas that allow and/or require different densities and housing types, including low, medium and high densities, single-family homes on a range of lot sizes, townhouses, duplexes, multi-family units and mixed commercial/residential uses. Accessory dwelling units are allowed in all single-family residential zones, per the Oregon City Municipal Code, subject to special development and occupancy standards. Manufactured homes are permitted in any zone where single-family detached housing units are permitted. Proposed policy 1.6 indicates that within the West and East Mixed Use Neighborhoods, a variety of housing types will be required and that lot size averaging and other techniques that help create housing variety while maintaining overall average density should be allowed. Requiring a mix of housing types and requiring a minimum and maximum density, rather than a minimum and maximum lot size, will allow a wide variety of housing units to be created, meeting the intent of this section.

The Commission finds this requirement is satisfied.

D. Housing Affordability

Demonstration of how residential developments will include, without public subsidy, housing affordable to households with incomes at or below are median incomes for home ownership and at or below 80 percent of area median incomes for rental as defined by U.S. Department of Housing and Urban Development for the adjacent urban jurisdiction. Public subsidies shall not be interpreted to mean the

following: density bonuses, streamlining permitting processes, extensions to the time at which system development charges and other fees are collected, and other exercises of the regulatory and zoning powers.

Analysis: According to the 2000 census, the median household income in Oregon City is \$45,531. Affordable housing is typically defined as housing that does not cost more than 30% of a household's income. In addition, very low income households are typically defined as those earning less than 30% of median household income; low-income households as those earning less than 50% of median household income; and moderate income households are those making between 50% and 80% of median income. Typically, the types of housing most affordable to people with low and moderate incomes are single-family homes on small lots, attached single-family homes, duplexes and multi-family housing, and accessory dwelling units. These types of housing types are expected to account for 390 to 480 units, providing affordable housing opportunities within the concept plan area. As stated above, requiring a variety of housing types will create opportunities for affordable housing within the proposed neighborhoods.

The Commission finds this requirement is satisfied.

E. Commercial and Industrial Development

Provision for sufficient commercial and industrial development for the needs of the area to be developed consistent with 2040 Growth Concept design types. Commercial and industrial designations in nearby areas inside the Urban Growth Boundary shall be considered in comprehensive plans to maintain design type consistency.

Analysis: The Commission notes that a key issue for the CAC/TAC was determining how much employment land was needed, what type and where. The Oregon City Comprehensive Plan requires that a majority of the lands be designated in a manner that encourages family-wage jobs in order to generate new jobs and move towards meeting the City's employment goals. The EcoNorthwest market analysis identified the advantages and disadvantages of industrial development within the study area and concluded that under the right conditions it is not unreasonable to expect 150 acres of industrial and business park development to build out on the site over a 20-year period.

Compare
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Metro brought 245 gross acres in the UGB in 2002 and 2004 to fulfill regional industrial employment needs. These areas (308 gross acres including those already within the UGB) are designated as the Industrial Design Type on Metro's 2040 Growth Concept Map. As noted above, Metro estimated 120 net acres of the concept plan area would be used for employment uses and indicated that it was important to fulfill the original intent for providing industrial lands and that there was flexibility for the local process to evaluate creative ways to meet the intent.

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The CAC created several alternatives and finally chose a hybrid within the industrial designated area that included about 127 net acres of North Employment Campus, which is consistent with Metro's intent and similar to Oregon City's existing Campus Industrial designation, and about 29 acres of Mixed Employment Village and Main Street, which allows a variety of uses in a village-oriented transit hub and mixed use neighborhoods to the south that also provide jobs tailored to the neighborhood setting.

evidence in 2007

The North Employment Campus is to provide for the needed family wage employment that strengthens and diversifies the economy and will be compliant with Metro's Title 4 regulations. The NEC allows a mix of clean industries, offices serving industrial needs, light industrial uses, research and development and large corporate headquarters. The uses permitted are intended to improve the region's economic climate, promote sustainable and traded sector businesses, and protect the supply of site for employment by limiting incompatible uses.

Proposed policy 1.3 identifies the need to support the attraction of family wage jobs and connections with Clackamas Community College within the North Employment Campus. Policy 1.4 identifies the need to promote job creation, mixed use and transit oriented development within the Mixed Employment Village and Main Street, and recommends the adoption of minimum density requirements, limitations on stand alone residential and other standards that implement the policy. Goal 3 – Green Jobs, includes policies recommending coordination with other local, county and state economic development agencies to recruit green industries and promote green development practices.

The concept plan provides land for an identified need within the region and state, and provides for a mix of other uses that will contribute to the economic welfare of the city, state and the citizens.

The Commission finds this requirement is satisfied.

F. Transportation

A conceptual transportation plan consistent with the applicable provisions of the Regional Transportation Plan, Title 6 of the Urban Growth Management Functional Plan, and that is also consistent with the protection of natural resources either identified in acknowledged comprehensive plan inventories or as required by Title 3 of the Urban Growth Management Functional Plan. The plan shall, consistent with OAR Chapter 660, Division 11, include preliminary cost estimates and funding strategies, including likely financing approaches.

NO/2/08
Analysis: The Beaver Creek Road Concept Plan provides for a mixed use community that provides viable options for internal trip making (i.e. many daily needs provided on-site), transit use, maximized walking and biking, and re-routed trips within the Oregon City area. Beaver Creek Road will be improved as a green boulevard that will be a 5-lane arterial section to Clairmont, then a 3-lane arterial from Clairmont to the UGB. The internal street system will provide logical, but limited access to Beaver Creek Road, by connecting to existing streets on the west side of Beaver Creek Road and requiring that an internal street/alley system be utilized, eliminating driveway cuts on Beaver Creek Road and maximizing its available capacity. The plan identifies an internal north-south connection from Old Acres Lane to Thayer Road that will reduce the need to access Beaver Creek Road for daily trips within the area and an extensive pedestrian and bicycle circulation system connecting the residential, commercial and industrial areas together and extends to existing and proposed transportation systems adjacent to the study area. The plan identifies appropriate green street options to be implemented, and expanded on, as development occurs, including: vegetated swales, planter islands, curb extensions, and porous pavement (Attachment A, Exhibit 2, Figures 15-19).

Proposed Goal 6 recommends providing multi-modal transportation links connected within the site as well as to the surrounding areas and includes policies recommending that land use reviews support bus service by ensuring a mix of land uses, densities and design options that support public transportation and other alternative transportation methods, ensure that local connectivity and off-street pedestrian routes link together in a highly connected pedestrian system that is safe, direct, convenient and attractive and improve pedestrian and bicycle safety along Beaver Creek Road. The concept plan process has identified and prepared the construction cost estimates for the planned transportation improvements and a detailed list of financing options has been created.

The Commission finds this requirement is satisfied.

G. Mapping

Identification, mapping and a funding strategy for protecting areas from development due to fish and wildlife habitat protection, water quality enhancement and mitigation, and natural hazards mitigation. A natural resource protection plan to protect fish and wildlife habitat, water quality enhancement areas and natural hazard areas shall be completed as part of the comprehensive plan and zoning for lands added to the UGB prior to urban development. The plan shall include a preliminary cost estimate and funding strategy, including likely financing approaches, for options such as mitigation, site acquisition, restoration, enhancement, or easement dedication to ensure that all significant natural resources are protected.

Analysis: The concept plan has mapped the open space, natural resource and natural hazard areas present within the study area. The parks and recreation system development charges is based on the type of dwelling unit to be constructed and the number of employees associated with a non-residential use could be utilized to acquire open space, natural resource and natural hazard areas that are part of the larger open space framework plan. Four other primary funding sources have been identified, including: Urban Renewal/Tax Increment Financing; Local Improvement Districts; Bonds; and Developer Funded Improvements. The plan also calls for creating the Environmentally Sensitive Resource Area to protect, conserve and enhance identified natural by applying a low-density base zoning that allows property owners to cluster density outside the ESRA and transfer to more appropriate sites.

The Commission finds this requirement is satisfied.

H. Public Facilities and Services

A conceptual public facilities and services plan for the provision of sanitary sewer, water, storm drainage, transportation, parks and police and fire protection. The plan shall, consistent with OAR 660, Division 11, include preliminary cost estimates and funding strategies, including likely funding approaches.

Analysis: The concept plan has created conceptual public facility plans, cost estimates and funding approaches for the provision of sanitary sewer, water, parks and storm within the site and the transportation system impacts created by the development of the site (see Transportation and Public Facilities and Services above). These plans have been developed to comply with the goals of the community, City of Oregon City, Metro and the appropriate master plans. The area is currently served by the Clackamas County Sheriff's Department. As the area is annexed, the

City of Oregon City Police Department will assume service responsibilities for the area. Clackamas County Fire District 1 currently serves the area and is the current fire service provider for the City.

The Commission finds this requirement is satisfied.

I. Schools

A conceptual school plan that provides for the amount of land and improvements needed, if any, for school facilities on new or existing sites that will serve the territory added to the UGB. The estimate of need shall be coordinated with affected local governments and special districts.

Analysis: The concept plan has not identified any new school sites within the study area. The Oregon City School District High School is located directly across Beavercreek Road from the study area and the district owns a vacant parcel of land directly south of the study area that could be used as a future school facility. The Oregon City School District provided a representative that was a member of the Citizen Advisory Committee. No need for additional lands identified as a result of the implementation of the concept plan was identified.

The Commission finds this requirement is satisfied.

J. Urban Growth Diagram

An urban growth diagram for the designated planning area showing, at least, the following, when applicable:

- ~~1. General locations of arterial, collector and essential local streets and connections and necessary public facilities such as sanitary sewer, storm sewer and water to demonstrate that the area can be served;~~
2. Location of steep slopes and unbuildable lands including but not limited to wetlands, floodplains and riparian areas;
3. General locations for mixed use areas, commercial and industrial lands;
4. General locations for single and multi-family housing;
5. General locations for public open space, plaza and neighborhood centers; and
6. General locations or alternative locations for any needed schools park or fire hall sites.

Analysis: This criterion has been met; see final concept plan document and maps (Attachment A, Exhibit 2).

The Commission finds this requirement is satisfied.

K. Plan Amendments

The plan amendments shall be coordinated among the city, county, school district and other service districts.

Analysis: The concept plan process has included representatives from the affected service districts; including Metro, ODOT, Clackamas County Transportation and Development, Oregon City School District, Clackamas Community College, Tri-Met, DLCD and Clackamas County

Economic Development. This criterion has been met; see final concept plan document (Attachment A, Exhibit 2).

The Commission finds this requirement is satisfied.

V. CONCLUSION

The Commission finds that Beaver Creek Road Concept Plan and appendices meets the requirements of the Statewide Land Use Goals, Metro Title 11 as well as the applicable Comprehensive Plan criteria.

ALICE NORRIS, Mayor

Date

Attested to this ___ day of ___ 2008

NANCY IDE, City Recorder

Title 4 Industrial and Employment Land

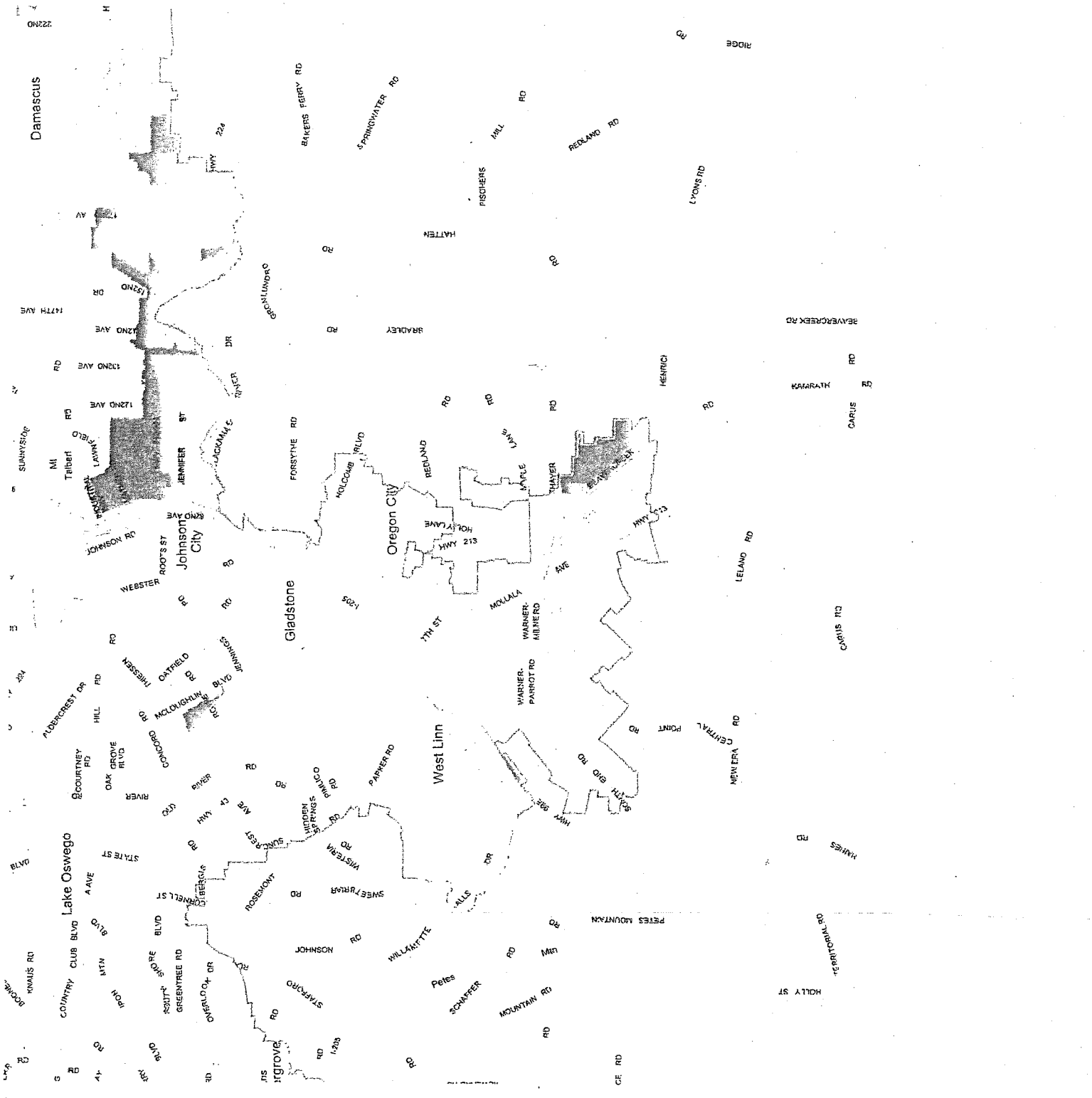
Employment Land
Industrial Land
Regionally Significant Industrial Area

