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August 14, 2012

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Andy Duyck, Chair
Washington Co Board of Commissioners
155 North First Avenue, MS-21
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LCDC Acknowledgment of Metro Urban Reserves, and Clackamas County, Multnomah County, Washington County Rural Reserves (Order 12-ACK-001819)

Dear President Hughes, Commissioner Lehan, Commissioner Cogen, and Commissioner Duyck,

I am pleased to inform you that the Land Conservation and Development Commission has acknowledged the Metro Urban Reserves and the Clackamas County, Multnomah County, and Washington County Rural Reserves submittal. The LCDC acknowledgment order finalizing this decision is enclosed.

Judicial review of this order may be obtained by filing a petition for review within 21 days from the service of this final order, pursuant to ORS 197.651.

We appreciate the efforts of Metro and Clackamas County, Multnomah County, and Washington County in completing the urban and rural reserves. Please contact your regional representatives, Anne Debbaut at (503) 725-2182 or email anne.debbaut@state.or.us ; or Jennifer Donnelly at (503)725-2183 or email jennifer.donnelly@state.or.us , if you have any questions or need further assistance.

Yours truly,

Jim Rue
Acting Director

cc: LCDC Objectors
Steve Greenwood, Coordinator, Intergovernmental Regional Solutions
Mike McCallister, Manager, Clackamas County Planning and Zoning
Karen Schilling, Manager, Multnomah County Land Use Planning
Andy Back, Long Range Manager, Washington County Development Services
Dick Benner, Attorney, Metro Land Use Lead Staff Attorney
Robin McArthur, Director, Metro Planning and Development

BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF THE REVIEW OF THE DESIGNATION OF URBAN RESERVES BY METRO AND RURAL RESERVES BY CLACKAMAS COUNTY, MULTNOMAH COUNTY, AND WASHINGTON COUNTY	))))))	**COMPLIANCE ACKNOWLEDGEMENT ORDER 12-ACK-001819**

The Matter of the Review of the Designation of Urban Reserves by Metro and Rural Reserves by Clackamas County, Multnomah County and Washington County, hereafter "Metro Urban and Rural Reserves Submittal" came before the Land Conservation and Development Commission as a referral by the Director of the Department of Land Conservation and Development, pursuant to ORS 195.137 to 195.145, and OAR chapter 660, divisions 25 and 27. In issuing this Acknowledgement Order, the Commission fully considered:

- Metro Ordinance No. 10-1238A, the June 23, 2010 joint and concurrent submittal of Clackamas County, Multnomah County, Washington County, and Metro (initial submittal);
- Metro Ordinance No. 11-1255, the May 13, 2011 (re-designation submittal);
- Objections received;
- The Department's staff reports;
- Written exceptions to the Department's reports; and
- Arguments and information presented at Commission hearings conducted on October 19-22 and 29, 2010 and August 18-19, 2011.

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I. INTRODUCTION

A. Procedural History

1. On June 23, 2010, the Department received Metro Ordinance No. 10-1238A, the joint and concurrent submittal of Clackamas County, Multnomah County, Washington County, and Metro pursuant to ORS 197.628-197.650 (initial submittal).

2. Pursuant to OAR 660-025-0150(1)(c), the Director referred the initial submittal to the Commission for review pursuant to ORS 197.633(1)(c) and (f).

3. Pursuant to OAR 660-025-0140(2)(a), the deadline to file objections to the initial submittal was July 14, 2010. The Department received 46 objections.

4. On September 28, 2010, the Department issued its staff report (DLCD September 28, 2010 Report).

5. Pursuant to OAR 660-025-0160(4), the deadline to file exceptions to the staff report was October 8, 2010. The Department received 33 exception filings to the staff report.

6. On October 19-22, 2010, the Commission held a public hearing in Portland, Oregon; the hearing was continued to October 29, 2010.

7. On October 29, 2010, the Commission voted to remand a portion of the initial submittal as it applied to certain reserve designations in Washington County.

8. On May 13, 2011, the Department received the re-designation submittal, Metro Ordinance No. 11-1255.

9. Pursuant to OAR 660-025-0140(2)(a), the deadline to file objections to was June 3, 2011. The Department received 14 objections.

10. On July 28, 2011, the Department issued its staff report on the re-designation submittal (DLCD July 28, 2011 Report).

11. Pursuant to OAR 660-025-0160(4), the deadline to file exceptions to the staff report was August 8, 2011. The Department received 11 exception filings to the staff report.

12. On August 18-19, 2011, the Commission held a public hearing in Portland, Oregon.

13. On August 19, 2011, the Commission voted to acknowledge the Metro Urban and Rural Reserves Submittal in its entirety, including the 2010 initial submittal, as revised by the 2011 re-designation submittal.

14. This Acknowledgement Order memorializes the decision of the Commission, pursuant to OAR 660-002-0010(6).

B. Background and Overview of Metro Urban and Rural Reserves Decision

The Metro Urban and Rural Reserves Submittal before the Commission includes amendments to the Clackamas, Multnomah, and Washington County comprehensive plans and the Metro Regional Framework Plan (RFP) and Urban Growth Management Functional Plan (UGMFP) to designate urban and rural reserves in the tri-county metropolitan area using the process authorized by the Oregon legislature in 2007 (SB 1011). The Commission reviews urban and rural reserves for acknowledgment "in the manner provided for periodic review." ORS 197.626(1)(c) and (f). This item is before the Commission as a referral from the Director of the Department of Land Conservation and Development (Department). The Commission reviewed the objections, the Department's Reports, which responded to those objections, and exceptions to the Department's reports filed by the participants, heard arguments from the parties, and decided to either sustain or reject each of the objections. Following initial hearings on the matter in 2010, the Commission voted to approve the initial submittal in part; and to reverse and remand portions of that submittal to Metro and Washington County. In response to the Commission vote, Metro and the counties filed a re-designation submittal. This order is a review on the record submitted by Metro and the three counties on both the initial submittal, Ordinance No. 10-1238A and the re-designation submittal, Ordinance No. 11-1255.

1. Purpose of Urban and Rural Reserves

Under ORS 195.143, the designation of urban and rural reserves in the Portland metro region is a cooperative process, in which Metro designates urban reserves and the counties designate rural reserves. The authority provided by statute for designating reserves in this way is dependent on Metro and the counties agreeing on both the urban and rural reserve designations. The purpose section of the Commission's rules implementing ORS 195.143 provides:

> "Urban reserves designated under this division are intended to facilitate long-term planning for urbanization in the Portland metropolitan area and to provide greater certainty to the agricultural and forest industries, to other industries and commerce, to private landowners and to public and private service providers, about the locations of future expansion of the Metro Urban Growth Boundary. Rural reserves under this division are intended to provide long-term protection for large blocks of agricultural land and forest land, and for important natural landscape features that limit urban development or define natural boundaries of urbanization. The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents." OAR 660-027-0005(2).

In adopting the initial submittal, Metro amended Title 11 of the UGMFP, wherein section 3.07.1105 explains the purpose of planning for the urban reserves:

> "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." Exhibit D to Ordinance No. 10-1238A; Metro Record at 8.

The counties define their intent for rural reserves as follows:

> "Rural Reserve areas are intended to provide long-term protection for large blocks of agricultural land and forest land, and for important natural landscape features that limit urban development or define natural boundaries of urbanization." Clackamas Co. Record at iv.

> "Rural reserves are intended to provide long-term protection of agricultural and forest land and landscape features that enhance the unique sense of place of the region." Multnomah Co. Ordinance 1161, Policy 6-A.

"Rural reserves are areas outside the Regional Urban Growth Boundary (UGB) that provide for the long-term protection of agriculture, forestry and/or important natural landscape features." Washington Co. Record at 9549.

In its 2010 report to the Commission, the Department explained the overall purpose and intent of the Metro Urban and Rural Reserves Submittal:

"[The] urban and rural reserves guide where the Portland region may grow (and where it will not) over the next fifty years, it is important to understand that these decisions do *not* commit particular lands to urban development. That will occur only if and when Metro is able to justify an urban growth boundary expansion under other applicable law.

"It is also important to understand that the process and criteria set by the Oregon legislature for designating urban and rural reserves is unlike any other large-scale planning exercise previously carried out in Oregon. With two exceptions, the Department believes that the statutes and rules that guide this effort replaced the familiar standards-based planning process with one based fundamentally on political checks and balances, together with factors that local governments are required to consider in making their decisions. The two exceptions, where the legislature and the Commission have set general standards for reserves are in terms of the overall amount of urban reserves, which must be based on forecasted population and employment growth (ORS 195.145(4)) and the commission's articulation of the purpose of reserves: 'a balance in * * * urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the regions for its residents.' OAR 660-027-0005(2).

"The result is that, in the Department's opinion, the region has substantial discretion in determining the *location* of urban and rural reserves – the framework that will guide *where* the region will grow over the next fifty years *if* the region shows that its needs for housing and employment require additional lands beyond the current urban growth boundary.

"Rural reserves in the Portland metro region will provide the long-term certainty about stability of uses that our agricultural and forest industries need to make significant capital investments. They also will help shape the region and protect the landscapes and natural features that define it.

"Urban reserves will enable communities in the regional and their partners in the private sector and government to plan for efficient improvements to our roads, other transportation systems, sewer and water systems, creating the foundation for great communities that can sustain long-term job creation and provide needed housing." DLCD September 28, 2010 Report at 3.

2. Matter At Issue

Metro's initial decision to designate urban reserves in the three-county region was made on June 3, 2010. Multnomah, Clackamas and Washington counties made their initial final decisions to designate rural reserves in their counties, respectively, on May 13, 27 and June 15, 2010. The four governments submitted their joint and concurrent decision to the Department on June 23, 2010. The initial submittal established a system of urban and rural reserves in the three-county region to guide long-term planning to the year 2060. The initial submittal designated 28,615 acres of urban reserves to accommodate urban growth to 2060, and 266,954 acres of rural reserves to protect agricultural land, forest land and important natural landscape features from urbanization for 50 years. The initial submittal included changes to the counties' comprehensive plans and Metro's RFP and UGMFP, including plan maps that depict the urban and rural reserves.

At the conclusion of its hearing on October 29, 2010, the Commission passed a motion to (1) approve the urban and rural reserve designations as submitted in Clackamas and Multnomah counties; (2) approve the urban reserves in Washington County, with the exception of two areas; and (3) reverse the urban reserve designation of Area 7I, remand the urban reserve designation of Area 7B for further findings, and remand the rural reserve designations in Washington County for further consideration in light of changes made on remand to Areas 7B and 7I.

The Commission chair summarized the motion prior to the vote as follows:

> "* * *[T]he motion is that we remand to Washington County and Metro to reject 7I; we remand to them to develop findings with regard to 7B; we remand Washington County's rural reserves for Washington County and Metro to consider whether to designate some of that rural reserve to urban reserve, capped at [an acreage equal to that contained in Area] 7I * * * so that it is 7I plus the other amount, plus any amount of undesignated land that they want to designate. We are approving everything else in all three counties, and we * * * are determining that any objection not specifically addressed in this motion is being denied."

This Commission vote rejected the urban reserve designation of Area 7I and required Metro and Washington County to make additional findings regarding the urban reserve designation of Area 7B. This vote allowed, but did not require, Metro and Washington County to replace any lands removed from the urban reserves designation as a result of their decisions regarding Areas 7I and 7B. Because Metro based its determination of need on a range forecast and made a policy choice to plan for the upper end of the middle third of its projection, the Commission determined that Metro could remove some lands without adding other lands by either altering its policy choice (to, for example, plan for the middle of the middle third) or by shortening the number of years that the reserves are planned for. Alternatively, Metro and Washington County could decide to leave the decisions concerning the amount of land unchanged, and add other lands as an urban reserve. The vote to remand the Washington County rural reserves allowed Metro and the county discretion in making those decisions.

Subsequent to the Commission's vote on the initial submittal, and without a final written order, Metro adopted amendments to the regional framework plan on April 21, 2011, and Washington County adopted amendments to its comprehensive plan to revise its rural reserve designations on April 26, 2011. Clackamas and Multnomah Counties adopted conforming plan

amendments on April 21 and April 28, 2011, respectively. Clackamas County adopted additional findings to supports its initial decision, but neither the Clackamas County nor Multnomah County amendments changed reserve designations in those counties.

The Metro and Washington County re-designations, submitted May 13, 2011, did not significantly change the overall balance between urban and rural reserves, but adjusted the urban and rural reserve designations in Washington County in the following five ways (*see* Exhibit B to the Supplemental Intergovernmental Agreement between Metro and Washington County):

1. Urban Reserve Area 7B – Removed the urban reserve designation from 28 acres in an area between Council Creek and Highway 47 in the vicinity of the intersection of NW Purdin Road/NW Verboort Road and Highway 47, north of Forest Grove, leaving those 28 acres undesignated; and retaining 480 acres of Area 7B in urban reserves.

2. Urban Reserve Area 7I (Northern Portion) – Changed 263 acres from urban reserve to rural reserve in an area south of NW Long Road, extending from NW Cornelius-Schefflin Road to just east of NW Susbauer Road (North of Cornelius).

3. Urban Reserve Area 7I (Southern Portion) – Removed the urban reserve designation from 360 acres in an area north of the City of Cornelius and south of the general location of NW Hobbs Road, between NW Cornelius-Schefflin Road and the floodplain of Dairy Creek, leaving those 360 acres undesignated.

4. Area to the West of Urban Reserve Area 8B – Designated 352 acres urban reserve, which was formerly undesignated, north of Highway 26 and east of NW Groveland Road.

5. Area to the South of SW Rosedale Road – Removed the rural reserve designation from 383 acres south of SW Rosedale Road, west of SW Farmington Road, leaving those 383 acres undesignated.

Washington County otherwise readopted its rural reserves as initially submitted. The net effect of the changes in Washington County was to decrease the amount of urban reserves designated by 299 acres, to decrease the amount of rural reserves designated by 120 acres, and to increase the amount of undesignated lands in Washington County by 419 acres. These changes are summarized in Table 1.

Table 1: Summary of Re-designation Submittal Changes

	Urban Reserve Acreage Change	Rural Reserve Acreage Change	Undesignated Acreage Change
Area 7B (North Plains)	-28 acres		+28 acres
UR Area 7I - North (Cornelius)	-263 acres	+263 acres	
UR Area 7I - South (Cornelius)	-360 acres		+360 acres
UR Area 8B (North Hillsboro)	+352 acres		-352 acres

South of Rosedale Road		-383 acres	+383 acres
TOTAL	-299 acres	-120 acres	+419 acres

The re-designations also added findings addressing more specifically both the urban and rural reserve factors in cases where Metro designated Foundation Agricultural Land in Washington County for urban reserves.

Following the re-designations, and with the adoption of Metro Ordinance No. 11-1255, Metro has designated 28,256 gross acres as urban reserves throughout the three-county region. Clackamas County Ordinance No. ZDO-233 designates 68,713 acres as rural reserves. Multnomah County Ordinance No. 20-10-1161 designates 46,706 acres as rural reserves. Washington County Ordinance No.740 designates 151,209 acres of rural reserves. The total of rural reserves throughout the three counties is 266,628. Metro Supp. Record at 2.

This Acknowledgement Order is the final order approving the 2010 initial submittal, as revised through the 2011 re-designation submittal, which together constitute the Metro Urban and Rural Reserves Submittal.

3. The Written Record For This Proceeding

1. The DLCD September 28, 2010 staff report with responses to objections.

2. Forty-six objections to the initial submittal filed pursuant to OAR 660-025-0150(1)(c):

Ref.	Objector
1.	Ann Culter
2.	Arthur Dummer
3.	Tualatin Riverkeepers
4.	Coalition for a Prosperous Region
5.	Carol Chesarek
6.	Chris Maletis *et al.*
7.	Dale Burger
8.	Forest Park Neighborhood Association
9.	David Hunnicutt
10.	Oregonians in Action
11.	David Smith
12.	Donald Bowerman *et al.*
13.	Dorothy Partlow
14.	Elizabeth Graser-Lindsey
15.	Hank Skade
16.	Jim Calcagno (Cal Farms)
17.	Jim Irvine
18.	Oregon Department of Agriculture *et al.*
19.	Audubon Society of Oregon
20.	John Burnham

21. John and Judy Cherry
22. Joseph C. Rayhawk (lower Springville)
23. Joseph C. Rayhawk (Peterkort)
24. Kathy Blumenkron
25. Linda Peters
26. 1000 Friends of Oregon *et al.*
27. Gary Gentemann
28. Melissa Jacobsen
29. Michael Wagner
30. Michael Cropp
31. Metropolitan Land Group
32. City of Portland
33. Robert Burnham
34. Robert Zahler
35. Coalition for a Livable Future
36. Sandra Baker
37. Save Helvetia
38. Steve and Kelli Bobosky
39. Susan McKenna
40. VanderZanden Farms
41. Thomas VanderZanden
42. Tim O'Callaghan
43. Tom Szambelan
44. Cities of Tualatin and West Linn
45. William Kaer
46. City of Wilsonville

3. Correspondence identifying material in the record responsive to objections to the initial 2010 submittal:

a. Metro, August 13, 2010
b. Multnomah County, August 13, 2010
c. Washington County, August 13, 2010
d. Clackamas County, August 18, 2010

4. Urban and Rural Reserves submittals

a. Metro Ordinance No.10-1238A, and the following exhibits:
   i. Exhibit A – Map
   ii. Exhibit B – Regional Framework Plan Policy 1.7 Urban and Rural Reserves
   iii. Exhibit C – Title 5 of the Urban Growth Management Functional Plan is repealed
   iv. Exhibit D – Title 11: Planning for New Urban Areas

v. Exhibit E – [Consolidated Findings for Urban and Rural Reserve Designations] Reasons for Designation of Urban and Rural Reserves

b. Clackamas County Ordinance No.ZDO-223, and the following exhibits:

vi. Exhibit A – Chapter 4 Clackamas County Comprehensive Plan amendment, including map

vii. Exhibit B – Urban Rural Reserves findings of fact

c. Multnomah County Ordinance No.1161 and Ordinance No.1165 and the following exhibits:

viii. Exhibit 2 – Findings of Fact

ix. Exhibit 3 – Record Index

d. Washington County Ordinance No.733 and the following exhibits:

x. Exhibit 1 amending the proposed Policy 29, relating to Rural and Urban Reserves designations, of the Rural/Natural Resource Plan;

xi. Exhibit 2 amending the Rural/Natural Resource Plan by the creation of a new map entitled "Rural and Urban Reserves" in Policy 29;

xii. Exhibit 3 amending the Rural/Natural Resource Plan by the creation of a new map entitled "Special Concept Plan Areas" in Policy 29;

xiii. Exhibit 4 amending Policy 3, Intergovernmental Coordination, of the Rural/Natural Resource Plan;

xiv. Exhibit 5 amending Policy 23, Transportation Plan, of the Rural/Natural Resource Plan;

xv. Exhibit 6 amending Policy 27, Urbanization, of the Rural/Natural Resource Plan;

xvi. Exhibit 7 amending Policy 3, Intergovernmental Coordination, of the Comprehensive Framework Plan for the Urban Area;

xvii. Exhibit 8 amending Policy 32, Transportation, of the Comprehensive Framework Plan for the Urban Area; and

xviii. Exhibit 9 amending Policy 40, Regional Planning Implementation, of the Comprehensive Framework Plan for the Urban Area.

5. Thirty-three exceptions to the DLCD September 28, 2010 Report filed pursuant to OAR 660-025-0160(4):

Ref.	Objector
1.	East Bethany Owners
2.	Dale Burger
3.	Dorothy Partlow
4.	Hank Skade
5.	John Burnham
6.	Kathy Blumenkron
7.	Robert Burnham
8.	Robert Zahler
9.	City of Sandy

10. Coalition for a Prosperous Region
11. Carol Chesarek
12. Carol Chesarek – Amabisca
13. Chris Maletis *et al.*
14. Forest Park Neighborhood Association
15. David Smith
16. Donald Bowerman
17. Elizabeth Graser-Lindsey
18. Jim Irvine
19. Audubon Society of Portland
20. John and Judy Cherry
21. Joseph C. Rayhawk (Lower Springville)
22. Joseph C. Rayhawk (Peterkort)
23. 1000 Friends of Oregon *et al.*
24. Michael Wagner
25. Metropolitan Land Group
26. Sandra Baker
27. Save Helvetia
28. Steve and Kelli Bobosky
29. Susan McKenna
30. Thomas VanderZanden
31. Cities of Tualatin and West Linn
32. William Kaer
33. City of Wilsonville

6. The DLCD July 28, 2011 staff report including responses to objections.

7. Fourteen Objections to the re-designation submittal filed pursuant to OAR 660-025-0150(1)(c):

Ref.	Objector
1.	Van De Moortele Family
2.	Coalition for a Prosperous Region
3.	City of Cornelius
4.	City of Hillsboro
5.	1000 Friends of Oregon *et al.*
6.	Department of Agriculture
7.	Joseph C Rayhawk
8.	Save Helvetia Community
9.	Thomas Black
10.	Steve and Kelli Bobosky
11.	Chris and Tom Maletis
12.	Forest Park Neighborhood Association
13.	Metropolitan Land Group
14.	East Bethany Owners

8. Correspondence from Metro dated June 24, 2011 identifying material in the record responsive to objections.

9. Re-designation Submittal:

a. Metro Ordinance No. 11-1255, with exhibits
b. Clackamas County Ordinance No. ZDO-223 with revised findings dated April 21, 2011, with exhibits
c. Multnomah County Ordinance No. 2010-1180 with exhibits
d. Washington County Ordinance No.740 with exhibits

10. Eleven exceptions to the DLCD July 28, 2011 Report filed pursuant to OAR 660-025-0160(4):

Ref.	Objector
1.	1000 Friends of Oregon *et al.*
2.	City of Cornelius
3.	Linda Peters
4.	Save Helvetia
5.	East Bethany Owners
6.	Joseph C Rayhawk
7.	Metro
8.	Cities of Tualatin and West Linn
9.	Chris and Tom Maletis
10.	Metropolitan Land Group
11.	Van De Moortele Family

C. Applicable Law

1. Metro Urban and Rural Reserves Statutory and Rule Requirements

ORS 195.137 to 195.145 provide the statutory authorization for rural reserve designation and a process for urban reserve designation that is unique to the Portland metropolitan region. Adopted in 2007 as SB 1011, these statutes also provide criteria regarding the amount of urban reserve land;[1] and both criteria and factors for the location of urban reserve land;[2] the location of rural reserves;[3] and the uses allowed within an urban reserve.[4]

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[1] ORS 195.145(4) provides:

> "Urban reserves designated by a metropolitan service district and a county pursuant to subsection (1)(b) of this section must be planned to accommodate population and employment growth for at least 20 years, and not more than 30 years, after the 20-year period for which the district has demonstrated a buildable land supply in the most recent inventory, determination and analysis performed under ORS 197.296."

[2] ORS 195.145(5) provides:

In addition to statutory provisions governing the designation of reserves, the legislature directed the Commission to adopt rules implementing the statutes. ORS 195.141(4); ORS 195.145(6). Shortly after the effective date of SB 1011, the Commission adopted OAR chapter 660, division 27, which includes implementing measures for the counties and Metro to employ in

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"A district and a county shall base the designation of urban reserves under subsection (1)(b) of this section upon consideration of factors including, but not limited to, whether land proposed for designation as urban reserves, alone or in conjunction with land inside the urban growth boundary:

"(a) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments;

"(b) Includes sufficient development capacity to support a healthy urban economy;

"(c) Can be served by public schools and other urban-level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers;

"(d) Can be designed to be walkable and served by a well-connected system of streets by appropriate service providers;

"(e) Can be designed to preserve and enhance natural ecological systems; and

"(f) Includes sufficient land suitable for a range of housing types."

[3] ORS 195.141 provides in part:

"(2) Land designated as a rural reserve:

"(a) Must be outside an urban growth boundary.

"(b) May not be designated as an urban reserve during the urban reserve planning period described in ORS 195.145(4) ["at least 20 years, and not more than 30 years, after the 20-year period for which the district has demonstrated a buildable land supply in the most recent inventory, determination and analysis performed under ORS 197.296."]

"(c) May not be included within an urban growth boundary during the period of time described in paragraph (b) of this subsection.

"(3) When designating a rural reserve under this section to provide long-term protection to the agricultural industry, a county and a metropolitan service district shall base the designation on consideration of factors including, but not limited to, whether land proposed for designation as a rural reserve:

"(a) Is situated in an area that is otherwise potentially subject to urbanization during the period described in subsection (2)(b) of this section, as indicated by proximity to the urban growth boundary and to properties with fair market values that significantly exceed agricultural values;

"(b) Is capable of sustaining long-term agricultural operations;

"(c) Has suitable soils and available water where needed to sustain long-term agricultural operations; and

"(d) Is suitable to sustain long-term agricultural operations, taking into account:

"(A) The existence of a large block of agricultural or other resource land with a concentration or cluster of farms;

"(B) The adjacent land use pattern, including its location in relation to adjacent nonfarm uses and the existence of buffers between agricultural operations and nonfarm uses;

"(C) The agricultural land use pattern, including parcelization, tenure and ownership patterns; and

"(D) The sufficient of agricultural infrastructure in the area."

[4] ORS 195.145(3) provides in part:

"In carrying out subsections (1) and (2) of this section:

"(a) Within an urban reserve, neither the commission nor any local government shall prohibit the siting on a legal parcel of a single family dwelling that would otherwise have been allowed under law existing prior to designation as an urban reserve."

their reserve determinations. The Commission adopted amendments to OAR chapter 660, division 27 on October 19, 2010. The Department filed the amended division and it became effective under ORS 183.355(2) on October 20, 2010. The Commission reviewed this matter under division 27 as effective on that date.

The rules in this division include provisions regarding the amount of urban reserve land;[5] the location of urban reserves;[6] the location of rural reserves;[7] and planning for areas inside urban and rural reserves.[8]

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[5] OAR 660-027-0040 provides in part:

> "(2) Urban reserves designated under this division shall be planned to accommodate estimated urban population and employment growth in the Metro area for at least 20 years, and not more than 30 years, beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in the most recent inventory, determination and analysis performed under ORS 197.296. Metro shall specify the particular number of years for which the urban reserves are intended to provide a supply of land based on the estimated land supply necessary for urban population and employment growth in the Metro area for that number of years. The 20- to 30-year supply of land specified in this rule shall consist of the combined total supply provided by all lands designated for urban reserves in all counties that have executed an intergovernmental agreement with Metro in accordance with OASR 660-027-0030.
> "(3) If Metro designates urban reserves under this division prior to December 31, 2009, it shall plan the reserves to accommodate population and employment growth for at least 20 years, and not more than 30 years, beyond 2029. Metro shall specify the particular number of years for which the urban reserves are intended to provide a supply of land."

[6] OAR 660-027-0050 provides:

> "Urban Reserve Factors: When identifying and selecting lands for designation as urban reserves under this division, Metro shall base its decision on consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB:
> "(1) Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments;
> "(2) Includes sufficient development capacity to support a healthy economy;
> "(3) Can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers;
> "(4) Can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers;
> "(5) Can be designed to preserve and enhance natural ecological systems;
> "(6) Includes sufficient land suitable for a range of needed housing types;
> "(7) Can be developed in a way that preserves important natural landscape features included in urban reserves; and
> "(8) Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves."

[7] OAR 660-027-0060 provides:

> "(1) When identifying and selecting lands for designation as rural reserves under this division, a county shall indicate which land was considered and designated in order to provide long-term protection to the agriculture and forest industries and which land was considered and designated to provide long-term protection of important natural landscape features, or both. Based on this choice, the county shall apply the appropriate factors in either section (2) or (3) of this rule, or both.
> "(2) Rural Reserve Factors: When identifying and selecting lands for designation as rural reserves intended to provide long-term protection to the agricultural industry or forest industry, or both, a county shall base its decision on consideration of whether the lands proposed for designation:

"(a) Are situated in an area that is otherwise potentially subject to urbanization during the applicable period described in OAR 660-027-0040(2) or (3) as indicated by proximity to a UGB or proximity to properties with fair market values that significantly exceed agricultural values for farmland, or forestry values for forest land;

"(b) Are capable of sustaining long-term agricultural operations for agricultural land, or are capable of sustaining long-term forestry operations for forest land;

"(c) Have suitable soils where needed to sustain long-term agricultural or forestry operations and, for agricultural land, have available water where needed to sustain long-term agricultural operations; and

"(d) Are suitable to sustain long-term agricultural or forestry operations, taking into account:

"(A) for farm land, the existence of a large block of agricultural or other resource land with a concentration or cluster of farm operations, or, for forest land, the existence of a large block of forested land with a concentration or cluster of managed woodlots;

"(B) The adjacent land use pattern, including its location in relation to adjacent non-farm uses or non-forest uses, and the existence of buffers between agricultural or forest operations and non-farm or non-forest uses;

"(C) The agricultural or forest land use pattern, including parcelization, tenure and ownership patterns; and

"(D) The sufficiency of agricultural or forestry infrastructure in the area, whichever is applicable.

"(3) Rural Reserve Factors: When identifying and selecting lands for designation as rural reserves intended to protect important natural landscape features, a county must consider those areas identified in Metro's February 2007 'Natural Landscape Features Inventory' and other pertinent information, and shall base its decision on consideration of whether the lands proposed for designation:

"(a) Are situated in an area that is otherwise potentially subject to urbanization during the applicable period described in OAR 660-027-0040(2) or (3);

"(b) Are subject to natural disasters or hazards, such as floodplains, steep slopes and areas subject to landslides;

"(c) Are important fish, plant or wildlife habitat;

"(d) Are necessary to protect water quality or water quantity, such as streams, wetlands and riparian areas;

"(e) Provide a sense of place for the region, such as buttes, bluffs, islands and extensive wetlands;

"(f) Can serve as a boundary or buffer, such as rivers, cliffs and floodplains, to reduce conflicts between urban uses and rural uses, or conflicts between urban uses and natural resource uses;

"(g) Provide for separation between cities; and

"(h) Provide easy access to recreation opportunities in rural areas, such as rural trails and parks.

"(4) Notwithstanding requirements for applying factors in OAR 660-027-0040(9) and section (2) of this rule, a county may deem that Foundation Agricultural Lands or Important Agricultural Lands within three miles of a UGB qualify for designation as rural reserves under section (2) without further explanation under OAR 660-027-0040(10)."

[8] The applicable version of OAR 660-027-0070, effective October 20, 2010, which the Commission has since amended in 2012, provided:

"(1) Urban reserves are the highest priority for inclusion in the urban growth boundary when Metro expands the UGB, as specified in Goal 14, OAR chapter 660, division 24, and in ORS 197.298.

"(2) In order to maintain opportunities for orderly and efficient development or urban uses and provision of urban services when urban reserves are added to the UGB, counties shall not amend comprehensive plan provisions or land use regulations for urban reserves designated under this division to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as urban reserves until the reserves are added to the UGB, except as specified in sections (4) through (6) of this rule.

"(3) Counties that designate rural reserves under this division shall not amend comprehensive plan provisions or land use regulations to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as rural reserves unless and until the reserves are re-designated, consistent with this division, as land other than rural reserves, except as specified in sections (4) through (6) of this rule.

In addition to these statutes and rules, ORS 197.010(2)(a) provides legislative land use policy, including the following "overarching principles guiding the land use program in the State of Oregon":

> "(A) Provide a healthy environment;
> "(B) Sustain a prosperous economy;
> "(C) Ensure a desirable quality of life; and
> "(D) Equitably allocate the benefits and burdens of land use planning."

ORS 197.010(2)(c) provides that the overarching principles provide "guidance" to a public body when the public body adopts or interprets goals, comprehensive plans and land use regulations implementing the plans, or administrative rules implementing a provision of statute; or interprets a law governing land use. ORS 197.010(2)(d) clarifies the legislative intent: "* * *

"(4) Notwithstanding the prohibitions in sections (2) and (3) of these rules, counties may adopt or amend comprehensive plan provisions or land use regulations as they apply to lands in urban reserves, rural reserves or both, unless an exception to Goals 3, 4, 11 or 14 is required, in order to allow:

"(a) Uses that the county inventories as significant Goal 5 resources, including programs to protect inventoried resources as provided under OAR chapter 660, division 23, or inventoried cultural resources as provided under OAR chapter 660, division 16;

"(b) Public park uses, subject to the adoption or amendment of a park master plan as provided in OAR chapter 660, division 34;

"(c) Roads, highways and other transportation and public facilities and improvements, as provided in ORS 215.213 and 215.283, OAR 660-012-0065, and 660 -033-0130 (agricultural land) or OAR chapter 660, division 6 (forest lands);

"(d) Other uses and land divisions that a county could have allowed as an outright permitted use or as a conditional use under ORS 215.213 and 215.283 or Goal 4 if the county had amended its comprehensive plan to conform to the applicable state statute or administrative rule prior to its designation of rural reserves.

"(5) Notwithstanding the prohibition in sections (2) through (4) of this rule a county may amend its comprehensive plan or land use regulations as they apply to land in an urban or rural reserve that is subject to an exception to Goals 3 or 4, or both, acknowledged prior to designation of the subject property as urban or rural reserves, in order to authorize an alteration or expansion of uses allowed on the land under the exception provided:

"(a) The alteration or expansion would comply with the requirements described in ORS 215.296, applied whether the land is zoned for farm use, forest use, or mixed farm and forest use;

"(b) The alteration or expansion conforms to applicable requirements for exceptions and amendments to exceptions under OAR chapter 660, division 4, and all other applicable laws; and

"(c) The alteration or expansion would not expand the boundaries of the exception area unless such alteration or expansion is necessary in response to a failing on-site wastewater disposal system.

"(6) Notwithstanding the prohibitions in sections (2) through (5) of this rule, a county may amend its comprehensive plan or land use regulations as they apply to lands in urban reserves or rural reserves or both in order to allow establishment of a new sewer system or the extension of a sewer system provided the exception meets the requirements under OAR 660-011-0060(9)(a).

"(7) Counties, cities and Metro may adopt and amend conceptual plans for the eventual urbanization of urban reserves designated under this division, including plans for eventual provision of public facilities and services, roads, highways and other transportation facilities, and may enter into urban service agreements among cities, counties and special districts serving or projected to serve the designated urban reserve area.

"(8) Metro shall ensure that lands designated as urban reserves, considered alone or in conjunction with lands already inside the UGB, are ultimately planned to be developed in a manner that is consistent with the factors in OAR 660-027-0050."

Use of the overarching principles in paragraph (a) of this subsection * * * is not a legal requirement for the Legislative Assembly or other public body and is not judicially enforceable."

Pursuant to OAR 660-027-0080, the Commission reviews adopted urban and rural reserves "in the manner provided for periodic review under ORS 197.628 to 197.650." OAR 660-025-0160(6) provides that the Commission must issue an order that does one or more of the following:

> (a) Approves the [submittal];
> (b) Remands the [submittal] to the local government, including a date for re-submittal; [or]
> (c) Requires specific plan or land use regulation revisions to be completed by a specific date[.]

2. Commission's Standard of Review

The Commission is required to adopt rules for review and approval of the designation of urban and rural reserves. ORS 197.633(2)(e)(B). The Commission reviews the Metro Urban and Rural Reserves Submittal in the manner provided for periodic review. OAR 660-027-0080(2). The joint and concurrent submittal of the local governments "shall include findings of fact and conclusions of law that demonstrate that the adopted or amended plans, policies and other implementing measures to designate urban and rural reserves comply with this division, the applicable statewide planning goals, and other applicable administrative rules." OAR 660-027-0080(4). The Commission's review assures that the Metro Urban and Rural Reserves Submittal complies with the statewide goals and administrative rules, and the local governments complied with SB 1011 and division 27 by considering the factors. *Id.*

Additionally, review in the manner of periodic review is subject to ORS 197.633(3):

"The commission's standard of review:

> "(a) For evidentiary issues, is whether there is substantial evidence in the record as a whole to support the local government's decision.
> "(b) For procedural issues, is whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding.
> "(c) For issues concerning compliance with applicable laws, is whether the local government's decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the regional framework plan, the functional plan and land use regulations. The commission shall defer to a local government's interpretation of the comprehensive plan or land use regulations in the manner provided in ORS 197.829. For purposes of this paragraph, 'complies' has the meaning given the term 'compliance' in the phrase 'compliance with the goals' in ORS 197.747."[9]

[9] ORS 197.633(3) became effective on June 23, 2011. Or Laws 2011, ch 469, §2.