Updated May 10, 2006

Map showing the location of the Regionally Significant Industrial Area (RSIA) in the Lake Oswego area. The map includes the following information:

- Scale: 1 inch equals 1.0 mile
- North Arrow
- Location Map: Shows the location of the RSIA within the Lake Oswego area, including the cities of Clackamas, Washington, Multnomah, and Clatsop.

APPENDIX B

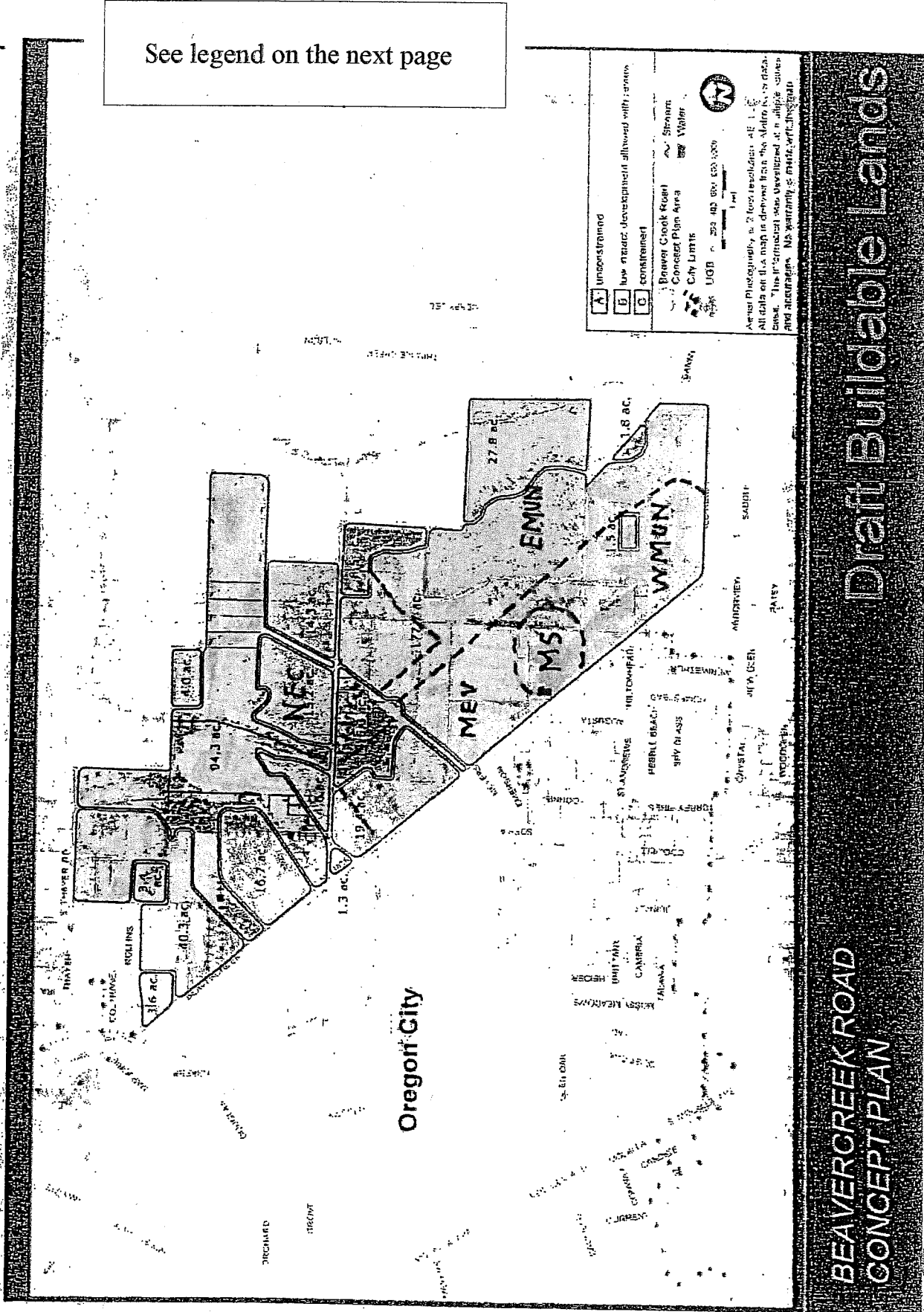


1:100,000

REGIONAL DATA RESOURCE CENTER
315 NORTH EAST LAMAR AVENUE
PORTLAND, OREGON 97232

DATE: 05/10/06

See legend on the next page



See map on previous page

1 **Legend to APPENDIX C.** Comparison of Maps in the Record Showing the 2002 and 2004
2 Metro Title-4 Industrial UGB Expansions and Other Lands in the Beaver Creek Road
3 Concept Plan Area.
4

Map Color	Metro 2040 Growth Concept Design Type	UGB Expansion	City Zoning or County	Acreage	Record page
Pink	Industrial	2002		245	42, 1524 & 725, Appendix B
Orange	Industrial	2004		63	42, 1524 & 725, Appendix B
Yellow	Employment	Pre-existing	Campus Industrial	~50	44, Appendix B, 1524
Green	Employment	Pre-existing	County	~14	Appendix B
Blue	Outer Neighborhood	Pre-existing	County	~74 ~2	1524 & 725, 42, 801, 1525, Appendix B
			Loder Rd.	5	Rec. 44

5

6 The Base Map is taken from Rec. 728 which is cleaner than other versions of the same thing.

7

8 The City limits and property lines are evident at Record pages 1778, 1512, 1402, 1404, 727,
9 248.

10

11 The concept plan dotted lines come from Rec. 49.

12

13 *Acreages*

14 *Blue* ~74. This land in the south is part of the total annexation area of 114 acres litigated in
15 *Graser-Lindsey v. City of Oregon City*. 2007-257. Final Order and Opinion page 2. Rec.
16 801. The 2004 UGB expansion was 63 acres. Rec. 42. The balance is 51 acres. Two
17 additional wedge shaped properties along Beaver Creek Road are estimated as 23 acres. In
18 total that gives 74 acres. FN 6.

19 *Green*. This is estimated off the map. FN 6.

20 *Blue*. This is estimated off the map at the top left corner. FN 6.

21

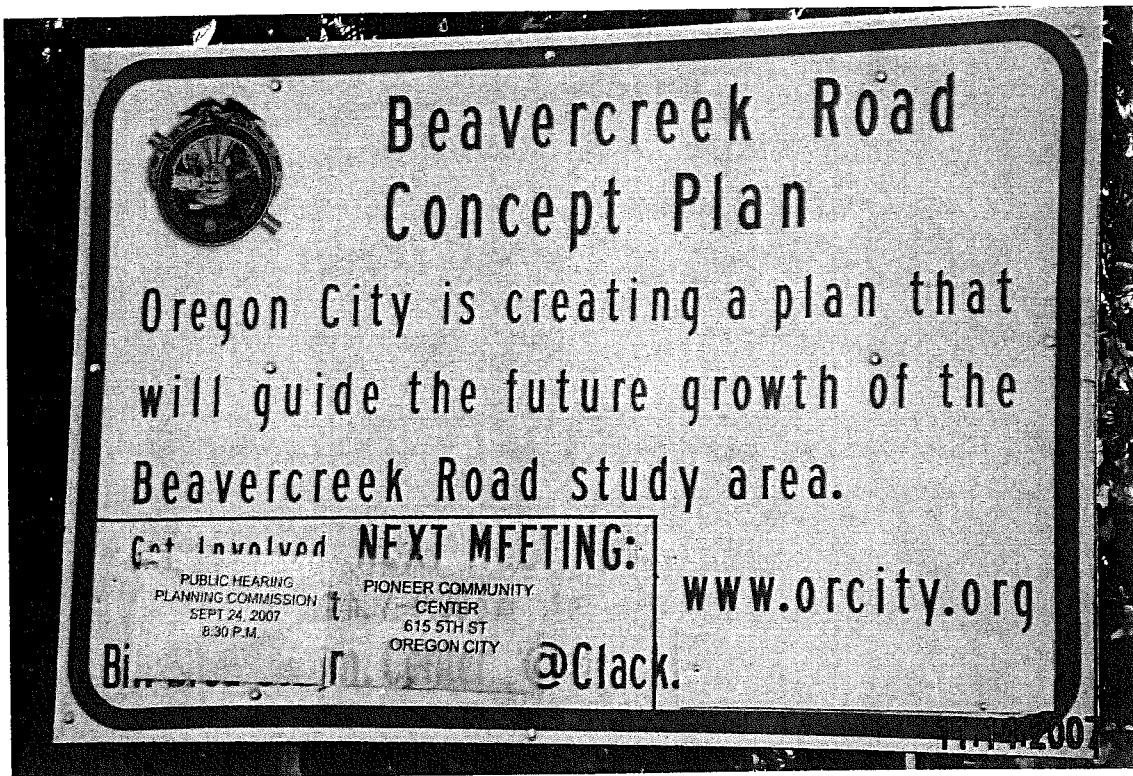
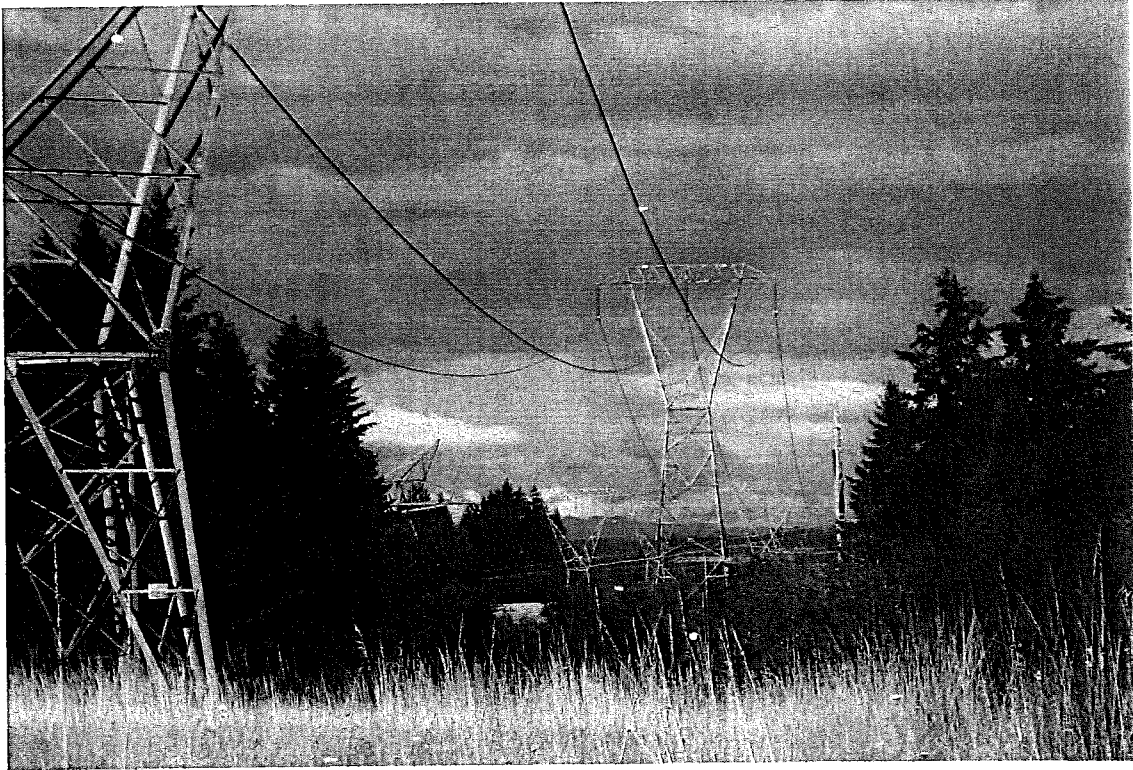
22 Oregon City's zoning can be seen most clearly at
23 http://www.ci.oregon-city.or.us/gis-mapping/pdf/atlas_zoning/Zoning_Atlas_Page_21.pdf
24 and pages 22 and 28.