The Court of Appeals has further explained that in applying this standard of review, the Commission "must demonstrate in its opinion the reasoning that leads the agency from the facts that it has found to the conclusions that it draws from those facts." *1000 Friends of Oregon v. LCDC*, 244 Or App 239, 267, 259 P3d 1021 (2011) *(McMinnville)* (quoting *1000 Friends of Oregon v. LCDC*, 237 Or App 213, 224, 239 P3d 272 (2010) (*Woodburn*).[10]

The Commission's rules require that Metro and the counties make findings that explain why Metro and the counties made the decisions that they did in the Metro Urban and Rural Reserves Submittal. Under OAR 660-027-0040(10), Metro and the counties are required to "adopt a single, joint set of findings of fact, statements of reasons and conclusions explaining why areas were chosen as urban or rural reserves, how these designations achieve the objective stated in OAR 660-027-0005(2), and the factual and policy basis for the estimated land supply determined under section (2) of this rule." Further, OAR 660-027-0040(11) requires that "if Metro designates [Foundation Agricultural Land] as urban reserves, the findings and statement of reasons shall explain, by reference to the factors in OAR 660-027-0050 and 660-027-0060(2), why Metro chose the Foundation Agricultural Land for designation as urban reserves rather than other land considered under this division." And, OAR 660-027-0080(4) requires "[t]he joint and concurrent submittal to the Commission shall include findings of fact and conclusions of law that demonstrate that the adopted or amended plans, policies and other implementing measures to designate urban and rural reserves comply with this division, the applicable statewide planning goals, and other applicable administrative rules."

The requirement for findings is not simply a technicality; its purpose is to assure that the Commission can perform its review function and that it does not substitute its judgment for that of Metro and the counties. *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16 n 6, 38 P3d 956 (2002); *Naumes Properties, LLC v. City of Central Point*, 46 Or LUBA 304, 314 (2004). In a recent decision on the City of Bend's proposed urban growth boundary, the Commission decided that where local findings are inadequate, the Commission nonetheless may affirm the local decision if the local government identifies evidence in the record that "clearly supports" its decision. This is analogous to the express statutory authority for the Land Use Board of Appeals to affirm local land use decisions in these circumstances (the Commission indicated that it was adopting the same approach). LUBA has narrowly interpreted the term "clearly supports" in ORS 197.835(11)(b) to mean "makes obvious" or "makes inevitable." *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101, 122 (1995). ORS 197.835(11)(b) authorizes LUBA to remedy minor oversights and imperfections in local government land use decisions, but does not allow LUBA to assume the responsibilities assigned to local governments, such as the weighing of evidence." *Salo v. City of Oregon City*, 36 Or LUBA 415, 429 (1999).

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[10] Several parties have cited *City of West Linn v. LCDC*, 201 Or App 419, 426-429, 119 P3d 285 (2005) for the Commission's standard of review. In *City of West Linn*, the Court of Appeals addressed at length *its* own standard of review under ORS 197.650 of a Commission order in a UGB amendment decision. While that case provides some useful guidance, it is important to note that the standard of review for the court is different from the standard for the Commission; and that the standard of judicial review in the event the Commission's decision in this matter is appealed is controlled by a different statute (ORS 197.651) than the statute that provided the standard of review in *City of West Linn* (ORS 197.650).

3. Procedural Rules

Pursuant to ORS 197.633(2), the Commission has adopted rules, OAR chapter 660, division 25, to govern procedures for matters reviewed in the manner of periodic review. Under OAR 660-025-0230(1)(d), the applicable version of division 25 to this review is the version filed and effective on May 15, 2006. The 2011 Oregon legislature passed HB 2130, which made changes to ORS 197.633, effective June 23, 2011.[11] To the extent those amendments conflict with division 25, the Commission followed the amended provisions of ORS 197.633 during its review of the re-designation submittal.

II. PROCEDURAL ISSUES

A. Decisions on Validity of Objections

The Department received a total of 46 letters of objection to the initial submittal and14 letters of objection to the re-designation submittal. Many of the objection letters included numerous specific objections. The Department analyzed the validity of each objection in the DLCD September 28, 2010 Report or the DLCD July 28, 2011 Report.

Under OAR 660-025-0140(2), in order for an objection to be valid, it must:

"(a) Be in writing and filed no later than 21 days from the date the notice was mailed by the local government;
"(b) Clearly identify an alleged deficiency in the work task;
"(c) Suggest specific revisions that would resolve the objection; and
"(d) Demonstrate that the objecting party participated at the local level orally or in writing during the local process."

The Court of Appeals has further explained that objectors before this Commission must "make an explicit and particular specification of error by the local government." *McMinnville*, 244 Or App at 268-269.

The Department determined that 33 objections to the initial submittal were valid and addressed them in the DLCD September 28, 2010 Report. The Department found that several objections to the initial submittal did not satisfy the requirements of OAR 660-025-0140(2) and recommended that the Commission not consider those objections.

The following list includes objections the Department determined to be invalid and comments received that do not object to any aspect of the reserves decision. Objections that support the reserves decision, or otherwise do not object to the submittals, are indicated as "no objection" in the list below.

[11] In February 2012, the Commission adopted amendments to division 25 to conform the rule to the statutory amendments made by HB 2130. A copy of the applicable version of division 25 is attached as Attachment 1 to this compliance acknowledgement order.

Ref.	Objector	Explanation
2	Arthur Dummer	No citation
7	Dale Burger	No citation and no remedy
17-2	Jim Irvine	No citation
19	Audubon Society of Portland	No remedy
22	Joseph Rayhawk	No remedy
27	Gary Gentemann	No objection
31-6	Metropolitan Land Group	No remedy
35	Coalition for a Livable Future	No citation
38-4	Steve and Kelly Bobosky	No citation
38-4	Steve and Kelly Bobosky	No citation
40	Thomas J. VanderZanden	No objection
45	William Kaer	No objection
42-6	Tim O'Callaghan	No remedy

The Department recommended that the Commission reject the objections from these objectors as invalid under OAR 660-025-0140(2). The Commission allowed each party an opportunity to argue whether the objection(s) are valid. In four instances, the Commission disagreed with the Department's recommendation. The Commission allowed Dale Burger, Audubon Society of Portland, Steve and Kelly Bobosky, and Metropolitan Land Group to argue the merits of their objections.

The Department determined that all objections to the 2011 re-designation submittal were valid. Challenges were raised to the validity of some objections, on the basis that they exceeded the scope of the "remand" hearing and raised issues that were, or could have been, raised during the initial review proceedings. The Commission rejects those challenges. While the focus of the August 18-19, 2011 oral argument was the re-designation submittal, the proceedings were a continuation of the initial proceedings. While a vote was taken, no final order was issued, and no issues were finally resolved following the initial hearings, and therefore no parties were precluded from raising, or continuing to raise issues related to the Metro Urban and Rural Reserves Submittal.

B. Decision on City of Sandy's Exception

Under the Commission's rules, persons who filed a valid objection to a submittal were permitted to file written exceptions to the Department's staff report. Exceptions to the report are governed by OAR 660-025-0160(4), which provides in part: "Persons who filed valid objections or an appeal, and the submitting local government, may file written exceptions to the director's report within ten (10) days of the date the report is mailed." Thirty-three objectors filed exceptions to the DLCD September 28, 2010 Report and eleven objectors filed exceptions to the July 28, 2011 Report.

Subsequent to distribution of the DLCD September 28, 2010 Report, the City of Sandy submitted a letter dated October 8, 2010 to the Department, during the period for filing exceptions. The letter requested permission to testify at the Commission hearing. The City of Sandy had not filed an objection. The Commission concluded that the city neither filed a valid

objection under OAR 660-025-0140(2) nor is it a submitting local government. As a result, the Commission determined that the city's exception is not permitted and did not consider it. *See also*, Section II.C. below.

C. Oral Argument

OAR 660-025-0085(5)(c) provides the procedures for oral argument at Commission hearings:

> "Oral argument will be allowed. The local government or governments whose decision is under review and parties who filed objections or an appeal may present oral argument. Oral argument will not be an opportunity to present new evidence regarding the matter before the commission. * * * *Other affected local governments may address only those issues raised in objections or the appeal.*" Emphasis added.

The Commission permitted all affected local governments and parties who filed objections an opportunity to present oral argument.

The City of Sandy maintained that it is affected by the reserves decision. The Commission found that the city is an affected local government for the purposes of OAR 660-025-0085(5)(c). The Commission allowed the city to present argument concerning issues raised in objections from other parties. However, because the issues raised in the city's October 8, 2010 letter were not raised in other objections, the Commission did not allow argument from the city on the issues in the city's letter.

D. New Evidence and Information

In providing oral argument to the Commission during the 2010 and 2011 public hearings, several parties distributed written handouts to the Commission.[12] The Commission also received a memorandum from the director and legal counsel.[13] To the extent that any of the materials in the written handouts distributed in 2010 constitutes new evidence or information, the Commission moved to request that each of the documents be included in its consideration and review of the submittal under OAR 660-025-0160(5). The Commission also requested that to the extent any of the materials in or attached to the written exceptions filed in the 2010 proceeding constituted new evidence or information, that that information or evidence be included in its consideration and review of the submittal under OAR 660-025-0160(5).

The 2011 legislature enacted HB 2130 which amended, *inter alia*, ORS 197.633. ORS 197.633(3), as amended, provides in part, "The commission shall confine its review of evidence to the local record." The amendment became effective on June 23, 2011, prior to the

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[12] For example, the Washington County Farm Bureau took the Commission and the parties on a PowerPoint tour of the areas in Washington County implicated in the initial submittal. The Commission afforded all parties the opportunity to respond to that tour.

[13] October 28, 2010 Memorandum regarding "Metro Reserves Deliberations" from Richard Whitman and Steve Shipsey. Attachment 2 to this compliance acknowledgement order.

Commission hearing on the re-designation decision. The Commission therefore no longer had authority to consider new evidence or information in reviewing the re-designation decision.[14]

At the 2010 hearings, the Commission offered Metro and the respective counties the opportunity to respond to objectors, including the new evidence and information presented orally or in writing by the objectors at the Commission's request pursuant to OAR 660-025-0085(5)(d) and 660-025-0160(5). At the 2011 hearings, the Commission again afforded Metro and the respective counties the opportunity to respond to objectors.

E. Official Notice

At its October 19-22, 2010 hearing, Metro requested that the Commission take official notice of:

- Metro Resolution No. 09-4094 (Attachment 3 to the compliance acknowledgement order)
- LCDC Order 07-WKTASK-001726 (Attachment 4 to the compliance acknowledgement order)

The Commission takes official notice of the requested items. OAR 660-025-0085(5)(e).

III. COMMISSION REVIEW

A. Commission's Scope of Review

OAR 660-027-0080(4) provides the Commission's scope of review as follows:

> "The Commission shall review the submittal for:
>
> "(a) Compliance with the applicable statewide planning goals. Under ORS 197.747 'compliance with the goals' means the submittal on the whole conforms with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature. To determine compliance with the Goal 2 requirement for an adequate factual base, the Commission shall consider whether the submittal is supported by substantial evidence. Under ORS 183.482(8)(c), substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding;
>
> "(b) Compliance with applicable administrative rules, including but not limited to the objective provided in OAR 660-027-0005(2) [i.e. a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents] and the urban and rural reserve designation standards provided in OAR 660-027-0040; and

[14] While the Department report correctly states that OAR 660-025-0160(5) provides for new evidence or information, the Commission had not yet amended the rule to conform to the recently enacted legislation that had become effective the prior month. *See* DLCD July 28, 2011 Report at 10. Thus, in this Acknowledgement Order, the Commission applies ORS 197.633(3) and not OAR 660-025-0160(5) to the re-designation submittal.

"(c) Consideration of the factors in OAR 660-027-0050 or 660-027-0060, whichever are applicable."

Thus, the Commission primarily and specifically reviews the decision based on four basic elements: compliance with the statewide planning goals; compliance with the "best achieves" standard of OAR 660-027-0005(2); compliance with the amount of land standard of OAR 660-027-0040; and consideration of the factors in OAR 660-027-0050 or 660-027-0060.

1. Compliance with the Statewide Planning Goals

OAR 660-027-0080(4)(a) and ORS 197.747 provide that "compliance with the goals" means "the submittal on the whole conforms with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature." In addition, not all goals apply to the reserves decision and some goals may apply, but only in a limited fashion.

The requirement to comply with the goals focuses on assuring that the underlying main purpose of the goal is met, even if there are minor qualitative deviations from the technical requirements of the goal or an implementing rule. *1000 Friends of Oregon v. LCDC (Lane Co.),* 305 Or 384, 397, 752 P2d 271 (1988). In determining whether any goal compliance deviation is "technical or minor" in nature under ORS 197.747, the Commission engages in a qualitative, not quantitative, analysis. *Id.*

2. Compliance with the Best Achieves Standard

Consistent with the legislative findings in ORS 195.137, the Commission established the objective of the urban and rural reserves as "a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents." OAR 660-027-0005(2). In adopting division 27, the Commission intended that this "best achieves" standard would require less scrutiny for the reserves decision than the requirements for locational decisions involved in urban growth boundary expansions (to consider and apply factors to alternative candidate areas – discussed below). The standard applies to the designation "in its entirety," it does not require Metro or a county to rank alternative areas. It is a standard that Metro and the counties must demonstrate has been met, through their findings.[15]

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[15] During the Commissions' consideration of the OAR chapter 660, division 27 rules, the Commissioner who chaired the rules workgroup explained the objective of the "best achieves" standard, stating, "I think it's important to recognize that the workgroup never saw that best requirement as being something that would require a detailed parcel to parcel type analysis. And there was real worry that it would even be construed that way because that was the opposite of the kind of fluid creative process we were hoping to be able to create. And that instead of being a process that would require exactitude found in like a parcel to parcel comparison that this best concept is supposed to focus on the collective overall regional process. It would be looking for the best fundamental balance between he competing areas. It would not require a ranking." The Commission adopted that understanding (Transcript, LCDC January 24-25, 2008 hearing on Metro Urban and Rural Reserves Rule at 1, 4). That transcript is attached as Attachment 5 to this Acknowledgment Order.

The standard applies to the submittal in its entirety. The Commission interprets the standard to apply in such a manner that concerns about one or more areas could result in a determination that the standard is not met (*i.e.*, the submittal in its entirety could fail to meet this standard because of problems with one or more particular designations).

In addition, there is a relationship between the "factors" that Metro and the counties must consider for urban reserves under OAR 660-027-0050 and rural reserves under OAR 660-027-0060, and the overall objective in OAR 660-027-0005(2). Metro and the counties must explain how the overall objective is met through their findings applying the urban and rural reserve factors to determine which areas to designate as urban and rural reserves.

3. Compliance with the Amount of Land Standard

In designating urban reserves, ORS 195.145(4) and OAR 660-027-0040(2) prescribe the amount of land that Metro may designate. OAR 660-027-0040(2) provides:

> "Urban reserves designated under this division shall be planned to accommodate estimated urban population and employment growth in the Metro area for at least 20 years, and not more than 30 years, beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in the most recent inventory, determination and analysis performed under ORS 197.296. Metro shall specify the particular number of years for which the urban reserves are intended to provide a supply of land, based on the estimated land supply necessary for urban population and employment growth in the Metro area for that number of years. The 20 to 30-year supply of land specified in this rule shall consist of the combined total supply provided by all lands designated for urban reserves in all counties that have executed an intergovernmental agreement with Metro in accordance with OAR 660-027-0030."

To designate the appropriate amount of reserves, Metro must know for which years and for how many years it is planning. The rule involves two different planning periods: the first is the "20-year planning period for which Metro has demonstrated a buildable land supply in the most recent inventory, determination and analysis performed under ORS 197.296" (hereafter, the "UGB-planning period"), while the second planning period is the 20 to 30-year period for which the urban reserves reserve land (the "UR-planning period"). The statute and rules provide Metro a substantial degree of discretion concerning both: (a) the *time period* that the urban reserves are planned to accommodate population and employment growth for; and (b) the *methods and policy considerations* that Metro uses to project future population and employment. The statute and rules also provide Metro significant discretion in determining how to apply its overall regional projections to parts of the region (counties).

4. Consideration of the Factors

OAR 660-027-0040(10) and (11), together with OAR 660-027-0050 (urban) and 660-027-0060 (rural), require the Commission to review the submittal to determine whether Metro and the counties considered and applied the factors for urban and rural reserves. Where the

submittal includes Foundation Agricultural Land, OAR 660-027-0040(11) requires the Commission to determine whether Metro and the counties considered and applied both the urban reserve factors and the rural reserve factors. The Commission confronts two related questions: (a) what it means for Metro and the counties to consider and apply the factors; and (b) whether the rule requires Metro and the counties to consider and apply the factors to each area, to the region as a whole, or to each county.

a. What is the Meaning of "Consider and Apply the Factors"?

The Commission finds that division 27 requires Metro and the counties to evaluate alternative areas in terms of each of the factors, and to then explain why it selected a particular area as an urban reserve or a rural reserve. For areas containing Foundation Agricultural Land that are considered as urban reserves, the rule requires Metro to do this evaluation in terms of both the urban and rural factors.

This evaluation does not require a ranking, nor does it require that the "best" suited lands be designated as either an urban or rural reserve, but it does require the county and Metro to show that they evaluated alternative areas in terms of each of the factors, *1000 Friends of Oregon v. Metro (Ryland Homes)*, 174 Or App 406, 409-410, 26 P3d 151 (2001), and that their findings explain why each area's designation as an urban or rural reserve is appropriate. While the UGB amendment process requires more stringent evaluation of the factors, as in UGB amendment proceedings, the Commission concludes "[n]o single factor is of such importance as to be determinative * * * nor are the individual factors necessarily thresholds that must be met." *Citizens Against Irresponsible Growth v. Metro*, 179 Or App at 17. In other words, as to any one area, the designating governmental body does not have to determine that the area complies with or meets every factor.[16] The designating body considers the factors together, and weighs and balances the factors as a whole.

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[16] The staff report to the Commission for the rulemaking to adopt division 27 discussed the intent for "consideration of factors" thoroughly:

> "Factors: It is important to note that the intent is for the rule to include and, where necessary, clarify the factors in SB 1011, but also to expand the list of factors (as allowed by that statute) in order to address additional concerns discussed by the workgroup (see rules 0050 and 0060 below for more detailed discussion of the particular additional factors proposed as part of these rules by the workgroup).
>
> "The workgroup discussed the term 'consideration of factors.' The proposed rules are based on the understanding that 'factors' are a special type of 'criteria' similar to the 'factors' proscribed for UGB location under Goal 14. As such, a general principle for Goal 14 factors applies here: factors are not 'independent criteria' – every parcel or area considered for urban or rural reserves would not be required to meet each and every factor. Instead, the factors are applied, weighed and balanced to select and evaluate areas for designation as urban or rural reserves. Metro and the counties must apply all the factors, not merely 'consider' them, and must use the factors to compare alternative locations for the reserves. The group decided that the requirement to 'consider' the factors in the statute is not meant to imply that any factor may be simply 'considered but then disregarded' – all the factors must be considered, applied together (which also implies they must be 'balanced' in the manner of Goal 14), and Metro and counties must demonstrate that they have done this.
>
> "The term 'consideration of factors' was previously adopted by LCDC in specifying the evaluation and selection of land for a UGB under Goal 14. Thus, there is precedent set by both LCDC and the courts

b. What Lands Does Metro or a County Apply the Factors To?

The Commission finds that division 27 requires Metro and the counties to apply the factors to areas, not to individual properties, and not to the entire region. As stated in the history of the Commission's division 27 rulemaking and in the legislative history for Senate Bill 1011, the reserve factors derive from the Goal 14 locational factors. *See* note 16. Those factors are applied to alternative locations for expanding an urban growth boundary to decide which one(s) to select to include within the expanded UGB. *1000 Friends of Oregon v. Metro (Ryland Homes)*, 174 Or App at 417. Similarly, under the Commission's division 21 urban reserves

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regarding the interpretation and employment of 'factors.' As indicated above, there was considerable discussion of the term 'factors' by the workgroup, including advice from LCDC legal counsel, and the group has concluded that 'factors' under SB 1011 are intended to be employed and interpreted in the same manner as the UGB factors in Goal 14. According to legal counsel, while the courts have not been entirely consistent in their interpretation of 'factors,' some legal precedent is worth noting in order to clarify the intent of 'factors' under the proposed reserve rules.

"First, the courts have indicated 'factors' are a type of 'criteria' (this is important because the workgroup discussion revealed that many planners consider 'criteria' to be something different than 'factors,' since typically a set of factors are 'considered' and 'weighed' in arriving at a decision).

"Second, a Court of Appeals interpretation of the term 'factors' was paraphrased in LCDC's 2006 UGB Amendment rules, OAR 660-24-0060(3), which state that: 'The boundary location factors of Goal 14 are not independent criteria. When the factors are applied to compare alternative boundary locations and to determine the UGB location, a local government must show that all the factors were considered and balanced.' Because the intent of the rules proposed by the Metro Reserves workgroup is for 'factors' to be interpreted in the same manner as UGB factors, this previous LCDC declaration about factors is important in applying the reserve factors.

"Finally, some examples are provided below regarding prior legal interpretations concerning the 'consideration of factors.' Although these examples concern Goal 14 factors and the selection of land for a UGB, the factors in the proposed reserve rules also concern the selection of land and use the term 'consideration of factors.' As such, the following examples may further clarify the intent of the proposed rules regarding 'factors':

"• Even if one of the factors is not fully satisfied, or is less determinative, that factor must still be considered and addressed. *Rosemont II*, 173 Or App at 328; *Baker v. Marion County*, 120 Or App 50, 54, 852 P2d 254, *rev den* 317 Or 485 (1993).

"• 'Locational' factors 3 through 7 of Goal 14 are not independent approval criteria. It is not required that a designated level of satisfaction for each factor be met in order to approve a UGB amendment. Rather, a local government must show that the factors were 'considered' and balanced in determining whether a UGB amendment is justified. *1000 Friends of Oregon v. Metro*, 174 Or App 406, 409-10 (2001)

"• The goal of the consideration under factors 3 through 7 is to determine the "best" land to add to the UGB, after considering each factor. *ARLU*, slip op at 13. In carrying out such consideration, each factor must be addressed. That a potential UGB expansion site failed a "test" established by the local government for compliance with one locational factor is not a sufficient basis for excluding it from consideration under the other locational factors. *1000 Friends II*, 174 Or App at 414 15."

DLCD January 11, 2008 Report at 15-16 (footnotes omitted). Attached as Attachment 6 to this compliance acknowledgement order.

rules, the Goal 14 factors are applied to proposed urban reserve areas. *D.S. Parklane Development, Inc. v. Metro*, 35 Or LUBA 516 (1999), *aff'd as modified* 165 Or App 1, 994 P2d 1205 (2000). The Commission intends, and construes that the legislature intended, that in deciding which lands to designate as urban and rural reserves, Metro and the counties are to apply the factors to selected areas to decide which ones to include as urban reserves, and which areas to include as rural reserves. Furthermore, because SB 1011 and division 27 require Metro and a county to jointly decide upon urban and rural reserves, the factors are applied to alternative areas within a county to decide which ones to designate as urban or rural reserves.

OAR 660-027-0040(10) requires Metro and the counties to "adopt a single, joint set of findings of fact, statements of reasons and conclusions explaining why *areas* were chosen as urban or rural reserves, how these designations achieve the objective stated in OAR 660-027-0005(2), and the factual and policy basis for the estimated land supply determined under section (2) of this rule." (Emphasis added.) The rule specifically requires Metro and the counties to apply the factors to "areas" rather than specific properties or to the region or a county as a whole. OAR 660-027-0040(11) expands the requirements of OAR 660-027-0040(10) by requiring Metro to make additional findings if it designates "Foundation Agricultural Land," as defined in OAR 660-027-0010(1), as urban reserves. The findings and statement of reasons required under subsection (11) for Foundation Agricultural Lands do not alter the geographic unit that Metro and the counties must adopt findings for – the findings must still be by "area" rather than on a property-by-property or region-wide basis. What this means is that if Metro designates some portion or all of an area as an urban reserve, and that area includes Foundation Agricultural Land, then the joint findings must explain why the area was selected as an urban reserve by applying both the urban and rural factors to that area and explaining why that area is more suitable as an urban reserve than other lands within Metro's study area that are not Foundation Agricultural Lands.

c. Determination of Whether A Particular Area Should be Urban or Rural, or Undesignated

Any one area may be, and many areas could have been, designated either as an urban or a rural reserve. After considering both sets of factors under OAR 660-027-0050 and OAR 660-027-0060, many areas have characteristics such that Metro could have designated them as urban or a county designate them as rural reserve. The Commission reviews whether Metro considered the urban reserve factors in deciding to include particular areas, explained why the areas should be urban reserves using the factors listed in the statute and rules, and whether there is evidence in the record as a whole that a reasonable person would rely upon to decide as Metro did.

In most instances, with one important exception, the Commission does not review the decision to determine whether an area would be *better* as a rural reserve than as an urban reserve, or even whether Metro was right in its designations. The question is a narrow one: whether Metro considered what the statute and rules require it to consider, and whether Metro's findings explain its reasoning, and whether there is substantial evidence in the record to support Metro's decision.

The exception is for lands that the Oregon Department of Agriculture (ODA) has identified as Foundation Agricultural Land, where the rules require Metro to engage in an additional explanation. Under OAR 660-027-0040(11), if Metro designates such land as an urban reserve, it must "* * * explain, by reference to the factors in OAR 660-027-0050 and 660-027-0060(2) [the urban and rural factors], why Metro chose the Foundation Agricultural Land for designation as urban reserves *rather than* other land considered under this division." (Emphasis added.) For these lands, Metro must consider both sets of factors, and explain why it selected the lands in question instead of other lands.

The administrative rules and the applicable statutes grant substantial discretion to Metro and the counties in deciding which lands to designate as urban and rural reserves and, as long as Metro can demonstrate that it considered the factors, there is no requirement for Metro to show that an area is better suited as an urban reserve than as a rural reserve before it designates any land as urban reserves. Nor is there any requirement that Metro or the counties consider any particular lands for either designation, and there is no requirement that either Metro or the Counties make any findings regarding areas they do not designate.

B. Summary of Commission Evaluation

1. Designation of Urban and Rural Reserves

The Metro Urban and Rural Reserves Submittal by the three counties and Metro involve issues related to the amount and location of the reserve areas, leading to four general issues:

a. Amount of urban reserve land;
b. Location of urban reserves;
c. Amount of rural reserve land; and
d. Location of rural reserves.

a. Amount of Urban Reserve Land

The statutory and regulatory requirements regarding the amount of land that Metro may designate as urban reserves are provided in ORS 195.145(4) and OAR 660-27-0040(2). Generally, the urban reserve is to include a sufficient quantity of land to accommodate urban growth for 20 to 30 years beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in the most recent inventory, determination and analysis under ORS 197.296. OAR 660-027-0040(2). Metro must first inventory the buildable land supply inside the UGB, determine the capacity of those lands (the lands already inside the UGB) to meet the region's long-term needs, and analyze what portion of those long-term needs may require additional lands beyond the current UGB. In carrying out these steps, Metro must specify the number of years for which the urban reserves are intended to provide a supply of land. OAR 660-027-0040(2).

Because under OAR 660-027-0040(2) the UR-planning period begins after the UGB-planning period ends, in order to designate the correct amount of urban reserves it is necessary to know which 20-year UGB-planning period the UR-planning period follows. Metro based the

UR-planning period on the 2010-2030 UGB-planning period in the Urban Growth Report. Metro designated 30 years of urban reserves to provide for future urban expansion and development from 2030 until 2060 – thirty years beyond the UGB-planning period. *See* Ordinance No. 10-1238A, Exhibit E; Metro Rec. at 22.

OAR 660-027-0040(2) requires Metro to inventory the supply of buildable lands within the current UGB. ORS 197.296(3)(a). Metro must then determine the housing capacity of that buildable land. *Id.* After doing those two things, ORS 197.296(3)(b) requires Metro to conduct an analysis of housing need by type and density range to determine the number of units and amount of land needed for each needed housing type for the next 20 years. Metro completed these three steps, for future housing needs, and also for projected need for employment lands. The Commission finds that by complying with the requirements of ORS 197.296(3), Metro satisfied the requirement for a UGB-planning period to be one onto which a UR-planning period can tack because, by completing the inventory, determination and analysis, and particularly the inventory, it demonstrated what the buildable land supply is for that UGB-planning period.

Metro designated urban reserves for a planning period that is authorized under the urban reserve statutes and rules. Metro completed its inventory, determination and analysis under ORS 197.296 for the 2009-2030 UGB-planning period, and compiled the results into the 2009-2030 Urban Growth Report ("UGR"). Metro Council adopted the 2009-2030 UGR by Resolution 09-4094 in December 2009. Metro Record at 22. The Metro Council subsequently adopted the UGR as part of the capacity ordinance on December 16, 2012 by Ordinance No. 10-1244B. Accordingly, Metro demonstrated a buildable land supply in the most recent inventory, determination and analysis performed under ORS 197.296, and the 2009-2030 UGB-planning period is one onto which the UR-planning period may tack under OAR 660-027-0040(2) and ORS 195.145(4). For these reasons, the Commission finds that Metro has satisfied the statutory and rule requirements regarding the amount of urban reserve land.

b. Location of Urban Reserves

In OAR chapter 660, division 27, the Commission implemented the applicable statutory provisions regarding where urban reserves may be located. ORS 195.145(5) and OAR 660-027-0050 provide "factors" that Metro must consider when deciding urban reserve designations. Under OAR 660-027-0050, the "urban reserve factors" that Metro must consider in its consideration of candidate areas include whether the land in question:

> "(1) Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments;
> "(2) Includes sufficient development capacity to support a healthy economy;
> "(3) Can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers;
> "(4) Can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers;
> "(5) Can be designed to preserve and enhance natural ecological systems;
> "(6) Includes sufficient land suitable for a range of needed housing types;

"(7) Can be developed in a way that preserves important natural landscape features included in urban reserves; and
"(8) Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves."

The factors are not standards or criteria which Metro must demonstrate are satisfied. Rather, the Commission finds that the factors are considerations Metro must take into account when deciding whether to designate an area as an urban reserve.

OAR 660-027-0050, the factors for urban reserves, and OAR 660-027-0060 for rural reserves refer to identification and selection of "land," and some of the individual factors in those rules mention characteristics of "the area." None of the factors for selecting urban or rural reserves, or any other provision of the applicable statutes or rules, require a parcel-specific analysis for reserve-boundary location decisions.

Because the applicable law limits Metro to the amount of urban reserve land that it demonstrates is needed, the region-wide supply of urban reserve is constrained, so locating urban reserve boundaries requires a higher level of precision than does locating rural reserve boundaries. The Commission affirms the analysis areas Metro has used for evaluating lands as urban reserves, expressly determining that neither the statutes nor rules require a parcel-by-parcel analysis, particularly in light of the fact that the land in question normally will not be urbanized for decades. The Commission upholds Metro's use of areas, as set forth in the Consolidated Findings, as the appropriate scale for considering the application of the urban reserve factors.

The findings included in the Metro Council's decision are found in the Consolidated Finding. Exhibit E to Ordinance No. 10-1238A, Metro Record at 14 and Exhibit B to Ordinance No.11-1255. The findings explain how Metro employed the factors, by explaining the background, overall conclusions, the overall process and an analysis of public involvement. The factors were applied in different processes in each of the counties.

c. Amount of Rural Reserve Land

Neither the statute nor the rule includes criteria, standards or factors concerning the amount of rural reserve land the counties may, should, or must designate. (Nor does the statute or rules require the counties to designate any particular land.) The rural reserve factors address the qualities of the land, and there is no state standard regarding how many acres of rural reserves a county may designate. The purpose statement in the rule (OAR 660-027-0005(2)) includes the following provision:

"The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents."

Since this "balance" is not implemented through prescribed criteria, the counties and Metro have considerable discretion in deciding which lands warrant the protections provided by a rural reserve designation.

d. Location of Rural Reserves

Both the statute and rules provide "factors" the counties must consider in locating rural reserves, but no standards or criteria with which the counties are required to show compliance or satisfaction. Similarly, compliance or satisfaction of the factors does not compel the counties to designate any particular land for rural reserve. The "rural reserve factors" for agricultural and forest lands are whether the lands:

> "(a) Are situated in an area that is otherwise potentially subject to urbanization during the applicable period described in OAR 660-027-0040(2) or (3) as indicated by proximity to a UGB or proximity to properties with fair market values that significantly exceed agricultural values for farmland, or forestry values for forest land;
> "(b) Are capable of sustaining long-term agricultural operations for agricultural land, or are capable of sustaining long-term forestry operations for forest land;
> "(c) Have suitable soils where needed to sustain long-term agricultural or forestry operations and, for agricultural land, have available water where needed to sustain long-term agricultural operations; and
> "(d) Are suitable to sustain long-term agricultural or forestry operations, taking into account:
> "(A) for farm land, the existence of a large block of agricultural or other resource land with a concentration or cluster of farm operations, or, for forest land, the existence of a large block of forested land with a concentration or cluster of managed woodlots;
> "(B) The adjacent land use pattern, including its location in relation to adjacent non-farm uses or non-forest uses, and the existence of buffers between agricultural or forest operations and non-farm or non-forest uses;
> "(C) The agricultural or forest land use pattern, including parcelization, tenure and ownership patterns; and
> "(D) The sufficiency of agricultural or forestry infrastructure in the area, whichever is applicable." OAR 660-027-0060(2).

The rural reserve factors for designating lands to protect important natural landscape features are whether the lands:

"(a) Are situated in an area that is otherwise potentially subject to urbanization during the applicable period described OAR 660-027-0040(2) or (3);
"(b) Are subject to natural disasters or hazards, such as floodplains, steep slopes and areas subject to landslides;
"(c) Are important fish, plant or wildlife habitat;
"(d) Are necessary to protect water quality or water quantity, such as streams, wetlands and riparian areas;
"(e) Provide a sense of place for the region, such as buttes, bluffs, islands and extensive wetlands;

"(f) Can serve as a boundary or buffer, such as rivers, cliffs and floodplains, to reduce conflicts between urban uses and rural uses, or conflicts between urban uses and natural resource uses;

"(g) Provide for separation between cities; and

"(h) Provide easy access to recreational opportunities in rural areas, such as rural trails and parks." OAR 660-027-0060(3).

The findings regarding rural reserve decisions included in each county's and Metro's decisions can be found in Metro's submittal. Exhibit B to Ordinance No. 11-1255 at 33 and Metro Record at 39 for Clackamas County; Exhibit B to Ordinance No. 11-1255 at 45 and Metro Record at 49 for Multnomah County; and Exhibit B to Ordinance No. 11-1255 at 54 and Metro Record at 82 for Washington County. The findings describe each rural reserve area and explain the county's findings regarding the rural reserve factors in OAR 660-027-0060(2).

2. Plan and code provisions to implement reserves policy

The statute and administrative rule requirements relevant to planning and land use regulations within reserves are found in footnotes 4 and 8. The only statutory provision is a restriction on new regulations prohibiting the siting of a single family dwelling on a legal parcel where that use was formerly permitted. The counties and Metro complied with this provision.

The rule includes restrictions on up-zoning and other intensification of uses in urban or rural reserves. The counties have adopted amendments to their comprehensive plan policies implementing these restrictions in order to influence future land use decisions. Clackamas Co. Record at 12, Policy 10 (FCFC); Multnomah Co. Record at 9663a; Washington Co. Record at 9044. The department received no objections related to the counties' implementation of planning and zoning inside urban and rural reserves. The Commission finds that the Metro Urban and Rural Reserves Submittal complies with OAR 660-027-0070 and ORS 195.145(3)(a).

OAR 660-027-0070(8) requires that Metro ensure the lands designated as urban reserves ultimately be planned to be developed in a manner consistent with the findings and conclusions that resulted in the designation. To implement the use restrictions within urban reserves, Metro adopted an amendment to the Urban Growth Management Functional Plan to include policies requiring completion of concept plans developed by affected local governments, service districts, and Metro for areas before they are added to the UGB. Metro Record at 4, 8–13. The department received no objections related to Metro's implementation of planning and zoning inside urban reserves. The Commission finds that the Metro Urban and Rural Reserves Submittal is consistent with OAR 660-027-0070.

IV. CONSIDERATION OF OBJECTIONS

The Department analyzed the valid objections submitted under OAR 660-025-0140(2) and, in the reports issued pursuant to OAR 660-025-0140(6), provided the Commission a recommendation to reject each objection. *See* DLCD September 28, 2010 Report at 23-108; DLCD July 28, 2011 Report at 12-58. In many instances, objectors also filed written exceptions to those reports pursuant to OAR 660-025-0160(4). The Department reviewed and responded to

the exceptions. After considering the objections, recommendations, exceptions, responses and the oral arguments presented at the public hearings, the Commission rejects each objection for the reasons set forth below.

The following individuals or organizations submitted objections in response to the initial submittal.