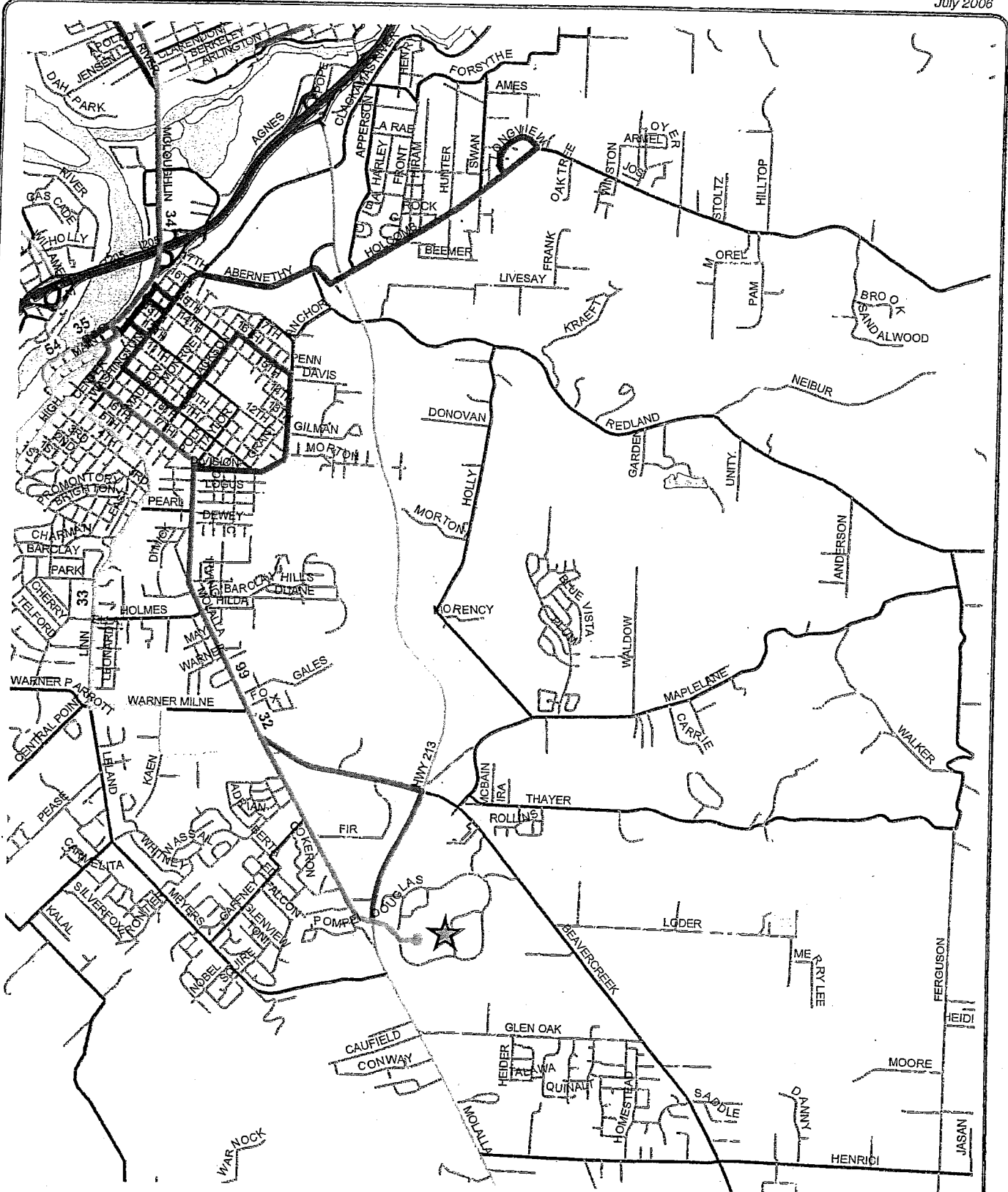
25

26 The Metro's adopted 2040 Growth Concept map can be seen most clearly at
27 http://www.oregonmetro.gov/files/planning/2040_growth_concept.pdf

APPENDIX D

Photos of Regional Power Transmission Line Corridors and Concept Plan Signs





LEGEND

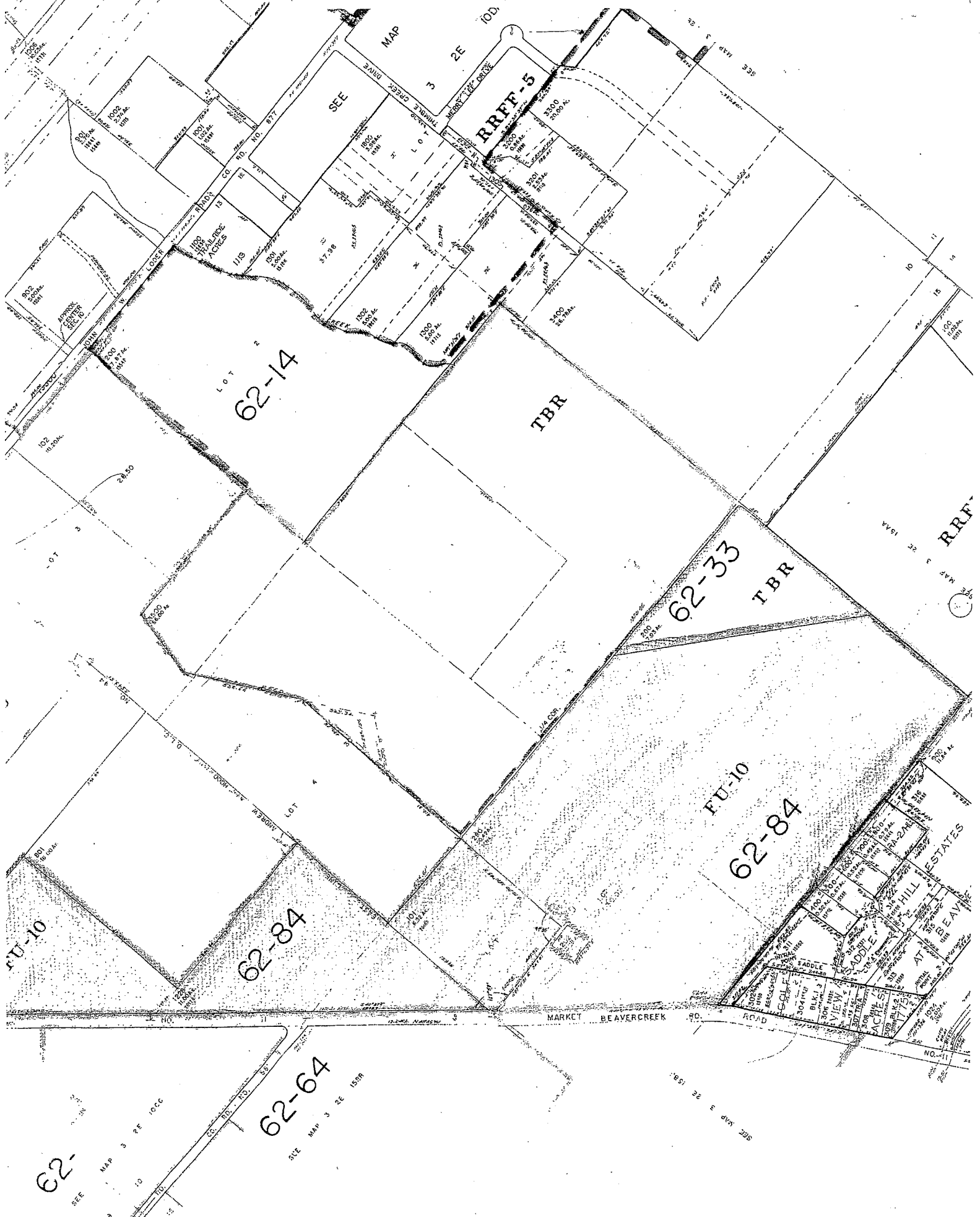
Bus Line

- 32
- 33
- 34
- 99

★ PARK-AND-RIDE FACILITY AT CLACKAMAS COMMUNITY COLLEGE

EXISTING TRI-MET BUS ROUTES
OREGON CITY, OR

APPENDIX F -- Timber Zoning (Tax Map)



1
2
3
4
5
6

Appendix G
A Comparison of
Existing and Mitigated Build Traffic Conditions
from Rec. 1876 and 431.

<i>Existing Traffic</i>		<i>Mitigated Build Conditions</i>		<i>Change</i>
Intersection #	LOS am pm	Intersection #	LOS pm	
1a, 1b	C C	1	?	
2	F F	2	?	
3	D C	3	E	Diminished
4	C B	4	C	Diminished
5	E D	5	E	Diminished
6	C C	6	D	Diminished
		7	D	Diminished
7	B C	8	C	Improved
8	D D	9	C	Improved
9	A A	10	C	Diminished
10	C C	11	D	Diminished
11	A A	12	C	Diminished
12	D A	13	C	Diminished
13	A A	14	D	Diminished
14	F D	15	C	Improved
15	B B	16	C	Diminished

7

Introduction

This document represents the first major revision of the 1982 *Oregon City Comprehensive Plan*. From 2002 to 2004, many, many citizens dedicated hundreds of hours assisting the City Commission, Planning Commission, and City staff revise the plan and the City Development Code (Title 17 of the *City of Oregon City Municipal Code*). The effort included several open houses, many work sessions, and several well-attended public hearings. The plan reflects the comments, suggestions, and vision of Oregon City residents and expresses that vision in its land-use policies, regulations, and map designations.

Oregon City's Comprehensive Plan and implementation ordinances must comply with applicable Statewide Planning Goals adopted by the Land Conservation and Development Commission as the result of a 1973 state law. The plan must also comply with the relevant portions of Metro's 1998 *Urban Growth Management Functional Plan*.

The plan is intended to do more than simply meet the requirements of the law, however. The City Commission firmly believes that the plan is necessary to protect and maintain the quality of life and social and economic vitality of the community. The City Commission understands that good planning is necessary to ensure that land resources are thoughtfully and efficiently used, that public services are cost-effective and adequate, that natural and historic resources that help define the city's character are protected and preserved, and that citizens will have continuing influence on the on-going decisions about the growth and development of their community.

Statements of Principle

Oregon City's Comprehensive Plan is founded on a number of principles, which shape the City Commission's vision for the future growth and development of the city. The principles help determine the scope of issues, concerns,

Section 1

Citizen Involvement

I know no greater depository of the ultimate powers of society but the people themselves. And if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their indiscretion through education. That is the true corrective of abuses of constitutional power.

— Thomas Jefferson

This section is intended to show compliance with Land Conservation and Development Commission (LCDC) Statewide Planning Goal 1, Citizen Involvement, which requires local governments “to develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.” The Citizen Participation Goal in the 1976 *Land-Use Policies for Oregon City* is to “provide an active and systematic process for citizen and public agency involvement in the land use decision-making for Oregon City.” The goal is based on the philosophy that a neighborhood program would provide the best means for citizens to become involved in the planning process.

Recognizing the importance of providing citizens with opportunities to be informed about, and involved in, the planning process, Oregon City established a Citizen Involvement Program in the 1980s. The program has two major components: neighborhood associations and a Citizen Involvement Committee (CIC). The CIC is the officially recognized citizen advisory committee to meet LCDC Statewide Planning Goal 1, and as required by Goal 1, is responsible for developing, implementing, and evaluating the Citizen Involvement Program. The CIC coordinates and communicates various aspects of citizen participation in the community and advises the City Commission, the Planning Commission and other planning and advisory bodies. The City Manager provides a City Liaison, and the Public Affairs Manager provides staff assistance. The overall goal of the CIC is to help improve the quality of life in Oregon City.

Prior to beginning the Comprehensive Plan update in the spring of 2002, the CIC revised the citizen involvement procedures for Oregon City. The CIC developed a five-year strategic plan (*Citizen Involvement Program Five-Year Strategic Plan, 2002*), which includes a mission statement, vision, values, roles and

responsibilities; wrote bylaws, approved by the membership on January 11, 2000; and wrote a Citizen Involvement Handbook. The documents were developed over three years by the entire CIC, which consisted of the elected leadership of the City-recognized neighborhood associations in Oregon City.