Ref.	Objector
1.	Ann Culter
2.	Arthur Dummer
3.	Tualatin Riverkeepers
4.	Coalition for a Prosperous Region
5.	Carol Chesarek
6.	Chris & Tom Maletis
7.	Dale Burger
8.	Forest Park Neighborhood Association et al.
9.	David Hunnicutt
10.	Oregonians in Action
11.	David A. Smith
12.	Donald and Dawn Bowerman, et al.
13.	Dorothy Partlow
14.	Elizabeth Graser-Lindsey
15.	Hank Skade
16.	Jim Calcagno
17.	Jim Irvine
18.	Oregon Department of Agriculture
19.	Audubon Society
20.	John Burnham
21.	John and Judy Cherry
22.	Joseph C. Rayhawk
23.	Joseph C. Rayhawk
24.	Kathy Blumenkron
25.	Linda Peters
26.	1000 Friends of Oregon
27.	Gary Gentemann
28.	Melissa Jacobsen
29.	Michael Wagner
30.	Michael Cropp
31.	Metropolitan Land Group
32.	City of Portland
33.	Robert Burnham
34.	Robert Zahler
35.	Coalition for a Livable Future
36.	Sandra J. Baker
37.	Save Helvetia Community
38.	Steve and Kelli Bobosky

39. Susan McKenna
40. Thomas J. VanderZanden
41. Thomas J. VanderZanden
42. Tim O'Callaghan
43. Tom Szambelan
44. Cities of Tualatin and West Linn
45. William E. Kaer
46. City of Wilsonville

The following individuals and organizations filed written exceptions to the DLCD September 28, 2010 Report and recommendation on the initial submittal.

Ref.	Objector
1.	East Bethany Owners Collaboration
2.	Dale Burger
3.	Dorothy Partlow
4.	Hank Skade
5.	John Burnham
6.	Kathy Blumenkron
7.	Robert Burnham
8.	Robert Zahler
9.	City of Sandy
10.	Coalition for a Prosperous Region
11.	Carol Chesarek
12.	Carol Chesarek-Cherry Amabisca
13.	Chris Maletis et al
14.	Forest Park Neighborhood Association
15.	David Smith
16.	Donald Bowerman
17.	Elizabeth Graser-Lindsey
18.	Jim Irvine
19.	Audubon Society of Oregon
20.	John and Judy Cherry
21.	Joseph C. Rayhawk
22.	1000 Friends of Oregon *et al*
23.	Michael Wagner
24.	Metropolitan Land Group
25.	Sandra Baker (Barker's Five)
26.	Save Helvetia
27.	Steve and Kelli Bobosky
28.	Susan McKenna
29.	Thomas VanderZanden
30.	Cities of Tualatin and West Linn
31.	William Kaer
32.	City of Wilsonville

The following individuals or organizations submitted objections in response to re-designation submittal.

Ref.	Objector
1.	Van De Moortele Family, LLC
2.	Coalition for a Prosperous Region
3.	City of Cornelius
4.	City of Hillsboro
5.	1000 Friends of Oregon *et al.*
6.	Oregon Department of Agriculture
7.	Joseph C. Rayhawk
8.	Save Helvetia
9.	Tom Black
10.	Steve & Kelli Bobosky
11.	Chris and Tom Maletis
12.	Forest Park Neighborhood
13.	Metropolitan Land Group
14.	East Bethany Owners

The following individuals and organizations filed written exceptions to the DLCD July 28, 2011 Report and recommendation on the re-designation submittal.

Ref.	Objector
1.	1000 Friends of Oregon
2.	City of Cornelius
3.	Linda Peters
4.	Save Helvetia
5.	East Bethany Owners
6.	Joseph Rayhawk
7.	Metro
8.	Cities of Tualatin and West Linn
9.	Chris and Tom Maletis
10.	Metropolitan Land Group
11.	Van De Moortele Family

In this order, the Commission considers and addresses the objections and exceptions based on the issues raised and not by objector.

A. Commission Review Authority – Urban Reserves and the Metro Code

The Cities of Tualatin and West Linn assert that the Commission lacks authority to review the Metro Urban and Rural Reserves Submittal on the premise that Metro lacked authority to designate urban reserves pursuant to OAR chapter 660, division 27. The cities also assert that for this reason Metro's designation of urban reserves violates Goal 2. Tualatin, July 14, 2010 at 3.

The cities contend that Metro's designation of urban reserves under the division 27 process is unlawful in substance because *former* Metro Code Chapter 3.01,[17] and specifically Sections 3.01.010(h) and 3.01.012, require Metro and cities and counties within Metro's jurisdiction to designate urban reserves pursuant to OAR chapter 660, division 21. At the time of the initial submittal, Metro had not amended its code to add the authority provided through SB 1011 (codified at ORS 195.137 to 195.145). According to the cities, Metro therefore has no authority under its own code to adopt urban reserves pursuant to division 27, and the counties are likewise prohibited from designating rural reserves. *See former* Metro Code Section 3.01.012. Accordingly, the cities argue the Metro Urban and Rural Reserves Submittal is void and the Commission cannot review it.

The cities anticipate that Metro would argue its adoption of Ordinance No. 10-1238A (June 3, 2010) is a *de facto* amendment to Chapter 3.01. In response, the cities argue that, while the ordinance amended other sections of the Metro Code, it did not amend Chapter 3.01. The cities contend Metro's findings do not explain how the reserves submittal is consistent with Chapter 3.01 and, therefore, the Metro Urban and Rural Reserves Submittal violates Goal 2 because Metro's adopted planning documents must be the "basis for all decisions and actions related to the use of land" under that goal. *D.S. Parklane*, 165 Or App at 21-23.

Metro designated urban reserves under ORS 195.145(1)(b) and OAR chapter 660, division 27. Specifically, ORS 195.141(1) provides "[a] county and a metropolitan service district established under ORS chapter 268 may enter into an intergovernmental agreement * * * to designate rural reserves pursuant to this section and urban reserves pursuant to ORS 195.145(1)(b)" and ORS 195.145(1)(b) provides "[a]lternatively, a metropolitan service district established under ORS chapter 268 and a county may enter into a written agreement * * * to designate urban reserves." In implementing ORS 195.145, OAR chapter 660, division 27, provides "[a]s an alternative to the authority to designate urban reserve areas granted by OAR chapter 660, division 21, Metro may designate urban reserves through intergovernmental agreements with counties and by amendment of the regional framework plan to implement such agreements in accordance with the requirements of this division." OAR 660-027-0020(1).

The statute and rule establish an additional process for designating urban reserves for metropolitan service districts and counties within such districts, as an alternative to the process provided in ORS 195.145(1)(a) and OAR chapter 660, division 21. *See* ORS 195.145(1)(b) and OAR 660-027-0020(1). Nothing in either the statute or the rule requires a metropolitan service district to designate urban reserves under either process; and neither preempts any local choice to select one process over the other.

For Urban Reserves Areas, *former* Metro Code 3.01.012(a) provided: "This section establishes the process and criteria for designation of urban reserve areas pursuant to ORS

[17] On December 16, 2010, after the initial submittal but prior to the re-designation submittal, Metro adopted Ordinance No. 10-1244B, which *inter alia* repealed Metro Code Chapter 3.01. *See* Ordinance No. 10-1244B at 3; Exhibit K to Capacity Ordinance No. 10-1244B at 2. In the alternative, the Commission rejects this objection on the basis that the repeal of Metro Code Chapter 3.01 renders the objection moot.

195.145 and Oregon Administrative Rules Chapter 660, Division 021."[18] Metro Code 3.01.010(h) defined "Urban reserve" to mean "an area designated as an urban reserve pursuant to Section 3.01.012 of this Code and applicable statutes and administrative rules."

The cities contend that these code provisions limit Metro's authority to designate urban reserves to the process provided under OAR chapter 660, division 21. The Commission agrees that if Metro elected to designate urban reserves under ORS 195.145(1)(a) and division 21, it would have had to follow the process and criteria in *former* Metro Code 3.01.012. However, Metro elected to proceed directly under the authority newly provided under SB 1011 and division 27, and nothing in the Metro Code cited by objectors limits Metro's authority to act directly under the statute and rules. Nothing in state law or rule requires Metro to update its ordinance to reflect the more recent state legislation before it can rely on that legislation.[19]

The cities' argument is premised on the assertion that *former* Metro Code 3.01.012 reflects Metro's choice of process. However, the provisions of *former* Metro Code 3.01.012 became effective on February 15, 2006, prior to the enactment of SB 1011, which became effective on June 28, 2007. Thus, *former* Metro Code 3.01.012 cannot reasonably be construed as a "choice" between alternatives made prior to the existence of one of the alternatives. Because the Metro Code does not preclude using a subsequent statutory alternative for designating urban reserves, it should not be construed as including that restriction. *See* ORS 174.010 (statutory construction should not insert a restriction that does not exist).

The cities also contend that the absence of provisions in the Metro Code for designation under ORS 195.145(1)(b) and OAR chapter 660, division 27 means that Metro lacks authority to utilize the provisions of division 27. The cities point to nothing in the Metro Code that precludes Metro from employing the division 27, nor do they establish that the authorizations to designate urban reserves under ORS 195.145(1)(b) and division 27 are contingent on Metro first adopting a process and criteria as it has done in *former* Metro Code 3.01.012 for the other means of designating urban reserves.

The Commission rejects this objection on the grounds that SB 1011 and OAR chapter 660, division 27 authorize Metro to designate urban reserves and the Commission has authority to review the Metro Urban and Rural Reserves Submittal.

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[18] The reference to ORS 195.145 in Metro Code 3.01.010(h) is to that statute as it existed prior to SB 1011. Section 6 of that act amended ORS 195.145 by adding the alternative manner of designating urban reserves described in (1)(b). *See* Or Laws 2007, ch 723, §6.

[19] ORS 197.646 requires Metro, a "local government" under ORS 197.015(13), to amend its acknowledged regional framework plan and implementing land use regulations by a self-initiated plan change to comply with a new statutory requirement. SB1011 authorizes, but does not require, Metro and a county to enter into an IGA to designate urban and rural reserves. Thus, the statute does not require Metro to initiate implementing changes under ORS 197.646.

B. Commission Review Authority – Re-designation Submittal

The City of Cornelius, and Steve and Kelli Bobosky contend that Metro and Washington County lacked authority to adopt the 2011 re-designations contained in the re-designation submittal because the Commission retained "exclusive jurisdiction" from the time the parties "appealed" the initial submittal in 2010 until the Commission issues a final written order memorializing the 2010 vote to remand. The City of Cornelius and Save Helvetia[20] object that a final written order was statutorily required before Metro and Washington County could consider and adopt the re-designation ordinances.[21] The city also argues the Commission's failure to adopt an order following the October 2010 hearing violates goal 2 because "there was never any finding of fact addressing non-compliance with the urban reserve factors for Area 7I." Cornelius Exception, August 8, 2011, at 4. While the Commission acknowledges it is required to issue a written order subject to judicial review on the submittal, the objections misconstrue process and do not establish that as a matter of law Metro and Washington County lacked jurisdiction to amend and submit their designations prior to issuance of the Commission's written order.

The Boboskys point to case law concerning appellate court jurisdiction that construe the statutes and rules governing appellate judicial jurisdiction. These cases provide that appellate court jurisdiction is exclusive until the appellate court finally disposes of the appeal.[22] Bobosky, June 2, 2011 at 6. The objectors point to no analogous authority in the statutes and rules providing for Commission review of the Metro Urban and Rural Reserves Submittal.

The Boboskys also refer to decisions of the Land Use Board of Appeals (LUBA) holding that absent statutory authority to the contrary, where jurisdiction over an appeal of a land use decision lies with an appellate court, the local government loses jurisdiction to modify that land use decision.[23] These cases likewise are inapposite because they construe specific statutes concerning LUBA and not the statutes governing Commission review of the Metro Urban and Rural Reserves Submittal.

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[20] "Save Helvetia" is a citizen group composed of "a coalition of farmers, business owners, concerned citizens and residents who are working to protect the agricultural lands of the Helvetia community." Save Helvetia, July 12, 2010, at 1. Save Helvetia asserts that "DLCD failed to write and distribute a written order of remand of the LCDC commissioner's deliberations of 10-29-10 as per OAR 660-002-0010: Delegation of Authority to Director (DLCD)." Save Helvetia, May 30, 2011 at 19.

[21] The City of Cornelius contends the absence of a written order memorializing the October 2010 Commission review violates ORS 197.644 and ORS 197.650. Cornelius, June 2, 2011 at 4. Save Helvetia asserts that "DLCD failed to write and distribute a written order of remand of the LCDC commissioner's deliberations of 10-29-10 as per OAR 660-002-0010: Delegation of Authority to Director (DLCD)." Save Helvetia, May 30, 2011 at 19.

[22] The Boboskys cite *Murray Well-Drilling v. Deisch*, 75 Or App 1, 9, 704 P2d 1159 (1985) to point out that appellate jurisdiction "is exclusive and plenary, until such time as the appellate courts have made disposition of the appeal;" and *State v. Jackson*, 228 Or 371, 283, 365 P2d 294 (1961), to note that once jurisdiction is vested in an appellate court, a lower court cannot "proceed in any manner so as to affect the jurisdiction acquired by the appellate court or defeat the right of the appellants to prosecute the appeal with effect."

[23] *Standard Insurance Co. v. Washington County*, 17 Or LUBA 647, 660 (1989); *Rose v. City of Corvallis*, 49 Or LUBA 260, 270 (2005).

While an analogy to appellate and LUBA cases may be instructive in the event one or more parties seek judicial review of this Acknowledgement Order, they do not apply to the Commission's review of the Metro Urban and Rural Reserves Submittal. ORS 197.626 (1) and (2).[24] Rather, the Commission's review is a statutorily required part of the process established by SB 1011.[25]

The objectors do not identify any provision in ORS chapters 195, 197, 215 or 268 concerning the authority of a county or Metro to act on a decision that is the subject of a pending Commission review proceeding. Metro and Washington County submitted amendments to the initial submittal and the Director referred the re-designation submittal to the Commission for review prior to issuance of a written order by the Commission on the initial submittal. The Commission rejects this objection.

The city objects that *the Commission* did not comply with Goal 2 because it did not provide "any finding of fact addressing non-compliance with the urban reserve factors for Area 7I." Cornelius Exception, August 8, 2011, at 4. The Commission rejects this objection both as a matter of law and a matter of fact. First, the Commission does not construe Goal 2 to provide a basis for this objection because the goal's requirements are not applicable to the Commission's manner of conducting its review of the Metro Urban and Rural Reserves Submittal. Goal 2, Part I does requires in part that all local decisions have an adequate factual base.[26] Thus, in reviewing the Metro Urban and Rural Reserves Submittal, the Commission is considering whether there is an adequate factual base to support the designations. One source of this requirement is Goal 2 and OAR 660-027-0080(4). Another source of that requirement is ORS 197.633(3)(a). However, as a matter of law, the Commission's obligation to make its findings of fact regarding objections stem not from Goal 2, but from the requirement in OAR 660-025-0140(6) to sustain or reject valid objections and to provide an explanation in order to enable the Court of Appeals to perform its judicial review of any challenges to this order contending that it is "[n]ot supported by substantial evidence in the whole record as to facts found by the commission" under ORS 197.651(10)(c). *See1000 Friends of Oregon v. LCDC,* 244 Or App at 267 *(McMinnville).* As a matter of fact, the Commission does make findings of fact and conclusions of law regarding Area 7I below.[27]

In a related objection, the City of Cornelius contends that the Commission did not have statutory authority to remand the initial submittal based on the city's interpretation of the

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[24] HB 2130 (2011) amended ORS 197.626(2) to expressly provide what *former* ORS 197.644(3)(a) (2009) and *former* ORS 197.633(5) (2009) read together established – that the Commission's final written order will be subject to judicial review upon issuance. Thus, whether under the 2009 or 2011 statutory scheme, an order of this Commission is subject to judicial review.

[25] Also, as distinct from LUBA and appellate courts, the Court of Appeals has held that review of final orders of the Commission may be found moot where further action of the local government occurred with respect to the area in question and superseded the prior action. *Multnomah County v. LCDC*, 43 Or App 655, 603 P2d 1238 (1979); *Carmel Estates, Inc. v. LCDC*, 51 Or App 435, 625 P2d 1367, *rev den* 291 Or 309 (1981).

[26] Goal 2 is "[t]o establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions."

[27] Consequently, in the alternative, the Commission also concludes that this objection is now moot.

periodic review procedures. *See*, Cornelius, June 2, 2011 at 3, citing ORS 197.628 to 197.650. The Commission rejects this objection on the grounds that it misconstrues the applicable law. The city appears to argue that the periodic review statutes authorize the Commission only to either adopt the decision or to modify an approved "work task," but lacks authority to remand. The Commission disagrees that its authority is limited in this way. *See* OAR 660-025-0150(1); OAR 660-025-0160(6) (authorizing the director and the commission to issue, *inter alia*, remand orders).[28]

C. Metro Authority – Designation Outside Service District Boundary

The Maletis Family, *et al*[29] (Maletis) objects that Metro lacks the authority to designate reserves beyond the metropolitan service district boundary. Maletis argues that provisions of ORS chapter 268 and the Metro Charter constrain Metro in all matters to acting within the district. With respect to SB 1011, Maletis contends that Metro's designation is void because "the Legislature's grant of authority in ORS Chapter 195 must be read consistent with the statutory and charter provisions * * *, which clearly confine Metro's jurisdiction to a limited geographic area." Maletis, June 2, 2011 at 8.

As Maletis acknowledges, SB 1011 provides specific authorization to Metro and the counties to simultaneously designate urban and rural reserves. Metro may not designate urban reserves in a county until it has entered into an agreement that identifies land to be designated as urban reserve in Metro's regional framework plan. *See*, ORS 195.143 and ORS 195.145(1)(b). The county is required to adopt a comprehensive plan for all of the land in the county and authorized to revise the plan by geographic area. ORS 215.050(1). The county and Metro must agree regarding the designation and establishment of urban and rural reserves within the county. Nothing in state law or the Metro Charter prohibits Metro from entering into an intergovernmental agreement with a county to act in a coordinated manner in undertaking land use planning. To the contrary, ORS 268.380 and ORS 195.143 are permissive, and provide legislative authorization for Metro to engage in land use planning within the district and to do so in coordination with governments with such authority outside the district. Further, Goal 2 requires county plans and actions related to land use to be consistent with the regional plan adopted under ORS chapter 268.

To construe the ORS 268.380(1) authorization to engage in coordinated land use planning within the district as prohibiting Metro from designating urban reserve outside the district boundaries would require the Commission to ignore at least two maxims of statutory construction. First, ORS 195.137 through 195.145 specifically authorize Metro and a county to designate urban and rural reserves as part of their general authorities to engage in land use planning under ORS 268.380 and ORS 215.050. Even assuming there was any inconsistency between those provisions, the specific authorization of ORS 195.137 through 195.145 would control. ORS 174.020(2) provides "[w]hen a general and particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent." Secondly, in construing the legislative intent underlying

[28] Alternatively, the Commission denies the objection as moot.
[29] The objectors are Chris Maletis; Tom Maletis; Exit 282A Development Company, LLC; and LFGC, LLC.

ORS 195.137 through 195.145, ORS 268.380 and ORS 215.050, it is possible to understand them to authorize coordinated land use planning for purposes of designating and establishing urban and rural reserves. That construction comports with ORS 174.010, which requires that in construing separate statutory provisions together, "where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all." Finally, the provision of the Metro Charter that Maletis relies upon as a constraint actually provides, "The Metro Area of governance includes all territory within the boundaries of the Metropolitan Service District * * * and any territory later annexed or *subjected to Metro governance under state law*." Chapter I, section 3 (emphasis added). ORS 195.137 to 195.145 subjects property subject to designation as urban reserves to Metro governance. The Commission rejects this objection.[30]

D. Validity of OAR 660-027-0040(5)

Oregonians in Action (OIA) challenges the validity of OAR 660-027-0040(5) on the grounds that the rule violates ORS 197.732 and Goal 2 by prohibiting counties from approving exceptions in rural reserve area. OIA, July 14, 2010 at 2. The Commission rejects this objection because the scope of its review of the Metro Urban and Rural Reserves Submittal does not include challenges to the applicable rules. Rather, the Commission determines whether the Metro Urban and Rural Reserves Submittal "on the whole complies" with the applicable rules. ORS 197.633(3). Alternatively, the Commission rejects this objection on the grounds that the rule is valid as determined in the Commission rulemaking proceeding. Further, the Commission amended OAR 660-027-0040(5) to allow the re-designation of land in rural reserves to another use as provided in OAR 660-027-0070 after OIA submitted its objection.

E. Commission Review – Compliance with ORS 197.040(1)(b)(C)-(E)

Maletis objects to Clackamas County's re-designation submittal, contending that, under ORS 197.040(1)(b)(C)-(E), Metro must consider all alternatives, including whether leaving property as "undesignated" serves the same state interest as a "rural reserve" designation while imposing fewer burdens on identified economic interests. Maletis, June 2, 2011 at 4. East Bethany Owners[31] raise similar concerns regarding Multnomah County and Metro. East Bethany Owners, May 27, 2011 at 3, August 8, 2011 exceptions at 2. Maletis's exception acknowledges that ORS 197.040 imposes no requirements on the counties (or Metro), but argues that the statute requires the Commission "to comply with the statute prior to rendering its decision on the

[30] In an exception to the Director's report, Maletis asserts that it "not appropriate" to rely on maxims of statutory construction in evaluating this objection because, citing *PGE v. BOLI*, 317 Or 606, 859 P2d 1243 (1993), "resort to maxims of statutory construction is appropriate only as a last step of analysis of legislative intent, to resolve identified ambiguity." Maletis Exception, August 8, 2011 at 12. According to Maletis, the director did not identify an ambiguity, and therefore could not appropriately resort to statutory construction. However, under *State v. Gaines*, 346 Or 160 (2009) which supersedes *PGE v. BOLI* legislative history is appropriately considered at any stage of statutory interpretation. In addition, Maletis' argument regarding the interplay between ORS 268.380 and ORS 195.137 to 195.145 that is different than that applied by Metro, the counties and the department, appears to be premised on an ambiguity in the statutory scheme.

[31] The East Bethany Owners includes a group of homeowners and residents in the East Bethany area including Robert Burnham, Vicki Burnham, Janet Burnham, John Burnham, Hank Skade, Dorothy Partlow and Robert Zahler.

matter." Maletis Exception, August 8, 2011, at 5. Therefore, Maletis argues, the Commission must "assess" alternatives and conclude that the Maletis property must be left undesignated. *Id.*

The Commission rejects the Maletis and East Bethany Owners objections, including as modified by their exceptions, on the grounds that ORS 197.040 applies in rulemaking context and does not modify the scope of review set forth in ORS 197.633(3). When the Commission undertakes rulemaking to carry out its statutory authority and "in designing its administrative requirements," ORS 197.040(1)(b) guides the Commission's process consistent with the limitation of ORS 197.040(3). Review of the Metro Urban and Rural Reserves Submittal in the manner of periodic review is not subject to ORS 197.040.

F. City of Cornelius – Area 7I

The City of Cornelius objects that the Commission did not base its October 2010 oral remand vote upon facts in the public record. Cornelius, June 2, 2011 at 3. The objection itemizes several statements presented to the Commission regarding Area 7I during the Commission's October 2010 hearings that the City believes to be false. The city identifies other statements in the record that contradict those it portrays as false. The city argues that the 2010 process left the city "without a venue to contradict false testimony;" and that it should have been afforded the opportunity to respond to that testimony during deliberation by the Commission during the 2010 hearings. Cornelius Exception, August 8, 2011, at 2. The city also argues that the Commission did not read or consider supplemental findings supporting the urban reserve designation of Area 7I, which it received the night before the final 2010 hearing. Instead, according to the city, the Commission "listened to privileged testimony from 1000 Friends and Department of Agriculture that was not founded in and contrary to the public record of facts." Cornelius Exception, August 8, 2011 at 2. Without a chance during the Commission deliberations "to raise a hand and point to a map" the city argues it has not had an opportunity to present necessary evidence. City of Cornelius, June 2, 2011 at 3.

The city essentially argues that the Commission erred in its evaluation and reliance on the evidence in the record, and reached an incorrect decision based on the evidence. The city has not, however, established that it was denied the opportunity to participate, or that there was not substantial evidence in the record to support the Commissions' decision. The Commission is not required to offer affected local governments (or any party) the opportunity to participate in its deliberations. Although OAR 660-025-0085(5)(c) provides for oral argument, including argument from affected local governments addressing objections raised, nothing in OAR 660-025-0085 provides an unlimited opportunity to interject at any point in the proceeding. Moreover, the City of Cornelius has had multiple opportunities to fully present evidence and argument throughout this review process. As an affected local government, the city presented the Commission facts in the record regarding the nature of Area 7I during both the 2010 and 2011 hearings. During the 2011 proceedings, the city presented testimony and evidence to support its initial position as well as its proposed compromise position. To the extent the city believes it was not adequately afforded the opportunity to respond to "false" testimony at the 2010 hearing, any prejudice it perceived was resolved when it was provided adequate additional opportunities to present its evidence and argument throughout the 2011 proceedings. While the city disagrees with the Commission's evaluation of the evidence and disagrees with the factual

substantiation of some of the evidence it relied on, the city has not established that the Commission denied the city an opportunity to present its evidence or that the Commission's review proceedings violated the city's right to participate.

The City of Cornelius also objects that in its October 2010 review, the Commission was unfair, inappropriate and exceeded its review authority by substituting its own judgment for that of Metro and Washington County with regard to Area 7I. Cornelius, June 2, 2011 at 4. The city correctly notes that under OAR 660-027-0080(4)(a), the Commission must determine whether a decision complies with the Goal 2 requirement that the local findings include an adequate factual base and whether the evidence in the record, viewed as a whole, would permit a reasonable person to make particular findings, in this case establishing Area 7I as an urban reserve. However, while the city disagrees with the Commission's evaluation of the evidence in the record, it has not established that the Commission's initial conclusions regarding Area 7I violated its standard of review. The Commission considered the evidentiary record and the determinations of Metro and Washington County during its October 2010 deliberations. The Commission considered the entire record, including the evidence highlighted in oral argument, in reviewing the submittal. After deliberations, the Commission concluded that, as to Area 7I, the evidentiary basis for the designation was not supported in the record, and voted to reject that designation. The Commission did not substitute its judgment for that of the local governments when, relying on the evidence in the record, it voted to reject the urban reserve designation for Area 7I. The Commission rejects this objection.

The City of Cornelius also objects that "the process of amending the Urban/Rural Reserves Map for Washington County has not been in compliance with Goals 1 and 2 because it has been closed to public participation in the negotiations and decision making that led to the amended Reserves Map." Cornelius, June 2, 2011 at 5. Specifically, the city argues (1) the public was not provided access to factual information at the times when public hearings were conducted and land use decisions were made; (2) Washington County's process was closed to public participation in the negotiations and decision making that led to the amended reserves map; and (3) none of the governing bodies provided public hearing instructions or procedures prior to a hearing being conducted. *Id.* The Commission rejects the city's objection based on Goal 1. This objection is addressed below at section M(2).

To the extent this objection rests in part on Goal 2—the requirement to provide affected governmental units with opportunities for review and comment during the preparation, review and revisions of plans and implementation ordinances—the Commission rejects the objection. *See* section M(3). The essence of the city's argument is that it lacked a meaningful opportunity to present its proposed compromise for consideration to the Washington County Board of Commissioners.[32] The objection highlights conflicting evidence presented to the county regarding designation of Area 7I but does not establish that the county failed to provide an adequate opportunity for the city to participate in the local proceedings.

[32] As the city describes the compromise, it would have moved "352 acres of new Urban Reserve that is not wanted on prime farmland north of Sunset Highway in Helvetia to north of Cornelius on less than prime farmland where it is wanted and needed to build a complete and sustainable community. [The farmland north of Sunset Highway in Helvetia has one of the highest concentrations of Class 1 soils in Washington County compared to Area 7I north of Cornelius.]" Cornelius Exception, August 8, 2011, at 1.

Nor does the county's failure to adopt the city's proposed compromise violate the Goal 2 requirement that the county establish an adequate factual base for its decision. Where the evidence is conflicting, the factual base is adequate if a reasonable person could reach the decision that Metro and the Washington County made in view of *all* the evidence in the record. The choice between the conflicting evidence belongs to the decision maker. *Mazeski v. Wasco County*, 28 Or LUBA 178, 184 (1994), *aff'd* 133 Or App 258, 890 P2d 455 (1995).

The city acknowledges that Washington County provided notice of hearings as required by its comprehensive plan. The city has not established that Goal 2 requires more opportunities for review and comment during the preparation, review and revisions than Washington County and Metro provided. The re-designation submittal findings and the record both demonstrate that Washington County provided public involvement opportunities to the city. *See*, Metro Ordinance No. 11-1255 at 10-13. Metro and Washington County held a joint public hearing on March 15, 2011 prior to signing the IGA. *See*, testimony in Metro Supp Record at 47-187; and summary of deliberation in Metro Ordinance No 11-1255 at 109-119.

G. Conflicts of Interest

Save Helvetia objects that Washington County Board of Commissioners Chair Duyck and Commissioner Terry failed to disclose potential conflicts of interest as required by ORS 244.120(12) and 244.130(1).[33] Save Helvetia, May 30, 2011 at 15-17. The Commission denies this objection on the grounds that its review pursuant to OAR 660-027-0080 does not encompass ORS chapter 244. Alternatively, on the merits, the Commission rejects this objection because (1) owning land subject to a rural or urban reserve designation does not result in a pecuniary benefit or detriment as required by ORS 244.020(12), and (2) even if one or more county commissioner did have a potential conflict of interest with regard to the approval of Washington County Ordinance 740, the resulting decision is not void for failure to disclose according to ORS 244.130(2). Save Helvetia's objection does not substantiate the conclusion the Commission is required to reject the Metro Urban and Rural Reserves Submittal based on the alleged potential conflict of interest requiring disclosure.[34]

H. Oregon Public Meetings Laws

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[33] For Chair Duyck, the alleged potential conflict of interest is that his father owns land designated rural reserves and for Commissioner Terry, the alleged potential conflict of interest is that he owns land designated urban reserve. Save Helvetia argues that the "end product of the reserves process" is tainted unless the Commission requires public disclosure of potential conflicts of interest. Save Helvetia, May 31, 2011 at 17.

[34] As material here, the statutes provide that a "potential conflict of interest" exists if the effect of an action by a public official "could be to the private pecuniary benefit or detriment of the person or the person's relative." ORS 244.020(12). For purposes of the statute, "relative" includes parents of the public official. ORS 244.020(15)(d). Officials facing a potential conflict of interest must announce publicly the nature of the potential conflict prior to taking any official action on the matter. ORS 244.120(2)(a). In any event, "[a] decision or action of any public official or any board or commission on which the public official serves or agency by which the public official is employed may *not be voided by any court solely by reason of the failure of the public official to disclose* an actual or potential conflict of interest." ORS 244.130(2) (emphasis added).

Save Helvetia objects generally that Washington County and Metro did not comply with the requirements of Oregon's Public Meeting Laws, ORS 192.410 to 192.505. Save Helvetia, May 30, 2011 at 17-18. Save Helvetia does not describe with any particularity the nature of the alleged violation or how the alleged violation provides grounds to reject the Metro Urban and Rural Reserves Submittal under OAR 660-027-0080.[35] Objectors before this Commission must "make an explicit and particular specification of error by the local government." *1000 Friends of Oregon v. LCDC*, 244 Or App at 268-269 (*McMinnville*). The Commission rejects this objection.

I. County Charter Procedures

Steve and Kelli Bobosky object that Washington County did not comply with applicable county charter provisions or public involvement laws during the re-designation process. Bobosky, June 2, 2011 at 9-12. The Commission rejects this objection on the grounds that its review pursuant to OAR 660-027-0080 does not encompass the charter provisions. Alternatively, if this objection is construed to assert an issue of Goal 2 compliance ("[t]o establish a land use planning process * * * as a basis for all decision and actions related to use of land"), the Boboskys have not established any violation.

The Boboskys argue that the county ordinance designating rural reserves is "deemed rejected" because the county violated Section 103(c) (timelines)[36] and Section 104 (planning commission review) of the Washington County Charter.[37] The Boboskys argument fails to distinguish between the ordinance and the Supplemental Reserves IGA. Tentative decisions in the Supplemental Reserves IGA were subject to consideration and modification in the ordinance process. The Boboskys are correct that the IGA was not adopted under the Section 103 timelines and was not subject to a planning commission hearing. However, the county charter did not require that IGA to comply with those provisions. The IGA and Ordinance No. 740 are distinct documents, and only the ordinance adoption is subject to Sections 103 and 104. The county's adoption of Ordinance No. 740 complied.[38] The Commission rejects this objection because it

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[35] The *Attorney General's Public Records and Meetings Manual* states "If a citizen wishes to compel compliance with the meetings law, or believes that a governing body has violated the law, the citizen may file a private civil lawsuit against the governing body." Page 114 (January 2011).

[36] Section 103(c) provides:

> "No proposed land use ordinance shall be adopted on or after November 1 of each calendar year through the final day of February of each subsequent calendar year. If a final decision on a proposed land use ordinance has not been reached by October 31, the proposed ordinance shall be deemed rejected unless the Board, by affirmative act, continues the proposed ordinance to a time and date certain on or after March 1 of the subsequent year."

[37] Section 104(a) provides in part:

> "Upon filing of a land use ordinance, it shall be forwarded to the Planning Commission for at least one public hearing."

[38] Ordinance No. 740 amends Policy 29 of the Rural/Natural Resource Plan Element of the Comprehensive Plan to modify the Rural and urban reserves map. Section 1(F) of Ordinance 740 establishes that the county followed Sections 103 and 104. The initial public hearing was held on March 2, 2011, and the Board held subsequent

does not establish that Washington County failed to follow the applicable procedures. ORS 197.633(3)(b).

J. Predetermined Outcome

Steve and Kelli Bobosky object generally that the local governments were committed to a predetermined outcome. Bobosky, June 2, 2011 at 12-20. This objection is within the Commission's review authority under OAR 660-027-0080 to the extent it implicates Goal 2 compliance with the requirement for public participation. The Commission rejects this objection because the record supports the conclusion that the local governments engaged the public and deliberated on public input. Metro found that "[e]ach local government held public hearings prior to adoption of the Supplemental IGA and prior to adoption of their respective ordinances amending their maps of urban and rural reserves." Exhibit B to Ordinance No. 11-1255 at 13. Contrary to the suggestion of predetermination is the summary of board and council motions. *Id.* at 111-122. The summary of the deliberations reflect that there was no predetermined outcome.

K. Clackamas County Revised Findings

Maletis objects to the Clackamas County Board of Commissioners' approval of Overall Findings for Designation of Urban and Rural Reserves and Revised Findings for Clackamas County Urban and Rural Reserves on April 21, 2011 on the grounds that the county "did not accept public testimony at the meeting before adopting the [findings]. In addition, the [findings] do not state that they replace or supersede the 2010 Findings." Maletis, June 2, 2011 at 6. The Commission denies this objection to the extent Maletis asserts violation of county code requirements on the grounds that its review pursuant to OAR 660-027-0080 does not encompass the county's code. Alternatively, on the merits the Commission denies the objection because the Maletis refers to inapplicable code provisions. The county did not amend its ordinance in connection with the re-designation submittal (as Metro and Washington County did).[39] Thus the county was not bound to follow "an amendment process that is substantially similar to that used to adopt that ordinance." *Id.* at 5.

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hearings before adopting Ordinance 740 on April 19, 2011. Metro's Response to Objections regarding the re-designation decision explains the record of the public process in adopting that decision:

> "The findings for Metro Ordinance No. 11-1255 * * * address public involvement. Findings at 11-13, with citations to materials in the record. Metro and Washington County held a joint public hearing (March 15,2011) prior to signing the IGA between them. Testimony received may be found at Metro Supp. Rec 47 to 187, with citations to materials in the record. Minutes of the joint meeting may be found at page 188 of that record. The joint deliberations by the two governing bodies are summarized in the findings for Metro Ordinance No. 11-1255 at 109 to 119, with citations to materials in the record, and Wash Co Supp. Rec. 12674. The deliberations demonstrate that there was no pre-determined outcome and that neither governing body had made up its collective mind. Both governments also held hearings prior to adoption of their respective ordinances revising reserve designations [Metro, April 21, 2011; Washington County, March 29, 2011 (Wash Co Supp. Rec. 10912); April 19, 2011 (Wash Co Supp. Rec. 11090); and April 26, 2011 (Wash Co. Supp. Rec. 11587). Testimony received at the Metro hearing may be found at Metro Supp. Rec. 326 to 600. Minutes of the council meeting may be found at page 601 of that record."

[39] The county's supplemental findings are consistent with the previous findings and do not alter or otherwise affect the previously adopted ordinance.

L. Equal Protection

Maletis and the East Bethany Owners assert that the reserves submittal violates the Equal Protection Clauses of the United States Constitution and the Oregon Constitution, both facially and as applied.[40] Maletis, June 2, 2011, at 6-7, August 8, 2011 at 9; East Bethany Owners, May 27, 2011 at 1; August 8, 2011 at 1-2. Arguing that the land use statutes governing reserves on their face treat farmland differently than non-farmland and that as applied the reserves decisions treated similarly situated properties in a disparate manner, the objectors conclude that the submittal "is unconstitutional and must be remanded."[41] Maletis, June 2, 2011 at 7.

In *Homebuilders Assoc. v. Metro*, 42 Or LUBA 176 (2002), the Land Use Board of Appeals described the proper analysis of assertions that a challenged decision violates Article I, section 20 of the Oregon Constitution. The Board opined:

> "As relevant here, to establish that the challenged decision violates Article I, section 20, of the Oregon Constitution, petitioner must show that (1) another group has been granted a 'privilege' or 'immunity' that petitioner's group has not been granted; (2) petitioner's group constitutes a 'true class'; and (3) the distinction between the classes does not have a rational relationship to a legitimate end. *Withers v. State of Oregon*, 163 Or App 298, 306, 987 P2d 1247 (1999). A true class is one that is defined in terms of characteristics that are shared apart from the challenged law or action. *Id.* If the true class is one with immutable characteristics, or a distinct, socially recognized group of citizens that has been the subject of adverse social and political stereotyping, then it is a suspect class, subject to a more exacting review standard. *Tanner v. OHSU*, 157 Or App 502, 520, 971 P2d 435 (1998). A true class that is defined by other characteristics, such as geographical residency or employment status, is subject to a less exacting rational relationship test. *Gunn v. Lane County*, 173 Or App 97, 103, 20 P3d 247 (2001); *Sherwood School Dist. 88J v. Washington Cty. Ed.*, 167 Or App 372, 6 P3d 518 (2000)." 42 Or LUBA at 200.

The Commission finds that the objectors have neither established that they are part of a true class nor, even assuming they were, that distinguishing between farmland and non-farmland does not have a rational relationship to a legitimate legislative end (to protect farmland for farm use). In its exceptions, Maletis asserts that the Metro Urban and Rural Reserve Submittal favors a true class: "the group of owners of farmland outside urban growth boundaries in Oregon." Maletis, August 8, 2011 at 10. The Commission does not understand that to be a "true class"

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[40] The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides in part that a state may not "deny to any person within its jurisdiction the equal protection of the laws." US Const, Amend XIV, §1. Similarly, Article I, section 20 of the Oregon Constitution provides that "[n]o law shall be passed granting to any citizen or class of citizens, privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens."

[41] The Commission has some question whether state and federal constitutional objections even fall within its scope of review under OAR 660-027-0080(4) and ORS 197.633(3)(c). Objectors assert that because the Court of Appeals review under ORS 197.651(10)(b) requires reverse or remand if this order is unconstitutional requires the Commission to consider objections regarding the constitutionality of the Metro Urban and Rural Reserves Submittal. To the extent that such objections are properly before this Commission, they are considered here.

under Article I, section 20. Additionally, such a class based on geographic location of land ownership would seem to be of a nature that a person could choose to enter (or leave) the class. *See Wilson v. Dept. of Rev.*, 302 Or 128, 132, 727 P2d 614 (1986) ("[l]aws which are left open for individuals voluntarily to bring themselves within a favored class do not violate Article I, section 20."). Even assuming that Maletis could establish that there is indeed such a challengable class, Maletis must establish under the Equal Protection Clause that any distinction between classes does not have a rational relationship to a legitimate end. *See also New Orleans v. Dukes*, 427 US 297, 303, 96 S Ct 2513, 49 L Ed2d 511 (1976).

These objections and exceptions fail to establish that the re-designation submittal is non-compliant with the goals or applicable administrative rules, or that the county failed to consider the factors for designation of lands as rural reserves under OAR 660-027-0060. The Commission rejects the objections.

M. Goal Compliance

The Commission reviews the Metro Urban and Rural Reserves Submittal for compliance with the applicable statewide planning goals pursuant to OAR 660-027-0080(4)(a) and ORS 197.633(3)(c). The rule provides that "compliance with the goals" as provided in ORS 197.747, means "the submittal on the whole conforms with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature." OAR 660-027-0080(4)(a). Additionally, to determine compliance with the Goal 2 requirement for an "adequate factual base", the rule requires the Commission to consider whether the submittal is supported by "substantial evidence" as that term is used in ORS 183.482(8)(c) ("substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding").

1. General Goal Compliance

Elizabeth Graser-Lindsey objects that the reserves submittal fails to "consider as a major determinant the carrying capacity of the air, land and water resources" and fails to determine if "the land conservation and development actions provided for by such plans" would "exceed the carrying capacity of such resources" as contemplated by Metro's 1995 Future Vision plan.[42] Ms. Graser-Lindsey argues that the Metro Urban and Rural Reserves Submittal violates Goals 2, 3, 4, 5, 6, 8, 9, 10, 12, and 14 because Metro and the counties did not "develop alternative means that will achieve the goals" as required by Goal 2 when they failed to follow the vision plan guidelines. Graser-Lindsey, July 6, 2010 at 1.

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[42] The 1995 Metro Future Vision states: "We have chosen to approach carrying capacity as an issue requiring ongoing discussion and monitoring." Metro's Notice of Adoption of Urban and Rural Reserves (Metro Ordinance No. 10-1238A, Exhibit E) indicates that Statewide Planning Goals 1–15 apply to this decision, that "these decisions establish a system of urban and rural reserves in the three-county region to guide long-term planning to the year 2060," and that "the decisions include changes to the comprehensive plans (counties) and regional framework plan (Metro) and maps."

The Commission agrees with objector Graser-Lindsey that all relevant goals apply to urban and rural reserves designations. Findings of goal compliance are explicitly required for planning documents designating urban and rural reserves under OAR 660-027-0080(4). This is consistent generally with state land use law because the Metro Urban and Rural Reserves Submittal includes both comprehensive plan amendments for Clackamas, Multnomah, and Washington Counties, and an amendment to Metro's Regional Framework Plan amendments. Goal 2 requires that such plan amendment decisions must explain why the amendment complies with the relevant goals. *Von Lubken v. Hood River County*, 22 Or LUBA 307, 314 (1991). The Commission also recognizes that the goals at issue include guidelines regarding consideration of carrying capacity.[43]

The Commission rejects this objection for two reasons. First, the decision to designate urban reserves does not immediately commit the lands to urban use. Rather, it makes the lands first priority for inclusion within the Metro UGB if Metro at some point in the future makes a policy decision to expand its urban growth boundary, and if Metro makes the showing required by state law (and Metro's own authorities) that an expansion is justified. Even then, Metro will decide among lands designated as urban reserves. The Commission construes its goals contemplate consideration of carrying capacity at the time of an amendment of the urban growth boundary, rather than at the time of a decision on urban reserves.

Second, the provisions objector Graser-Lindsey identifies are guidelines and not mandatory requirements. As Goal 2 explains, and ORS 197.015(9) confirms, guidelines are suggested approaches intended to aid local governments in achieving goal compliance in connection with development and implementation of comprehensive plans and related regulations.[44] The word "guideline" is used in its ordinary sense of guidance and not mandate or limitation. As the statute provides, "[g]uidelines shall be advisory and shall not limit state agencies, cities, counties and special districts to a single approach." ORS 197.015(9).

The Commission previously acknowledged Metro's Regional Framework Plan and Regional Urban Growth Goals and Objectives (RUGGOs) as complying with the statewide planning goals. The RFP and RUGGOs include provisions directed at the overall carrying capacity of the lands making up the Metro region. RFP amendments that are part of the Metro Urban and Rural Reserves Submittal do not alter that compliance. As noted above, the Metro Urban and Rural Reserves Submittal does not commit any lands to urbanization and, as a result, Metro's existing planning provisions remain adequate to address carrying capacity to the extent that such a consideration is required by the statewide goals.

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[43] For example, the Goal 3 guidelines provide that plans "should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources."

[44] Goal 2 provides:

> "Guidelines are *suggested directions* that would aid local governments in activating the mandated goals. They are *intended to be instructive, directional* and positive, *not limiting local government to a single course of action* when some other course would achieve the same result. Above all, guidelines are not intended to be a grant of power to the state to carry out zoning from the state level under the guise of guidelines." (Emphasis added).

Joseph Rayhawk also objects generally that the submittal violates Goals 1-15 generally, and Goals 1, 2, 3, 6, 11, 12 and 13 specifically. Mr. Rayhawk's specific objections are addressed below. The Commission finds Mr. Rayhawk's general objections lack particularity. Objectors before this Commission must "make an explicit and particular specification of error by the local government." *1000 Friends of Oregon v. LCDC*, 244 Or App at 268-269 (*McMinnville*). The Commission rejects this objection.

2. Goal 1: Citizen Involvement

The City of Cornelius, Save Helvetia, Thomas Black, Joseph Rayhawk and Linda Peters object that the reserves process violated Goal 1. Several objectors allege a lack of opportunity for meaningful public participation. The City of Cornelius particularly identifies the Washington County process that lead to the re-designation submittal, which it asserts "has not provided the public access to factual information used by LCDC, Metro and the County at the times when public hearings were conducted and land use decisions made on Reserves." Cornelius, June 2, 2011 at 2. Thomas Black also objects that Washington County violated Goal 1 because it did not involve "a true cross-section of the citizens of Washington County in the initial review and decision making process." Objector Black feels that city representatives were given undue influence, that public hearings were "only a formality," and that decisions were made prior to the hearings. Black, June 1, 2011 at 5.

Goal 1 requires local governments to develop a citizen involvement program. None of the objections contend that any of the local governments did not have a program, or did not comply with their citizen involvement program. Rather, they object to the results of Washington County's implementation of its program. That, however, does not establish a Goal 1 violation.[45] To demonstrate a Goal 1 violation the objector must establish a failure to comply with the acknowledged citizen involvement program. *Casey Jones Well Drilling, Inc. v. City of Lowell*, 34 Or LUBA 263 (1998); *Churchill v. Tillamook County*, 29 Or LUBA 68 (1995). The objectors have not done so. Specifically, the City of Cornelius contends the Metro and Washington County public hearings violated Goal 1 because neither governing body provided public hearing instructions or procedures prior to conducting a hearing and never began any of the public hearings by asking whether the hearing body whether there were any *ex parte* conflicts or other conflicts of interest to declare. However, the city does not identify any state or local requirements applicable to the proceedings before Metro or the county that required them to provide those instructions. The hearings before Metro and the County were not quasi-judicial land use proceedings; they were legislative proceedings.

Metro Ordinance No. 11-1255 (at 10- 13) describes the overall process of analysis and public involvement in two sections titled "analysis and decision making and public involvement":

[45] LUBA repeatedly has held that where amendments to a local government's comprehensive plan or land use regulations do not amend or affect the local governments acknowledged citizen involvement program, the only way a petitioner can demonstrate a violation of Goal 1 is by demonstrating a failure to comply with the acknowledged citizen involvement program. *Casey Jones Well Drilling, Inc. v. City of Lowell*, 34 Or LUBA 263 (1998); *Churchill v. Tillamook County*, 29 Or LUBA 68 (1995).

"The public involvement plan provided the public with more than 180 discrete opportunities to inform decision makers of their views urban and rural reserves. A fuller account of the public involvement process the activities associated with each stage may be found at Staff Report, June 9, 2010, Metro Rec. 123-155; Metro Supp. Rec. 47."

Washington County's Supplemental Record (at 12664-12667) addresses the county's public involvement process. Metro and Washington County held a joint public hearing on March 15, 2011, prior to signing the amended IGA; testimony from this hearing is included in the Metro Supplemental Record (at 47-187). Both governments held public hearings prior to adoption of their respective ordinances revising the reserves decision – Metro on April 21, 2011 and Washington County on March 29, April 19, and April 26, 2011. Washington County Supp. Record at 10912, 11090 and 11587. Based on the above the Commission finds that Metro and Washington County followed their public involvement programs throughout the reserves process, in compliance with Goal 1. The objections are rejected.

3. Goal 2: Land Use Planning

Numerous objectors assert that various portions of the submittal violate the Goal 2. Goal 2 requires both an adequate factual base and that citizens and affected governmental units be provided opportunities for review and comment during the preparation, review and revisions of plans and implementation ordinances. For the most part, objections to the Goal 2 requirement that the decision have an adequate factual base are addressed below, in the context of specific findings. Objections based on lack of an opportunity for public participation are addressed here. Goal 2 provides in part,

"Opportunities shall be provided for review and comment by citizens and affected governmental units during the preparation, review and revisions of plans and implementing ordinances."

Steve and Kelli Bobosky object that they had no opportunity to participate in the process Metro and Washington County used in reaching the re-designation submittal. Bobosky, June 2, 2011 at 8-9. Metro and Washington County limited the re-designation proceeding to issues responding to their understanding of the October 2010 Commission vote to remand specific components of the initial submittal. Washington County lawfully was permitted to re-evaluate its rural reserve designations, including the designation of the Bobosky's property. However, Goal 2 does not require the county to reconsider or reevaluate all elements of a prior decision in its re-evaluation and reconsideration of a portion of that decision. The county's decision not to re-evaluate the Bobosky's property designation or allow additional testimony concerning areas that chose not to reevaluate or re-designate does not violate Goal 2. The Commission rejects this objection because the Boboskys had a full opportunity to participate in the local proceedings that lead to the designation of their property and have had the opportunity to provide both written and oral testimony regarding their opposition to the designation of their property, during the Commission's initial and supplemental review of the Metro Urban and Rural Reserves Submittal.

The City of Cornelius also objects that Metro and Washington County proceeded with reconsideration and reevaluation of some designations after the Commission voted to remand a portion of the initial submittal. With respect to the participation requirement of Goal 2, the city fails to demonstrate that it was denied opportunities to review and comment during the process leading to the re-designation submittal. To the contrary, the city confirms that it "testified against this Urban/Rural Reserves adjustment by Washington County and Metro in public workshops and the following public hearings that led to approval of the new Reserves recommendation to LCDC this summer" and lists six separate instances where it was provided the opportunity to present testimony and evidence into the record. Cornelius, June 2, 2011 at 1. The Commission rejects this objection.

4. Goal 3: Agricultural Lands

Several objectors, including Joseph Rayhawk, Thomas Black, Linda Peters and Save Helvetia object that the reserves decision violates Goal 3 because it does not preserve farmland for farm use and will cause adverse impacts on nearby farm uses. Joseph Rayhawk and Save Helvetia argue that to satisfy Goal 3, all land that satisfies the rural reserve factors must be designated as rural reserves. Helvetia, July 12, 2010 at 13; Rayhawk, June 1, 2011 at 7-8, Black, June 1, 2011 at 3.

Goal 3 does not prohibit the designation of farmland, Foundation Agricultural Lands or otherwise, as an urban reserve, nor does it require that all land that meets the rural reserve factors must be designated rural reserve. Exclusive Farm Use (EFU) zoned land designated as an urban reserve remains subject to Goal 3 until and unless Metro adds the land to the regional urban growth boundary. OAR 660-027-0070. Likewise, undesignated Goal 3 resource land remains subject to the protections of Goal 3. Rather than contributing to adverse impacts, the designation of urban and rural reserves provides better certainty, and limits uses that might conflict with farm uses. OAR 660-027-0070.

Further, nothing in state statute or rule requires that a county designate a particular property or area as either an urban or a rural reserve. To the contrary, division 27 provides Metro and the counties discretion regarding whether to designate any lands. Metro may designate Foundation Agricultural Land as an urban reserve under specified conditions. OAR 660-027-0040(11). The rule requires a county to indicate which land was considered for designation as rural reserves and for which purpose, and the counties satisfied this requirement. OAR 660-027-0060. Nothing in the reserves statutes or rules or Goal 3 mandates designation of particular land as a rural reserve – only that there be some rural reserves designated if the county utilizes the urban reserves authorization provided by SB 1011. ORS 195.143(3). The Commission rejects these objections.

5. Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces

Thomas Black alleges the urban and rural reserves submittal violates Goal 5 because it will allow urbanization of natural resources, cultural and historic areas, and open spaces. Metro addressed Goal 5. Exhibit B to Ordinance No. 11-1255 at 182. Goal 5 applies only to "significant" resource sites, including regional resources, that are included in an inventory

adopted as part of a comprehensive plan or a Metro regional functional plan. OAR 660-023-0080. If Metro were to expand the regional UGB, or a county were to amend its comprehensive plan designations for reserve areas, Goal 5 would apply at that time. Goal 5 does not apply to the decisions to designate an area as an urban reserve because that decision does not authorize any new use of the land that could conflict with an inventoried Goal 5 resource. If inventoried resources exist in the subject area, Goal 5 requires Metro and the county to evaluate them in light of conflicting uses at the time amendment of the UGB or the comprehensive plan is under consideration to allow new conflicting uses. OAR 660-027-0070. The Commission rejects this objection.

6. Goal 9: Economic Development

Maletis objects that there is no substantial evidence or related findings, in either the initial or re-designation submittal, to meaningfully assure that the submittal, as it will be implemented by the counties, is in compliance with Goal 9. Maletis, July 14, 2010 at 15; June 2, 2011 at 5. Specifically, Maletis contends that although the Metro Urban and Rural Reserves Submittal includes summary conclusions by each of the counties as to how the reserve designations comply with Goal 9, no facts support the conclusions.[46] Further, Maletis argues that it does not appear Metro made any effort to acknowledge and coordinate the counties' findings and substantive mapping decisions regarding Goal 9 into its own analysis to ensure that regional goal objectives and obligations are met; and that there are no independent findings by Metro to demonstrate, based upon substantial evidence in the whole record, that the submittal complies with Goal 9 on a regional basis.

Goal 9 is "[t]o provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens." The implementing rule "does not require or restrict planning for industrial or other employment uses outside of urban growth boundaries." OAR 660-009-0010. Generally, Goal 9 does not establish planning requirements for local governments outside of urban growth boundaries. OAR 660-009-0020. All urban and rural reserves lie outside the Metro regional UGB.

Maletis does not cite any authority that requires independent findings by Metro to demonstrate compliance with Goal 9 on a regional basis. To the extent Goal 9 is implicated through this process, the applicable requirement for determining potential future land need for employment is contained in OAR 660-027-0050(2). Metro analyzed the need for employment

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[46]To the extent Maletis' requested relief for this objection is to remand the decision to Clackamas County, in its supplemental findings, Clackamas County states:

> "The proposed text amendment is consistent with Goal 9 because it, in itself, does not propose to alter the supply of land designated for commercial or industrial use. However, the text does establish urban reserves, which include lands suitable for both employment and housing. In Clackamas County, specific areas were identified as appropriate for a mixed use center including high intensity, mixed use housing (Borland area of Stafford) and for industrial employment (eastern portion of Clackanomah). These areas will be available to create new employment areas in the future if they are brought into the UGB." Revised Findings for Clackamas County Urban and Rural Reserves April 21, 2011 at 28-29.

land for the planning period and accommodated it. Metro Record at 22. Metro also made findings relative to Goal 9 in the Urban Growth Report on which it relied in evaluating land needs under the rule. Metro Record at 626. It also made findings regarding Goal 9 compliance for each of the counties in Exhibit E to Ordinance No. 10-1238A: Metro record at 45 (Clackamas County), 57 (Multnomah County) and 113 (Washington County), and a general finding of goal compliance.[47] However, the specific provisions of Goal 9 generally apply inside UGBs, and "implementation" of the urban reserves submittal for purposes of Goal 9 will take place at the time the UGB is amended by Metro. Metro may, at that time, designate specific lands for employment use in order to be consistent with Goal 9.

In contrast to the Maletis objection, Joseph Rayhawk contends the Metro Urban and Rural Reserves Submittal violates Goal 9 because Washington County asked for more urban reserve land than is needed for economic development; and because the submittal "took flat Foundation Farmland rather than the more challenging Important or Conflicted Lands." Rayhawk, June 1, 2011 at 8. As a result, Mr. Rayhawk opines that "they may be contributing to the current decline of the County has a job growth engine, especially for high-tech jobs." *Ibid.* While he offers opinions regarding Washington County's economic development efforts, the objection does not offer any evidence undermining Metro's analysis, or establishing how Goal 9 is implicated or violated by the Metro Urban and Rural Reserves Submittal.

The Commission rejects both the Maletis and Rayhawk objections.

7. Goal 12: Transportation (and OAR chapter 660, division 12)

Tim O'Callaghan, Maletis and the Metropolitan Land Group (MLG) object that the Metro Urban and Rural Reserves Submittal violates Goal 12 because it lacks findings regarding OAR chapter 660, division 12 (the "Transportation Planning Rule" or "TPR"). O'Callaghan, July 14, 2010 at 16; Maletis, July 14, 2010 at 15; MLG, July 14, 2010 at 18. The objectors argue that Metro and the counties must show compliance with the TPR because the submittal includes amendments to the RFP and the counties' acknowledged comprehensive plans. According to these objectors, none of these local governments determined whether the proposed amendments would "significantly affect" any existing or proposed transportation facilities.

Maletis, MLG and O'Callaghan argue that neither Metro nor Clackamas County made any independent findings regarding Goal 12 or the TPR, and that, while Multnomah County and Washington County adopted Goal 12 findings, the counties did not address the TPR. As a result, the objectors assert that it is unclear whether any of the adopted policies or designations

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[47] For Goal 9 generally, Metro found:

> "The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations for lands subject to Goal 9. All urban and rural reserves lie outside the UGB. No land planned and zoned for rural employment was designated rural reserve. Designation of land as urban reserve helps achieve the objectives of Goal 9. Much urban reserve is suitable for industrial and other employment uses; designation of land suitable for employment as urban reserve increases the likelihood that it will become available for employment uses over time. The designation of reserves is consistent with Goal 9." Exhibit B to Ordinance No. 11-1255 at 183.

"significantly affect" any existing or planned transportation facilities. Maletis and MLG also argue that the local governments cannot defer this analysis to a later stage of development on the grounds that no development is currently proposed.

The Commission rejects this objection because the local governments were not required to address the TPR in the Metro Urban and Rural Reserves Submittal. By its own terms the TPR does not apply directly to urban and rural reserves designations. The rule reflects the Commission's position that a land use decision that does not commit lands to an urban use and that, in fact, maintains existing land uses, does not affect any transportation system or facility. The same reasoning applies here: since the zoning of the property included in an urban reserve will not (and cannot) change by virtue of the reserve designation, the land use action will generate no new vehicle trips.

The "significantly affect" language appears at OAR 660-012-0060. Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation will "significantly affect" an existing or planned transportation facility, the local government adopting the amendment must preserve the "identified function, capacity, and performance standards" of the facility. OAR 660-012-0060(1) and (2). The rule also identifies the circumstances that would result in a significant affect.

None of the categories listed in the rule[48] describe the urban and rural reserve amendments adopted by Metro and the counties. Additionally, OAR 660-012-0060(1)(c) provides that the determination of whether an action will significantly affect a transportation facility is "...measured at the end of the planning period identified in the adopted transportation system plan[.]" Here, the Regional Transportation System Plan (RTSP), acknowledged November 24, 2010, includes a planning period to 2035. Thus, the Metro Urban and Rural Reserves Submittal addresses potential land uses well past that horizon. Finally, OAR 660-024-0020(1)(d) provides:

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[48] OAR 660-012-0060(1) provides in part:

> "A plan or land use regulation amendment significantly affects a transportation facility if it would:
>
> "(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
>
> "(b) Change standards implementing a functional classification system; or
>
> "(c) As measured at the end of the planning period identified in the adopted transportation system plan:
>
> "(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;
>
> "(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
>
> "(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan."

"The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary."

While this rule does not apply directly to urban and rural reserves designations, it supports the Commission's conclusion that the Metro Urban and Rural Reserves Submittal which does not commit lands to an urban use and that, in fact, maintains existing land uses, does not affect a transportation system or facility. The Commission rejects these objections.

N. Urban Reserves

1. Failure to allocate land needs by geographic subarea

The Coalition for a Prosperous Region[49] (CPR) objected during the initial proceedings and reasserted their objection following the re-designation submittal that (1) Metro failed to balance urban needs as required by OAR 660-027-0005(2) by failing to allocate land needs by geographic subarea to meet long-term needs for population and employment; and by doing so, (2) Metro failed to adequately consider the urban reserves factor requiring sufficient development capacity to support a healthy economy (OAR 660-027-0050(2)) and (3) failed to adequately consider the urban reserves factor requiring that lands designated for urban reserves can be developed in a way that makes efficient use of existing and future infrastructure investments (OAR 660-027-0050(1)). CPR therefore alleges Metro failed to comply with Statewide Planning Goals 9, 10 and 14. CPR, July 14, 2010 at 14–16; June 2, 2011, at 1-2.

CPR contends the three counties that comprise the Metro region are projected to grow at different rates, yet the reserves submittal does not expressly allocate land needs by geographic area, or even allow sufficient flexibility to address such sub-regional growth rates. CPR asserts that the submittal provides insufficient urban reserves and undesignated lands to meet the region's needs over the next 50 years, particularly in the western part of the region. This objection focuses on the need to increase urban reserves in Washington County consistent with its sub-regional growth needs.

According to the CPR, the failure to allocate growth among the counties means that the reserves submittal fails to properly apply the urban reserves factor that lands designated for urban reserves can be developed in a way that makes efficient use of existing and future infrastructure investments. CPR argues that the failure to allocate growth among the counties also means that the reserves submittal failed to properly apply the urban reserves factor that sufficient development capacity for a healthy economy and sufficient land suitable for a range of housing choices.

[49] The Coalition for a Prosperous Region is "a consortium of business and labor organizations that includes the Columbia Pacific Building Trades Council, the Commercial Real Estate Association (NAIOP), Commercial Real Estate Economic Coalition, Home Builders Association of Metropolitan Portland, Portland Metropolitan Association of Realtors, Portland Business Alliance, and Westside Economic Alliance." CPR July 14, 2010, at 1.

CPR proposes that to properly allocate lands under OAR 660-027-0050(2), the Commission should remand the submittal to require Metro and the Counties to designate additional land in Washington County as urban reserves based on unmet need in a process that considers all relevant factors, including historic population growth, economic aspirations of the individual communities, and housing equity. In the alternative CPR argues the Commission should acknowledge the designated urban reserves for all three counties, but remand with direction to remove rural reserve designations in Washington County so there is sufficient land available to accommodate possible increases to the urban reserves, or to retain these as undesignated until they may be needed for conversion to urban reserves at a later time.

OAR 660-027-0005(2) requires findings based on substantial evidence and supported by an adequate factual base that there is a balance between designated urban and rural reserves that, "in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the most important landscape features that define the region for its residents." OAR 660-027-0005(2). CPR contends that "balance" should mean or include assigning land needs across the region by geographic area. Perhaps Metro and one or more county could have chosen to strike the balance in the manner CPR advocates. However, because neither the initial submittal nor the re-designation submittal assign land needs by geographic area, in order to sustain this objection, the Commission must determine that as a matter of law, the "balance" required by OAR 660-027-0005(2), must be done at a sub-regional level. The Commission concludes however that the text of the rule does not compel CPR's preferred interpretation, but instead, expressly allows the balance to be considered "in its entirety."

CPR's arguments might have merit if the submittal under review was a Metro regional urban growth boundary amendment. As CPR notes, in that context the courts have found Metro may consider regional balance. (*See, e.g., City of West Linn v. LCDC*, 201 Or App at 438; *Citizens Against Irresponsible Growth*, 179 Or App at 17 n 6; *D.S. Parklane Development, Inc.*, 35 Or LUBA at 556-60). Here, however, neither Goal 14 nor the related statutes concerning housing and employment apply and the relevant authorities do not contemplate a sub-regional balancing methodology. The statutory and rule criteria are much less prescriptive, and direct Metro only to assure that the amount of land "be planned to accommodate estimated urban population and employment growth in the Metro area for at least [40 to 50 years] * * *, [and that the amount] consist of the combined total supply provided by all lands designated for urban reserves in all counties that have executed an intergovernmental agreement with Metro[.]" OAR 660-027-0040(2).

The designation of urban reserves in the Metro region provides a large inventory of land that has the potential to become urbanizable in the future, when, and to the extent that Metro is able to demonstrate a need for additional land during future proceedings. To the extent that one part of the Metro region grows faster than expected, either in terms of residents or jobs, Metro retains the ability to adjust its UGB to reflect differences in growth rates. Further, Metro has built in a twenty-year review of its urban reserves designations offering the opportunity to consider what lands to designate potentially urbanizable as well. Metro and the counties have (collectively) also left some undesignated lands around the entire region in order to allow for this type of correction. In short, unlike an UGB amendment, an urban reserve designation provides

an overall amount of land for potential urban needs for a 30-year year period beyond the 20-year UGB; it does not designate lands as urbanizable, let alone for specific future uses or sub-regional needs.

CPR also misconstrues the joint state agencies' October 14, 2009 letter to the Metro Regional Reserves Steering Committee and Core 4.[50] Metro Record at 1370-1390. CPR mistakenly interprets that letter to mean that the urban reserves submittal must designate specific lands or areas for specific future urban uses in specific parts of the region. But the state agencies were expressing only that sub-regional needs were an important policy consideration that the agencies urged Metro to take into account as part of its deliberations.[51] In fact, the findings show that county and local needs were presented and extensively considered in the process and analysis leading up to the final designation of urban and rural reserves. *See, e.g.*, Metro Record at 20-21, 25-39, 48-49 and 71-95. The Commission finds that Metro did not violate OAR 660-027-0005(2) or other relevant goals and rules by not designating urban reserves by geographic area.

CPR also objects that, by not designating urban reserves on a geographic basis, Metro did not adequately consider the urban reserves factor requiring sufficient development capacity to support a healthy economy in OAR 660-027-0050(2). The objection relies on the fact that the Washington County Reserves Coordinating Committee recommended an urban reserves amount of 34,300 acres in Washington County to the Reserves Steering Committee and the Core 4, but Metro ultimately relied on the Core 4's recommendation for approximately 13,561 acres in

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[50] The state agencies that signed that letter include: The Oregon Departments of Agriculture, Forestry, Transportation, Business Development, Fish and Wildlife, Environmental Quality, Water Resources, State Lands, and Land Conservation and Development.

The "Core 4" was comprised of one elected official from each of Metro and the three counties. The group provided policy level project oversight and management, and was charged with assuring that the regional reserves designations represented a reasonable balance of the guiding factors of OAR chapter 660, division 27. The Regional Steering Committee was comprised of management level professionals representing a diverse array of interests, including representatives of the nine agencies listed above. The committee was co-led by the Core 4, and was charged with overseeing the study of urban and rural reserves to make recommendations related to the final designation of reserve areas to Metro and the three counties. Washington Co. Record at 5; Exhibit B to Ordinance No. 11-1255 at 55.

[51] The Joint Agency letter identified "equity and efficiency concerns in deciding where and how the region will grow (population and employment)" by stating:

> "Metro has a responsibility to allocate land needs by geographic area within the region to meet long term needs for population and employment. We understand that this responsibility is complicated by the reserves process. Metro and the counties should first achieve consensus on how much lands the region will need for population and employment, and then (separately) decide how those lands should be allowed between the three counties. In making these regional-scale decisions, Metro and the counties need to keep both housing equity (Goal 10) and employment (Goal 9) considerations (including the aspirations of individual communities) in mind as well as fiscal equity and environmental justice in determining how to distribute urban reserve areas across the region.
>
> "Each county should address housing equity and employment considerations by having some reconciliation of the supply and demand for housing and employment uses as part of their submitted analysis. Metro has done this on a macro level, but should supply the counties with the adequate tools to address these issues on a sub-regional basis." Agency Joint Letter, October 14, 2009, at 6; Metro Record at 1638.

Washington County urban reserves. Metro Record at 71-73. The initial submittal included approximately 13,800 urban reserve acres in Washington County. During the re-designation process, Metro reduced urban reserves in Washington County by 299 acres and 391 more acres were left undesignated. After the re-designation, about 13,525 acres in Washington County are designated urban reserve. Metro Supp. Record at 3. CPR claims that a healthy regional economy requires Metro to adopt a much higher number for urban reserves land supply in Washington County, and the correct number is the one recommended by the Washington County Reserves Coordinating Committee.

In designating urban reserves, Metro is not required to adopt the recommendation of any party to the reserves process. In designating urban and rural reserves respectively, Metro and three counties must apply, weigh and balance the urban and rural reserve designation factors in the administrative rule to lands in the study area, and make a decision based on findings that demonstrate that the submittal meets the criteria for urban reserves and the overall objective in OAR 660-027-0005(2). Metro specifically addressed this factor with regard to employment lands. Metro Record at 16-17, 23. The record contains adequate findings to demonstrate that Metro applied OAR 660-027-0050(2) in analyzing whether the urban reserves "include sufficient development capacity to support a healthy economy" and concluded it does, citing Metro Record at 16-17, 27, 29, 31-32, 34, 37-38, 48-49, 69, 71, and 73-94.

CPR also objects that Metro's failure to allocate growth among the counties means that Metro did not properly apply the urban reserves factor requiring that lands can be developed in a way that makes efficient use of existing and future infrastructure investments. CPR makes the point that "the City of Hillsboro has developed sophisticated infrastructure to support substantial industrial development." CPR, July 14, 2010, at 15. The objection does not cite to facts in the record supporting this conclusory statement; and even assuming factual substantiation for this statement, it does not compel the conclusion that Metro improperly applied the factors to study areas around the entire region.

Finally, CPR argues the findings are not adequate to show Metro applied OAR 660-027-0050(3) in its analysis. OAR 660-027-0050(3) requires consideration of whether the land proposed for urban reserves "can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers[.]" The Commission finds that the record establishes that Metro applied that urban reserve factor in its analysis, and that analysis is reflected in Metro's findings. Metro Record at 27, 29, 31-32, 35, 38, 48, 69-71, and 73-94. The Commission concludes that those findings demonstrate that Metro adequately considered OAR 660-027-0050(3) in its urban reserves analysis.

The Commission finds that Metro's failure to designate urban reserves on a geographical basis does not violate the cited goals and rules and rejects this objection.

2. Failure to Evaluate Re-designation Land Needs Region-wide

In contrast to CPR's objection, Save Helvetia objects to the re-designation submittal contending Metro failed to reconsider land needs region-wide when it re-designated lands in

Washington County in response to the Commission's October 2010 vote to remand the initial submittal with regard to some lands in Washington County. Save Helvetia argues that Metro's submittal "utterly fails to explain how altering the overall need and location of urban [] reserve designations by trading Cornelius lands for those in Helvetia in Washington County will affect the region as a whole." Save Helvetia Exception, August 8, 2011, at 2. It also faults the submittal for failing "to analyze the qualitative impacts from urbanizing these lands and does not explain how such impacts will alter the overall livability within the region. The impact the Metro decision will have on the viability and vitality of the region was not considered and was in no way coordinated with the other affected counties." *Id.*

First, as described above, the re-designation submittal did not significantly change the amount of land designated for either urban or rural reserves, either in Washington County or in the region as a whole and, therefore, did not significantly alter the overall the balance or otherwise affect the livability, viability or vitality in the region as a whole. As a continuation of the reserves designation process that did not significantly impact the overall balance within the region, Metro was not required to re-evaluate the needs of the entire region when it adjusted the designations in Washington County. Secondly, while Save Helvetia might prefer that the urban and rural reserves process include the level of scrutiny described in its list of "failures," in fact neither the statute nor the rules requires the type of detailed and comprehensive comparative analysis Save Helvetia faults Metro for not conducting. The Commission rejects this objection.

3. Amount of Urban Reserve Land

a. Oversupply of Urban Reserve Land

The City of Portland objects that the Metro Urban and Rural Reserves Submittal includes an oversupply of urban reserves that represents more than a 30-year supply of land in violation of OAR 660-027-0040(2). Portland, July 14, 2010 at 2 (page unnumbered). The city asserts that the oversupply error is the result of what it considers to be three faulty assumptions in the December 2009 Urban Growth Report, which result in an overestimate of the future urban land need. Portland identifies those assumptions as:

> "1. The existing urban growth boundary requires a four percent vacancy rate to provide needed housing, even though urban reserves will be readily available to meet unanticipated needs.
>
> "2. The calculation on need for urban reserves requires a four percent vacancy rate, even though these lands are, by definition, completely vacant of urban housing.
>
> "3. There will be no up-zonings of existing urban land, even though the [2035 Regional Transportation Plan] contains new [High Capacity Transit] corridors, with assumptions of up-zoning and redevelopment at new transit stations." Portland, July 14, 2010 at 3 (page unnumbered).

Thus, the city argues that Metro underestimated the capacity of existing urban land.

As an initial matter, the Commission notes that the 2009 Urban Growth Report is not the subject of this review. To the extent the city's underlying request is that this Commission

require that the 2009 Urban Growth Report be revised to reflect the city's preferred assumptions, the Commission's authority in this review does not extend to review of that report.

To the extent the city's objection relates to Metro's analysis and conclusions regarding compliance with OAR 660-027-0040(2), that rule establishes the timeframe Metro is to utilize in determining the amount of land to include as urban reserves if it designates reserves under division 27. The amount is a quantity of land based on the estimated land supply necessary for "urban population and employment growth in the Metro area for at least 20 years, and not more than 30 years, beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in the most recent inventory, determination and analysis performed under ORS 197.296." OAR 660-027-0040(2).