The five-year strategic plan and bylaws were written to comply with the intent of LCDC Statewide Planning Goal 1, which requires citizens to be involved in all aspects of land-use planning and other livability issues.

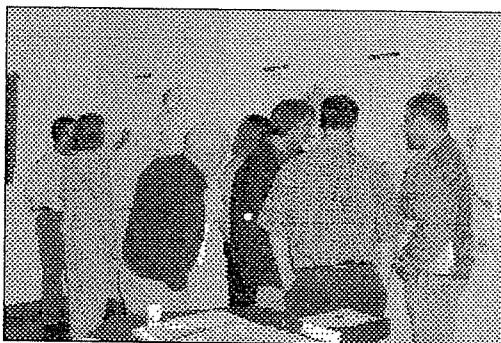
The CIC serves the area within the current legal city limits and all areas of impact within the current Urban Growth Boundary such as county islands within the neighborhood association boundaries; areas of the county adjacent to recognized neighborhood associations; and areas of the county not adjacent to a recognized neighborhood association but within the Urban Growth

Boundary and not represented by a county-recognized neighborhood association (called Community Planning Organizations or CPOs).

In February 1999, the City sponsored a meeting to evaluate a proposal for a "visioning process" and how the city might benefit from the undertaking. At the meeting, it was concluded that the process could work if properly structured with realistic "visions" that could be accomplished by volunteers working with the community; government, medical community, educational leaders, and business organizations. From that meeting, the

First City's Future Initiating Task Force was created.¹ The task force then developed a strategy to create a vision for Oregon City.

In November 2000, the task force held its first community-wide open house, which was attended by 125 community members and City staff. From that meeting, a vision statement emerged that brought forward shared common goals for the future of Oregon City (*First City's Future, Visioning Project, Phase 1 Report, 2001*). The visioning process is an ongoing project and needs to be updated periodically. A successful visioning process is a constant, dynamic process that must be initiated and maintained by the community. The First City's Future Initiating Task Force visioning effort represented a major citizen participation project.



Goal 1.1 Citizen Involvement Program

Implement a Citizen Involvement Program that will provide an active and systematic process for citizen participation in all phases of the land-use decision-making process to enable citizens to consider and act upon a broad range of

¹ "First City" is a reference to the fact that Oregon City was the first incorporated town west of the Rockies and the seat of the first provisional government of the Oregon Territory.

issues affecting the livability, community sustainability, and quality of neighborhoods and the community as a whole.

Policy 1.1.1

Utilize neighborhood associations as the vehicle for neighborhood-based input to meet the requirements of the Land Conservation and Development Commission (LCDC) Statewide Planning Goal 1, Citizen Involvement. The Citizen Involvement Committee (CIC) shall serve as the officially recognized citizen committee needed to meet LCDC Statewide Planning Goal 1.

Goal 1.2 Community and Comprehensive Planning

Ensure that citizens, neighborhood groups, and affected property owners are involved in all phases of the comprehensive planning program.

Policy 1.2.1

Encourage citizens to participate in appropriate government functions and land-use planning.

Policy 1.2.1

Encourage development and refinement of CIC and neighborhood association bylaws that will govern the groups' formation and operations.

Goal 1.3 Community Education

Provide education for individuals, groups, and communities to ensure effective participation in decision-making processes that affect the livability of neighborhoods.

Policy 1.3.1

Encourage training of volunteers involved with the CIC and neighborhood associations.

Goal 1.4 Community Involvement

Provide complete information for individuals, groups, and communities to participate in public policy planning and implementation of policies.

Policy 1.4.1

Notify citizens about community involvement opportunities when they occur.

Goal 1.5 Government/Community Relations

Provide a framework for facilitating open, two-way communication between City representatives and individuals, groups, and communities.

Policy 1.5.1

Support the CIC in initiating and planning events in cooperation with the City on issues of mutual interest. Topics may include such things as working with local schools regarding citizen involvement and stakeholders involved with Comprehensive Plan development and Urban Growth Boundary expansion.

Goal 1.6 CIC Continuous Development

Support the CIC's team spirit and dedication to community involvement to ensure continuous improvement.

Policy 1.6.1

Assist the CIC in finding funding for the Community Involvement Program's current and future development.

Policy 1.6.2

Support an Annual Leadership Development Conference for CIC members, to include updating the CIC strategic plan, if funding is available.

Goal 1.7 Neighborhood Plans

Adopt neighborhood plans that encompass a broad range of concerns for each neighborhood over a five- to ten-year period as refinements of the Oregon City Comprehensive Plan.

Policy 1.7.1

Ensure that neighborhood plans are consistent with the Comprehensive Plan.

Policy 1.7.2

Provide opportunities for property owners, residents, and businesses within the neighborhood to be involved in all phases of the preparation of a neighborhood plan.

Policy 1.7.3

Use the neighborhood plans to make recommendations to city boards, commissions, and agencies regarding public improvements and land-use decisions.

Goal 1.8 Advisory Committees

Establish and support citizen advisory committees and commissions. *for compliance with goal*

Policy 1.8.1

Identify the areas of City government in which the counsel of a formal citizen advisory committee or commission is warranted if funding is available to provide appropriate staff support.

Policy 1.8.2

Solicit and support citizen participation on citizen advisory committees and commissions. Identify desirable expertise from the Portland metro area as needed to best serve the interests of Oregon City.

their locations. For example, some neighborhoods are underserved by Neighborhood Retail Centers.

Neighborhood Retail Center. This provides convenience goods (foods, drugs and sundries) and personal services (laundry, dry cleaning, barbering, shoe repair) for the day-to-day needs of the immediate neighborhood. Size may range from 30,000 to 100,000 square feet.

Community Retail Center. This provides a wider range of facilities with a greater variety of merchandise. Many are built around a junior department store, variety store or discount department store as the major tenant. Others are built around multiple anchors in power centers or super community centers. Size may range from 100,000 to 300,000 (or more) square feet.

Regional Retail Center. This provides general merchandise, apparel, furniture and home furnishings in depth and variety, as well as a range of services and recreational facilities. It is built around one or two full-line department stores of generally not less than 75,000 square feet. Size may range from 250,000 to 900,000 square feet. A Regional Retail Center provides services typical of a business district but is not as extensive as the larger Super Regional Center, which may include aspects of big box development (industrial-style, stand-alone retail, typically with 20,000 to 200,000 square feet and 3 stories or height of 30 feet).

Industrial Land

There is often pressure to convert industrially zoned land to easily developable sites and other uses. The goals of the City are to protect existing industrial land from conversion, where appropriate, to annex industrial land and expand the Urban Growth Boundary to add urbanizable industrial land to the inventory, and to ensure that public facilities can serve future development.

Planned Land-Use Types

As the official long-range planning guide for land-use development in the city by type, density and location, the Oregon City Comprehensive Plan and Land -Use Map should be reviewed regularly. The land-use categories shown on the map (Appendix A) are:

- Low Density Residential (LR) — primarily single-family detached homes.
- Medium Density Residential (MR) — residential developments with dwelling unit types such as attached single-family units, rowhouses, and townhouses. Included in this classification is the McLoughlin Conditional Residential district, which is unique in that it allows existing residential uses, assuming they

piecemeal changes, there are inconsistencies and outdated concepts that should be corrected through a major code update.

Subdivision Regulations. Title 16 of the *City of Oregon City Municipal Code* (1991) governing subdivisions implement several provisions of the Comprehensive Plan.

Design Review. Site plan and design review provisions are intended to promote design integrity and neighborhood livability. New design guidelines were added to the zoning ordinance in 2001. It is expected that the guidelines will continue to be refined to strike the right balance of predictability for developers and neighborhood protection and livability. The City hopes to develop a design overlay for the Downtown.

Regular Review and Update. Periodically, technical review of the Comprehensive Plan should be conducted by City planning staff. Recommendations for updating the Comprehensive Plan should be presented to the Citizen Involvement Committee. The Planning Commission should make a recommendation to the City Commission for input and discussion. The technical review should consider:

- the plan implementation process
- adequacy of the plan to guide land-use actions, including an examination of trends
- whether the plan still reflects community needs, desires, attitudes and conditions, including changing demographic patterns and economics
- addition of updated information about the City by regional, state and federal governmental agencies

Goal 2.1 Efficient Use of Land

Ensure that property planned for residential, commercial, office, and industrial uses is used efficiently and that land is developed following principles of sustainable development.

Policy 2.1.1

Create incentives for new development to use land more efficiently, such as by having minimum floor area ratios and maximums for parking and setbacks.

Policy 2.1.2

Encourage the vertical and horizontal mixing of different land-use types in selected areas of the city where compatible uses can be designed to reduce the overall need for parking, create vibrant urban areas, reduce reliance on private automobiles, create more business opportunities and achieve better places to live.

Policy 2.5.2

Allow and encourage the development of small retail centers in residential neighborhoods that provide goods and services for local residents and workers. Generally, these centers should be located at the intersections of two or more streets that are classified as neighborhood collectors or higher.

Policy 2.5.3

Review design standards and the sign code to ensure compatibility with existing neighborhoods.

Policy 2.5.4

Encourage the development of successful commercial areas organized as centers surrounded by higher density housing and office uses, rather than as commercial strips adjacent to low-density housing.

Policy 2.5.5

Encourage commercial and industrial development that enhances livability of neighborhoods through the design of attractive LEED™-certified buildings and environmentally responsible landscaping that uses native vegetation wherever possible, and by ensuring that development is screened and buffered from adjoining residential neighborhoods and access is provided by a variety of transportation modes.

Policy 2.5.6

Develop a concept plan for South End that includes commercial designations in an amount sufficient to serve the needs of the South End neighborhood. The area designated as "Future Urban Holding" on South End Road lacks sufficient commercial services.

Goal 2.6 Industrial Land Development

Ensure an adequate supply of land for major industrial employers with family-wage jobs.

Policy 2.6.1

Work with Metro to ensure that there is enough land available within the Urban Growth Boundary to meet the need for industrial and/or commercial development. If there is not enough, identify areas outside the boundary that may be appropriate to annex. The selection of these areas will be based on market factors, protection of environmentally sensitive areas, compatibility with adjoining and nearby uses, public facilities and infrastructure, proximity to expressways and transit, site requirements of specific types of industries, and the desires of the property owners.

Policy 2.6.2

Ensure that land zoned or planned for industrial use is used for industrial purposes, and that exceptions are allowed only where some other use supports industrial development. New non-industrial uses should especially be restricted in already developed, active industrial sites.

Policy 2.6.3

Protect the city's supply of undeveloped and underdeveloped land zoned for industrial uses by limiting non-industrial community uses, such as schools, parks, and churches on such properties and by limiting larger commercial uses within those areas.

Policy 2.6.4

Protect existing and planned undeveloped and underdeveloped industrial lands from incompatible land uses, and minimize deterrents to desired industrial development.

Policy 2.6.5

Ensure that land-use patterns create opportunities for citizens to live closer to their workplace.

Policy 2.6.6

Identify industrial uses that could partner with Clackamas Community College as training centers and future employers of students graduating from CCC.

Policy 2.6.7

Establish priorities to ensure that adequate public facilities are available to support the desired industrial development.

Policy 2.6.8

Require lands east of Clackamas Community College that are designated as Future Urban Holding to be the subject of concept plans, which if approved as an amendment to the Comprehensive Plan, would guide zoning designations. The majority of these lands should be designated in a manner that encourages family-wage jobs in order to generate new jobs and move towards meeting the city's employment goals.

Goal 2.7 Oregon City Comprehensive Plan Land-Use Map

Maintain the Oregon City Comprehensive Plan Land-Use Map as the official long-range planning guide for land-use development of the city by type, density and location.

Policy 2.7.1

Maintain a sufficient land supply within the city limits and the Urban Growth Boundary to meet local, regional, and state requirements for accommodating growth.

Policy 2.7.2

Use the following 11 land-use classifications on the Oregon City Comprehensive Plan Land-Use Map to determine the zoning classifications that may be applied to parcels:

- Low Density Residential (LR)
- Medium Density Residential (MR)
- High Density Residential (HR)
- Commercial (C)
- Mixed Use Corridor (MUC)
- Mixed Use Employment (MUE)
- Mixed Use Downtown (MUD)
- Industrial (I)
- Public and Quasi-Public (QP)
- Parks (P)
- Future Urban Holding (FUH)

Policy 2.7.3

Recognize the design types of *Metro's 2040 Growth Concept*. Establish boundaries for the Regional Center in Downtown Oregon City; Corridors along 7th Street, Molalla Avenue, Beavercreek Road, and Highway 99; Industrial areas; and for Inner and Outer Neighborhoods.



Policy 5.4.1

Conserve and restore ecological structure, processes and functions within the city to closely approximate natural ecosystem structure, processes, and functions.

Policy 5.4.2

Cooperate with Clackamas County, Metro and other agencies to identify and protect wildlife habitat, distinctive natural areas, corridors and linkages and other ecological resources within the Urban Growth Boundary and incorporate the information into the Urban Growth Management Agreement with Clackamas County.