Metro established a 50-year time period for its urban reserves, starting January 1, 2010 and ending December 31, 2059. Metro Record at 14, 22. Consistent with OAR 660-027-0040(2), Metro based the starting date on the date that it completed its "inventory, determination and analysis performed under ORS 197.296." On December 10, 2009, the Metro Council adopted this report by Resolution 09-4094 and subsequently as part of the capacity ordinance on December 16, 2012 by Ordinance No. 10-1244B. The 2009 Urban Growth Report served as a basis for its decision on urban reserves.

OAR 660-027-0040(2) requires that urban reserves are "planned to accommodate estimated urban population and employment growth" but the rule does not prescribe a methodology for how Metro is to estimate the land supply necessary for urban population and employment growth in the Metro area through the fifty-year period. The general methodology Metro used in the Urban Growth Report is consistent with the methodology used to determine the capacity of the existing urban growth boundary. While the City of Portland may have preferred a different methodology, it has not established that Metro's methodology is not consistent with OAR 660-027-0040(2).

Communities determining their needs for employment and residential lands for purposes of UGB management use a vacancy factor to recognize that land markets require some level of vacancy to function. The City of Portland does not provide any basis for determining that a four percent vacancy factor is too high, but instead contends that a long-term supply of land outside of the UGB designated as urban reserves is a functional equivalent of vacant land within the UGB. But that argument ignores that the process of bringing land into an urban growth boundary and then providing the urban services necessary for the land to develop is not instantaneous. If there is no vacant land within the regional UGB in the meantime, then the region would confront difficulty complying with Goals 9 and 14 which require a long-term supply of land for housing and employment needs (and, under Goal 9, for cities to provide a competitive short-term supply).

The City of Portland also argues that Metro's assumption that there will be no up-zoning of land over the planning period is inconsistent with the 2035 Regional Transportation Plan (RTP), which contains new High Capacity Transit (HCT) corridors, with assumptions of up-zoning and redevelopment at new transit stations. Metro adopted the 2035 RTP on June 10, 2010 by Metro Ordinance No. 10-1241B, after Metro made its initial submittal but prior to

making the re-designation submittal decision. Pursuant to ORS 197.274(2), the department approved the 2035 RTP as an amendment to the RFP on November 24, 2010. DLCD Order No. 001797. Although the department approved the 2035 RTP prior to the completion of the reserves designation process, the Commission concludes that the city has not established that Metro erred in not accounting for up-zoning associated with HCT corridors in the 2035 RTP when it determined the capacity of the existing UGB under OAR 660-027-0040(2) in 2009, prior to the 2010 approval of the 2035 RTP. The objective of Goal 2 is to make the planning process and the planning documents the "basis for all decisions and actions related to land use." *D.S. Parklane Development, Inc.*, 165 Or App at 22; *1000 Friends of Oregon v. City of Dundee,* 203 Or App 207, 214, 124 P3d 1249 (2005). The city's contention that Metro erred by not relying on the HCT corridors in the 2035 RTP prior to the approval of that planning document is contrary to Goal 2. The Commission considered and rejected these objections at the October 2010 hearing. The department's subsequent approval of the 2035 RTP in November 2010 did not require Metro to begin the need determination anew when it undertook responding to the Commission's initial review of the submittal. The Commission rejects that basis of objection.

Finally, the City of Portland objects that Metro failed to coordinate the 50-year range forecast for population and employment based on the December 2009 Urban Growth Report with the 2035 RTP.[52] The city alleges that this lack of coordination results in violation of Goal 2, ORS 197.015(5), and ORS 268.380(2). Portland, July 14, 2010 at 3 (page unnumbered). The city premises its argument on Metro's requirement to adopt plans that are coordinated with each other.

The 2035 RTP is not before the Commission in this review, so to the extent the objection questions the assumptions and conclusions in that planning document, the Commission does not consider those. Moreover, the Commission finds that Metro made the assumptions in the submittal under review consistent with the planning documents, including the then acknowledged RTP, at the time it made the decision. Metro was not required to revise the most recent ORS 197.296 analysis, or its reliance on it, to reflect assumptions made in the 2035 RTP. Because the HCT corridors strategies contained in the 2035 RTP were neither approved nor implemented through changes to Metro's other functional plans at the time Metro determined the capacity of the existing UGB, Metro was not required to and reasonably did not modify its assumptions regarding planned or zoned densities based on those strategies. The Commission rejects this objection.

b. Urban Reserve Supply Exceeds Statutory 50-year Limit

1000 Friends of Oregon (1000 Friends)[53] and City of Wilsonville also challenge the amount of urban reserve lands designated by Metro in its initial reserves submittal. 1000 Friends also objects that the re-designation submittal did not correct that over-supply of land designated

[52] The most recent ORS 197.296 analysis presented in the December 2009 Urban Growth Report contains population and job growth assumptions that differ from those underpinning the RTP, because the RTP contains up-zoning and redevelopment projections along HCT corridors that are different from those included in the latest ORS 197.296 analysis.

[53] The 1000 Friends objection is on behalf of 1000 Friends of Oregon, the Washington County Farm Bureau, and Dave Vanasche, Washington County Farm Bureau President.

for urban reserves. Both objectors argue that the amount of land proposed for urban reserves exceeds the statutory 50-year limit on urban reserves in violation of ORS 195.145(4). 1000 Friends, July 12, 2010 at 2; June 1, 2011 at 7; City of Wilsonville, July 14, 2010, at 2-5. The objections contend:

(1) Metro assumes that the existing urban zoning, adopted and acknowledged by each city and county, will not be realized within the 20-year time period of the urban growth boundary (UGB), at least absent a demonstration that public investments or policies are currently in place or underway to cause the zoned level of urban development to happen.

(2) Metro assumes that cities will meet their current zoning only if certain investments are made - such as in infrastructure, urban renewal, various subsidies, or waivers - and Metro requires a level of certainty about those investments before relying on them to assume that higher densities are achieved in any city.

The result of assumptions that do not fully account for up-zoning, rezoning, and meeting zoned densities over the reserves time period, objectors contend, is an overstated identified need and corresponding oversupply of land for the stated 50-year planning period.

Metro's submittal explains that it based its analysis of the existing UGB capacity on a projection that development within the current UGB will occur at levels allowed by current zoning during the 50-year planning period. Metro found:

> "The region will focus its public investments over the next 50 years in communities inside the existing UGB and, as a result, land within the UGB would develop close to the maximum levels allowed by existing local comprehensive plan and zone designations. This investment strategy is expected to accommodate 70 to 85 percent of growth forecasted over that period. No increase in zoned capacity within the UGB was assumed because, at the time of adoption of reserves ordinances by the four governments, the Metro Council will not have completed its decisionmaking about actions to increase the capacity of the existing UGB as part of Metro's 2009 capacity analysis. For those areas added to the UGB between 2002 and 2005 for which comprehensive planning and zoning is not yet complete, Metro assumed the areas would accommodate all the housing and employment anticipated in the ordinances that added the areas to the UGB over the reserves planning period. Fifty years of enhanced and focused investment to accommodate growth will influence the market to use zoned capacity more fully." Metro Record at 23.

Metro projects that 100 percent of the maximum zoned capacity of the existing UGB will be used during the reserves planning period. Metro Record at 23, 600. In addition, in calculating the amount of land needed for urban reserves, Metro assumed that: (1) future residential development in urban reserves would develop at higher densities than has been the experience in the UGB in the past, and (2) that employment lands over the next 50 years would be used with greater efficiencies than in the past. Metro Record at 23–24. Although the re-designations submittal resulted in slightly less property designated for urban reserves, the re-designation submittal did not significantly alter the calculations.

The state agencies reviewed Metro's estimate of its projected range of land needs for residential and employment uses in the combined state agency comments. The state agencies assessment concluded that Metro's projections were reasonable:

> "The state agencies support the amount of urban reserves recommended by the Metro COO. That recommendation is for a range of between 15,000 and 29,000 acres. We believe that Metro and the counties can develop findings that, with this amount of land, the region can accommodate estimated urban population and employment growth for at least 40 years, and that the amount includes sufficient development capacity to support a healthy economy and to provide a range of needed housing types." Metro Reord at 1373.

1000 Friends and Wilsonville argue that Metro's projections do not meet the requirements of ORS 197.296 and Goal 14. However, the objectors have not established how those authorities apply to the urban reserves submittal, and the Commission finds that, by their terms, they do not. The need factors of Goal 14, and the requirements of ORS 197.296 relate to urban growth boundaries, not to urban reserve designations. Further, even if those requirements were applicable, Metro's use of current zoned capacity is consistent with ORS 197.296 and this Commission's Goal 14 rules, which require communities to first use current zoned capacity in determining what proportion of future projected land needs can be met within the existing UGB (looking to up zoning as a possible efficiency measure once current capacity is determined). There is no legal inconsistency between Metro's projections and ORS 197.296 or Goal 14.

While some of Metro's planning projections may be characterized as somewhat conservative, others are best described as somewhat aggressive. On balance, the Commission finds that the projection of land needs over the 50-year period is reasonable and is supported by an adequate factual base. In contrast to the statutes and rules relating to land need projections for the amendment of urban growth boundaries, neither SB 1011 nor the division 27 rules proscribe any particular method for estimating housing and employment needs over a fifty-year period, and Metro has documented that there is a significant range in terms of likely outcomes over such a long planning period. *See* generally, Metro Record at 1922-1931. Instead of requiring a specific method for estimating long-term need, SB 1011 and division 27 rely principally on the requirement for a broad regional consensus among decision-makers to achieve balance in the urban and rural reserve designations. The Commission finds Metro's planning projections and assumptions are reasonable and consistent with the statutory and rule framework.

1000 Friends also objects that Metro projected that development during the first 20 years of the 50-year period will occur at zoned capacity only if certain investments are made. 1000 Friends specifically argues that Metro should rely on full zoned capacity, with no projected underbuild, because the cities all have acknowledged public facilities plans. Metro's findings explain that it did not project higher density because it had not yet adopted measures to increase the capacity of the current UGB. Metro Record at 23. Metro's findings make it clear that it did project that even areas that have recently been added to the UGB (such as Damascus) will develop at full planned densities over a 50-year period. *Id.* 1000 Friends' preference that Metro *should* have employed different assumptions does not establish that Metro's projections are either inconsistent with OAR 660-027-0040 or unsupported by substantial evidence.

Finally, 1000 Friends points out that Metro could choose a time span less than the maximum 50 years, or an estimate of future growth that is not at the top of its population and employment growth forecast. If choosing the outer limit of the allowable time span and the upper end of the population and employment forecasts results in a designation of urban reserves that does not conform to the law, which 1000 Friends believes it does not, then they assert that Metro must choose a lesser time span, a lower point within the forecast, or both.

The Commission agrees with 1000 Friends that Metro could have chosen a time span of less than 50 years or chosen an estimate of future growth that is not at the top of its population and employment growth forecast. However, 1000 Friends has not established that Metro's choice to rely on a 50-year time span or its estimate of future growth are not allowed by the statute or rules. Applicable law authorizes Metro to designate urban reserves for up to a 50-year period, and 1000 Friends has not identified any legal basis that would preclude Metro from deciding to plan for the upper end of that range. This Commission reviews the local government's submittal to determine whether that decision complies with that law; not whether there are other decisions the local government could have made that could have also complied. The Commission rejects this objection.

c. Basis for Planning Projections

Maletis, O'Callaghan and MLG object that that the reserves submittal violates Goals 2 and 14 because Metro and the counties based projected population growth, employment growth, densities of development, and land needs on "unacknowledged documents extraneous to" Metro's acknowledged urban growth management functional plan and the acknowledged comprehensive plans of the counties. Maletis, July 14, 2010 at 12; Maletis, October 8, 2010 at 7-9. The objectors assert Metro's reliance on the 2009 Urban Growth Report and the COO Recommendation, Urban Rural Reserves in Appendix 3E-C of Metro's record are in "clear contravention of" *D.S. Parklane Development, Inc.,* 165 Or App 1 and *1000 Friends of Oregon v. City of Dundee,* 203 Or App 207.

In *D.S. Parklane*, Metro relied on a draft report that was not approved by the Metro Council to determine whether its existing UGB had a 20-year supply of land in determining its needed lands estimate. *See D.S. Parklane,* 35 Or LUBA at 538. In *1000 Friends of Oregon v. City of Dundee*, the city relied on a buildable lands inventory study contemplated by but not incorporated into the comprehensive plan in rendering a land use decision. 203 Or App at 216. In both cases, the court determined that the draft report and study were "not a plan or planning document of the kind that Goal 2 contemplates." 165 Or App at 22; 203 Or App at 216. The Commission understands objectors to assert that Metro's use of the 2009 Urban Growth Report in the Metro Urban and Rural Reserves submittal suffers the same defects.

Unlike the draft report at issue in the *D.S. Parklane* case, the Metro Council has adopted the 2009 UGR by Resolution No. 09-4094 and subsequently by Ordinance No. 10-1244B. However, the Metro Council's adoption of the 2009 Urban Growth Report is not the end of the inquiry. In *1000 Friends of Oregon v. Metro,* the court considered whether Metro's incorporation of urban growth report capacity numbers into the RFP allow Metro to use those numbers in assessing whether an expansion of the UGB was justified. 174 Or App at 421. The

court concluded it was not because the urban growth report conflicted with the text and context of the RFP, specifically the "target capacities" requirements that prescribed mandatory densities. *Id.* at 424. Here, however, objectors have directed the Commission to no text or context in either the RFP or the Urban Growth Management Functional Plan[54] with which the 2009 UGR is in conflict. Objectors before this Commission must "make an explicit and particular specification of error by the local government." *1000 Friends of Oregon v. LCDC*, 244 Or App at 268-269 (*McMinnville*). In its review, the Commission does not find that the 2009 UGR conflicts with the RFP or the UGMFP. In *1000 Friends of Oregon v. Metro,* the court identified the "target capacity" provisions in *former* MC 3.07.120, MC 3.07.150 and Table 1.07 as providing Metro's assessment of the capacity of the UGB. 174 Or App at 424. Metro has amended the UGMFP several times since that case, and it no longer contains "target capacity" provisions. The Commission does not identify any provisions that conflict with the 2009 UGR regarding assessing the capacity of the UGB and objectors have not otherwise established that the 2009 UGR is not a planning document of the kind that Goal 2 contemplates. Because the Commission finds that Metro properly considered and established the population growth, employment growth, densities of development, and land needs projections used as the basis for urban reserve designations, it rejects this objection.

d. **Objective to Achieve Balance**

1. Too much urban reserve

1000 Friends, Save Helvetia and the Audubon Society of Portland object that Metro's findings, do not adequately address the balancing required by OAR 660-027-0005(2), and that Metro misunderstands that balancing is a qualitative analysis. 1000 Friends further asserts that Metro and Washington County incorrectly responded to the Commission's October 2010 decision as an exercise in replacing "lost acres," and that the lost acres should not necessarily come from Washington County. They further argue Metro and Washington County compounded the error by misapplying the factors and Washington County's practice of using undesignated lands as a "holding zone" for future urbanization when those lands qualify for rural reserve designation. 1000 Friends contends Metro improperly discounted alternatives to Foundation Agricultural Land for urban reserve designation and improperly failed to consider reducing the urban reserve time period.

The context for 1000 Friends' specific contentions is that the submittal is not "balanced" as required by OAR 660-027-0005(2). The initial consolidated findings contained few statements that explicitly address balance, though the findings sections entitled "Background" and "Overall Conclusions," as a whole, adequately explained why Metro and the counties determined that their designation of urban reserves and rural reserves best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the most important landscape features that define the region for its residents. Exhibit E to Ordinance No. 10-1238A, Metro Record at 14-19. In the re-designation submittal, Metro made additional findings to further explain how it designations further the objective of achieving balance under OAR 660-027-0005(2). Exhibit B to Ordinance No. 11-1255 at 3-5.

[54] The Urban Growth Management Functional Plan is Section 3.07 of the Metro Code.

Although the Commission may have preferred a more explicit statement addressing the balance required by OAR 660-027-0005(2), the consolidated findings of Metro and the counties do establish that the submittal is intended to strike the "best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents" balance. The findings demonstrate that the submittal achieves the objectives of accommodating nearly a 75 percent population increase by increasing the area within the regional UGB merely 11 percent. To achieve that quantitative success, the region recognized the need to build great communities – those that offer residents a range of housing types and transportation modes from which to choose. Such offerings are available in compact, mixed-use communities with fully integrated street, pedestrian, bicycle and transit systems. A healthy economy providing family-wage jobs may mean attracting certain industries that prefer large parcels of flat land. Although it is easiest to build great communities and provide for employment on flat land in large parcels without a rural settlement pattern at the perimeter of the existing UGB, such lands are almost all Foundational Agricultural Lands which also contribute greatly to the economy and livability of the region in their resource use. Thus, to promote the viability and vitality of the agricultural and forest industries, the submittal designated more than half of the urban reserves on lands that, although they may be more difficult and expensive to urbanize, are not Foundational Agricultural Land. Ultimately, the counties and Metro came to an agreement that the "adopted system of urban and rural reserves, in its entirety, achieves the region's long-range goals and a balance among the objectives of reserves: to accommodate growth in population and employment in sustainable and prosperous communities and neighborhoods, to preserve the vitality of the farms and forests of the region, and to protect defining natural landscape features." Metro Record 18-19. The Commission finds that the Metro Urban and Rural Reserves Submittal has demonstrated the balance required by OAR 660-027-0005(2).

As a factual matter, the "balance" of the urban and rural reserves in the re-designation submittal has been altered little from the initial submittal. The total number of acres, and the locations of urban and rural reserves and undesignated land both in Washington County and the region as a whole has not changed significantly. However, in the re-designation submittal, Metro made additional findings to further explain the balance. Washington County also further addressed its reasoning for designating Foundation Agricultural Lands as urban reserve in the supplemental reserves findings at pp. 9616-9695 and 12732-12735. Metro cited findings relating to designation of Foundation Agricultural Lands at Ordinance No. 11-1255 at 3-5 and in the supplemental record at 172-178, 181-288, 298-300, 440-481, 799-805, 1105-1110, and 1163-1187. Metro cited to findings explaining why certain lands were left undesignated in Metro supplemental findings at 124, 127, 155, and 163-166. Metro, June 24, 2011.

Whether Metro and Washington County were attempting to "make up" for "lost" acres of urban reserve is not material to the Commission's evaluation. Rather, the Commission must review the designations to determine whether Metro adequately considered the factors in determining the amount of urban reserve land, based on the demonstrated need and whether the areas designated have been adequately justified. The Commission determined at the close of initial 2010 hearings that Metro had appropriately inventoried buildable lands and determined need, designated urban reserves for a period authorized by statutes and rules, and used appropriate population and employment projections. While the amount was not significant, in

fact the amount of urban reserve land designated by Metro in the region and in Washington County declined in the re-designation submittal. The Commission found in 2010 that Metro justified the amount of land included and used an authorized planning period for establishing urban reserves and has been presented no reason to change that conclusion.

1000 Friends also contends Washington County improperly left land that qualified as rural reserve undesignated in order to make a "holding zone" for future urban reserves. The objection does not state that this practice, by itself, violates any provision of statute or rule, but rather states that it further compounds other problems, leading to the package of urban and rural reserves not striking the proper balance. Objections regarding the designation of rural reserves, and Metro's choice to leave some lands undesignated are addressed below. However, for purposes of the objection that this results in a lack of "balance", the Commission rejects that objection. As explained above, while some parties would have preferred to strike the balance differently, the Commission finds that the balance reflected in the reserves submittal is based on substantial evidence, and that Metro and the counties have established an adequate factual base for the submittal.

Finally, Save Helvetia objects that the submittal did not achieve the required balance and results in excessive urban reserve designation as a result of Metro's failure to "simultaneously consider" the urban and rural reserve factors. Save Helvetia, July 12, 2010 at 13. Save Helvetia argues that OAR 660-027-0040(10) requires that both urban and rural reserve factors must be applied "concurrently and in coordination with one another."[55] Save Helvetia argues that it is improper to solely consider a case in favor of urbanization without simultaneously considering whether these same lands might be more suitable for rural land protections." *Id.* The Commission disagrees. The Commission interprets the "simultaneous consideration" requirement in OAR 660-027-0040(1) to mean that the county and Metro must consider urban and rural reserve designations in the entire county and region at the same time and adopt a single, joint set of findings, reasons and conclusions for its designations. It does not imply any particular outcome and does not require both urban and rural reserve factors to be considered for each and every property, or for each and every area. In contract, in OAR 660-027-0040(11), the Commission has expressly required that if Metro designates Foundation Agricultural Land as urban reserves, it must explain under both the urban and rural reserve factors why such land was chosen. Thus, the context of the regulatory scheme establishes that a requirement to apply both urban and rural reserve factors to a particular will be expressly stated. The Commission rejects this objection.

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[55] OAR 660-027-0040(10) provides:

> "Metro and any county that enters into an agreement with Metro under this division shall apply the factors in OASR 660-027-0050 and 660-027-0060 concurrently and in coordination with one another. Metro and those counties that lie partially within Metro with which Metro enters into an agreement shall adopt a single, joint set of findings of fact, statements of reasons and conclusions explaining why areas were chosen as urban or rural reserves, how these designations achieve the objective stated in OAR 660-027-0005(2) and the factual and policy basis for the estimated land supply determined under section (2) of this rule."

2. Insufficient urban reserve

In contrast to the objections that the reserves submittal designates too many acres of urban reserves to achieve an appropriate balance, CPR asserts the submittal fails to designate sufficient urban reserves to achieve the balance of urban and rural reserves and that the findings are inadequate to demonstrate compliance with OAR 660-027-0005(2). CPR, July 14, 2010 at 4–8; June 2, 2011 at 1-2. In furtherance of that objection, CPR argues that the "Overall Conclusions" section of the initial reserves findings is almost exclusively devoted to a discussion of the tradeoffs and considerations related to the designation of rural reserves, failing to describe the trade-offs or considerations of its designation of urban reserves. Metro Record at 14-19. CPR argues further that the initial submittal does not describe how it "balanced" the designation of urban and rural reserves to "best achieve" the region's urban and rural needs, noting that OAR 660-027-0005(2) is cited only once; and the only two statements concerning balance are purely conclusory. Metro Record at 2, 18, 22. CPR describes considerable testimony not mentioned in the reserves findings that argues that urban needs are not met and disproportionately suffer in comparison with rural needs and that reserve findings concerning tradeoffs for individual urban reserve areas are not enough to demonstrate overall balance. CPR notes that the reserves findings mention OAR 660-027-0050(2) in only three places, and then only to state that the balance has been achieved. Metro Record at 2, 18, 22.

The Commission agrees with CPR that OAR 660-027-0005(2) requires findings supported by an adequate factual base that there is a balance between designated urban and rural reserves that, "*in its entirety, best achieves* livable communities, the viability and vitality of the agricultural and forest industries and protection of the most important landscape features that define the region for its residents." OAR 660-027-0005(2) (emphasis added). The objection suggests that "balance" means some kind of quantitative reckoning of the amount of urban reserve versus the amount of rural reserves.

As discussed above, the Commission construes OAR 660-027-0005(2) to require a qualitative balance in terms of long-term trade-offs between the further geographic expansion of the Portland metro urban area and the conservation of farm, forest and natural areas that surround the metro area. This is not a balance in terms of the quantitative amount of urban and rural reserves, but a balance between encouraging further urban expansion versus land conservation.

The real issue is whether the findings in support of the reserves submittals demonstrate compliance with the overall objective in OAR 660-027-0005(2). As discussed above with regard to the opposite argument, the Commission finds that Metro and the counties have established that the submittal demonstrates an appropriate balance and rejects this objection.

CPR next asserts that Metro underestimates urban land need by overestimating the development capacity within the existing UGB and relying on faulty assumptions to dramatically increase projected development efficiency and density. Consequently, CPR argues the urban reserves submittal fails to designate enough urban reserves to balance urban and rural needs as required by OAR 660-027-0005(2); to properly apply the urban reserves factors, particularly OAR 660-027-0050(2) and (6); and to satisfy the requirements of Goals 2, 9, 10, and 14 rendering it inconsistent with OAR 660-027-0080(4). CPR, July 14, 2010 at 9–14.

In contrast to the City of Portland's opposite argument, CPR also asserts that Metro's 2009 Urban Growth Report, Reserves Residential Range Methodology, and Reserves Employment Range Methodology rely on overly optimistic and never-achieved refill rates, very aggressive floor-to-area ratios (FARs), availability of housing subsidies, and decreased underbuild rates. The result, CPR contends, is an overestimation of the capacity within the existing UGB and an underestimation of reserves land needed to accommodate housing and employment demand through the 2060 planning horizon. The objection also challenges the assumption that there will be a higher proportion of infill housing in the future, arguing that more infill negatively affects housing choice (both by unit type and location) and affordability and prevents achievement of "livable communities" as "attractive places to live and work."

Notably, CPR's arguments are essentially the reverse of the arguments made by 1000 Friends and the cities of Wilsonville and Portland. Like those reverse arguments, while CPR's suggested methodology could possibly have been supported, had Metro chosen to employ it, CPR has not established that the goals it cites or the urban reserve rules dictate its suggested methodology. Regarding CPR's requested schedule for designating additional urban reserves, even if the Commission found it appropriate or reasonable for Metro to do so, CPR does not establish that the Commission has the authority to require Metro to adopt additional urban reserves if Metro's assumptions prove incorrect. Under OAR 660-27-0040, the designation of urban reserves is not a mandatory requirement, and neither the statute nor its implementing rules require or contemplate the type of periodic adjustment schedule CPR prefers. However, Metro amended the RFP by adding Urban and Rural Reserve Policy 1.7.6, which states that it is the policy of the Metro Council to:

> "Twenty years after the initial designation of the reserves, in conjunction with Clackamas, Multnomah and Washington Counties, review the designated urban and rural reserves for effectiveness, sufficiency and appropriateness." Exhibit B to Ordinance No. 10-1238A at 1; Metro Record at 4.

The Commission concludes that Metro RFP Policy 1.7.6 largely addresses CPR's stated concerns. The objection is rejected.

In considering this objection, as well as the converse objections by 1000 Friends and the cities of Portland and Wilsonville, the Commission must determine whether Metro made reasonable assumptions in calculating the amount of land needed for urban reserves. Metro assumed that: (1) future residential development within the UGB would be at full or almost full zoned capacity over the 50-year period, (2) future residential development in urban reserves would develop at higher densities than has been the experience in the UGB in the past, and (3) employment lands over the next 50 years would be used with greater efficiencies than in the past. Metro Record at 23–24. Although CPR claims that these assumptions were inappropriate and unsupported factually, leading Metro to designate an inadequate amount of land for urban reserves, the Commission finds that Metro provided adequate findings supported by substantial evidence in explaining the reasons for making the above-described assumptions. Metro Record at 23-24 (findings); 117-122 (staff report); and 597-610 (technical analyses for COO recommendations). Metro's policy choice to project its 50-year land needs in the middle of its

forecasted range does not conflict with any state statute, goal or rule, and is supported by an adequate factual base.

CPR has established neither that projecting a higher proportion of infill housing in the urban reserves than has occurred in the UGB violates Goal 10 or the urban reserve designation factor[56] by negatively affecting housing choice and affordability, nor that the higher proportion of infill housing prevents achievement of the overall objective of "livable communities" as "attractive places to live and work" under OAR 660-027-0005(2) and 660-027-0010(4). Goal 10 requires communities to provide land for needed housing. The evidence in the record does not establish that communities with infill housing are not "livable," that infill housing prevents those communities from being "attractive places to live and work," or that more infill will prevent flexibility of location in the region.

CPR also asserts that Metro did not include "sufficient development capacity to support a healthy economy" in violation of urban reserve designation factor OAR 660-027-0050(2). In order for the Commission to sustain this objection, CPR must establish that Metro did not base the submittal and re-designation submittal on a consideration of this factor at all. However, Metro's findings consider development capacity and specifically determine that there is more than sufficient development capacity within its current UGB to meet projected employment needs over a 50-year period. Metro Record at 609. Nevertheless, Metro also determined that for one general type of employment land need (large lots, over 25 acres) there is not sufficient capacity in the existing UGB beyond 20 years. To address this general, long-term employment land need, Metro added 3,000 acres to its total estimate of land supply, equating to its estimate based on historic trends and future projections regarding the amount of land needed for this type of use. The Commission finds that the projections Metro used to determine the amount of urban reserves land are reasonable and supported by an adequate factual base, and therefore the objections do not establish that the Metro Urban and Rural Reserves Submittal violate the cited goals and rules.

Finally, CPR objects that Metro's adoption of the top end of the "middle third" of the population and employment forecasts is arbitrary and thus violates the Goal 2 requirement that decisions be supported by an adequate factual base. CPR asserts the reserves findings do not describe how Metro arrived at its decision to use the "middle third" of its population and employment projections, and that instead the reserves findings simply state Metro's estimated demand in ranges for new dwelling units and new jobs. Because these forecasts are the basis for the projected urban needs, CPR asserts that the reserves decision also fails to comply with OAR 660-027-0005(2), or demonstrate that the urban reserves factors in OAR 660-027-0050(2) and (6) were correctly applied. CPR, July 14, 2010 at 8.

CPR directs the Commission to nothing in the statute or rules that precluded Metro from using the range forecast for the initial phases of its analysis of the amount of land needed for long-term population and employment, provided it ultimately decided (based on an adequate factual base and appropriate policy determinations) on a specific projection of need. Metro decided to use the top end of the "middle third" of its population projection. Metro Record at 24, 118-119, 601-603, 607-610. Metro explains the range forecast and the policy questions involved

[56] OAR 660-027-0050(6): "Includes sufficient land suitable for a range of needed housing types."

in deciding where within the range to plan for in its 20 and 50-year Regional Population and Employment Forecasts. Metro Record at 1918-2007. Metro based its determination of the amount of employment land needed on its estimate of the portion of its long-term need that will be for large sites (as explained above), and not on its range forecast. The Commission finds the Metro's reasoning and findings are supported by substantial evidence in the record, and that Metro has demonstrate an adequate factual base for its conclusion

4. Challenges to Bases for Designation of Urban Reserves

a. Use of Road Rights of Way as Urban Reserves

Linda Peters objects that Washington County amendments to its Metro IGA converted the rural sides and rights-of-way of 22 rural roads, including land adjacent to rural reserves, to urban reserves. Ms. Peters objects that Washington County neither adopted policies to implement these reserves nor made adequate findings to support the need for this land as urban reserves; that the designation fails to buffer urban from rural uses in violation of Goal 3 and OAR 660-027-0050(8); and the exact amount of designated land has not yet been determined.

Specifically, Ms. Peters challenges Washington County Findings II.B.3) Proposed Adjustments to Ordinance No. 733, Technical Amendments 4), at 25, which states:

> "Rural reserve designations of public road Rights-of-Way (ROW) adjoining urban or future urban areas could result in management and/or maintenance issues. *Staff recommended during the hearings process for Ordinance No. 733 that in instances where roadways are utilized as boundaries for either urban reserves or undesignated lands, the entire ROW be designated urban reserve or remain undesignated.* The Board of County Commissioners agreed with this issue and directed county staff to have the changes reviewed through the process defined in the Intergovernmental Agreement with Metro (Washington County Record Pages 8533-8554)." (Emphasis in original).

Ms. Peters asserts there has been no showing of need for these urban reserve expansions, citing Washington County's only justification as "Rural reserve designations of public road rights-of-way (ROW) adjoining urban or future urban areas could result in management and/or maintenance issues." She also argues that placing "urban reserves" on the rural reserve side of the road provides no buffer or edge to the farming activities on the rural reserve side of the road, which fails to "avoid or minimize adverse effects on farm and forest practices...on nearby land including land designated as rural reserves" under OAR 660-027-0050(8).

Ms. Peters contends that including both sides of certain rights-of-way within urban reserve designations will increase conflicts with nearby farm uses. Placing urban infrastructure, particularly roads built to urban standards, through or alongside rural reserves, fails to protect the resource uses to encourage long-term investment. Citing the DLCD director's April 19, 2010 comment to the Commission, Peters argues that "the urban and rural reserves concept is intended not only to protect rural reserves from urbanization, it is also intended to provide a greater degree of protection of resource uses in rural reserves relative to other resource lands in order to encourage long-term investment in farm and forest uses and conservation of important natural

resources." Linda Peters, July 14, 2010, at 7 (unnumbered pages.) Ms. Peters asserts the deficiency violates OAR 660-027-0040(7), OAR 660-027-0050(8), Goal 2 and Goal 3. Peters, July 14, 2010 at 6 (page unnumbered) and requested that this Commission reverse urban reserve designations on rural sides and rights-of-way of the 22 subject rural roads in Washington County, or, in the alternative, remand for an adequate factual base and compliance with all other statutory and rule requirements for urban reserve designations.[57]

Metro adopted Regional Framework Plan Policies 1.7, 1.9, and 1.11 and a map with the urban reserve designations. Exhibits A and B to Ordinance No. 10-1238A, Metro Record at 3–6; *see also* Metro Record at 24.[58] Metro's adoption ordinance describes the map as follows: "The areas shown as 'Rural Reserves' on Exhibit A are the Rural Reserves adopted by Clackamas, Multnomah and Washington Counties and are hereby made subject to the policies added to the Regional Framework Plan by Exhibit B of this ordinance." Metro Record at 2. Thus, rural reserves are subject to Regional Framework Plan policies. Metro's findings state:

> "The region's urban and rural reserves are fully integrated into Metro's Regional Framework Plan and the Comprehensive Plans of Clackamas, Multnomah and Washington counties. Metro's plan includes a map that shows urban and rural reserves in all three counties. Each of the county plans includes a map that shows urban and rural reserves in the county. The reserves shown on each county map are identical to the reserves shown in that county on the Metro map." Metro Record at 15.

These findings adequately reflect that the reserves map is adopted as part of the Regional Framework Plan.

The Commission understands this objection to be that neither Metro nor Washington County has adopted policies that specifically address rights-of-way and adjoining lands. OAR 660-027-0040(6)[59] and (7)[60] require Metro and the counties to adopt policies to "implement the

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[57] Because OAR chapter 660, division 27 authorizes Metro to designate urban reserves and the three Metro-area counties to designate rural reserves, OAR 660-027-0020(1) and (2), the Commission understands Ms. Peters to argue for remand to Metro.

[58] The Ordinance states: "The Regional Framework Plan is hereby amended, as indicated in Exhibit 13, attached and incorporated into this ordinance, to adopt policies to implement Urban Reserves and Rural Reserves pursuant to the intergovernmental agreements between Metro and Clackamas, Multnomah and Washington Counties, respectively, and ORS 195.141 to 195.143." Ordinance No. 10-1238A, Metro Record at 2.

[59] OAR 660-027-0040(6) provides:

> "If Metro designates urban reserves under this division it shall adopt policies to implement the reserves and must show the reserves on its regional framework plan map. A county in which urban reserves are designated shall adopt policies to implement the reserves and must show the reserves on its comprehensive plan and zone maps."

[60] OAR 660-027-0040(7) provides:

> "If a county designates rural reserves under this division it shall adopt policies to implement the reserves and must show the reserves on its comprehensive plan and zone maps. Metro shall adopt policies to implement the rural reserves and show the reserves on its regional framework plan maps."

reserves." Although Regional Framework Plan policy 1.9.8, related to UGBs advises Metro to "Use natural or built features, whenever practical, to ensure a clear transition from rural to urban land use", the Commission has not identified either a Washington County or Metro policy that expressly addresses the interplay of rights-of-way as a buffer between reserves and adjoining lands. Neither OAR 660-027-0040(6) nor (7) specify the contents of the urban and rural reserve policies adopted by Metro or the counties, other than that they must implement the reserves.

However, although Ms. Peters may be correct that Metro and county policies expressly addressing the boundary of reserves that adjoin or include rights-of-way would be beneficial, she has not established that failure to adopt such a policy violates any applicable statute or rule regarding the designation of reserves. Metro's amendments to its Regional Framework Plan, Metro Record at 4, and to Title 11 of its Urban Growth Management Functional Plan, establish polices to implement the reserve designations. Metro Record at 8-13. Neither the statute nor the rule requires that Metro or the county adopt policies to address this detail of reserve designations. The Commission rejects the first part of this objection.

Ms. Peters also argues that Washington County did not adopt adequate findings, and that the county's findings "tell us no more than that county staff thought there might be a problem, and the Board and IGA partners said in effect, 'well, OK then, make the rural sides of the road urban.'" Linda Peters, July 14, 2010, at 7 (unnumbered.) Again, the referenced finding states:

> "Rural reserve designations of public road Rights-of-Way (ROW) adjoining urban or future urban areas could result in management and/or maintenance issues. *Staff recommended during the hearings process for Ordinance No. 733 that in instances where roadways are utilized as boundaries for either urban reserves or undesignated lands, the entire ROW be designated urban reserve or remain undesignated.* The Board of County Commissioners agreed with this issue and directed county staff to have the changes reviewed through the process defined in the Intergovernmental Agreement with Metro (Washington County Record Pages 8533-8554)." (Emphasis in original).

While the Commission might understand how the quoted finding could be read as either perfunctory or conclusory, or perhaps both, nevertheless the finding does identify a potential issue and explains the rationale for the county's decision to exclude rights-of-way from the boundary of rural reserves where a roadway is used as a boundary. Washington County's data and findings for Metro's urban reserve designation of certain rural rights-of-way and adjacent lands are in the record. WC Record at 9643-9644; Metro Record at 63, 67. More directly, this is a legislative land use decision by Metro regarding whether to include certain areas within its designation of urban reserves. That decision does not require findings that explain the details of each segment of the boundary selected by Metro. Rather, the Commission construes OAR 660-027-0050 to require Metro to make its decisions by applying and considering the listed factors to the lands it identifies for study. Metro selected the urban reserves on the basis of areas that it defined for purposes of its analysis and decision-making process. Ms. Peters does not establish that Metro erred by analyzing the application of the urban reserve factors at the geographic level of these areas, and the Commission finds that Metro's use of areas as its basis for analysis was reasonable given the legislative and regional nature of its decision. Neither the statute nor the

rule contemplates the unrealistic, if not impossible task of applying the factors to every parcel or every part of the edge of urban reserve areas.

Ms. Peters also objects that Metro's failure to determine the amount of land designated violates Goal 2. The findings for the amount of land needed for urban reserves in Washington County provided exact acreage figures, locations, and reasons why the urban reserve areas were designated as such (e.g., 4E, 4F, 4G, 5A, 5B). Metro Record at 58-95; and the decision describes the boundary of the designated urban reserves and the amount of land included. However, as described in more detail below, after review of the initial reserves submittal, the Commission determined that, in part, the findings did lack an adequate factual base, in violation of Goal 2. The Commission also voted to remand a portion of the decision that prompted Metro and Washington County to amend their designations in a manner that addresses Ms. Peter's objection. Accordingly, and as addressed in more detail below, the Commission finds that, as a whole, with regard to the designation of Washington County right-of-ways the finding include an adequate factual base, in compliance with Goal 2.

Finally, Ms. Peters objects that the reserves decision violates Goal 3 and OAR 660-027-0050(8) because of adverse effects on nearby farm uses. The Commission rejects that objection. OAR 660-027-0050(8) is one of the urban reserve designation factors. It does not require a finding that designation of the site will avoid or minimize adverse effects on nearby farm uses and rural reserves. It is not a criterion that must be satisfied on its own. Rather, it is one of the factors that Metro must consider in conjunction with all of the other urban reserve designation factors in OAR 660-027-0050. Metro adopted general findings addressing OAR 660-027-0050(8) in connection with the Bethany West area. Metro Record at 92-95. The findings state "concept and community level planning in conformance with established county plan policies can establish a site design which will avoid or minimize adverse impacts on farm practices and natural landscape features in the area." *Id.* The record includes the county's basis for adjusting the boundary to include both sides of the rights-of-way in question are further explained in a staff memo. Washington Co. Record at 8559. That county record explains that if the reserves boundary was placed at the centerline of roadways it may mean that only half of the right-of-way could be improved if and when the land was added to the urban growth boundary. The Commission rejects this objection.

b. Need for Large-Lot Industrial Use

1000 Friends of Oregon objected to the initial reserves submittal on the basis of a finding of a need for 3,000 or more acres of urban reserves for large-lot industrial use. 1000 Friends argues that the alleged need for 3,000 or more acres for urban reserves for large-lot industrial use is not supported by law and is without substantial evidence; and that the designation of lands to meet this alleged need violates the reserve rule and statute by improperly using large blocks of farmland. 1000 Friends, July 12, 2010 at 6-9. 1000 Friends objects that the re-designation submittal furthers this error.

1000 Friends first objects there is no legal basis for providing for any specific type of land use in the urban reserves; that there is no legal basis to make any urban reserve decision based on "preferences" of some employers; and that there is no provision allowing for setting

aside large blocks of land for industrial use. 1000 Friends further argues that the overwhelming majority of urban reserve land proposed for large-lot industrial uses is on Foundation Agricultural Lands in Washington County and that Metro has not adequately established the need to designate Foundation Agricultural Lands as urban reserves. 1000 Friends contends the deficiency violates ORS 215.243(2) and OAR 660-021-0030(1). 1000 Friends, July 12, 2010 at 8.

1000 Friends first argues that under OAR 660-021-0030(1), the alleged need for 3,000 or more acres of industrial land in urban reserves is not supported by substantial evidence. OAR 660-021-0030(1) is substantively the same as ORS 195.145(4) and OAR 660-027-0040(2) in establishing the time period for the urban reserves' land supply.[61] However, OAR 660-021-0030(1) is not applicable to this urban reserves decision because Metro may use OAR chapter 660, division 21 or division 27 to designate urban reserves, but it may not use both at the same time. OAR 660-027-0005(1) and OAR 660-021-0020(2). The Commission assumes that 1000 Friends intended to cite OAR 660-027-0040(2) and not 660-021-0030(1).

In a previous Commission review, the City of Newberg calculated its land supply for urban reserves based (in part) on the projected long-term need for large-lot industrial sites with particular site characteristics in particular locations. The Commission remanded the city's decision. The order stated: "The City's decision designating URAs is remanded to remove identification of specific industrial, commercial, institutional, and livability needs." (*See* LCDC Remand Order 010-REMAND-001787, April 22, 2010 at 9.) The Commission's order in Newberg was based on the OAR chapter 660, division 21 rules for designating urban reserves. The following is the pertinent part of the Commission's order on Newberg's urban reserves:

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[61] OAR 660-021-0030(1) provides:

> "Urban reserves shall include an amount of land estimated to be at least a 10-year supply and no more than a 30-year supply of developable land beyond the 20-year time frame used to establish the urban growth boundary. Local governments designating urban reserves shall adopt findings specifying the particular number of years over which designated urban reserves are intended to provide a supply of land."

ORS 195.145(4) provides:

> "Urban reserves designated by a metropolitan service district and a county pursuant to subsection (1)(b) of this section must be planned to accommodate population and employment growth for at least 20 years, and not more than 30 years, after the 20-year period for which the district has demonstrated a buildable land supply in the most recent inventory, determination and analysis performed under ORS 197.296."

OAR 660-027-0040(2) provides:

> "Urban reserves designated under this division shall be planned to accommodate estimated urban population and employment growth in the Metro area for at least 20 years, and not more than 30 years, beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in the most recent inventory, determination and analysis performed under ORS 197.296. Metro shall specify the particular number of years for which the urban reserves are intended to provide a supply of land, based on the estimated land supply necessary for urban population and employment growth in the Metro area for that number of years. The 20 to 30-year supply of land specified in this rule shall consist of the combined total supply provided by all lands designated for urban reserves in all counties that have executed an intergovernmental agreement with Metro in accordance with OAR 660-027-0030."

"The City of Newberg determined its long-term need for land (through 2040) by developing a population forecast coordinated with Yamhill County, and assessing its need for land in several categories along with the existing supply of land within the city's UGB. Based on this analysis, the City determined that its total long-term need for land (through 2040) was for 1,665 acres. Of this amount, however, a significant portion also was identified as being for uses with unique and specific site requirements - particularly for large tracts of land and in some cases for relatively flat lands.

"The Department argued, based on the history of the urban reserve rule, that OAR 660-021-0030(1) does not authorize a city's long-term land need to be based on specific siting requirements for particular uses, and that (instead) the amount of land in a city's urban reserves must be based on generalized long-term population and employment forecasts. The City disagreed, but nevertheless agreed to a voluntary remand in order to revise its determination to remove reliance of projected land needs of future uses with specific site requirements.

"The Commission interprets OAR 660-021-0030(1) as requiring local governments to make an estimate of its need for developable land over a 10 to 30 year planning period beyond the 20-year time frame used to establish the UGB. This is to be an estimate, based on long-term forecasts of overall population and employment needs for the planning period. The Commission recognizes that the rule authorizes local governments to choose the length of the planning period (within the specified limits), and that the longer the planning period the greater the amount of land that is likely to be justified for inclusion in URAs." LCDC Remand Order 010-REMAND-001787 at 6-7.

In contrast to the Newberg reserve decision, here Metro found that there was no long-term need for additional land beyond the current UGB as a result of overall employment growth. However, Metro's analysis showed that there was a need, based on its buildable lands inventory, its determination of long-term employment growth, and its analysis of the capacity of the existing UGB, for an additional 3,000 acres of land:

"Based on this analysis, the UGB contains adequate capacity to accommodate overall employment growth in the reserves timeframe * * *. However, one key issue remains, regarding providing lots over 25 acres for larger users. This issue was analyzed in the draft urban growth report. It is likely, that single-tenant and multi-tenant employment users in this size range will need to be largely accommodated on vacant buildable lands because redevelopment and infill (refill) appears to be a more likely source of capacity for smaller lot needs. It is impossible to predict with any certainty the number of large lot users expected to come to this region 50 years from now, so this analysis proposes an extension of the analysis described in the UGR. The 20-year UGR analysis shows a rough match between supply and demand for large lots, so it is reasonable to assume that much of the region's large lot supply in the reserves timeframe would come from urban reserves. A reasonable extension of historical demand informed by future growth estimates suggests that approximately 100 acres per year would be appropriate over the reserves timeframe, equating to 2,000 acres for the period 2030-2050 and an additional 1,000 acres for 2050 – 2060." Metro Record at 609. *See also*, Metro Record at 118-119.

In the Newberg matter, the city projected a need for land for specific industries with specific site needs that could only be met in specific locations. In contrast, here Metro is projecting that one aspect of its general land needs for employment over the next fifty years cannot be met within the existing UGB. Metro did not base its determination on a specific need, nor did it identify any particular location where this need will be met within its urban reserve areas. Instead, Metro has determined that in order to accommodate its estimated employment growth, it will need 3,000 acres of land in urban reserves in the 2030-2060 period. The Commission finds that Metro's projection complies with ORS 195.145 and OAR 660-027-0040(2).

1000 Friends further argues that the designation of large-lot industrial land on Foundation Agricultural Land violates the statute and rule. However, no specific urban reserve area is designated for future large-lot industrial use. That determination would need to be made by Metro in conjunction with an amendment of its urban growth boundary.

The Commission acknowledges that the initial consolidated findings contain the following statement:

> "Urban Reserve Area 8A was specifically selected for its key location along the Sunset Highway and north of existing employment land in Hillsboro and also because of the identified need for large-lot industrial sites in this region. WC Rec. 3124-3128. This area's pattern of relatively large parcels can help support the Metro recommendation for roughly 3,000 acres of large-parcel areas which provide capacity for emerging light industrial high-tech or biotech firms such as Solarworld and Genentech." Metro Record at 90. *See also*, Metro Record at 118-119.

In addition, the re-designation findings include the following statement, in its finding regarding urban reserve factor (2):

> "The city views Urban Area 7B as the location for employment expansion, particularly industrial. The reason is that the David Hill Urban Reserve Area 7A is too hilly to accommodate any substantial employment growth and is too far away from main roads needed to connect to the regional transportation system for freight and employment movement. Area 7B is the best location for significant employment expansion due to tis size, flatness of the area, proximity to the Town Center and proximity to the regional road network. Further, there are large parcels to meet the city's large lot industrial needs.
>
> "The City's Economic Opportunities Analysis (EOA) report (Washington County Record page 11129-11249) provided a justification for the amount of land need beyond current supply in the community for office, industrial, retail and other industrial employment sectors. When taking into account current vacant land supply in the community, there is still a need for 284 to 1,520 acres of additional industrial land in order to meet the City's industrial need over the next 50 years. (Washington County Record page 11192). Thus, this land in Area 7B is needed to achieve a 'healthy economy.'

"The City's EOA report also addressed the community's 20 year need by parcel size. The report indicates there is a need for at least one large lot industrial site (50 to 100 acres in size) sometime during the next 20 years (Washington County Record page 11183). Currently, no such site exists in the community. The only parcel within the study area that could accommodate this large-lot need without having to assemble the land is a 115 acre parcel located in the northwest portion of 7B. *Further, the property owner has indicated that the orchard currently on the property is nearing the end of its useful life and would be available for development within the next 2 to 5 years*

"Besides the large-lot industrial need, the urban reserve area provides for a range of potential industrial sites for large, medium and small employers. In addition, locating industrial land near the Highway 47 corridor complements public investments in transportation made to improve traffic circulation in western-Washington County. * * * * *" Ordinance No.11-1255, Exhibit B, at 134-135 (Emphasis added.)

1000 Friends cites this finding, and the italicized language in particular, as impermissibly designating land for large lot industrial use. 1000 Friends, June 1, 2011, at 9.

However, nothing in Metro's decision or the policies adopted by Metro or Washington County to implement the urban reserves commits it or Washington County to use this area for any particular future urban use. As the City of Forest Grove noted in its hearing testimony,

"1000 Friends objection about specific uses was curious from one perspective. Aside from DLCD staff correctly noting that Metro did not adopt a specific land use, it also appears that some of the factors require the consideration of land use types to make the necessary finding (*e.g.*, sufficient development capacity to support a healthy economy and sufficient land suitable for a range of housing types.) Specific uses were discussed to demonstrate how those urban reserve factors are met." Forest Grove, August 18, 2011, at 1.

Contrary to 1000 Friends' characterization, Metro's identification and discussion of the evidence in evaluating these factors does not establish that the submittal impermissibly designates land for large lot industrial use. Metro's evaluation of the urban reserve factors does not require it to ignore the size or qualities of the land under consideration. Metro's findings do not impermissibly designate any urban reserve area for future large-lot industrial use.

In addition, while the Commission did not remand the initial decision on this basis, the re-designation decision included additional explanation that further clarifies that Metro's determination of a need for an additional 3,000 acres of large-parcel areas was not based on a particularized need for any particular type of urban use. Ordinance No. 11-1255, Exhibit B at 67. These findings adequately identify and rely on substantial evidence in the record to support its projections and designations. This objection is rejected. To the extent this objection more generally challenges Metro's designation of Foundation Agricultural Lands as urban reserves, that issue is addressed below.

c. Need for Diversity of Employment Sites

In contrast to 1000 Friends' argument that the decision does not justify the need for 3,000 acres for large-lot sites, CPR asserts the decision fails to provide for a sufficient diversity of employment sites necessary for a healthy economy, and that the findings are not adequate to establish that the 3,000-acre target for large lot industrial sites is sufficient to meet employment land needs. CPR, July 14, 2010 at 16.

The urban reserve factor relating to employment lands, OAR 660-027-0050(2), requires that urban reserves "Include sufficient development capacity to support a healthy economy." Numerous parties presented evidence that to have a healthy economy – that is, be able to attract new employers and support the growth of existing employers – it is necessary to have enough diversity of sites to provide for varying needs (*e.g.*, infrastructure; access to labor force; size; proximity to customers, suppliers, and like companies; market choice, *etc.*). According to CPR, the reserves decision fails to account for the needed diversity of employment sites, instead assuming a shift from production to more research and development and administration/marketing, which have more employees per square foot and demand a higher proportion of office space.

CPR asserts that Metro's reliance on new assumptions without an explanation of how existing sites provide the necessary diversity is inadequate to demonstrate that it correctly applied OAR 660-027-0050(2) to provide for a healthy economy, or OAR 660-027-0005(2) to "best achieve" urban needs. For the same reasons, CPR believes that the reserves decision does not comply with Goal 9.

As explained above, the Commission rejects CPR's objections regarding compliance with Goal 9. The applicable requirements are the general provisions of the reserves rules: OAR 660-027-0005(2) (a balance of urban and rural reserves that best achieves livable communities), and OAR 660-027-0050(2) (that the urban reserves alone or in conjunction with lands inside the current UGB include sufficient development capacity to support a healthy economy).

Metro's analysis showed that the existing UGB has a substantial surplus in the overall amount of employment land that it projected will be needed over the fifty-year planning period (by a factor of 2:1). Metro Record at 609. Recognizing that a portion of the general need for employment lands is for larger sites, Metro also analyzed that component of its general employment land need, and determined that there is adequate capacity within the existing UGB for the next twenty years. Metro Record at 609-610. Finally, Metro analyzed the demand for this component of its employment land need and, based on an extrapolation of trend data, found that approximately 100 acres per year were needed for large-sites that could not be met within the existing UGB, for a total need of 3,000 acres. *Id.*

The Commission finds that there is substantial evidence in the record to demonstrate that the amount of urban reserves designated "includes sufficient development capacity to support a healthy economy," a consideration Metro must make under OAR 660-027-0050(2). However, following the initial hearings, and as explained in further detail below, the Commission voted to remand a portion of the urban reserves designations in Washington County. That remand vote

did not contemplate any increase in the ultimate number of urban reserves. It did, however, also include a vote to remand the Washington County rural reserves to allow the county to adjust the amount of land designated for rural reserve and give the county the option to designate other urban reserves, or leave more undesignated land. In fact, in its re-designation decision, the county did increase the amount of undesignated land, which could, as CPR contemplates, potentially be included in a request to amend the UGB should Metro's assumptions prove to be incorrect.

However, the City of Hillsboro objects to the re-designation submittal on the basis that following the re-designation, Metro designated too little urban reserve near the "Silicon Forest" in Washington County. The City of Hillsboro reiterates the objections CPR made to the initial decision, contending that additional urban reserve, or additional undesignated land as an alternative to urban reserve, is needed in the area to meet long-term demand for large industrial sites. The objection contends Metro's urban reserves re-designation submittal continues to fail to satisfy ORS 195.145(5)(b) and the urban reserves factors contained in OAR 660-027-0050 because it does not provide sufficient suitably located urban reserve land to provide for livability and a healthy economy over the planning period.

The record for the analysis of this area is at Metro Ordinance No. 10-1238A, Metro Record at 22-24 and Metro supp. record at 13-15. The Commission concludes that, while the City of Hillsboro disagrees with Metro's policy choices regarding the location and amount of urban reserves, it has not established that Metro could not reach the conclusion it did. The Metro findings adequately address OAR 660-027-0050, and there is substantial evidence to support Metro's findings.

Hillsboro's objection includes an additional argument not made previously by the CPR. The city states:

> "On October 29, 2010, the Land Conservation and Development Commission (LCDC) orally remanded the Washington County element of the Metro and Washington County Reserves Decision. The draft minutes of this LCDC proceeding includes an LCDC/DLCD staff discussion questioning the adequacy of "Undesignated" land in Washington County.
>
> "This dialogue on the record raises critical doubt whether the final Washington County Rural Reserves set (and boundaries) are too tight to ensure that *a balance* has been reached by the Washington County Urban and Rural Reserves designations that, *in its entirety*, *best achieves livable communities* in this County, and adequately supports a *healthy economy* locally and regionally.
>
> "* * * * *
>
> "LCDC and DLCD discussions during the Reserve proceedings noted concern regarding the sufficiency of employment-oriented urban reserves in Washington County, particularly if such proposed reserves north of the City of Cornelius were not going to be

included in the final set of County urban reserves acknowledged by LCDC." (Emphasis in original.) Hillsboro, May 31, 2011 at 5.

The city notes the 2011 re-designation submittal includes 299 fewer acres of urban reserve and 391 more acres of undesignated land than did the initial submittal.

The Commission did express some concern regarding the overall flexibility for Washington County to designate new urban reserves in the future. However, in 2010, the Commission did not direct the county to reduce the amount of rural reserves or increase the amount of undesignated land. While the amount of land designated as urban reserve has been reduced by a small amount (a net of 299 acres) the amount of undesignated land has been increased by a total of 391 acres. These changes do not fundamentally alter the ability of the region to provide land needed for industrial or other future urban land needs over the planning period. They represent changes on the order of one percent to the regional total for urban reserves, well within the forecasting range of variability over the planning period.

The Commission finds that Washington County's and Metro's decision regarding the amount of urban reserve and undesignated land adequately applies the urban reserve factors with regard to the amount of land needed for future employment needs, and is based on substantial evidence in the record. Therefore, the Commission rejects these objections.

d. Designation of Foundation Agricultural Land as Urban Reserves

1000 Friends and Save Helvetia object that Metro's designation of Foundation Agricultural Land as urban reserves violates ORS 195.137 to 195.145 and OAR chapter 660, division 27. 1000 Friends, July 12, 2010 at 3; 1000 Friends and Save Helvetia, June 1, 2011 at 5-6. They also object regarding the initial submittal that Metro did not make adequate findings to justify its designation of Foundation Agricultural Lands as urban reserves over other non-foundation lands, in violation of OAR 660-027-0040(11).

1000 Friends and Save Helvetia assert that the amount of Foundation Agricultural Land designated as urban reserve is unbalanced and disproportionate region-wide and in Washington County in particular, they argue that, unlike other land needed for urban uses, Foundation Agricultural Lands are limited in their quantity and in their locational attributes. They assert that this difference between Foundation Agricultural Lands and lands for urban uses is recognized in the statutes and Commission rules, and that Metro has failed to recognize the significant damage that its designations will do to the agricultural industry in this part of the state. 1000 Friends identifies alternative areas that Metro could have designated as urban reserves that are not Foundation Agriculture Land. Finally, they argue that these failures have had the result that the decision lacks the overall balance required by the Commission's rule at OAR 660-027-0005(2).

To support their argument, 1000 Friends points out that of the 28,615 acres of urban reserves, 11,915 acres are Foundation Agricultural Lands, of which 9,730 acres are in Washington County. In contrast, very little Foundation Agricultural Land was designated as urban reserves in Multnomah or Clackamas counties. They also note that much of the undesignated land in Washington County is Foundation Agricultural Land that is under the threat

of urbanization. According to 1000 Friends, "[t]he result is that the land most threatened by urbanization in Washington County is now proposed as urban reserves, while many acres not under threat of urbanization in the planning period are designated as rural reserves, turning the law on its head." 1000 Friends, July 12, 2010, at 5.

The Commission does not agree with 1000 Friends that only agricultural and natural resource lands are placed-based under the reserves statutes and rules. Urban reserves also are to reflect place-based needs of the region in terms of future livability and efficiency of public facilities and services. These characteristics are reflected both in the Commission's rules defining the terms "urban reserves" and "livable communities" and in the legislature's establishment of the factors that Metro must consider for urban reserves, which include the efficient use of existing infrastructure, lands that can be provided with cost-effective public facilities and services, lands that can be designed to be walkable and served by well-connected streets, and lands where development can be designed to preserve and enhance natural ecological systems. ORS 195.145(5). These are all factors that are dependent on natural and economic geography, just as the rural reserve factors are.

Under OAR 660-027-0060(4), identification of land by Oregon Department of Agriculture (ODA) as Foundation Agricultural Land is a sufficient basis for the county to designate land rural reserve within three miles of a UGB without consideration of other factors. However, the rules also allow for Foundation Agricultural land to be designated as urban reserves, and specify a process for that evaluation. If Foundation Agricultural Land is considered to rate favorably under the urban reserve factors, the Commission's rule require that if Metro designates such land as urban reserves, its findings and statement of reasons must explain, by reference to both the urban and rural reserve factors, why Metro chose those lands as urban reserves rather than other lands. OAR 660-027-0040(11). Metro's findings include analyses and conclusions explaining why it designated Foundation Agricultural Lands as urban reserves rather than using other lands. Metro Record at 14–18. Specifically, Metro summarized its decision in the following terms:

> "Why did the region designate *any* Foundation Agricultural Land as urban reserve? The explanation lies in the geography and topography of the region, the growing cost of urban services and the declining sources of revenues to pay for them, and the fundamental relationships among geography, topography and the cost of services. The region aspires to build 'great communities.' Great communities are those that offer residents a range of housing types and transportation modes from which to choose. Experience shows that compact, mixed-use communities with fully integrated street, pedestrian, bicycle and transit systems offer the best range of housing and transportation choices. *State of the Centers: Investing in Our Communities*, January, 2009. Metro Rec.181-288. The urban reserves factors in the reserves rules derive from work done by the region to identify the characteristics of great communities. Urban reserve factors (1), (3), (4), and (6) especially aim at lands that can be developed in a compact, mixed-use, walkable and transit-supportive pattern, support by efficient and cost-effective services. Cost of services studies tell us that the best geography, both natural and political, for compact, mixed-use communities is relatively flat, undeveloped land. * * *

"* * * * Converting existing low-density rural residential development into compact, mixed-use communities through infill and re-development is not only very expensive, it is politically difficult. There is no better support for these findings than the experience of the city of Damascus, trying since its addition to the UGB in 2002 to gain the acceptance of its citizens for a plan to urbanize a landscape characterized by a few flat areas interspersed among steeply sloping buttes and incised stream courses and natural resources. Staff Report, June 9, 2010, Metro Rec. 289-300.

"Mapping of slopes, parcel sizes, and Foundation Agricultural Land revealed that most flat land in large parcels without a rural settlement pattern at the perimeter of the UGB lies outside Hillsboro, Cornelius, Forest Grove, Beaverton, and Sherwood. These same lands provide the most readily available supply of large lots for industrial development. * * * Had the region been looking only for the best land to build great communities, nearly all the urban reserves would have been around these cities. * * *

"* * * * *

"Despite these geopolitical and cost-of-services realities, the reserves partners designated extensive urban reserves that are *not* Foundation Agricultural Lands in order to meet the farm and forest land objectives of reserves, knowing they will be more difficult and expensive to urbanize:

"Urban Reserve 1D east of Damascus and south of Gresham (2,716 acres);
"Urban Reserve 2A south of Damascus (1,239 acres);
"Urban Reserves 3B, C, D, F and G around Oregon City (2,232 acres);
"Urban reserves 4A, B and C in the Stafford area (4,699 acres);
"Urban reserves 4D, E, F, G and H southeast of Tualatin and east of Wilsonville (3,589 acres);
"Urban Reserve 5F between Tualatin and Sherwood (572 acres);
"Urban Reserve 5G west of Wilsonville (203 acres); and
"Urban Reserve 5D south of Sherwood (447 acres).

"This totals approximately 15,697 acres, 55 percent of the lands designated urban reserve." Exhibit E to Ordinance No. 10-1238A at 3-4; Metro Record at 16-17 (footnote and some citations omitted).

Metro also included some findings concerning why it chose the Foundation Agricultural Lands that it did, considering the rural reserve factors in the Commission's rules. The Commission interprets this aspect of its rules to require Metro to consider whether Foundation Agricultural Lands considered as urban reserves are best-suited as urban reserves or rural reserves, considering both the urban and rural factors. Metro's initial findings indicate that it believes that its designations satisfy this requirement. Specifically, Metro found that:

"Urban reserves, if and when added to the UGB, will take some land from the farm and forest land base. But the partners understood from the beginning that some of the very same characteristics that make an area suitable for agriculture also make it suitable for

industrial uses and compact, mixed-use, pedestrian and transit-supportive urban development. * * *

"Some important numbers help explain why the partners came to agree that the adopted system, in its entirety, achieves this balance. Of the total 28,615 acres designated urban reserves, approximately 13,981 acres are Foundation or Important Agricultural Land. This represents only four percent of the Foundation and Important Agricultural Land studied for possible urban or rural reserve designation. If all of this land is added to the UGB over the next 50 years, the region will have lost five percent of the farmland base in the three-county area." Metro Record at 15 (citations omitted).

In its initial designations, of the 194,350 acres of land identified as Foundation Agricultural Lands in the three-county area and designated as rural or urban reserves, 11,931 acres are urban reserves and 182,439 acres were rural reserves. Metro Record at 179. In Washington County, the numbers are 130,944 total Foundation Agricultural Lands as reserves, with 121,214 acres as rural reserves, and 9,730 as urban. *Id.* The Commission determined, considering the entirety of the submittal, that, with two significant exceptions, Metro's initial decision was based on adequate findings and supported by substantial evidence in the record.

However, following the initial hearings, the Commission determined that the designation of Area 7I was not based on substantial evidence, and rejected that designation. The Commission also determined that Metro had not made adequate findings to justify an urban reserve designation of Foundation Agricultural Land (Area 7B) in Washington County. The Commission determined that for Area 7B Metro had not adequately considered all of the rural reserve factors prior to designating that Foundation Agricultural Land as urban reserve. Consequently, the Commission voted to remand the decision to Washington County for the development of findings.

Metro and Washington County responded by reconsidering the urban reserve designation of Area 7B and removed the urban reserve designation from 28 of the 508 acres in that Area, leaving those 28 acres undesignated. For the remainder of Area 7B, for which Metro retained the urban reserve designation, the re-designation findings further specifically address each of the urban and rural reserve factors and made specific findings to establish a factual basis to designate that land as urban reserves. Ordinance No. 11-1255 at 132-153. With regard to Area 7I, Metro re-designated the northern 263 acres of that area as rural reserves, and left the remaining 360 acres undesignated. Following the re-designations, 11,551 acres of the total 28,256 acres of urban reserves are Foundation Agricultural Land. Exhibit B to Ordinance No. 11-1255 at 3; Metro Supp Record at 799, 804-805.

1000 Friends' specific objection to the re-designation decision regarding Area 7B is addressed below. However, more generally 1000 Friends objects that the re-designation findings continue to inadequately justify the use of Foundation Agricultural Land as urban reserves. 1000 Friends and Save Helvetia contend that the findings for designating some Foundation Agricultural Land as urban reserve continue to be conclusory and legally flawed. The Commission rejects this objection.

Metro and the counties have adopted findings based on the factors regarding the location of urban reserves throughout the region, including on Foundation Agriculture Land. The record includes substantial evidence to support Metro's findings, and the findings themselves have an adequate factual base. 1000 Friends has made reasonable counter arguments based on these same criteria, which could support findings justifying a different decision. However, the Commission finds that the statutory and rule provisions directing designation of urban and rural reserves provide the region with considerable discretion in making the reserves decisions. 1000 Friends' arguments, while reasonable, do not establish that, as a matter of law, Metro and the counties could not reach a different conclusion. The Commission finds that findings on the initial reverses submittal, as supplemented by the findings in the re-designation submittal, adequately address each of the urban and rural reserve factors, and are based on substantial evidence in the record.

O. Rural Reserves Decisions

1. Clackamas County

a. Use of Three-Mile Urbanization Guideline

Maletis, Tim O'Callaghan, MLG and Michael J. Wagner all object that the reserves decision does not comply with Goal 2 because the findings do not include an adequate factual base to support Clackamas County's methodology and conclusion that all lands within three miles of the UGB are necessarily "subject to urbanization" for purposes of OAR 660-027-0060(2)(a). Maletis, July 14, 2010 at 14; June 2, 2011 at 8-9. MLG, July 14, 2010 at 18[62]; O'Callaghan, July 14, 2010, at 16; Wagner, July 3, 2010 at 1.

The objectors all maintain that to comply with ORS 195.141(3)(a) and OAR 660-027-0060(2)(a), a county must consider whether lands are "subject to urbanization" through 2060. The parties assert that Clackamas County's determination that all lands located within three miles of the Regional UGB and within one-half mile of an outlying city UGB are necessarily "subject to urbanization" fails to satisfy the statute and rule. According to Maletis, this bright-line, "one size fits all" conclusion is not based on substantial evidence in the record to support the selected distances or to explain why properties within three miles of a UGB were more or less subject to the varied factors that influence urbanization. In the absence of any evidence at all to support Clackamas County's characterization of this factor, Maletis, MLG and O'Callaghan argue there is no adequate factual base for purposes of Goal 2 to support Clackamas County's application of this factor in the rural reserves analysis. Accordingly, they argue that the County's methodology resulted in too much land being designated as rural reserves.

Conversely, Mr. Wagner argues that by relying on this methodology, the county did no analysis of lands "potentially subject to urbanization" and that it erred when it limited rural preservation to an "arbitrary" three miles based on the concept that traffic studies use the three-

[62] Although the property subject to MLG's objection is in Multnomah County, the MLG objection challenges Clackamas County's compliance with OAR 660-027-0060(4), and generally requests that the decision be remanded to Metro and the counties " to correct the identified errors and designate the Property as 'urban reserve.'" MLG July 14, 2010 at 8.

mile limit. Mr. Wagner uses the U.S. Census definition of "urbanized area" to argue that many areas beyond the three-mile limit are potentially subject to urbanization. He further states that the county erred when it did not perform any analysis of fair market values, providing an example of comparative information on differing land values for EFU, forest and rural residential-zoned lands. Mr. Wagner concludes that this methodology resulted in too little land being designated as rural reserves.

The reserves rule includes four factors counties must consider when designating rural reserves intended to provide long-term protection to agricultural or forest industry under OAR 660-027-0060(2) and ORS 195.141(3). Threat of urbanization is one of those factors, and specifically requires that when the county is identifying and selecting lands for designation as rural reserves, it must consider whether the lands proposed are "situated in an area that is otherwise potentially subject to urbanization during the applicable period * * * as indicated by proximity to a UGB or proximity to properties with fair market values that significantly exceed agricultural values for farmland, or forestry values for forest land[.]" OAR 660-027-0060(2)(a); *see also* ORS 195.141(3)(a). Like the other factors, the threat of urbanization is not a criterion or standard that the county must show has been satisfied. Neither the statute nor the Commission's rule mandate that the county "conclude" the land is subject to urbanization in order to designate it as a rural reserve. Instead, the county must take that factor into consideration in making its decision.

Clackamas County's initial decision identifies material addressing the "three-mile urbanization" guideline used by the county Rural Reserves Policy Advisory Committee. Clackamas Co. Record at 365. The county's findings indicate that it relied on OAR 660-027-0060(4) to determine that lands should be designated as rural reserves if they are identified as Foundation Agricultural Land, and are located within three miles of an urban growth boundary. *See, e.g.*, Clackamas Co. Record at 4-5 (French Prairie area should be a rural reserve because it is Foundation Agricultural Land within three miles of a UGB, and because it contains prime agricultural soils and is one of the most important agricultural areas in the state). OAR 660-027-0060(4) provides:

> "Notwithstanding requirements for applying factors in OAR 660-027-0040(9) and section (2) of this rule, a county may deem that Foundation Agricultural Lands or Important Agricultural Lands within three miles of a UGB qualify for designation as rural reserves under section (2) without further explanation under OAR 660-027-0040(10)."

This "safe harbor" provision which allows a county to designate Foundation Agricultural Lands or Important Agricultural Lands within three miles of a UGB as rural reserve by dint of such status and proximity alone represents a policy choice by this Commission that such lands are under threat of urbanization. Clackamas County made additional findings, rather than utilizing the OAR 660-027-0060(4) safe harbor alone.

Based on its guideline, Clackamas County determined that all lands within a distance of three miles from the Regional UGB and one-half mile from a non-Metro UGB are subject to the threat of urbanization over a fifty-year period. However, while Clackamas County may have studied rural reserve candidate areas, and determined that land within three miles of the Metro

UGB and one-half mile of other cities was subject to urbanization for purposes of addressing the rural reserve factors, it did not designate all land within these radii as rural reserves when the factors as a whole were evaluated and applied. Rather, Clackamas County's findings reflect that it used the 3-mile radius as an initial screen in its evaluation.

The great majority of lands designated rural reserve in the county are within three miles of a UGB, with smaller areas extending beyond the three miles and some areas extending one mile or less from a non-Metro UGB. Part of the county's choice of three miles was not that traffic studies use the three-mile limit, but to account for the impact of transportation access on state highways. Clackamas Co. Record at 365. The county was not required to use the U.S. Census definition of urbanized area as an indicator of lands subject to urbanization. The former includes urban as well as urbanizing (low-density lands), while the latter often includes completely undeveloped farmland that is nevertheless under threat of development.

The October 14, 2009 joint state agency letter commented on the amount of land designated rural reserve and stated:

> "In general, the approach used by Clackamas County is consistent with how the agencies believe rural reserve designations should be used (to "steer" urban development away from or toward particular areas, rather than as a blanket treatment of everything that is not an urban reserve)." Metro Record at 1375.

The Commission finds that the Clackamas County methodology and use of the "three-mile urbanization guideline" was consistent with OAR 660-027-0060(2) and (4) and that its findings regarding the designation of rural reserves based in part on that guideline are supported by an adequate factual base. While the County could have chosen other methodologies, none of the objectors have established that the county's methodology, and the findings it made based on that methodology, are inconsistent with the statute and rules. Moreover, the objections do not establish how this single factor, when applied in conjunction with the other three factors Clackamas County was required to consider, could compel a conclusion that the County designated either too much or too little rural reserve land. The Commission rejects these objections.

b. Misapplication of Reserve Factors

Elizabeth Graser-Lindsey objects that the decision designating the urban and rural reserves is based on a misapplication of the rural reserve factors "to provide long-term protection to the agricultural industry or forest industry" under OAR 660-027-0060(2). Graser-Lindsey, July 6, 2010 at 5 (page unnumbered). The objection alleges deficiencies in both urban and rural reserve designations, but the rules cited in the text of the objection address only rural reserve factors in OAR 660-027-0060, specific to Clackamas County.

Ms. Graser-Lindsey states that Clackamas County erroneously used the farmland categories from the January 2007 ODA report to Metro entitled "Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands" (*i.e.*, Foundation, Important and Conflicted Agricultural Land) to define farmland instead of considering the rural

reserve factors in OAR 660-027-0060. Ms. Graser-Lindsey contends that specific facts that provided evidence of quality agricultural or forest lands were ignored in areas designated as "Conflicted" in the ODA mapping units, resulting in OAR 660-027-0060 being misapplied.