Policy 5.4.3

Identify, initiate and cooperate in partnerships with other jurisdictions, businesses, neighborhoods, schools and organizations to conserve and restore natural resources within and adjacent to Oregon City.

Policy 5.4.4

Consider natural resources and their contribution to quality of life as a key community value when planning, evaluating and assessing costs of City actions.

Policy 5.4.5

Ensure that riparian corridors along streams and rivers are conserved and restored to provide maximum ecological value to aquatic and terrestrial species. This could include an aggressive tree and vegetation planting program to stabilize slopes, reduce erosion, and mitigate against invasive species and stream impacts where appropriate.

Policy 5.4.6

Support and promote public education, interpretation, and awareness of the city's ecological resources.

Policy 5.4.7

The City shall encourage preservation over mitigation when making decisions that affect wetlands and a "no net loss" approach to wetland protection.

Policy 5.4.8

Conserve natural resources that have significant functions and values related to flood protection, sediment and erosion control, water quality, groundwater recharge and discharge, education, vegetation and fish, and wildlife habitat.

Policy 5.4.9

Protect and enhance riparian corridors along streams in Oregon City to increase shade, reduce streambank erosion and intrusion of sediments, and provide habitat for a variety of plants, animals, and fish.

necessary for additional land development and population growth are existing or committed.

Goal 11.1 Provision of Public Facilities

Serve the health, safety, education, welfare, and recreational needs of all Oregon City residents through the planning and provision of adequate public facilities.

Policy 11.1.1

Ensure adequate public funding for the following public facilities and services, if feasible:

- Transportation infrastructure
- Wastewater collection
- Stormwater management
- Police protection
- Fire protection
- Parks and recreation
- Water distribution
- Planning, zoning and subdivision regulation
- Library services
- Aquatic Center
- Carnegie Center
- Pioneer Community Center
- City Hall
- Buena Vista House
- Ermatinger House

Policy 11.1.2

Provide public facilities and services consistent with the goals, policies and implementing measures of the Comprehensive Plan, if feasible.

Policy 11.1.3

Confine urban public facilities and services to the city limits except where allowed for safety and health reasons in accordance with state land-use planning goals and regulations. Facilities that serve the public will be centrally located and accessible, preferably by multiple modes of transportation.

Policy 11.1.4

Support development on underdeveloped or vacant buildable land within the city where public facilities and services are available or can be provided and where land-use compatibility can be found relative to the environment, zoning, and Comprehensive Plan goals.

Policy 11.1.5

Design the extension or improvement of any major public facility and service to an area to complement other public facilities and services at uniform levels.

Policy 11.1.6

Enhance efficient use of existing public facilities and services by encouraging development at maximum levels permitted in the Comprehensive Plan, implementing minimum residential densities, and adopting an Accessory Dwelling Unit Ordinance to infill vacant land.

Policy 11.1.7

Develop and maintain a coordinated Capital Improvements Plan that provides a framework, schedule, prioritization, and cost estimate for the provision of public facilities and services within the City of Oregon City and its Urban Growth Boundary.

Goal 11.2 Wastewater

Seek the most efficient and economic means available for constructing, operating, and maintaining the City's wastewater collection system while protecting the environment and meeting state and federal standards for sanitary sewer systems.

Policy 11.2.2

Plan, operate and maintain the wastewater collection system for all current and anticipated city residents within the existing Urban Growth Boundary. Plan strategically for future expansion areas.

Policy 11.2.2

Given the vision for Clackamette Cove, investigate strategies to deal with increased flows, including alternate locations for treatment, from growth in the Damascus area and the potential closure of the Kellogg Creek Water Pollution Control Plant.

Policy 11.2.3

Work with the Tri-City Service District to provide enough collection capacity to meet standards established by the Oregon Department of Environmental Quality (DEQ) to avoid discharging inadequately treated sewage into surface-water.

Policy 11.2.4

Seek economical means to reduce inflow and infiltration of surface- and groundwater into the wastewater collection system. As appropriate, plant riparian vegetation to slow stormwater, and to reduce erosion and stream sedimentation.

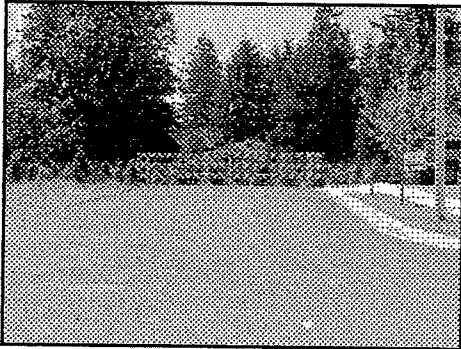
Policy 11.2.5

Implement the City's wastewater policies through the *City of Oregon City Sanitary Sewer Master Plan*.

tives, and viable neighborhoods that have a variety of uses. Other themes the City should consider as it grows are discussed below.

Expansion of Boundaries. Oregon City cannot expand west or north because of rivers and the adjacent cities of West Linn and Gladstone. The city will ultimately run out of land on which to accommodate new development, both within the current city limits and the Urban Growth Boundary.

As the region grows, the city will need to expand its limits to accommodate a fair share of the future demand for housing and jobs. This should be done in a rational and planned manner, in coordination with the City's Capital Improvement Program and its ability to provide services to new areas. In addition, the City should consult with residents who would be affected by a proposed Urban Growth Boundary expansion to get their input, including what their concerns are and what they expect the impacts to be, and to assess the level of support.



The Urban Growth Boundary is established to identify and separate urbanizable land from rural land, as described in LCDC Statewide Planning Goal 14. Metro regulates the expansion of the Metro Urban Growth Boundary, which

includes Oregon City's Urban Growth Boundary, through Title 11 of the *Code of the Metropolitan Service District (2003)*. However, Oregon City can apply for a major amendment to the Urban Growth Boundary every year except years in which Metro updates its five-year analysis of buildable land supply.

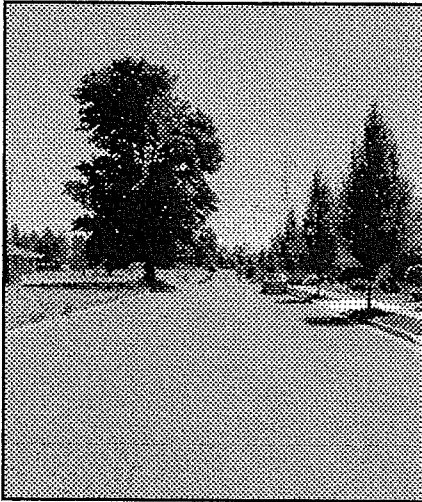
Metro considers the following when evaluating proposed changes to the Urban Growth Boundary:

- demonstrated need to accommodate long-range urban population growth
- need for housing, employment opportunities, and livability
- orderly and economic provision of public facilities and services
- maximum efficiency of land uses within, and on the fringe of, the existing urban area
- environmental, energy, economic and social consequences
- retention of high-quality, productive agricultural land
- compatibility of the proposed urban uses with nearby agricultural activities

An application for an expansion must demonstrate that growth cannot be reasonably accommodated within the current Urban Growth Boundary, that proposed uses would or could be compatible with existing uses, and that the long-term environmental, economic, social, and energy consequences after mitigation would not be significantly greater than they would be elsewhere in Metro's jurisdiction.

Title 11 requires cities to include the land within their Urban Growth Boundaries in their Comprehensive Plans prior to urbanizing that land. Title 11 intends to promote the integration of land added to the Urban Growth Boundary with existing communities by ensuring that concept plans are developed for areas proposed for urbanization or annexation. Concept plans must include a conceptual transportation plan; natural resources protection plan to protect areas with fish and wildlife habitat, water quality enhancement and mitigation and natural hazards mitigation; a conceptual public facilities and services plan for wastewater, water, storm drainage, transportation, parks, and police and fire protection; and a conceptual school plan. Metro requires Oregon City to adopt concept plans for areas added to the Urban Growth Boundary.

Once inside the Urban Growth Boundary, areas can be proposed for annexation. The Oregon City zoning code lists factors for evaluating a proposed annexation. The Planning Commission and City Commission should not consider issues related to annexations that are better suited to development reviews. The City should consider its ability to adequately provide public facilities and services to an area and leave development plans and related issues to the site development/design review process.



The City is required to refer all proposed annexations to the voters. Rather than asking voters to approve property owners' requests to annex one at a time, the City should implement an annexation plan. The City could then annex large blocks of properties, with voter approval, rather than in a piecemeal fashion. Annexation would be tied more directly to the City's ability to provide services efficiently, maintain regular city boundaries, and help the city meet Metro targets for housing and employment. The zoning of the property should be considered when the Planning Commission and City Commission review the annexation request.

Applications for annexation, whether initiated by the City or by individuals, are based on specific criteria contained in the *City of Oregon City Municipal Code*. An annexation may not be approved because the City cannot provide public services to the area in a timely fashion, as required by state and metro regulations. Therefore, an annexation plan that identifies where and when areas might be considered for annexation can control the expansion of the city limits and services to help avoid conflicts and provide predictability for residents and developers. Other considerations are consistency with the provisions of this Comprehensive Plan and the City's public facility plans, with any plans and agreements of urban service providers, and with regional annexation criteria.

Partnerships with Other Governments. The City does not provide all of the urban services within the city limits. Clackamas County, the Oregon City School District, the Oregon Department of Transportation, the TriCities Sewer

District, Clackamas Community College, and many other agencies also provide necessary services to residents and employees. In order to efficiently and effectively use the public dollars available to all of these different agencies, the City should be proactive in forming excellent working relationships with other agencies to address urban service issues.

Green Corridors. “Green corridors” are lands and waterways left in a natural condition to provide open space, recreational opportunities, habitat, and a sense of separation of various areas. Metro has identified green corridors in the region in *Metro’s 2040 Growth Concept* (1995). Although there are no green corridors within the city now, there may be in the future. Beavercreek and its tributaries are potential green corridors. Clackamas County is establishing green corridors adjacent to Oregon City on Highway 99E from Canemah to New Era and on Highway 213 from the Oregon City city limits to Molalla. The City recognizes the value of green corridors and will ensure that any such corridor within its city limits or Urban Growth Boundary is adequately protected.

Options for implementing green corridor concepts elsewhere include:

- providing a gradual transition from green corridor to urban environment
- implementing a green belt or green corridor policy of parks and open spaces along these corridors; this could include purchase and development of parks along corridors and restricting development in natural areas with steep slopes, wetlands, or other flooding issues from development along these corridors
- preserving these areas by adding zoning language to implement scenic roads policies
- reviewing development standards along the corridor to extend setbacks, increase landscaping requirements, encourage native vegetation
- developing incentive programs and educational programs
- linking tourism promotion or historic preservation to green corridors

Goal 14.1 Urban Growth Boundary

Establish, and amend when appropriate, the Urban Growth Boundary in the unincorporated area around the city that contains sufficient land to accommodate growth during the planning period for a full range of city land uses, including residential, commercial, industrial, and institutional.

Policy 14.1.1

The Urban Growth Boundary shall conform to Title 11 of the *Code of the Metropolitan Service District* and will provide sufficient land to accommodate 20-year urban land needs, resulting in efficient urban growth and a distinction between urban uses and surrounding rural lands, and promoting appropriate infill and redevelopment in the city.

Policy 14.1.2

Concept plans that provide more detail than the city's Comprehensive Plan will be required prior to development of lands within the Urban Growth Boundary.

Goal 14.2 Orderly Redevelopment of Existing City Areas

Reduce the need to develop land within the Urban Growth Boundary by encouraging redevelopment of underdeveloped or blighted areas within the existing city limits.

Policy 14.2.1

Maximize public investment in existing public facilities and services by encouraging redevelopment as appropriate.

Policy 14.2.2

Encourage redevelopment of city areas currently served by public facilities through regulatory and financial incentives.

Goal 14.3 Orderly Provision of Services to Growth Areas

Plan for public services to lands within the Urban Growth Boundary through adoption of a concept plan and related Capital Improvement Program, as amendments to the Comprehensive Plan.

Policy 14.3.1

Maximize new public facilities and services by encouraging new development within the Urban Growth Boundary at maximum densities allowed by the Comprehensive Plan.

Policy 14.3.2

Ensure that the extension of new services does not diminish the delivery of those same services to existing areas and residents in the city.

Policy 14.3.3

Oppose the formation of new urban services districts and oppose the formation of new utility districts that may conflict with efficient delivery of city utilities within the Urban Growth Boundary.

Policy 14.3.4

Ensure the cost of providing new public services and improvements to existing public services resulting from new development are borne by the entity responsible for the new development to the maximum extent allowed under state law for Systems Development Charges.