The Commission finds that ORS 195.137 to 195.145 and OAR chapter 660, division 27 do not require or contemplate that the counties would make a parcel-by-parcel analysis of reserve areas, as Ms. Graser-Lindsey suggests. Additionally, as discussed above, the rural reserve factors in OAR 660-027-0060(2) are not criteria with which the counties must show compliance, but rather factors to be considered in the reserves decisions. Even if an area contains quality agricultural or forest land, nothing in the statute or rules compel a rural reserve designation. Clackamas County made findings regarding the rural reserve factors in OAR 660-027-0060(2) for each designated area, and those findings demonstrate that the county considered the factors listed in statute and rule. Clackamas County was not required to make findings for areas that were not designated. Metro Record at 39. This objection is rejected.

2. Washington County

a. Objective to Achieve Balance – Too Little Rural Reserve

The Oregon Department of Agriculture and Board of Agriculture (collectively, ODA) objects that Metro's urban reserve designations and Washington County's rural reserves designations are not consistent with the purpose and objective provided in OAR 660-027-0005(2) and result in too little land being designated as rural reserve. ODA, July 14, 2010 at 2. OAR 660-027-0005(2) includes the division's purpose statement, which is to achieve "a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries, and protection of the important natural landscape features that define the region for its residents." ODA argues that as to Washington County, the decision does not achieve that balance. ODA asserts that Metro and Washington County "extended if not expanded support for this imbalance" in the re-designation decision. ODA, June 2, 2011 at 2.

ODA notes that in the initial decision,

> "* * * 63.5 percent of the lands located adjacent to the UGB located in Washington County (includes Forest Grove and Cornelius) has been designated by Metro as urban reserve (55%) or left as 'undesignated' lands (8.5%) with no protection from future designation as additional urban reserve land. If one removes the Forest Grove/Cornelius UGB, 67.1 percent of the lands has been designated by Metro as urban reserve (61%) or left as 'undesignated' land (6.1%)." ODA, July 14, 2010 at 2.

ODA believes that the amount of rural reserves was inflated in Washington County in order to justify a larger amount of urban reserves in that part of the region. Specifically, ODA identifies and suggests that acreage not identified as Foundation Agricultural Land could have been designated as urban reserve, instead of the Foundation Agricultural Lands that were. ODA recommends that non-foundation acreage that could have been designated as urban reserves are

southwest of Borland Road, southeast of Oregon City, in the Clackamas Heights area, east and west of Wilsonville, and between Wilsonville and Sherwood. ODA, July 14, 2010 at 2-3.

Although ODA disagrees with the outcome, in fact Washington County completed an in-depth analysis of potential rural and urban reserves, first evaluating land based on a variety of quantitative assessments reflected in two tables and a series of maps. Washington Co. Record at 2281-2282. The county then refined this analysis to provide a qualitative analysis, including five means of determining potential rural reserve areas: urbanization, productivity, parcelization, physical features and dwelling density. The County then ranked these various subareas by tier. Washington Co. Record at 2300. Tier 1 indicates which subareas are most suitable for rural reserves, followed by Tier 2, Tier 3 and Tier 4 areas. The county designated extensive areas up to five miles from UGBs for rural reserves, although several outer subareas were assessed by the county as having "low" or "medium" potential for urbanization and were ranked Tier 4 – least suitable for rural reserves.

Contrary to ODA's suggestion, the designation of a large amount of rural reserve land in Washington County has not enabled the county to designate more urban reserve land than population projections and land use need analyses will support. As discussed above, the purpose of OAR chapter 660, division 27 is to achieve a balance in the designation of urban and rural reserves to apply to the entirety of the region and not to the individual counties. The large amount of rural reserve land within Washington County reflects a region-wide balance, and neither Metro nor Washington County relied on the amount of rural reserve in that county to increase the amount of urban reserves. The county has made findings explaining its consideration of all the factors in its designation of rural reserves, including consideration of whether the lands are subject to urbanization. Washington Co. Record at 2294–2306.

The fact that, as originally submitted, 7.4 percent of the Foundation Agricultural Lands designated as reserves in Washington County were urban reserves, and 92.6 percent are rural reserves, indicates that most of the county's key agricultural lands have been protected. While the re-designations did not significantly alter those percentages, it did reduce the amount of land designated for urban reserve by 299 acres, compared to a reduction of 120 acres of rural reserve land. On a regional basis, the percentages are even more weighted toward protection of agricultural lands, with 6.1 percent of the Foundation Agricultural Lands designated as urban reserves and 93.9 percent rural reserves. Metro and Washington County also appropriately considered other Washington County characteristics in their evaluation, including: (1) the much greater extent of Foundation Agricultural Lands adjacent to the UGB relative to the other two counties in the region, (2) the very limited amount of "conflicted" agricultural land, (3) the higher population and land need projections, and (4) fewer topographic challenges for compact development than in Clackamas and Multnomah Counties. For these reasons, the Commission rejects ODA's objection that Metro and Washington County's reserve designations did not achieve an appropriate balance, as contemplated under OAR 660-027-0005(2). The Commission finds that Washington County has adequately explained its rural reserve designation decision with regards to consideration of the factors in OAR 660-027-0060(2) and (3) in designating lands more than three miles from the current UGB.

ODA and 1000 Friends also object that the analysis and designation of key agricultural lands as urban reserves in Washington County uses elements not included in applicable statutes or rules. They also argue that the county relied on a weighting analysis that is inconsistent with the applicable law and involves elements not in the law in evaluating the rural reserve factors in a manner that results in an excess of land designated for urban reserves. 1000 Friends adds that all of the lands the county designated as urban reserves are under a high threat of urbanizations, while almost all rural reserves are under "low" or "medium" threat of urbanization. 1000 Friends, July 12, 2010 at 10.

ODA argues that the county's analysis inappropriately uses the "subject to urbanization" factor to downgrade the importance of agricultural lands under the rural reserve factor in OAR 660-027-0060(2)(a). ODA asserts that while its identification of Foundation Agricultural Land took into account the long-term viability of agricultural operations and the overall stability of agriculture, Washington County's analysis failed to do so. ODA also argues that "The county's analysis gives too much weight to whether lands are located within the Tualatin Valley Irrigation District and inappropriately ranks lands within water-restricted areas lower," in contravention of OAR 660-027-0060(2)(c). Further, ODA objects that the analysis and conclusions confuse "large block of agricultural land" with "large parcels," and inappropriately considers residential density without determining whether dwellings were authorized in conjunction with farm use or as nonfarm dwellings when determining whether there is a "large block of agricultural land" under OAR 660-027-0060(2)(d)(A). With regard to OAR 660-027-0060(2)(d)(D), ODA argues that "the analysis does not adequately address the sufficiency of agricultural infrastructure the area. The only information provided concerns the need to protect a critical mass of operations, and the county disregarded this information." And finally, ODA argues that "[t]he analysis makes conclusory statements that urban reserve areas "can be designed to avoid or minimize adverse effects on farm and forest practices" without providing evidence or discussion as to how adequate protection is provided in considering OAR 660-027-0050(8). ODA July 14, 2010, at 4-5.

Regarding the requirement in OAR 660-027-0060(2)(b) and (d) to consider whether rural reserves are "capable of sustaining" and "suitable to sustain" long-term agricultural operations, 1000 Friends also notes that much of the lands designated as urban reserves are the productive heart of Washington County agriculture, and that the value of production from these lands has continued to grow. 1000 Friends argues that the lands should be designated as rural reserves to sustain this production, not as urban reserves.

Regarding OAR 660-027-0060(2)(c) (agricultural infrastructure), 1000 Friends states that the availability of water for irrigation is a relevant consideration only "where needed." 1000 Friends argues that the county places inappropriate weight on this factor, and does not recognize that many high-value crops do not need irrigation. In addition, 1000 Friends objects that the county looks too narrowly at parcelization in addressing whether there is a "large block" of agricultural land in designating rural reserves under OAR 660-027-0060(2)(d)(A). Finally, 1000 Friends states that agricultural infrastructure is not adequately considered as required in OAR 660-027-0060(2)(d)(D).

The consolidated findings regarding application of the rural reserves factors in Washington County address each of the subsections in OAR 660-027-0060(2). Metro Record at 95-97 (generally describing how the county considered each of the factors in the rule). Washington County's analysis of how it considered the factors is provided in detail at Washington Co. Record at 2970-2988 in the recommendations from the county's coordinating committee. Contrary to ODA's and 1000 Friends' arguments, the Commission finds that the reserves decisions findings do not consider elements not contemplated by the statute or rule. While the interpretations and application of the rule are not those ODA and 1000 Friends would prefer, the findings establish that Metro and Washington County considered each of the factors, and reached conclusions based on substantial evidence in the record, with an adequate factual base. Specifically, the county and Metro considered each of the four factors in OAR 660-027-0060(2) as follows:

> OAR 660-027-0060(2)(a); Threat of Urbanization: Despite 1000 Friends' generalization that the lands the county designated as urban reserves are under a high threat of urbanizations, while almost all rural reserves are under "low" or "medium" threat of urbanization, the analysis reflected in the county's findings demonstrate that the county did consider the threat of urbanization in evaluating areas for rural reserve designations. Although Washington County initially used a weighting that ascribed little significance (maximum of 10 percent) to proximity to a UGB, the county later changed that approach to ascribe greater weight to this factor. The county also considered land values. Washington Co. Record at 2971-2972. There is substantial evidence in the record to show that the county adequately considered this factor, and that Metro and Washington County had an adequate factual basis in reaching their conclusions based on the consideration of OAR 660-027-0060(2)(a).
>
> OAR 660-027-0060(2)(b) and (c); Capability of sustaining long-term agricultural operations: 1000 Friends considers that much of the lands designated as urban reserves are the productive heart of Washington County agriculture, which are capable of sustaining agricultural operations in the long term, and that those lands should have been designated for rural reserves instead of urban reserves. ODA argues that in evaluating the capability of sustaining agricultural operations, the county gave too much weight to the availability of water for Irrigation. ODA is correct that Washington County gives its highest agricultural productivity rating only to lands with access to water, even where high-value crops are grown without irrigation and even for high-value farmland. The county states in its findings that it anticipates water availability will become increasingly important in the future and uses this as a contributing factor under OAR 660-027-0060(2)(b) as well as (c). Washington Co. Record at 2972. ODA and 1000 Friends correctly note that the consideration is for water "where needed" in subsection (c), but fails to recognize that this is not the primary way the county used this consideration. The county found that "water availability appears to be a significant factor in preservation of farmland over the long-term" in its consideration of subsection (b). Washington Co. Record at 2972. The Commission finds that the statute and rule do not preclude the county from considering water availability when determining whether land is "capable of sustain long-term agricultural operations." As one of the four factors the county must consider, the Commission interprets OAR 660-027-0060(2)(b) as giving a county

substantial discretion in determining how it evaluates the "capability of sustaining long-term agricultural operations." The Commission finds that Washington County and Metro adequately evaluated that capability in its consideration of this factor, in conjunction with evaluation of all four of the OAR 660-027-0060 factors.

OAR 660-027-0060(2)(d); Suitability to sustain long-term agricultural operations: OAR 660-027-0060(2)(d)(A) and (D) provide that two of the considerations that counties must take into account when deciding whether to designate land as a rural reserve are the existence of large blocks of resource land with a concentration of farms, and the sufficiency of agricultural infrastructure in the area. Both 1000 Friends and ODA object that Washington County did not adequately evaluate these factors. However, while ODA and 1000 Friends disagree with the county's conclusions, the record establishes that Washington County analyzed both parcelization and ownership patterns, but concluded that parcelization is a better long-term indicator of the sustainability of agricultural operations. Washington Co. Record at 2975; 2976; 2978; 3019-20 (maps of parcelization and ownership); 3815. Washington County has considered whether lands proposed as rural reserves are suitable to sustain long-term agricultural operations, taking into account both large blocks of agricultural operations and the sufficiency of agricultural infrastructure in the area. The county also considered the ODA Agricultural Lands inventory, finding that almost all lands within five miles of existing urban areas is inventoried as Foundation or Important Agricultural Lands. Washington Co. Record at 2972. The county also considered specific comments from the Washington County Farm Bureau, Washington Co. Record at 2980-2983, that reflect ODA's objection. Although Washington County may not have considered large blocks of agricultural land, and agricultural infrastructure in the way that ODA and 1000 Friends may have preferred, the fact is that the county did consider these factors. The statute and rule do not require the analysis ODA and 1000 Friends prefer.

In addition to its objections regarding specific rural reserve factors, ODA's objection also asserts that in deciding to designate some areas for urban reserves rather than rural reserves, the county violated the intent of OAR 660-027-0050(8), which requires that urban reserves be designed to avoid or minimize adverse effects on farm or practices. The Commission also disagrees with this portion of the objection. Washington County initially addressed this factor through the "Pre-qualified Concept Plan" process. Each of these concept plans addressed the factor in section (8). Washington Co. Record at 3036–3141. Additionally, Metro requires concept planning for all new UGB expansions, and one of the considerations in this concept planning exercise is, "avoidance or minimization of adverse effects on farm and forest practices and important natural landscape features on nearby rural lands." Metro Record at 9 and 24–25. For these reasons, the Commission finds that, in general, the initial submittal adequately considered OAR 660-027-0050(8).

However, as discussed below, as applied to specific urban reserve designations in Washington County, the Commission voted to remand the submittal, requesting that Metro and Washington County re-evaluate those conclusions as to those specific areas. That re-evaluation resulted, in part, in the county's decreased reliance on the pre-qualified concept plan for the City of Cornelius. It also resulted in other changes to the Washington County reserve designations,

and Metro's urban reserve designations in Washington County. Those specific changes are addressed below.

Nonetheless, ODA continues to object to Metro's and Washington County's analyses and conclusions in the re-designation submittal, reasserting its objection to the balance achieved in the reserves. ODA alleges generally that the decision is not consistent with the purpose and objectives of OAR chapter 660, division 27, and that the analysis and designation of certain agricultural lands as urban reserve, and failure to designate qualified lands as rural reserve, continues to be flawed.

ODA first argues the that the re-designation submittal continues to not be consistent with the purpose and objectives of OAR chapter 660, division 27 because it does not achieve a balance "in the designation of urban and rural reserves that in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents." OAR 660-027-0005(2). The objection asserts that Metro and Washington County have a responsibility to balance the reserves and that:

1. Metro and Washington County's decision to replace the acreage of urban reserve lost when Area 7I outside Cornelius was re-designated made a current imbalance worse;
2. Metro should have looked outside of Washington County for land to replace the re-designated urban reserve Area 7I. ODA, June 2, 2011 at 2.

The findings for Metro Ordinance No. 11-1255 (at 3-10) and Washington County Ordinance No. 740 (Washington County Supp. Record at 12732) show how the choices were made to designate Foundation Agriculture Land as urban reserves and how these choices achieve the objective of OAR 660-027-0005(2).

While the Commission voted to remand the initial submittal for re-designation and further analysis of specific areas, the Commission did not dispute the overall amount of urban reserve designations in Washington County. The re-designation findings do not significantly change the amount of urban reserve land; rather the acreage of urban reserve in the region and in Washington County is slightly decreased in the re-designation submittal. ODA's renewed objection does not establish an additional basis to find Metro and Washington County failed to achieve the balance in the overall amount of urban and rural reserves.

ODA also asserts that Metro should have looked to land that is not Foundation Agricultural Land to replace the urban reserve designation that was removed from Area 7I, even if the land is outside Washington County. However, Metro explained its reasons for including Foundation Agricultural Land within urban reserves. Overall, Metro decreased the amount of urban reserve land in Washington County by almost 300 acres. ODA's objection does not identify any error by Metro in reducing the overall acreage of urban reserves. The Commission rejects this objection.

Joseph Rayhawk objects to the removal of any of the initially designated rural reserves re-designation submittal. Mr. Rayhawk argues Washington County should not have changed any

rural reserve designation to undesignated or urban reserves. He contends that a map of urban and rural reserves presented during the public hearings process leading to the initial designations better achieved the balance of urban and rural reserves than does the re-designation submittal.

The supplemental reserve findings for urban reserves area and undesignated areas in Washington County are in the record at Metro Ordinance No. 11-1255 pages 163-165, 167-169. The objection cites general and specific examples of changes made to designations by Washington County late in the initial decision process the Mr. Rayhawk believes are inconsistent with the reserves rules. However, while Mr. Rayhawk disagrees with the analysis and conclusions, he has not established that, as a matter of law, Metro and the county could not reach the decisions it did. The Commission finds that Mr. Rayhawk has not established any statutory or rule violation in Washington County's re-designation submittal.

b. Objective to Achieve Balance – Too Much Rural Reserve

1) Failure to consider zoning/Exceptions land

In direct contrast to objections from ODA, 1000 Friends and Joseph Rayhawk, Oregonians in Action (OIA) also objects that Washington County misapplied the factors in OAR 660-027-0060 and reaches the opposite conclusion: that Washington County's analysis resulted in too many areas being designated for rural reserves. Specifically OIA objects that the county inappropriately failed to consider the zoning of the property, or whether exceptions lands or non-resource lands are included. OIA, July 14, 2010 at 1. OIA argues that the OAR 660-027-0060 rural reserves factors may only be applied to resource lands.

OIA states that the county's findings do not distinguish between those properties in each of the study areas that are not agricultural land as defined by Goal 3 or forest land as defined by Goal 4, and those that are resource land. OIA argues that the county must study exception areas within proposed rural reserves individually, to determine if they qualify based on having important natural landscape features and, specifically, buffers between Goal 3 and Goal 4 parcels and urban areas.

While the Commission agrees with OIA that a county could possibly evaluate areas in the manner OIA prefers, the counties were under no statutory or rule mandate to do so. Neither the reserves statute nor the rules require that non-resource lands be distinguished from agricultural or forest lands when designating rural reserves, and the fact that Washington County has not done so is not a basis for the Commission to remand the decision. The statutory definitions of "rural reserve" and "urban reserve" and the statutory factors do not distinguish between resource and non-resource land, and neither do the Commission's rules. *See* ORS 195.137(1) and (2), ORS 195.141(3), and OAR chapter 660, division 27. The Commission interprets the factors to apply to both resource and exception land, and a county must consider both when determining whether to designate lands as rural reserves. Similarly, Metro must consider both resource and non-resource lands when evaluating lands for designation as urban reserves. Contrary to OIA's suggestion, there is no inherent reason why non-resource lands may not sustain or contribute to sustaining, agricultural operations and (as OIA notes) exception lands may also be important in

sustaining forest uses or in terms of natural resources, hazards, or the region's sense of place. The Commission rejects this objection.

Similarly, Steve and Kelli Bobosky object that the decision unlawfully fails to identify agricultural land subject to Goal 3. Rather, they argue the decision improperly considers land "Agricultural land" regardless of whether it is subject to Goal 3 or to an acknowledged exception to Goal 3, making it impossible to lawfully apply the urban and rural reserves "criteria." They argue that, in designating acknowledged exception lands as "rural reserve," the county improperly assigned exception lands equal status with acknowledged EFU-protected agricultural lands, and that this unlawfully undermines Goal 3 and the agricultural land use policy in ORS 215.243 because it repeals regional protection for agriculture. They argue that instead the county must first identify resource land subject to Goal 3 before it can designate rural reserves, and that only resource land is eligible for the reserve designation. Because the reserves decision designates parcels that have been subject to exceptions to Goal 3, they contend that the reserves decision violates Goal 3, ORS 195.141(3), OAR 660-0027-0050 and OAR 660-0027-0060. Bobosky, July 7, 2010 at 15; June 2, 2011 at 12-14; 38.

The Commission's evaluation of the objection as it applies to the Bobosky's specific property is discussed below. However, as it applies to the Bobosky's challenge to the county's inclusion of exceptions property, the Commission finds no authority in statute or the rule to support a finding that exceptions lands cannot or should not be eligible for designation as rural reserves. Similarly, neither the statute nor the rule support the Bobosky's contention that exception land must be prioritized as urban reserves. The legislature has found that rural reserves are intended "to provide long-term protection for agriculture, forestry or important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization." ORS 195.137(1). The intent of rural reserves is to afford greater long-term protection of the agricultural industry, the forest industry and important natural landscape features from urbanization. OAR 660-027-0060(2) and (3). The status of particular lands as exception lands or agricultural lands is not determinative as a matter of law to the counties' decisions. Rural reserves may be designated to protect the agricultural or forest industries (not lands), or to protect important natural features of the lands. These purposes are consistent with Goal 3 and the agricultural land use policies enunciated in ORS 215.243, and do not require a property-by-property consideration of whether lands are exception lands.

The Commission disagrees with the Bobosky's assertion that designating exception areas as rural reserve undermines this intent. Uses that take place in rural areas, even if not zoned EFU, affect farming operations and practices. While Washington County was not required to designate exception areas (or any other areas) as rural reserve, nothing n OAR chapter 660, division 27 prohibits rural reserve designation of exceptions areas. The Bobosky's arguments regarding the scope of the inquiry required under the reserves factors is simply not supported by the language of the rule. Nothing in OAR chapter 660, division 27 requires any inventory of "resource land" or "compelling reasons founded in protecting inventoried important natural resources" prior to including exceptions land in the reserves evaluation. The effect of the rural reserves designation is greater protection of agricultural industry, forest industry, important natural resource features or any combination thereof, regardless of whether those areas may include lands that are subject to exceptions. Accordingly, the Commission find that Washington

County's designation of exception areas as rural reserves does not violate Goal 3, ORS 195.141(3), OAR 660-0027-0050 or 660-027-0060, or ORS 215.243.

The Boboskys also object to Metro's repeal of RFP Policy 1.12 and argue that the Commission should require Metro to restore its Policy 1.12 protecting Agricultural Land.[63] Bobosky, July 7, 2010 at 19; June 2, 2011 at 44-45. The Metro Urban and Rural Reserves Submittal repealed RFP Policy 1.12. Exhibit B to Ordinance No. 10-1238 at 3; Metro Record at 6. The Metro staff report explains:

> "Metro Ordinance No. 10-1238A includes amendments to the Regional Framework Plan (RFP) and Urban Growth Management Functional Plan (UGMFP) to conform these policy and regulatory documents to the adoption of reserves. Under this ordinance, Policies 1.7 (Urban/Rural Transition), 1.9 (Urban Growth Boundary) and 1.11 (Neighbor Cities) of the RFP would be completely revised to reflect the establishment of reserves; Policy 1.12 (Protection of Agriculture and Forest Resource Lands) would be repealed (Findings, Exhibit B)." Metro Record at 121.

The Commission understands the Boboskys to argue that by repealing RFP Policy 1.12, Metro is attempting to avoid protecting Goal3 agricultural land and that this Commission should require Metro to prioritize exception areas for designation as urban reserves. The Commission rejects this objection because it is not consistent with the statutory and regulatory scheme for adopting urban and rural reserves. As discussed above, in designating urban reserves, ORS 195.131 to 195.145 and OAR chapter 660, division 27 do not mandate that Metro prioritize the consideration of exception areas over resource lands the way the statutory scheme for including land within an UGB does. *See* ORS 197.298(1) (establishing hierarchy of lands and generally requiring exception areas to be included prior to land designated in acknowledged comprehensive plans for agriculture or forestry). As such, this objection does not establish a basis for the Commission to remand the submittal and is rejected.

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[63] The repealed Policy 1.12 stated:

> "It is the policy of the Metro Council that:
>
> "1.12.1 Agricultural and forest resource lands outside the UGB shall be protected from urbanization, and accounted for in regional economic and development plans, consistent with this Plan. However, Metro recognizes that all the statewide goals, including Statewide Planning Goal 10 Housing and Goal 14 Urbanization, are of equal importance to Goal 3 Agricultural Lands and Goal 4 Forest Lands which protect agriculture and forest resource lands. These goals represent competing and, sometimes, conflicting policy interests which need to be balanced.
>
> "1.12.2 When the Metro Council must choose among agricultural lands of the same soil classification for addition to the UGB, the Metro Council shall choose agricultural land deemed less important to the continuation of commercial agriculture in the region.
>
> "1.12.3 Metro shall enter into agreements with neighboring cities and counties to carry out Council policy on protection of agricultural and forest resource policy through the designation of Rural Reserves and other measures.
>
> "1.12.4 Metro shall work with neighboring counties to provide a high degree of certainty for investment in agriculture and forestry and to reduce conflicts between urbanization and agricultural and forest practices."

2) Misapplication of "important natural landscape features" considerations

OIA objects that Washington County wrongly designated areas as rural reserves by applying the "important natural landscape features" considerations at OAR 660-027-0060(3) in a "hopelessly overbroad" way to features that are under low threat of urbanization and that contain no Goal 5 resources. OIA argues that ORS 197.137(1) limits rural reserves designated to protect important landscape features to lands that "limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes, and floodplains." OIA, July 14, 2010 at 2.

In applying OAR 660-027-0060(3), Washington County created a three-tier prioritization of natural landscape features. The analysis gives heavy weight to land with an elevation above 350 feet, which results in a high-priority rating for a majority of the five-mile study area and particularly lands far from UGBs. Washington Co. Record at 2306 and Map 33. The county explained its decision to consider elevation as important to protect lands that provide a sense of place for the region, as well as providing headwater protection for streams. Washington Co. Record at 2987. OIA is correct that the county did not consider Goal 5 resources, but the rule does not require delineation of Goal 5 resources or otherwise limit the county to only those resources in making its determinations.

Although the Commission agrees with OIA that Washington County's application of the "subject to urbanization" factor at OAR 660-027-0060(3)(a) appears to have been quite broad, the Commission finds that it is not unlawful in substance and is within the scope of the county's discretion allowed under the rule. The county found that:

> "* * * [F]actor (3)(a) [OAR 660-027-0060(3)(a), the factor for rural reserves to protect natural resources] is worded differently than Factor (2)(a) [the factor for rural reserves to protect farm or forest lands]. Factor (2)(a) requires the consideration of proximity to a UGB or proximity to land with fair market values that significantly exceeds agricultural values for farmland or forest values for forest land. Factor (3)(a) simply states that reserve lands 'are situated in an area that is otherwise potentially subject to urbanization.' Thus, 'subject to urbanization' can be defined differently than how staff defined it in Factor 2. Two approaches in defining 'subject to urbanization' were therefore considered. One approach was to use the same definition as used in Factor 2 - land that is rated as high subject to urbanization (HU), medium subject to urbanization (MU), and low subject to urbanization (LU). A disadvantage to this option is that some natural feature areas may be strong candidates for inclusion in a rural reserve but be in an area of low urbanization potential. Weighting of values used to make a decision would be one way of addressing this issue. A second approach is to broadly define 'subject to urbanization' as all of the 5 mile study area. This allows for all natural features to be considered equally relative to this factor. The Washington County Farm Bureau has advocated that some of the hillside areas should be in urban reserves rather than farmland on the valley floor. Given this perspective, all of the 5 mile study area may be subject to some degree of potential urbanization." Washington Co. Record at 2986.

Washington County is correct that the wording of OAR 660-027-0060(3)(a) differs from 0060(2)(a) and that, accordingly, the analytical framework allows for the broader consideration the county used. While the Commission is concerned that the broad construction the county gave the term "subject to urbanization" appears to have rendered the term meaningless in application as it relates to natural features, the Commission nevertheless finds that county's application of the factor in this manner is allowed under the current rule language. Further, the Commission finds that the county findings provide an explanation why a construction that deems the entire study area "subject to urbanization" is factually supported. Therefore, the Commission rejects this objection.

c. Reliance on 2007 Agricultural Lands Inventory

ODA, Save Helvetia and 1000 Friends object that Washington County relied on analysis of data that allegedly discounts the value of agricultural land for protection as rural reserve. ODA urges instead that the Commission consider only the analysis done by ODA and require re-designation of certain lands to rural reserve. Specifically, they allege that Washington County improperly relied on a 2007 Agricultural Lands Inventory, an outdated study prepared by Herbert Huddleston, and factors other than ODA's soil quality analysis to classify farmland. ODA, July 14, 2010 at 34-35; June 2, 2011 at 3; 1000 Friends Exception, August 8, 2011 at 10; Save Helvetia Exception, August 8, 2011 at 10.

Metro Ordinance No. 11-1255, Exhibit B at page 123, explains why Washington County and Metro used additional information to distinguish among the areas of Foundation Agricultural Land at the perimeter of the portion of the UGB in the county. Virtually all of the lands surrounding the existing UGB are identified as Foundation Agricultural Land and the findings reflect that to more fully differentiate and distinguish between those agricultural lands, the county relied on additional, more intensive anslysis.[64] There is no legal error in the county's use of additional data and analysis to more fully evaluate the statutory and rule factors. Those data and analyses provide additional substantial evidence for the county's and Metro's decisions. The Commission rejects this objection.

d. Consideration of Undesignated Areas in Washington County

1) Too much undesignated land

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[64] Metro Ordinance No. 11-1255 explains the county's use of additional information to supplement ODA's analysis as follows:

> "The map results from the ODA analysis (Washington County Record pages 9748-9818) are limited to a total of three classifications in the 2007 Agricultural Lands Inventory: Foundation, Important, and Conflicted lands. The overwhelming majority of the acreage in Washington County was considered foundation land; this designation was broadly applied and made no further distinction among those agricultural areas. (As an example, the entirety of Hagg Lake and relatively large blocks of forestland were classified as foundation land.) To better apply the rural reserve factors found under OAR 660-027-0060(2), staff believed a more intensive agricultural analysis was important to the rural reserve designation process. Some components of this analysis included parcelization, dwelling density, potential crop productivity based on successive agricultural inputs, and possession of a water right or inclusion within the Tualatin Valley Irrigation District. (Washington County Record Pages 2971-2980)." Exhibit B to Ordinance No. 11-1125 at 123.

Save Helvetia, ODA, 1000 Friends and Joseph Rayhawk object that Washington County improperly left undesignated areas that should have been designated as rural reserves. In the initial submittal, Washington County did not designate lands around both North Plains and Banks as either urban or rural reserves. In addition, the county left another sizable area of undesignated land adjacent and to the west of urban reserve area 8B and across Highway 26 from urban reserve area 8A. ODA and 1000 Friends both objected to the county's failure to designate those areas as rural reserves. ODA, July 14, 2010 at 7. 1000 Friends objects to "most" of the undesignated lands around North Plains and Banks. 1000 Friends, July 12, 2010 at 17. In the re-designation submittal, Washington County increased the amount of undesignated land by 419 acres by removing the urban reserve designation from three areas, and the rural reserve designation from an additional area. All three objectors object to these additional undesignated areas in particular, and more generally to Metro and the County's decision to leave areas undesignated.

ODA states that the decision to not designate farmland located south of North Plains and Highway 26 and lands located north of Highway 26 and west of Helvetia Road, and the removal of rural reserve designation South of Rosedale Road fails to protect Foundation Agricultural Land that qualifies for protection as rural reserve. These areas include large, commercially viable farming operations and are contiguous to and part of larger blocks of farmland that the county designated rural reserve. ODA asserts that both areas are under threat of urbanization. ODA faults Metro and the county by leaving undesignated lands that ODA considers appropriate for rural reserve designation, and for failing to explain in its findings its basis for leaving those lands undesignated.

1000 Friends argues generally against the undesignated status of lands around North Plains and Banks, and, in particular, the undesignated land south of Highway 26. 1000 Friends states that much of this land qualifies for rural reserve designation and that the impact of leaving undesignated lands must be evaluated, not only on those lands, but on the farm and forest lands around them, citing OAR 660-027-0060(2)(d)(B).

Referring specifically to Area 8-SBR, Save Helvetia argues that the lack of designation will have an adverse impact on adjacent farming activities, and that it is not necessary to compromise this land by reserving it as undesignated land without any analysis of why this land is not suitable for protection as rural reserve. Save Helvetia stated that there is no reasonable basis to assume that Goal 3 does not require the same protections of Foundation Agricultural Lands that are imposed on other neighboring lands without any further explanation. Save Helvetia argues that under the statutory scheme, "All lands that would qualify for rural reserves that are subject to urbanization pressure within the 50 years must be designated for rural reserves. . . Nothing authorizes a county or Metro to elect not to apply rural reserves to lands that would otherwise qualify." (Save Helvetia Exception, August 8, 2011 at 10.) Both Save Helvetia and Joseph Rayhawk argue that the failure to designate lands that qualify as rural reserves violates Goal 3.

Save Helvetia further urges that the statute and rule should be interpreted to require application of the urban and rural reserve factors to undesignated lands, arguing that otherwise,

the purpose of the long-term protection of farm uses "is entirely frustrated if local governments can elect to leave undesignated those lands that would otherwise qualify for rural reserve protecting setting these lands up for urbanization through the Goal 14 urbanization process." Save Helvetia Exception, August 8, 2011 at 9.

While it was under no statutory or rule obligation to do so, Washington County has explained its decision not to designate lands around North Plains and Banks, with findings that: (1) the lands are outside of Metro's jurisdiction to designate urban reserves, (2) analysis of these lands did not identify them as the highest priority for rural reserves, and (3) it was deemed appropriate to retain some undesignated lands to address the potential long-term population and employment needs of communities outside of Metro but inside of Washington County (given the county's coordinating role). Washington Co. Record at 2308.

Despite the objectors' policy preferences, even if land is suitable for designation as rural reserve, nothing in the statute or rules compels Washington County to so designate any particular land. While ODA and the other objectors make reasonable arguments why some of the land should not be left undesignated, those objections reflect a policy disagreement with Washington County. While those disagreements may reflect legitimate, competing views, they do not provide a basis for the Commission to remand the county's decision or require designation of any particular lands. Contrary to Save Helvetia's conclusion, leaving land undesignated does not result in priority for urbanization or otherwise frustrate the preservation of farmland. As Save Helvetia correctly acknowledges, any lands proposed for urbanization must be reviewed through the Goal 14 process.

1000 Friends argues that the county must consider OAR 660-027-0060(2)(d)(B) (relating to adjacent land use patterns and buffers) in determining whether to designate these areas. Washington County did evaluate the area for possible rural reserve designation and decided to maintain the existing plan and zone designations. Washington Co. Record at 8239. Nothing in statute or the Commission's rules requires the county to adopt findings concerning lands that it did not propose to designate as rural reserves. *See* OAR 660-027-0060(2) ("* * * a county shall base its decision on consideration of whether the lands proposed for designation:").

Finally, Exhibit B to the intergovernmental agreement between Metro and Washington County states:

> "Special Concept Plan Area B:
>
> "Undesignated lands surrounding the City of Banks and the City of North Plains provide the opportunity in the future for Washington County and each respective city to undertake Urban Reserve planning under OAR 660-021. It is the County's expectation that such planning will result in application of Urban Reserve and Rural Reserve designations in appropriate locations and quantities." Washington Co. Record at 8838.

In other words, Washington County anticipates that future decisions will lead to either urban or rural reserve designations for some of these undesignated areas. Nothing in ORS 195.137 to 195.145 or OAR chapter 660, division 27 prohibits that approach and given the

county's responsibilities to coordinate land use planning under ORS 195.025, such an approach is apt with respect to cities that are not included within Metro's boundary.

Nothing in the statute or rule requires that a county designate any particular property or area as a rural reserve, and nothing precludes Metro and the counties from leaving areas undesignated. Division 27 requires the county to indicate which land was considered for urban and rural reserves, which the county has done. The rule requires that the county consider the listed rural reserve factors, which the county has done. Undesignated EFU areas continue to be planned and zoned for exclusive farm use, in compliance with Goal 3. There is nothing in Goal 3 that requires the applicable statutory and rule provisions to be interpreted to require rural reserve designation of lands that could qualify under the rural reserve factors. The Commission finds no basis to sustain these objections; therefore, they are rejected.

2) Insufficient amount of undesignated land

In contrast to Save Helvetia and 1000 Friends objections, CPR and the City of Hillsboro both object that the submittal leaves an inadequate amount of undesignated land. During review of the initial submittal, CPR argued that:

> "[T]he Coalition believes additional land should be left undesignated to provide the necessary safety value for the uncertainty inherent in this 50-year decision. Since so little urban reserve acreage was designated relative to projected population and employment growth, and since the assumptions relied upon to meet this projected growth were so aggressive compared to past experience, retaining more undesignated land will require a reduction in the amount of rural reserve. Such a reduction, however, is not the threat to rural needs that it might at first appear to be. If Metro's current projected land needs are correct, the designated urban reserves will suffice, no additions will be necessary, and the undesignated lands will protect rural needs under existing resource zoning. But if the projections fall short of actual performance, future decision-makers will have the flexibility to look to undesignated lands to adjust the urban reserve acreage upward to accommodate demand that would have been met by initial urban reserves acreage if the projections were more accurate." CPR, July 14, 2010 at 4 (footnote omitted).

CPR objected that the failure to leave more land undesignated violated the OAR 660-027-0005(2) requirement that the decision establish a "balance" that "best achieves" urban and rural needs.