Goal 14.4 Annexation of Lands to the City

Annex lands to the city through a process that considers the effects on public services and the benefits to the city as a whole and ensures that development

Oregon City Municipal Code
Title 17 Zoning 17.04 Definition

17.04.290 Home occupation.

"Home occupation" means an occupation carried on solely by the resident or residents of a dwelling unit as a secondary use, in connection with which no assistants are employed, no commodities are sold other than services, no sounds are heard beyond the premises, and there is no display, advertisement or sign board except such signs as by this title may be permitted in the district where the home or occupation is situated, including such occupations as lawyer, public accountant, artist, writer, teacher, musician, home office of a physician, dentist or other practitioner of any of the healing arts, or practices of any art or craft of a nature to be conveniently, unobstructively and inoffensively pursued in a single-family dwelling, and not more than one-half of the floor area of one story is devoted to such use. The occupation may be carried on in an accessory building of the residence.

(Ord. 04-1016, Att. 1 (part), 2004: prior code §11-1-6 (part))



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17.50.090 Public notices.

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Drafts

All public notices issued by the city with regard to a land use matter, announcing applications or public hearings of quasi-judicial or legislative actions, shall comply with the requirements of this section.

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All Mail

A. Notice of Type II Applications. Once the planning manager has deemed a Type II application complete, the city shall prepare and send notice of the application, by first class mail, to all record owners of property within three hundred feet of the subject property and to any city-recognized neighborhood association whose territory includes the subject property. Pursuant to Section 17.50.080(H), the applicant is responsible for providing an accurate and complete set of mailing labels for these property owners and for posting the subject property with the city-prepared notice in accordance with Section 17.50.100. The city's Type II notice shall include the following information:

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Spam (25)

1. Street address or other easily understood location of the subject property and city-assigned planning file number;
2. A description of the applicant's proposal, along with citations of the approval criteria that the city will use to evaluate the proposal;
3. A statement that any interested party may submit to the city written comments on the application during a fourteen-day comment period prior to the city's deciding the application, along with instructions on where to send the comments and the deadline of the fourteen-day comment period;
4. A statement that any issue which is intended to provide a basis for an appeal must be raised in writing during the fourteen-day comment period with sufficient specificity to enable the city to respond to the issue;
5. A statement that the application and all supporting materials may be inspected, and copied at cost, at City Hall during normal business hours;
6. The name and telephone number of the planning staff person assigned to the application or is otherwise available to answer questions about the application.

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- [imap]/Sent (19)
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B. Notice of Public Hearing on a Type III or IV Quasi-Judicial Application. Notice for all public hearings concerning a quasi-judicial application shall conform to the requirements of this subsection. At least twenty days prior to the hearing, the city shall prepare and send, by first class mail, notice of the hearing to all record owners of property within three hundred feet of the subject property and to any city-recognized neighborhood association whose territory includes the subject property. The city shall also publish the notice in a newspaper of general circulation within the city at least twenty days prior to the hearing. Pursuant to Section 17.50.080(H), the applicant is responsible for providing an accurate and complete set of mailing labels for these property owners and for posting the subject property with the city-prepared notice in accordance with Section 17.50.100. Notice of the application hearing shall include the following information:

1. The time, date and location of the public hearing;
2. Street address or other easily understood location of the subject property and city-assigned planning file number;
3. A description of the applicant's proposal, along with a list of citations of the approval criteria that the city will use to evaluate the proposal;
4. A statement that any interested party may testify at the hearing or submit written comments on the proposal at or prior to the hearing and that a staff report will be prepared and made available to the public at least seven days prior to the hearing;
5. A statement that any issue which is intended to provide a basis for an appeal to the city commission must be raised before the close of the public record. Issues must be raised and accompanied by statements or evidence sufficient to afford the city and all parties to respond to the issue;
6. A statement that the application and all supporting materials and evidence submitted in support of the application may be inspected at no charge and that copies may be obtained at reasonable cost at City Hall during normal business hours; and
7. The name and telephone number of the planning staff person responsible for the application or is otherwise available to answer questions about the application.

C. Notice of Public Hearing on a Legislative Proposal. At least twenty days prior to a public hearing at which a legislative proposal to amend or adopt the city's land use regulations or comprehensive plan

is to be considered, the planning manager shall issue a public notice that conforms to the requirements of this subsection. Notice shall be sent to affected governmental entities, special districts, providers of urban services, including Tri-Met, Oregon Department of Transportation and Metro, any affected recognized neighborhood associations and any party who has requested in writing such notice. Notice shall also be published in a newspaper of general circulation within the city. Notice issued under this subsection shall include the following information:

1. The time, date and location of the public hearing;
 2. The city-assigned planning file number and title of the proposal;
 3. A description of the proposal in sufficient detail for people to determine the nature of the change being proposed;
 4. A statement that any interested party may testify at the hearing or submit written comments on the proposal at or prior to the hearing; and
 5. The name and telephone number of the planning staff person responsible for the proposal and who interested people may contact for further information. (Ord. 98-1008 §1 (part), 1998)
- 17.50.100 Notice posting requirements.

Where this chapter requires notice of a pending or proposed permit application or hearing to be posted on the subject property, the requirements of this section shall apply.

A. City Guidance and the Applicant's Responsibility. The city shall supply all of the notices which the applicant is required to post on the subject property and shall specify the dates the notices are to be posted and the earliest date on which they may be removed. The city shall also provide a statement to be signed and returned by the applicant certifying that the notice(s) were posted at the correct time and that if there is any delay in the city's land use process caused by the applicant's failure to correctly post the subject property for the required period of time and in the correct location, the applicant agrees to extend the one-hundred-twenty-day period in a timely manner.

B. Number and Location. The applicant must place the notices on each frontage of the subject property. If the property's frontage exceeds six hundred feet, the applicant shall post one copy of the notice for each six hundred feet or fraction thereof. Notices shall be posted within ten feet of the street and shall be visible to pedestrians and motorists. Notices shall not be posted within the public right-of-way or on trees. The applicant shall remove all signs within ten days following the event announced in the notice. (Ord. 98-1008 §1 (part), 1998)

17.50.170 Legislative hearing process.

A. Purpose. Legislative actions involve the adoption or amendment of the city's land use regulations, comprehensive plan, maps, inventories and other policy documents that affect the entire city or large portions of it. Legislative actions which affect land use must begin with a public hearing before the planning commission.

B. Planning Commission Review.

1. Hearing Required. The planning commission shall hold at least one public hearing before recommending action on a legislative proposal. Any interested person may appear and provide written or oral testimony on the proposal at or prior to the hearing. The planning manager shall notify the Oregon Department of Land Conservation and Development (DLCD) as required by the post-acknowledgment procedures of ORS 197.610 to 197.625, as applicable.
 2. Planning Manager's Report. Once the planning commission hearing has been scheduled and noticed in accordance with Section 17.50.090(C) and any other applicable laws, the planning manager shall prepare and make available a report on the legislative proposal at least seven days prior to the hearing.
 3. Planning Commission Recommendation. At the conclusion of the hearing, the planning commission shall adopt a recommendation on the proposal to the city commission. The planning commission shall make a report and recommendation to the city commission on all legislative proposals. If the planning commission recommends adoption of some form of the proposal, the planning commission shall prepare and forward to the city commission a report and recommendation to that effect.
- ##### C. City Commission Review.
1. City Commission Action. Upon a recommendation from the planning commission on a legislative action, the city commission shall hold at least one public hearing on the proposal. Any interested person may provide written or oral testimony on the proposal at or prior to the hearing. At the conclusion of the hearing, the city commission may adopt, modify or reject the legislative proposal, or it may remand the matter to the planning commission for further consideration. If the decision is to adopt at least some form of the proposal, and thereby amend the city's land use regulations, comprehensive plan, official zoning maps or some component of any of these documents, the city commission decision shall be enacted as an ordinance.
 2. Notice of Final Decision. Not later than five days following the city commission final decision, the planning manager shall mail notice of the decision to DLCD in accordance with ORS 197.615(2). (Ord. 98-1008 §1 (part), 1998)

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CLACKAMAS COUNTY – CITY OF OREGON CITY
URBAN GROWTH MANAGEMENT AGREEMENT

This Agreement, made and entered into this ____ day of _____, 1990, by and between the CITY OF OREGON CITY (CITY), a municipal corporation of the State of Oregon, and CLACKAMAS COUNTY (COUNTY), a political subdivision of the State of Oregon.

WHEREAS, ORS 190.003 to 190.030 allows units of local government to enter into agreements for performance of any or all functions and activities which such units have authority to perform; and

WHEREAS, Statewide Planning Goal 2, Land Use Planning, requires that City, County, State and Federal agency and special district plans and actions shall be consistent with the comprehensive plans of the cities and counties and regional plans adopted under ORS Chapter 197; and

WHEREAS, the Oregon Land Conservation and Development Commission (LCDC) requires each jurisdiction requesting acknowledgement of compliance to submit an agreement setting forth the means by which comprehensive planning coordination within the Regional Urban Growth Boundary will be implemented; and

WHEREAS, OAR 660-11-015 requires the responsibility for the preparation, adoption and amendment of the public facility plan to be specified within an urban growth management agreement; and

WHEREAS, CITY and COUNTY have a mutual interest in coordinated comprehensive plans, compatible land uses and coordinated planning of urban services and facilities; and

WHEREAS, CITY and COUNTY, to ensure coordination and consistent comprehensive plans, consider it mutually advantageous to establish:

1. A site-specific Urban Growth Management Boundary (UGMB) within the Regional Urban Growth Boundary (UGMB) within which both CITY and COUNTY maintain an interest in comprehensive planning and development; and

2. A process for coordinating land use planning and development within the UGMB; and
3. Policies regarding comprehensive planning and development proposals within the UGMB; and
4. A process for amending the Urban Growth Management Agreement; and

WHEREAS, it is anticipated that presently unincorporated areas within the UGMB will, in the future, be annexed to CITY, and CITY and COUNTY both desire that such annexations not result in any nonconforming uses or structures.

NOW, THEREFORE, CITY AND COUNTY AGREE AS FOLLOWS:

1. Boundary

- A. The Urban Growth Management Boundary (UGMB) shall include unincorporated land within the Urban Growth Boundary (UGB) and adjacent to the CITY as shown on map Attachment "A" to this Agreement. Any amendments to the Metro UGB in the area south of the Clackamas River and east of the Willamette River will automatically be reflected in the UGMB. Any such changes shall be coordinated with existing service providers.

2. Comprehensive Planning, Plan Amendments and Public Facilities Planning

- A. The development of a comprehensive plan and comprehensive plan changes for the area within the UGMB shall be a coordinated CITY-COUNTY planning effort. CITY shall be responsible for preparing all legislative comprehensive plan amendments in the UGMB. COUNTY shall adopt CITY land use plan designations for all unincorporated lands within the UGMB. All quasi-judicial comprehensive plan amendments for lands zoned FU-10 within the unincorporated UGMB shall be approved by CITY prior to COUNTY adoption.
- B. CITY shall be responsible for the preparation, adoption, and amendment of the public facility plan within the UGMB

required by OAR Chapter 660, Division 11, Public Facilities Planning. Preparation and amendment of such public facility plan shall provide for coordination with and participation by COUNTY, County service and other special districts within the UGMB.

3. Development Proposals in Unincorporated Area

- A. COUNTY's zoning shall apply to all unincorporated lands within the UGMB. COUNTY shall zone all unincorporated lands within the UGMB as Future Urbanizable (FU-10), except as otherwise provided in the Country Village Addendum attached to and made part of this Agreement. Subject to the terms of this Agreement, COUNTY shall retain responsibility and authority for all implementing regulations and land use actions on all unincorporated lands within the UGMB.
- B. The provision of public facilities and services shall be consistent with the adopted public facility plan for the unincorporated UGMB. For areas zoned FU-10 within the UGMB, COUNTY shall issue no permits or otherwise authorize extension or connection of public facilities and services in violation of the FU-10 zone. Any proposed amendment to the FU-10 zone within the UGMB shall be approved by CITY prior to COUNTY adoption.
- C. COUNTY shall not form any new County service districts or support the annexation of land within the unincorporated UGMB to such districts or to other service districts without CITY approval.

4. City and County Notice and Coordination

- A. The COUNTY shall provide notification to the CITY, and an opportunity to participate, review and comment, within 35 days prior to the first scheduled public hearing on all land use actions, quasi-judicial actions, proposed legislative changes to the COUNTY comprehensive plan or its implementing ordinances affecting land within the UGMB.

- B. The COUNTY shall provide notification to the CITY , and an opportunity to participate, review and comment, at least 15 days prior to staff decision on applications for administrative actions as provided in the COUNTY's Zoning and Development Ordinance for applications within the UGMB.
- C. The COUNTY shall notify and invite CITY staff to participate and comment in pre-application meetings on conditional use proposals or Design Review Committee meetings on development proposals within the unincorporated areas of the UGMB. These meetings shall be scheduled by the COUNTY after consultation with CITY staff. If CITY chooses to attend a pre-application meeting, the meeting shall occur at a mutually agreeable time within 10 working days following notification to CITY. In the event that a mutually agreement time cannot be achieved, or in the event CITY informs COUNTY that it does not wish to attend a pre-application meeting, such meeting shall occur at COUNTY's convenience.
- D. The CITY shall provide notification to the COUNTY, and an opportunity to participate, review and comment, at least 20 days prior to the first public hearing on all proposed annexations, capital improvement plans or extraterritorial service extensions into unincorporated areas.
- E. The CITY shall provide notification to the COUNTY, and an opportunity to participate, review and comment, at least 20 days prior to the first public hearing on all land use actions, proposed legislative changes to the CITY comprehensive plan or quasi-judicial actions adjacent to or in close proximity to unincorporated areas.
- F. Any amendments proposed by the COUNTY or CITY to the UGMB as shown on Attachment "A" shall be reviewed by CITY and COUNTY prior to submission to METRO. If and when CITY and COUNTY find it necessary to undertake a change of the UGB, the parties shall follow the procedures and requirements set forth in state statutes and Oregon administrative rules.

- G. The COUNTY shall enter all written comments of the CITY into the public record and shall consider the same in the exercise of this planning and plan implementation responsibilities. The CITY shall enter all written comments of the COUNTY in to the public record and shall consider the same in its exercise of its planning and plan implementation responsibilities.

5. City Annexations

- A. CITY may undertake annexations in the manner provided for by law within the UGMB. CITY annexation proposals shall include adjacent road right-of-way to properties proposed for annexation. COUNTY shall not oppose such annexations.
- B. Upon annexation, CITY shall assume jurisdiction of COUNTY roads and local access roads that are within the area annexed. As a condition of jurisdiction transfer for roads not built to CITY street standards on the date of the final decision on the annexation, COUNTY agrees to pay to CITY a sum of money equal to the cost of a two-inch asphaltic concrete overlay over the width of the then-existing pavement; however, if the width of pavement is less than 20 feet, the sum shall be calculated for an overlay 20 feet wide. The cost of asphaltic concrete overlay to be used in the calculation shall be the average of the most current asphaltic concrete overlay projects performed by each of CITY and COUNTY. Arterial roads will be considered for transfer on a case-by-case basis. Terms of transfer for arterial roads will be negotiated and agreed to by both jurisdictions.
- C. Public sewer and water shall be provided to lands within the UGMB in the manner provided in the public facility plan. In the event the appropriate authority determines a health hazard exists within the unincorporated UGMB, needed services shall be provided to health hazard areas by service districts if determined by the Health Division that annexation to and service by CITY is not feasible.

6. Amendments to the Urban Growth Management Agreement

A. The terms of this Agreement may be amended or supplemented by mutual agreement of the parties. Any amendments or supplements shall be in writing, shall refer specifically to this Agreement, and shall be executed by the parties. The parties shall review this Agreement at each periodic review and make any necessary amendments.

7. Concurrent Adoption

A. The adoption of this Agreement shall occur concurrently with the adoption of the public facility plan referred to in Paragraph 2 (B) of this Agreement and the amendments to the FU-10 zone agreed to by parties.

IN WITNESS WHEREOF, the parties have executed this Urban Growth Management Agreement, including the Country Village Addendum attached hereto, on the date set opposite their signatures.

CITY OF OREGON CITY

By: _____ Date: _____

Attest: _____ Date: _____

CLACKAMAS COUNTY BOARD OF COMMISSIONERS

By: _____ Date: _____
Chair

By: _____ Date: _____
Commissioner

By: _____ Date: _____
Commissioner

APPROVE AS TO FORM

County Counsel

APPROVED:

Director, Dept. of Transportation and Development

CLACKAMAS COUNTY – CITY OF OREGON CITY
URBAN GROWTH MANAGEMENT AGREEMENT
COUNTRY VILLAGE ADDENDUM

This Addendum, known as the Country Village Addendum shall be and is hereby made a part of the Clackamas County – City of Oregon City Urban Growth Management Agreement. All provisions of that Agreement that are not inconsistent with the terms of this Addendum shall apply with equal force to the property which is the subject of this Addendum.

WHEREAS, CITY and COUNTY have previously entered into urban growth management agreements and amendments to coordinate land use planning for the unincorporated area adjacent to the CITY and inside the Metropolitan Service District's urban growth boundary; and

WHEREAS, in 1987, COUNTY approved a 600-unit mobile home development on the Country Village property, portions of which have been developed; and

WHEREAS, in 1988, CITY initiated annexation of Country Village, which was approved by the Portland Metropolitan Area Local Government Boundary Commission but overturned following remonstrations by the resident electors; and

WHEREAS, in response to the vote against annexation to Oregon City, CITY, in keeping with its responsibilities under CITY's Public Facilities Plan, desires to clarify the provision of public facilities and services to the Country Village property; and

WHEREAS, CITY and COUNTY wish to resolve this issue in a cooperative manner.

NOW, THEREFORE, CITY AND COUNTY AGREE AS FOLLOWS:

1. Comprehensive Planning, zoning, and Plan and Zoning Amendments.
 - A. The existing COUNTY zoning designations applied to the Country Village property shall continue. Any legislative or quasi-judicial zone change amendments for the Country Village

property shall be approved by CITY prior to COUNTY adoption.

2. Development Proposals of the Country Village Property

- A. Subject to the terms of the COUNTY-CITY Urban Growth Management Agreement and this Addendum, COUNTY shall retain responsibility and authority for development permitted within the Country Village property prior to its annexation to CITY.
- B. Any major modification (as defined by the Clackamas County Zoning and Development Ordinance) of the development approval granted by COUNTY for provision of up to 600 mobile home units on the Country Village property, shall be approved by CITY prior to COUNTY adoption.

3. Annexation and Extraterritorial Extension of Services

- A. COUNTY and CITY agree that CITY shall be the ultimate provider of public facilities and services to the Country Village property. COUNTY shall not oppose annexation or the extraterritorial extension of services by CITY to the Country Village property.

Exhibit F

BEFORE THE OREGON CITY
CITY COMMISSION

**In the Matter of Resolution No. 07-)
24 02 to set the election date of)
November 6, 2007 for the)
annexation of 122 acres located east)
of Beaver Creek Road and South of)
Loder Road into Oregon City.)
)
)
)
)**

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND FINAL ORDER IN
OREGON CITY FILE No. AN 07-02.

I. INTRODUCTION

Northwest Development Solutions (the "Applicant") submitted application for the annexation of 12 properties totaling 122 acres into the city limits of Oregon City. The Planning Commission held evidentiary hearings on July 16th and July 23rd, 2007, after which the Planning Commission deliberated and unanimously recommended approval of the request to the City Commission for their consideration. On August 1st, 2007, the City Commission held a public hearing and after hearing all of the testimony and considering all of the evidence, tentatively voted to approve the annexation and recommend that the issue be sent to the citizens for a vote on November 6th, 2007. The Commission's reasons for approving the application are set forth in these findings of fact, conclusions of law, and final order.

II. FINDINGS

Annexation 07-02 was initiated by consent petition of a 100% of the property owners and voters. The territory contains approximately 122 acres, has 5 single-family residences, 7 commercial structures, a population of 9 and is valued at \$1,566,711. The properties have a comprehensive plan designation of Future Urban Holding, which is a holding designation until a Concept Plan for the Beaver Creek Road area is completed. The zoning designation will remain Future Urban 10-acre minimum until adoption of the Beaver Creek Road Concept Plan and the appropriate Comprehensive Plan and Zoning designation can be applied to the individual properties. A majority of the public testimony addressed the draft Beaver Creek Road Concept Plan design and process and was not applicable to the annexation request before the commission.

A. Metro Boundary Change Criteria.

1. Consistency with directly applicable provisions in ORS 195 agreements or ORS 195 annexation plans.

Findings. There are no adopted 195 annexation plans or agreements applicable to this area. For the foregoing reasons, this criterion is met.

2. Consistency with directly applicable provisions of urban planning area agreements between the annexing entity and a necessary party.

Findings. A necessary party is defined as any county, city or district whose jurisdictional boundary or adopted urban serve area includes any part of the affected territory or who provides any urban service to any portion of the affected territory, Metro, and any other unit of local government, as defined in ORS 190.003, that is a party to any agreement for provisions of an urban service to the affected territory. Proper notice was given to all necessary parties and the only comments received were from the Public Safety Director of Oregon City, which were addressed to the satisfaction of the Director by the applicant.

A citizen contended that the County Commissioners have not been briefed on the annexation, thus it is not possible to know if the necessary party has contested the annexation.

The County Commissioner's office was mailed notice of the annexation request on June 12th, 2007, indicating the time and location of the Planning and City Commission public hearings and requesting comments, either in writing or during testimony at the hearings. No comments were received from the County.

The City and County have an Urban Growth Management Agreement (UGMA), which is part of their Comprehensive Plans. The territory to be annexed falls within the Urban Growth Management Boundary (UGMB) identified for Oregon City and is subject to the agreement. The County agreed to adopt the City's Comprehensive Plan designation for the area, which currently is Future Urban 10 and the agreement presumes that all the urban lands within the UGMB will ultimately annex to the City and that the responsibility for the public facilities shall fall the City.

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17
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The City concurs with the Tri-City Service District's annexation of the subject properties upon voter approval of the city annexation. This territory is currently within the Clackamas River Water District, with which the city does not have an urban service agreement, however; ORS 222.120 allows the city to specify that the territory be automatically withdrawn from the water district upon annexation, which will occur upon voter approval of the city annexation. The City shall also withdraw the territory from the County Service District for Law Enforcement and Clackamas County R.F.P.D #1. For the foregoing reasons, this criterion is met.

3. Consistency with directly applicable standards for boundary changes contained in comprehensive land use plans and public facility plans.

Ag

Findings. The AN 07-02 staff report, which is incorporated into these findings, demonstrates consistency with the existing comprehensive land use plans and public facility plans. The annexation of the 122 acres and 5 single-family homes will have minimal impact on the existing services and infrastructure and the properties are contiguous to the existing City limits. The properties will be zoned Future Urban 10 until the Beaver Creek Concept Plan and implementing ordinances are adopted. Approval of the Beaver Creek Road Concept Plan will comply with all applicable Comprehensive Plan requirements and the public facility plans will be updated to account for the future impacts of the full build out of the 122 acres. The FU-10 zoning designation is a holding zone that prevents the property from being developed at urban standards until such time as the Concept Plan and implementing ordinances are adopted, having demonstrated compliance with the Comprehensive Plan, including updates to the city master plans and capital improvements plans. For the foregoing reasons, this criterion is met. At the public hearing before the city commission, several parties raised the issue of consistency with the Beaver Creek Concept Plan. As discussed below, that plan had not yet been adopted and is not a criterion for this annexation.

4. Consistency with directly applicable standards for boundary changes contained in the Regional framework or any functional plans.

Findings. The law that requires Metro to adopt criteria for boundary changes specifically states that those criteria shall include "...compliance with adopted regional urban growth goals and objectives, functional plans....and the regional framework plan of the district

(Metro).” The Growth Management Functional Plan was reviewed and found not to contain any criteria directly applicable to boundary changes. In addition, the Regional Framework Plan was reviewed and found not to contain specific criteria applicable to boundary changes. For the foregoing reasons, this criterion is met.

5. Whether the proposed boundary change will promote or not interfere with the timely, orderly and economic provision of public facilities and services.

Findings. Annexation of the existing five homes will have virtually no effect on the timely, orderly and economic provision of public facilities and services. The City will obtain a small increase in property tax revenues from adding additional assessed value to its tax rolls as a result of annexing the territory and there is adequate public facilities and services to provide for the additional 5 homes and 7 commercial buildings. The City will also obtain land use jurisdiction over the territory. The Beaver Creek Concept Plan will address the overall impact to the city of a much larger swath of land, which includes this piece, but that plan has not yet been completed. The territory to be annexed under that plan will include approximately 20 acres of employment and 48 acres of mixed employment, which will provide employment opportunities that are greatly lacking in Oregon City. Because that plan has not been adopted, it is not an applicable criterion and there has been no showing that annexation of this property to the city will interfere with the timely, orderly and economic provision of public facilities and services to the area. The applicant has also proposed a Police Funding Fee to be collected at time of building permit to off-set the impacts on police and fire services. For the foregoing reasons, this criterion is met.

6. Consistency with other applicable criteria for the boundary change in question under state and local law.

Findings. The proposed annexation complies with all applicable state and local laws as demonstrated in these findings of fact and the AN 07-02 staff report. For the foregoing reasons, this criterion is met.

B. Oregon City Municipal Code: Section 6 of Chapter 14.

1. Adequacy of access to the site.

Findings. Access is provided from Beaver Creek Road to the west and Loder Road to the north. The City-County UGMA requires the annexation to include the adjacent portions of all county streets. There is adequate frontage from public streets to access the site in a safe and efficient manner. For the foregoing reasons, this criterion is met.

2. Conformity of the proposal with the City's Comprehensive Plan.

Findings. The Comprehensive Plan identifies a need to provide an adequate supply of land for major industrial employers with family-wage jobs, ensure that land-use patterns create opportunities for citizens to live closer to their workplace and require that a majority of the lands east of Clackamas Community College, which includes this area, shall be

designated in such a manner that it encourages family-wage jobs in order to generate new jobs and move towards meeting the city's employment goals.

The Beaver Creek Road Concept Plan, which includes this 122 acre parcel, will be designed to meet City and Metro requirements for the creation and protection of employment lands within the study area. However, as noted above, that plan is not yet adopted and not applicable.

The proposed annexation properties are within the Beaver Creek Road Concept Planning area, but no concept plan has been adopted. Therefore, the Concept Plan is not applicable to this annexation.

3. Adequacy and availability of public facilities and services to service potential development.

Findings: as discussed below, the Facilities and Services discussion of the staff report indicate that there are adequate services to support the annexation at the zoning designation of FU-10. To the extent additional development will occur, the property will have to be re-zoned, which will not occur until the Concept Plan has been approved. The Concept Plan will have to demonstrate that public facilities and services for potential development will be accounted for once the Beaver Creek Road Concept Plan is adopted. The concept plan will identify the impacts to the public facilities and services and the remedies necessary to accommodate the potential development on the annexed properties.

There are existing water lines and sanitary sewer lines in Beaver Creek Road north of the subject site and in Glen Oak Road that can be extended to the site to provide service. The necessary water, sanitary, and stormwater improvements necessary to accommodate the future development of the area will be included in the city's master plans to ensure adequacy of the systems.

The Beaver Creek Concept Plan will integrate a multi-modal transportation system with a mixed-use development pattern to achieve a highly efficient and sustainable design. The concept plan will identify a network of internal and external pedestrian, bicycle, transit, and street connections that serve the study area and connect it to the surrounding community and the broader region. The concept plan will ensure that the land brought into the UGB is planned in an efficient and sustainable manner that will identify compatible land uses, including industrial, office, commercial, and residential uses, thereby reducing the need for vehicle trips, improving the efficiency of public transportation, offering multi-modal transportation options, and reducing the need to expand the UGB in the future.

The Concept Plan will address traffic impacts, remedies and costs that are necessary to accommodate the additional growth in this area. The improvements will be added to the Transportation System Plan as part of the adoption of the Beaver Creek Concept Plan and will meet the necessary Level of Service requirements of the city and will meet the Transportation Planning Rule. However, that plan is not yet applicable. The annexation proposal under the existing zone is adequately served by public facilities and services of a rural character. For the foregoing reasons, this criterion is met.

4. Compliance with applicable sections of Oregon Revised Statutes Chapter 222, and Metro Code 3.09.

Findings. The only criterion in ORS 222 for so-called "100% annexations" is that annexed lands be contiguous to the City. The site is contiguous at its border with city property for about 4,200 feet along the exterior area boundary. The Metro Code criteria are discussed above. This report considers each factor and the Conclusions and Reasons in the attached Staff Report Findings and Reasons demonstrate that these criteria are satisfied. For the foregoing reasons, this criterion is met.

5. Natural hazards identified by the City, such as wetlands, floodplains, and steep slopes.

Findings. Preliminary review has identified water resource areas that will require further investigation at time of development to demonstrate compliance with existing Oregon City Municipal Code water resource protection standards. There is no showing of any natural hazard that would preclude development of this site. For the foregoing reasons, this criterion is met.

6. Any significant adverse effects on specially designated open space, scenic historic or natural resource areas by urbanization of the subject property at the time of annexation.

Findings. The property is in the Newell and Thimble drainage basin according to the Drainage Master Plan. There are no designated areas affected by urbanization of this property.

7. *Lack of any significant adverse effects on the economic, social and physical environment of the community by the overall impact of annexation.*

Findings. Annexation of the existing five homes will have virtually no effect on the economic, social, or physical environment of the community. The Commission interprets the "community" as including the City of Oregon City and the lands within its urban service area. The City will obtain a small increase in property tax revenues from adding additional assessed value to its tax roll as a result of annexing the territory. The City will also obtain land use jurisdiction over the territory. Finally it will have service responsibilities including fire, police, and general administration. The City delivers police service to the unincorporated area in the course of patrolling to deliver service to the incorporated area. The increases in service responsibilities to the area that result from the annexation are insignificant, though an additional five homes may impact the existing response time of the Police Department.

There are adequate public facilities and services to support annexation of this property at the FU-10 zoning. The Beaver Creek Concept Plan will address any re-zoning for further urbanization. The plan will provide for a mix of employment, office, commercial and residential that will provide employment, entertainment and services within close proximity to existing and planned residential development. The ability to provide these opportunities in such close proximity to the residential development will limit the impacts on the infrastructure and services, include transportation. The addition of employment lands will have a positive effect

on the economic, social and physical environment of Oregon City by providing employment opportunities in a region severely lacking those opportunities, increase the assessed value with employment, office and commercial uses and providing a unique and urban physical environment that will be to the benefit of the residents of Oregon City.

The concept plan call for a mix of housing sizes and types, creating a truly mixed community that serves many income levels and demographics, which will improve the social environment of Oregon City. The compact urban development will also increase the opportunities for public transportation opportunities, potentially expanding the existing Tri-Met service from Clackamas Community College to the west of the site and providing an alternative to the single occupancy vehicle trip, thereby improving the economic and physical environment of Oregon City. Future urban activity will be governed by the to-be-adopted concept plan. The rural level of use allowed before and after this annexation will not significantly affect the community. For the foregoing reasons, this criterion is met.

III. CONCLUSION

For the reasons noted above, the City Commission has determined that the Applicant has met its burden of proof with respect to the Annexation and adopts Resolution No. 07-24 and set Proposal No. AN 07-02 for an election on November 6, 2007. The City Commission shall withdraw the territory from the County Service District for Enhanced Law Enforcement, concur with Tri-City Service District's annexation of the subject property upon voter approval of the city annexation, will withdraw from the Clackamas County R.F.P.D #1 and Clackamas River Water District, will require all consenting property owners to sign a waiver of Measure 37 rights prior to the City Commission adopting a final ordinance accepting a positive annexation election result and shall accept the financial solution offered by the applicant to address the police funding shortcomings.

ADOPTED this 15th day of August 2007.

OREGON CITY COMMISSION

Alice Norris, Mayor

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1 CERTIFICATE OF FILING AND SERVICE

2 I hereby certify that on May 15, 2009, I filed the original and four copies of this
3 Petition for Review with the Land Use Board of Appeals, PUC Building, 550 Capitol Street
4 NE, Suite 235, Salem, Oregon 97301-2552, by certified mail.

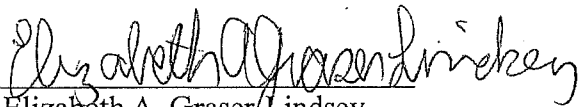
5 I also certify that on May 15, 2009, I served a true and correct copy of this Petition
6 for Review on:

7 Mr. Edward J. Sullivan
8 Ms. Carrie A. Richter
9 Garvey Schubert & Barer
10 121 SW Morrison St., 11th Floor
11 Portland, OR 97204

12
13 Kelly S. Hossaini
14 Miller Nash
15 3400 US Bancorp Tower
16 111 SW Fifth Ave.
17 Portland, OR 97204-3699

18
19 pursuant to OAR 661-010-0015(2) by first class mail.

20 DATED this 15th day of May, 2009.

21
22 By: 
23 Elizabeth A. Graser-Lindsey

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Urban renewal will take center stage OREGON CITY: Election may change commission views on Cove, Rivers

The Oregon City News, Nov 10, 2010



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Although Commissioner Doug Neeley easily secured his mayoral position, he may face a tough road ahead on the controversial platform of another Oregon City race to swing the balance of power on the Urban Renewal Commission.



RAYMOND RENDLEMAN / OREGON CITY NEWS
New Oregon City Commissioner Kathy Roth celebrates her victory at the Rivershore in Oregon City.

In the three-way race for Position 1, Kathy Roth held onto a slim, approximately 350-vote lead over incumbent Daphne Wuest and second challenger Dan Holladay, as votes continued to be counted at the end of last week.

"This is a very, very pivotal race especially when it comes to the outcome of urban renewal," Roth said.

Commissioners Jim Nicita and Rocky Smith, who have often cast lone opposing votes in sparring on urban-renewal decisions, endorsed Roth's campaign. The URC has a total of 10 members, but city commissioners appoint the remaining members; two URC terms expire at the end of this year.

"One of the first orders of business will be referring the charter amendment to the voters to give citizens the ability to vote on taking on large amounts of debt," Nicita said.

In response to criticism that it would be unwieldy to cast votes on every \$10,000 storefront upgrade, Nicita said that he would work with other commissioners to find a reasonable threshold.

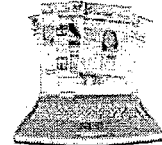
Neeley worried that threatening the city's partnerships with developers would also threaten the potential of adding significant tax base and jobs in the area. He reiterated a counter-argument he's used in candidate debates saying, "If you're going to say that a developer has to go through a vote of the people, you're not going to have any developers step up."

Neeley would be particularly disappointed if the millions of dollars that have already been put into planning for the Cove project were for nothing, especially since the developer has promised to restore much of the brownfield area into a city park.

Nicita said that it would be possible to vote and keep developers on board, adding that he doesn't "want to focus on urban renewal—there are so many other important issues, and some of the key questions regarding facilities

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SPECIAL SECTIONS AND PROMOTIONS



The remodels of the city's library and police station will remain top concerns, and Nicita agreed with another of Roth's main campaign battles with Wuest, that the public works department should not be located next to Waterboard Park.

“It'll be a new sort of perspective from which all these issues are examined,” Nicita said.

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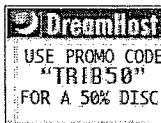
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2010 Capacity Ordinance
Public comment

Date 11/29/10
No. _____

Please print

Name (required)

Barry Lindsey

Affiliation (if any)

Address (required)

21341 S. Ferguson Rd, Beavercreek, OR, 97004

E-mail (required)

Include my e-mail in your project notification list

Comment topic(s) (check all that apply)

Invest in safe, livable communities

Promote economic development and good jobs

Natural areas protection

Reduce inefficiency, foster innovation and demand accountability

Other Title 4 change

Comment (use back or attach additional sheets if necessary)

When the Beavercreek Road Concept Plan was first being developed, advertised as being for bringing in "Green" industries and also affiliated with Green research with Clackamas Comm. college. It seemed a bit more acceptable then, but when it changed for residential, it is no longer acceptable,

You have three minutes to testify. Attach supporting material to this form. Make sure your name is on all material. If you choose not to testify, you may comment by leaving this form with staff or depositing it in the comment box.



Metro

2010 Capacity Ordinance Public comment

Date 11/29/10

No. _____

Please print

Name (required)

VALERIE MCQUAID

Affiliation (if any)

Address (required)

20377 S BEAVER CREEK RD, OREGON CITY

E-mail (required)

bilzreep@yahoo.com

Include my e-mail in your project notification list

Comment topic(s) (check all that apply)

Invest in safe, livable communities

Promote economic development and good jobs

Natural areas protection

Reduce inefficiency, foster innovation and demand accountability

Other _____

Comment (use back or attach additional sheets if necessary)

Why do you meet at 5 pm? Most people are on their way home from work or are cooking dinner!

How do you disseminate info re your meetings? I didn't find out about tonight's meeting till I got a call from Elizabeth G. 2 days ago.

I agree with Elizabeth — if & when our golf course & airport has to go away, let's go with the original plan — light industrial NOT residential!

You have three minutes to testify. Attach supporting material to this form. Make sure your name is on all material. If you choose not to testify, you may comment by leaving this form with staff or depositing it in the comment box.

Clackamas County Commissioners
Oregon City, Oregon

November 29, 2010

Stephen A Gufreda
Carina DeOliveira
15550 S Old Acres Lane
Oregon city, Oregon 97045

To Whom It May Concern:

We are responding to the meeting on 11/29/2010 at the Public Service Building, 2051 Kaen Rd , Oregon City. It is our understanding that with respect to the Beaver creek Road Concept Plan, the county wishes to change the land at the airport and part of the golf course from Title IV (industrial) to residential type designation.

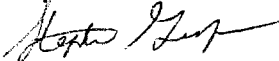
We oppose this change. The change appears to be arbitrary just for the benefit of the land owners (to be able subdivide and build homes) because the Beaver creek Concept Plan, as written, did not work out. Someone described this change as a "bait and switch tactic."

If the land is changed in this way, the impact would be detrimental to the Beaver creek area residents in the following ways. (1) The traffic would be greatly increased beyond the already heavy amount. (2) no provision for improving the existing infrastructure can be done without major funding, which is not available. (3) no thought or provision has been made for schools to serve an increase in population of families moving into a residential area.

It is our feeling that the land be put back outside the Urban Growth Boundary since its industrial designation is not workable. Also, when we moved here we appreciated the open space and the rural aspect of the Beaver creek area and would like to keep it that way. Additionally, the golf course provides recreation for a much larger group of people than just those who live in the area. I know the airport serves a select few, but we like it where it is, and the open land may in the future be used as needed recreational space for the community.

Thank you,

Stephen Gufreda



Carina DeOliveira