The Commission does not interpret OAR 660-027-0005(2) to require any specific amount of undesignated land. As discussed above, the designation of urban and rural reserves does not mandate evaluation of lands that Metro and the counties determine, in their discretion, to not designate. Neither does the "best achieves" balancing requirement mandate or compel any amount of undesignated land. However, during the initial October 2010 hearing, some Commission members expressed some concern regarding the limited amount of land left undesignated, and opined that leaving lands undesignated could be used to provide for future flexibility. While recognizing that the Commission could not substitute its judgment for that of Metro and the counties, in voting to remand the decision, the Commission left open the option

for Metro and Washington County to leave additional undesignated land to allow for that flexibility. In response, the re-designation decision increased the amount of undesignated land by 391 acre. Exhibit B to Ordinance No. 11-1255 at 2.

The City of Hillsboro continues to object that the amount of undesignated land in the re-designation decision is insufficient to satisfy the OAR 660-027-0005(2) "best achieves" balancing requirement. The city argues that the Commission's dialogue during the October 2010 hearing "raises critical doubt whether the final Washington County Rural reserves set (and boundaries) are too tight to ensure a balance has been reached by the Washington County Urban and Rural Reserves designations that, *in its entirety, best achieves livable communities* in this County, and adequately supports a *healthy economy* locally and regionally." City of Hillsboro, May 31, 2011 at 5 (emphasis in original.) The city argues that the additional 391 acres of undesignated lands is inadequate, and that "modified set of Washington County Reserve designations is insufficient to meet the needs of the region" under ORS 195.145(5)(b) and OAR 660-027-0005(2). *Id.*

As discussed above, while the Commission opined at its October 2010 hearing that leaving more lands undesignated could provide for future flexibility, the Commission does not agree with the city's interpretation of its discussion at that hearing, or that the Commission found or inferred that additional undesignated lands were necessary to comply with OAR 660-027-0005(2) or to ensure a healthy economy under ORS 195.145(5)(b). In fact, the re-designation submittal does increase the amount of undesignated land by 391 acres, which does increase the flexibility should Metro's assumptions and projections prove inadequate. However, it is not within the Commission's review authority to substitute its judgment for that of Metro or the counties in evaluating whether, or how much, land to leave undesignated. OAR 660-027-0005(2) does not require any set amount of urban, rural or undesignated land, and leaves substantial discretion to Metro and the counties to evaluate and determine the amount of urban and rural land that "in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents." The Commission finds that OAR 660-027-0005(2) and the urban reserve factors do not compel additional undesignated land to achieve that balance. These objections are rejected.

e. Compliance with ORS 197.298(2).

The Boboskys object that because the urban and rural reserve designations directly influence how Goal 14 and the priorities for locating UGB expansions are applied, the urban and rural reserve designations must comply with ORS 197.298[65] and Goal 14. Save Helvetia also

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[65] ORS 197.298 provides in part:

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

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

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

objects that the reserves decision is inconsistent with the priority scheme set forth in ORS 197.298. In general, the Boboskys argue that ORS 197.298 would compel removal of the rural reserve designation from their property, while Save Helvetia relies on ORS 197.298 to argue that more land should be preserved as rural reserve.

ORS 197.298(2) requires that when determining where to expand the urban growth boundary, higher priority must be given to those lands of lower productive capability. Save Helvetia argues that although ORS 197.298(1)(a) makes urban reserve lands first priority for inclusion in the UGB, that designation cannot be used to "trump the priority process" required under ORS 197.298. Save Helvetia, July 12, 2010 at 17. The Boboskys argue that designating their property, located in a developed residential subdivision as a "rural reserve," and leaving thousands of acres of high quality farmland subject to Goal 3 undesignated "makes it impossible for the region to comply with ORS 197.298 when adding land to the UGB." Bobosky, July 7, 2010 at 23. The Boboskys assert that, "[l]ocking up all the subject exception land having poorer agricultural soils, as well as all exception lands in Washington County, as rural reserves, but leaving high quality EFU land all over the region 'undesignated' leaves only high quality EFU zoned land for urbanization in violation of ORS 197.298(2)." Bobosky, *Id*; June 2, 2011 at 48-49.

The Boboskys' request with regard to their specific property is addressed below. However, as it applies more generally, neither Save Helvetia nor the Boboskys have established any basis for remand of the decision based on ORS 197.298. By its own terms, ORS 197.298 applies only to consideration of including land in a UGB. ORS 197.298 does not compel or dictate the evaluation of urban reserves under ORS 197.145. Neither the reserves statutes nor rules incorporate a requirement for the local governments to consider ORS 197.298 in making urban or rural reserve location decisions. This proposal is for the designation of urban and rural reserves under OAR chapter 660, division 27. The objective of this division, described in OAR 660-027-0005(2) "... is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents." ORS 197.298 will become applicable at the time any land is proposed for inclusion within a UGB. At that point, lands designated urban reserve will be given first priority. The Commission finds that ORS 197.298 does not dictate the urban reserve decisions made under ORS 197.145, and cannot be appropriately relied on to mandate or prohibit reserve designations. These objections are rejected.

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completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.

"(c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247 (1991 Edition).

"(d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both.

"(2) Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use."

P. Area-Specific Objections

1. Clackamas County

a. Stafford Area (Areas 4A-D)

The Cities of Tualatin and West Linn objected and filed exceptions to Clackamas County's designation of areas 4A–D, also known as the Stafford Basin, as an urban reserve. The City of Wilsonville objects to the urban reserve designation of area 4D of the Stafford Basin.

> Area Description. Urban Reserves 4A, 4B and 4C are named Stafford, Rosemont and Borland. These three areas comprise approximately 4,700 acres. Area 4A (Stafford) is located north of the Tualatin River, south of Lake Oswego, and west of West Linn. Area 4B (Rosemont) is a 162-acre area located adjacent to West Linn's recently urbanized Tanner Basin neighborhood. Area 4C (Borland) is located south of the Tualatin River, on both sides of I-205. Area 4C is adjacent to the cities of Tualatin and Lake Oswego on the west and West Linn on the east. The southern boundary generally is framed by the steeper terrain of Pete's Mountain. There are very few parcels greater than 20 acres. The terrain of this area is varied. Most of area 4B is gently rolling, while the rest of the area east of Wilson Creek has steeper terrain. The area south of Lake Oswego, along Stafford Rd. and Johnson Rd., generally has more moderate slopes. The Borland area, south of the Tualatin River, also is characterized by moderate slopes.
>
> Wilson Creek and the Tualatin River are important natural landscape features located in this area. This entire area is identified as Conflicted Agricultural Land, although approximately 1,100 acres near Rosemont Road are zoned Exclusive Farm Use. The Oregon Department of Forestry Development Zone Map does not identify any Mixed Forest/Agriculture or Wildland Forest located with this Urban Reserve.
>
> Area 4D comprises approximately 2,600 acres, and is adjacent to a slightly smaller urban Reserve in Washington County. This area is parcelized, generally developed with a mix of single family homes and smaller farms, and has moderately rolling terrain. All of this area is identified as Conflicted Agricultural Land. *See* Metro Record at 32, 36.

Tualatin and West Linn note that they and the City of Lake Oswego have opposed the urbanization of the Stafford Area on the grounds the cities cannot cost-effectively provide public services such as transportation, water, and sewer. If the Stafford Area could be cost-effectively served or urbanized without risking significant negative impacts on existing services or the livability of their existing residents, the cities state that they would be in favor of urbanizing the Stafford Area. The cities argue that Metro and Clackamas County should have accorded great weight to the testimony of the cities. Finally, they argue that Metro's findings are not supported by substantial evidence in the record.

The City of Wilsonville also objects to the designation of a portion of the Stafford Area as urban reserves, objecting that Area 4D does not comply with OAR 660-027-0050(1) and (3).

According to the city, a large portion of the Stafford basin clearly cannot be provided with transportation improvements or other public infrastructure in an efficient manner.

1) Transportation

The cities first assert that the designation does not comply with OAR 660-027-0050(1) or (3), Goal 2 or Goal 12 (Transportation), OAR chapter 660, division 12 (the "Transportation Planning Rule" or "TPR") or the 2035 Regional Transportation Plan. Tualatin and West Linn, July 14, 2010 at 4–8. Wilsonville, July 14, 2010 at 8. All three cities point out that Metro's findings show that urbanization of the Stafford Basin will require enormous transportation system improvements. Tualatin and West Linn contend that Metro's findings that traffic will be bad everywhere does not excuse the fact that this area cannot be efficiently and cost-effectively served by current or future transportation systems. The cities also point out that no appropriate governmental entity can afford to build the required transportation improvements. The cities also argue that poor transportation capacity everywhere does not justify ignoring the factors, and instead it indicates that Metro and the counties should not designate any of those areas as urban reserves until there is sufficient evidence to indicate that the future transportation system will accommodate the development. Similarly, they argue that the county's findings describing its effort to avoid Foundation Agricultural Land does not address whether transportation facilities are available in other, non-foundation areas.

Tualatin and West Linn also argue that Metro's regional transportation plan indicates that there is neither the money nor the ability to construct transportation improvements necessary to provide an adequate transportation system to serve an urbanized Stafford Basin through 2035. They argue that amending the regional planning documents to provide for significant additional urban development in an area served by a transportation system that will not be able to support it, violates, or at the very least requires an analysis of, Goal 12 and the TPR. The cities note that Metro's findings do not address compliance with Goal 12 or the TPR at all.

The Commission considered and rejected general objections regarding Goal 12 and the TPR above. As discussed above, with regard to Goal 12 and the TPR, the Metro findings state:

> "The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations and does not place any limitations on the provision of rural transportation facilities or improvements. The four governments assessed the feasibility of providing urban transportation facilities to lands under consideration for designation as urban reserve, with assistance from the Oregon Department of Transportation. This assessment guided the designations and increases the likelihood that urban reserves added to the UGB can be provided with urban transportation facilities efficiently and cost-effectively. The designation of reserves is consistent with Goal 12." Metro Record at 114.

As discussed generally above, the Commission finds that the TPR does not apply to the urban and rural reserve designations. The TPR generally requires local governments to establish and maintain transportation system plans and the rule provides specificity on what those plans are to contain. OAR 660-012-0060 specifically applies to decisions to amend comprehensive

plans and functional plans, but only where uses authorized by the amendment would significantly affect an existing or planned transportation facility. Metro's urban reserve submittal does not authorize any new use or increased intensity of use. In fact, under OAR 660-027-0070 potential future uses are more limited than they would otherwise be. As a result, the Commission finds that neither Goal 12 nor the TPR provide a basis to remand the submittal.

Additionally, and more specific to the cities' objection regarding Areas 4A-D, the Clackamas County record indicates that transportation considerations were weighed when the county and Metro compared candidate urban reserve areas, in accordance with OAR 660-027-0050(1) and (3). Clackamas Co. Record at 704–792, 800–01; Exhibit B to Ordinance 11-1255 at 30. The supplemental findings further explain:

> "Cities [of Tualatin and West Linn] argue that the 2035 Regional Transportation Plan ("RTP") indicates that much of the transportation infrastructure in the area will be at Level of Service "F" by 2035, and that therefore the Stafford area cannot be served at all. The RTP is a prediction of and plan to address traffic flows for a 25-year period. Conversely, the Reserves Designations are intended to address a 50-year time frame, rather than a 25-year time frame. Metro Rec. 1918. The record reflects that the transportation system will necessarily change in 25 years. In that vein, the "Regional High Capacity Transit System" map identifies a new light rail line in the vicinity of I-205 as the "next phase" regional priority. *See* ClackCo Rec. 734; 822-822." Exhibit B to Ordinance No. 11-1255 at 30.

The record demonstrates that transportation facilities costs were considered related to the designation of Areas 4A–D as an urban reserve under the factors 1 and 3, and the Commission finds that Metro had an adequate factual base for its decision under Goal 2. Clackamas Co. Record at 704–792, 800–01; Exhibit B to Ordinance No. 11-1255 at 30. The cities' argument that this area will be expensive to serve appears to be true, based on the record, but that does not compel a conclusion that Metro was required to exclude the area on that basis. *See* Clackamas Co. Record at 1268, 1273 (ODOT Urban Reserve Study Area Analysis rating potential of I-205 to accommodate additional traffic as very low and costly). However, the cost of transportation is one factor that Metro was required to, and did, consider, in conjunction with its consideration of all of the urban reserve factors.

2) Provision of Public Services

Tualatin and West Linn also object that the designation of the Stafford Area as an urban reserve does not demonstrate compliance with ORS 195.145(5)(a) and (c), Goal 2, or the provisions of OAR chapter 660, division 27 with regard to efficient and cost-effective provision of other public services (other than transportation facilities). Tualatin, July 14, 2010 at 8. The City of Wilsonville objects:

> "Although one might argue that there are no longer any '*financially capable service providers*' the fact remains that the four cities surrounding the Stafford basin (Lake Oswego, West Linn, Tualatin and Wilsonville) have today, and will continue to have, limited resources for providing urban infrastructure. While each of the cities may

provide services to parts of the Stafford area, even a combination of the cities will not be able to efficiently and cost-effectively provide services to the entire area. None of the cities has any intention of providing urban services to Area 4-D over the life of the reserves." Wilsonville, July 14, 2010 at 9.

The cities also contend that the findings regarding the applicable statutory and regulatory provisions are not supported by an adequate factual base.

ORS 195.145(5) requires that a district and county designate urban reserves, in part:

"upon consideration of factors including, but not limited to, whether the land proposed for designation as urban reserves, alone or in conjunction with land inside the urban growth boundary:

"(a) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments; [and]

" * * * * *

"(c) Can be served by public schools and other urban-level facilities and services efficiently and cost-effectively by appropriate and financially capable service providers[.]"

OAR 660-027-0050 implements that statutory scheme by requiring Metro in evaluating areas for urban reserve designation, to consider *inter alia*, whether land proposed for designation as urban reserves:

"(1) Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments;

"* * * * *

"(3) Can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers[.]"

Metro and Clackamas County evaluated Areas 4A–D in accordance with these, as well as the other OAR 660-027-0050 factors, and found that this urban reserve area can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments, as contemplated by factors (1) and (3). According to the county, this area is similar in its physical characteristics to lands already within the cities of West Linn and Lake Oswego, which are developing at urban densities. Clackamas Co. Record at xviii. The county found that this urban reserve area can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers. As with all of the region's urban reserves, additional infrastructure will need to be developed in order to provide for urbanization. Clackamas Co. Record at xix.

Technical assessments rated this area as highly suitable for sewer and water. Clackamas Co. Record at 795-796. The findings further explain:

> "Metro's panel of sewer experts rated the entire Stafford area as having a 'high' suitability for sewer service. See, e.g., Metro Rec. 1174. We find this analysis more probative for comparison across areas than the analysis submitted by cities. Moreover, since the analysis of urban reserves addresses a 50-year time frame, we do not find that the current desire of neighboring cities to serve the area influences the question of whether the area 'can be served.'" Metro Exhibit B to Ordinance No. 11-1255 at 30.

The Commission concurs that the current desire of neighboring cities to serve the area is not determinative in considering whether the area "can be served."

In *City of West Linn v. LCDC*, the court reviewed the City of West Linn's challenge to the Commission's rejection of an objection to the inclusion of an adjacent area within the UGB. 201 Or App at 435-437. The city had argued to the Commission that

> "it has expressly informed Metro by letter that it has no desire to provide services to the area and argues on that basis that the area cannot be provided with public services in an 'orderly' fashion, as Goal 14 requires." *Id.* at 435.

The court noted that the Commission had rejected the city's objection to inclusion of the area on willingness to provide service:

> "With respect to the city's purported refusal to provide services, LCDC reasoned that merely because the City of West Linn expressed disinterest in providing services does not mean that service will be provided in an orderly manner." *Id.* at 436.

The city essentially repeated the arguments it made to the Commission to the court. In turn, the court held:

> "We agree with LCDC that the Goal 14 requirement of 'orderly' provision of services is not the exclusive determinant of a decision to include land within an expanded UGB. No single factor controls. We also agree that the city's disinterest in providing services to Study Area 37 does not necessarily mean that services cannot be provided in an orderly fashion." *Id.* at 436-437.

Recognizing that the case is distinguishable in that it involved a UGB expansion under Goal 14 and not a designation of urban reserves, the Commission concludes nonetheless that the reasoning is instructive to Metro's consideration of the urban reserve factors under ORS 195.145(5)(a) and (c) and OAR 660-027-0050(1) and (3). A stated disinterest in serving an area becomes perhaps even less relevant over a 50-year planning period then the Commission and court held it to be over a 20-year planning period.

As with the locational factor under Goal 14 requiring consideration of "Orderly and economic provision of public facilities and services" involved in the *City of West Linn v. LCDC*

case, the urban reserve factors are factors to be considered. *See* Section III.4.a above (describing Commission interpretation of "consider and apply the factors" requirement). Similar to that court's holding the "[n]o single factor controls" related to the Goal 14 locational factors, the Commission concludes that likewise no single urban reserve factor is determinative. To the extent the cities argue the designation of the Stafford Area as an urban reserve does not "demonstrate compliance" with applicable law, the Commission concludes the objection misconstrues the urban reserve factors. The Commission finds that Metro considered the urban reserve factors under ORS 195.145(5)(a) and (c) and OAR 660-027-0050(1) and (3); although the cities may have arrived at different conclusions, they do not establish that Metro erred and the Commission rejects these objections. Regarding the adequacy of the factual base under Goal 2, as described above, the Commission concludes that the findings demonstrate that the consideration was based on substantial evidence.

3) Parcelization and Topography

The cities of Tualatin and West Linn next object that designating the Stafford Area as urban reserve does not comply with OAR 660-027-0050(2), (4), and (6) because existing parcelization and natural topographical constraints mean that the Stafford Area cannot support a healthy economy, a compact and well integrated urban form, or a mix of needed housing types. Tualatin, July 14, 2010 at 10. The cities' objection cites a variety of statistics regarding parcel sizes and ownership, and contends the maps and analysis show the areas are substantially parcelized and constrained by slopes and environmental features. The objection further states that, given the natural resource and physical constraints in the Stafford Area, development costs will be very high, so housing will not be provided in the price ranges for "needed housing." The cities disagree with the county's and Metro's findings that the area is physically similar to the cities of West Linn and Lake Oswego.

The cities contend that in order to properly consider the factors, Metro must determine what types of land and how much is needed to achieve the purposes cited in the factors (efficient urban densities, a healthy economy, walkable, *etc.*). According to the cities, Metro's failure to conduct such an analysis requires that the Commission remand the decision for further analysis and explanation.

OAR 660-027-0050(2), (4), and (6) require Metro to consider, among the other factors whether land proposed for designation as urban reserves:

> "(2) Includes sufficient development capacity to support a healthy economy;
>
> "* * * * *
>
> "(4) Can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers; [and]
>
> "* * * * *
>
> "(6) Includes sufficient land suitable for a range of needed housing types."

The record shows that the county considered the topography, natural features and parcelization of the various candidate areas in evaluating these factors. *See* Clackamas Co. Record at 1263-1266 (maps depicting "constrained land" and "buildable land" in urban reserve discussion areas). The submittal finding state:

> "While acknowledging that there are impediments to development in this area, much of the area also is suitable for urban-level development. There have been development concepts presented for various parts of this area. ClackCo Rec. 3312. An early study of this area assessed its potential for development of a 'great community' and specifically pointed to the Borland area as an area suitable for a major center. ClackCo Rec. 371. Buildable land maps for this area provided by Metro also demonstrate the suitability for urban development of parts of this Urban Reserve. See, 'Metro Urban Study Area Analysis, Map C'. The County was provided with proposed development plans for portions of the Stafford area. For example, most of the property owners in the Borland have committed their property to development as a —town center community. ClackCoRec. 3357-3361. Another property owner completed an —Urban Feasibility Study showing the urban development potential of his 55-acre property. ClackCoRec. 3123-3148. Those plans provide examples of the ability to create urban-level development in the Stafford areas." Exhibit B to Ordinance No. 1255 at 28.

The supplemental findings add:

> "This Urban Reserve can be planned to be walkable, and served with a well-connected system of streets, bikeways, recreation trails and public transit, *particularly in conjunction with adjacent areas inside the urban growth boundary,* as contemplated by the administrative rule. The Borland Area is suitable for intense, mixed-use development. Other areas suitable for development also can be developed as neighborhoods with the above-described infrastructure. The neighborhoods themselves can be walkable, connected to each other, and just as important, connected to existing development in the adjacent cities. Stafford abuts existing urban level development on three sides, much of it subdivisions. See *West Linn Candidate Rural Reserve Map*, indexed at Metro Record 2284. * * * There are few areas in the region which have the potential to create the same level and type of connections to existing development. There is adequate land to create street, bicycle and pedestrian connections within and across the area with appropriate concept planning. In making this finding, we are aware of the natural features found within the area. However, those features do not create impassable barriers to connectivity." *Id.* at 30.

Finally, the re-designation submittal findings specifically address the objectors' concerns regarding parcelization:

> "Testimony submitted by the cities of Tualatin and West Linn ('Cities') asserts that the level of parcelization, combined with existing natural features, means that the area lacks the capacity to support a healthy economy, a compact and well-integrated urban form or a mix of needed housing types.

"However, much of the area consists of large parcels. For example, the *West Linn Candidate Rural Reserve Map* shows that, of a 2980-acre 'focus area,' 1870 acres are in parcels larger than five acres, and 1210 acres in parcels larger than 10 acres. The map is indexed at Metro Rec. 2284 and was submitted by the Cities of Tualatin and West Linn with their objections. With the potential for centers, neighborhoods and clusters of higher densities, for example in the Borland area, we find the area does have sufficient land and sufficient numbers of larger parcels to provide a variety of housing types and a healthy economy." *Id.* at 29.

The Commission concludes that the re-designation submittal demonstrates that the urban reserve factors have been considered related to this area and that further the specific concerns of the objectors were considered and analyzed based on substantial evidence in the record.

4) Natural and Environmental Features

Next, the cities of Tualatin and West Linn object that the Stafford Area urban reserve designation does not comply with OAR 660-027-0050(5), (7), and (8) because in order to protect the existing environmental features, local government would have to constrain development in the Stafford Area to the degree that it cannot meet the identified land needs for urbanization. Tualatin, July 14, 2010 at 14. The cities note that evidence in the record indicates that as much as 70 percent of the Stafford Area is constrained by topographical (steep slopes) and environmental features (rivers, streams, and wildlife habitat), and that if this area is protected it cannot be urbanized efficiently. Conversely, according to the cities, if the area is developed at the stated intensity, many of these environmental features will be impaired or negatively impacted. The cities also maintain that Metro does not explain why it concludes the Stafford Area is reasonably developable, and local government can still preserve and protect important natural features, given the contrary evidence submitted by the cities.

OAR 660-027-0050(5), (7), and (8) require Metro to consider, among the other factors "whether the land proposed for designation as urban reserves * * *:

"(5) Can be designed to preserve and enhance natural ecological systems;

"* * * * *

"(7) Can be developed in a way that preserves important natural landscape features included in urban reserves; and

"(8) Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves."

The entire Stafford Area is comprised of Conflicted Agricultural Land. Metro Record at 33. There are important natural landscape features in this area (Tualatin River and Wilson Creek). *Id.* Metro and county findings indicate protection of these areas is a significant issue, but

can be accomplished by application of regulatory programs of the cities that will govern when areas are added to the UGB. This and other urban reserve areas will be subject to concept planning prior to being brought into the UGB, and Metro's concept planning criteria include consideration of "protection of natural ecological systems and important natural landscape features."[66] Metro Record at 9; Exhibit B to Ordinance No. 1255 at 28-31.

In response to the concerns raised by the cities, the re-designation submittal findings state:

> "Cities also argue that the amount of natural features render the area insufficient to provide for a variety of housing types. Cities contend that the amount of steep slopes and stream buffers renders much of the area unbuildable. We find that cities overstate the amount of constrained land in the area, and the effect those constraints have on housing capacity. For example, cities' analysis applies a uniform 200-foot buffer to all streams. Actual buffers vary by stream type. See Metro Code § 3.07.360. Similarly, cities assert that the slopes in the area mean that the area lacks capacity. Slopes are not *per se* unbuildable, as demonstrated by the existing development in West Linn, Lake Oswego, Portland's West Hills and other similar areas. Moreover, only 13% of the 'focus area' consists of slopes of over 25%, and these often overlap with stream corridors. *Stafford Area Natural Features Map*, indexed at Metro Record 2284." *Id.* at 29-30.

The objection does not establish either that Metro did not consider the urban reserve factors or that the consideration was not supported by an adequate factual base. Although it is clear the cities would draw different conclusions based on the evidence in the record, the cities have not established that a reasonable person could not reach the decision that Metro and the counties made. The Commission rejects this objection.

5) Consideration of Factors as a Whole

Finally, the cities of Tualatin and West Linn object that the decision to designate the Stafford Area as an urban reserve does not demonstrate that the factors as a whole support designation of the Stafford Area as an Urban Reserve. Tualatin, July 14, 2010 at 15. This objection essentially reasserts and consolidates the cities' previous four objections. The cities contend that, for all the reasons explained in the previous objections, on balance and based on the evidence, Metro should have made a different decision regarding designation of the Stafford Area. The objection asserts (1) there is no support in the findings for the conclusion that not designating the Stafford Basin or Norwood necessarily requires designation of more Foundation

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[66] Exhibit B to Ordinance No. 11-1255 at 27 explains the concept planning to which this area will be subject:

> "An important component of the decision to designate this area as an Urban Reserve are the "Principles for Concept Planning of Urban Reserves", which are part of the Intergovernmental Agreement between Clackamas County and Metro that has been executed in satisfaction of OAR 660-027-0020 and 0030. Among other t5higns, these "Principles" require participation of the three cities and citizen involvement entities – such as the Stafford Hamlet – in development of concept plans for this Urban Reserve. The Principles also require the concept plans to provide for governance of any area added to the Urban Growth Boundary to be provided by a city. The Principles recognize the need for concept plans to account for the environmental, topographic and habitat areas located within this Urban Reserve."

Agricultural Land; (2) the conclusions do not address the fact that large portions of the Stafford Area are zoned for agricultural use and are home to many small-scale farming activities and (3) the rule is not solely about preservation of Foundation Agricultural Land.

As evaluated above regarding the cities' objections to compliance with each of the urban reserve factors, Metro adequately considered the urban reserve factors in OAR 660-027-0050, and documented that consideration with sufficient evidence and findings. Metro and Clackamas County have made findings relative to each of the factors, alone and in relation to the others, explaining the designation of the Stafford as urban reserves. Metro Record at 19–23; Exhibit B to Ordinance No. 1255 at 26-31. While the cities disagree with the findings and decision, in fact Metro and the county did evaluate each of the factors. As discussed above, contrary to the cities' implication, the factors are not criteria with Metro must show compliance. Thus, the rules did not require Metro and the county to conduct the type of analytical exercise urged by the cities to establish how to "achieve" the purposes of each of the individual factors. While the cities disagree with the findings and decision, the findings reflect that Metro weighed and evaluated the factors in making the reserves decision, and the findings and conclusions adopted by Clackamas County and Metro adequately explain the how all factors were balanced in reaching the decision.

For these reasons, and as set forth in more detail above, the Commission finds that Metro and Clackamas County appropriately weighed the factors, and that record includes substantial evidence to support the designation of urban reserve for the Stafford Area under the relevant statutory and rule factors, and there is an adequate factual base for Metro's decision. This objection is rejected.

b. Portion of Area 4I; "Top of Pete's Mountain"

Donald and Dawn Bowerman, Leigh & Ceille Campbell, Gordon Root, Steven Prueitt and Colin and Mindy Giddings (collectively, the Bowermans) object to Clackamas County's decision designating the "Top of Pete's Mountain Area" near West Linn (part of Area 4I) as a rural reserve.

> Area Description: The "Top of Pete's Mountain" area can be defined as property located in elevations greater than 150 feet and confined by Schaeffer Road to the north, Pete's Mountain Road to the east, Hoffman Road to the south and Mountain Road to the west. The larger rural reserve area is bounded by the Willamette River on the east and south. On the north, Area 4I is adjacent to areas that were not designated as urban or rural reserve. There are two primary geographic features in this area. The upper hillsides of Pete's Mountain comprise the eastern part of this area, while the western half and the Peach Cove area generally are characterized by flatter land. The Pete's Mountain area contains a mix of rural residences, small farms and wooded hillsides. The flat areas contain larger farms and scattered rural residences. All of Area 4I is located within three miles of the UGB. All of Area 4I is identified as Important Agricultural Land (the "east Wilsonville area"), except for a very small area located at the intersection of S. Shaffer Road and S. Mountain Rd. The Willamette Narrows, an important natural landscape

feature identified in Metro's February 2007 "Natural Landscape Features Inventory," is located along the eastern edge of Area 4I. Metro Record at 42.

The Bowermans argue that (1) there is evidence in the record that there is limited to no agricultural industry in the area; (2) the area is not capable of sustaining long-term agricultural operations; (3) the soil and water are not suitable to sustain long-term agricultural operations; and (4) the area is not suitable to sustain long-term agricultural operations. The Bowermans argue that the area simply does not meet the criteria for designation as a rural reserve.

Clackamas County relied primarily on the "safe harbor" provision in OAR 660-027-0060(4) in designating this area as rural reserve. OAR 660-027-0060(4) allows the county to designate Foundation or Important Agricultural Lands within three miles of the UGB as rural reserve without further evaluation or findings. Consequently, under OAR 660-027-0060(4), because the majority of this area is Foundation or Important Agricultural Lands, the county was not required to further explain or justify its decision to designate this area as rural reserves.

A small area of "conflicted agricultural land" was included in the rural reserves designation adjacent to Schaeffer Road to make SW Schaeffer Rd the clear "hard" northern boundary for the area's rural reserves. Exhibit B to Ordinance No. 11-1255 at 39. As noted above, portions of this area have been inventoried by Metro as containing important landscape features. While the Bowermans disagree with the designation, they have not established that the county erred in applying the safe harbor provision of OAR 660-027-0060(4). The county made adequate findings, based on substantial evidence in the record to justify the rural reserve designation under OAR 660-027-0060(4). The Commission rejects this objection.

c. Portion of Area 4J

Maletis objects that their property, located south of the Willamette River, east of I-5, and west of Airport Road in Clackamas County in Study Area 4J, should be designated as an urban reserve and not as rural reserve. Maletis, July 14, 2010 at 8–12. The City of Wilsonville filed a written exception urging the Commission to find that in the rural reserve designation of Area 4J, Metro and Clackamas County properly construed and applied the applicable law. Wilsonville, October 8, 2010 at 1-3.

Area Description. Area 4J is generally flat and comprised of large farms. The Molalla and Pudding Rivers are located in the eastern part of this area. The Willamette, Molalla and Pudding Rivers and their floodplains are identified as important natural landscape features in Metro's February 2007 Natural Landscape Features Inventory." Metro Record at 40. All of this rural reserve is classified as Foundation Agricultural Land (identified in the ODA Report as part of the Clackamas Prairies and French Prairie areas). *Id.*

Maletis argue several bases of objection – that substantial evidence in the record supports designating the property as an "urban reserve;" that Metro and the counties misconstrued applicable law and made a decision not supported by substantial evidence in designating the

property as "rural reserve;" and that as applied, the enforcement of the "safe harbor" provision of OAR 660-027-0060(4) by Metro and the counties violates ORS 195.141(3) and (4).

The entirety of the 4J area is within three miles of the Metro UGB, and was identified by ODA as Foundation Agricultural Land. Consequently, Area 4J qualifies as a rural reserve area under the "safe harbor" provision of OAR 660-027-0060(4) and Clackamas County was not required to further evaluate or explain the rural reserve designation under OAR 660-027-0040(10). Clackamas Co. Record at 590-592. Maletis contends, however, that, as applied to their property, the use of OAR 660-027-0060(4) safe harbor provision violates ORS 195.141(3) and (4).

ORS 195.141(3) requires that Metro and each county base the designation of rural reserves on consideration of the factors in that section. ORS 195.141(4) authorizes the Commission to adopt rules establishing a process and criteria for designating reserves pursuant to ORS 195.141. This Commission initially adopted rules in 2010, which are codified at OAR chapter 660, division 27. These rules require consideration of factors, which largely mirror those set forth in ORS 195.141(3), prior to designating a rural reserve to provide protection of agricultural land. In addition, to implement the statute for those areas identified by the ODA as Foundation or Important Agricultural Lands, the Commission adopted OAR 660-027-0060(4), which provides:

> "Notwithstanding requirements for applying factors in OAR 660-027-0040(9) and section (2) of this rule, a county may deem that Foundation Agricultural Lands or Important Agricultural Lands within three miles of a UGB qualify for designation as rural reserves under section (2) without further explanation."

This provision permits a county to assign a rural reserve designation to a property classified by ODA as a Foundation or Important Agricultural Land without making findings addressing the factors. The "safe harbor" provision in OAR 660-027-0060(4) does not replace the factors from the statute and rule, but rather identifies a circumstance where, in the Commission's judgment, the factors are already adequately considered based on ODA's prior analysis based on the same considerations. Counties are not required to utilize the safe harbor (and Washington County did not), but OAR 660-027-0060(4) authorizes them to do so. ORS 195.415 does not preclude the Commission from allowing a county to rely on this preexisting analysis that the Commission determines adequately considers the statutory factors for designating lands as a rural reserve under ORS 195.141(3).[67] Further, in adopting administrative rules to implement any statewide land use policy to carry out ORS chapter 195, the Commission has broad authority to adopt rules to provide special protection for Foundation Agricultural Lands or Important Agricultural Lands within the broader range of farmlands zoned EFU. *Lane County v. LCDC*, 325 Or 569, 580-583, 942 P2d 278 (1997).

As an example of the analyses ODA performed in designating Foundation or Important Agricultural Lands, ODA's analysis of the French Prairie area, which includes the portion of Area 4J where the Maletis property is located, states:

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[67] The City of Wilsonville offers an additional text and context analysis of ORS195.141 to support the Commission's rulemaking authority. *See* City of Wilsonville exception, October 8, 2010 at 2-3.

"This subregion maintains excellent integrity for large-scale, intensive industrial agricultural operations. It is, in effect, a large block of agricultural land containing large parcels and larger farms with several inclusions of urban development. It is not uncommon for farms to operate on several parcels located within and, in many cases, outside the subregion. While some localized conflicts with nonfarm uses exist, they are not, overall, beyond what is considered common.

"* * * * *

"Conclusion

"Excellent soils, available water, well established infrastructure and large parcels that block up and dominate the land use pattern. This subregion has all the elements for maintaining and expanding viable, commercial agricultural. This subregion, combined with the Clackamas Prairies and East Canby subregions, is one of the most significant agricultural areas in the state." ODA, Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands, January 2007, at 32-34.

This report exemplifies why the safe harbor provisions of OAR 660-027-0060(4), as applied to Area 4J, validly ensure adequate evaluation of the factors in ORS 195.415 for those areas ODA has identified as Foundation or Important Agricultural Lands. Based on the ODA report as well as the county's analysis of this area, the Commission rejects this objection and finds OAR 660-027-0060(4) is valid as applied to the Maletis property.

However, in the alternative, even without reliance on OAR 660-027-0060(4), the Commission denies the objection based on Clackamas County's additional reasoning and analysis for its rural reserve designation of this area. After completing a comprehensive analysis of the property and its suitability for urban or rural purposes, Clackamas County found that area 4J rated "high' under all of the factors related to long-term protection for agriculture and forest industries. Clackamas Co. Record at 590-592. The county also rated the property as having "medium" or "high" suitability for an urban reserve designation on all factors, with the exception of three subfactors. Clackamas Co. Record at 590-592. Thus, the county found that, based on the factors, it could qualify for either an urban or rural reserve designation.

The Maletis' primary contention is that substantial evidence in the record supports designating their property "urban reserve" and conversely does not support the current designation as "rural reserve." However, while Maletis disagrees, as cited above, there is substantial evidence in the record upon the consideration of which Metro and the County could reasonably determine that area 4J should be designated as a rural reserve under the factors in OAR 660-027-0060 in addition to the safe harbor under section (4) of that rule. Moreover, in the situation where Metro and the county could determine that an area could be either a rural reserve or an urban reserve, based on their consideration of the statutory and rule factors, the decision concerning which designation to apply is highly discretionary. OAR 660-027-0005(2), provides that the purpose of the Metro reserves as a whole is to provide "a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and

vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents." While it is possible that consideration of substantial evidence could support either designation, the applicable statute and rule leave substantial discretion to Metro and the counties as to which designation to make.

Following the Commission's vote to remand a portion of the initial decision (unrelated to the Maletis property), Clackamas County adopted additional findings to support its original designations. Those additional findings did not modify any designations, and did not address area 4J specifically. However, in the re-designation submittal, Clackamas County made findings related to the "safe harbor" provision of OAR 660-027-0060(4) and made additional findings related to OAR 660-027-0060. (Revised Findings for Clackamas County Urban and Rural Reserves April 21, 2011 at 21-23.)

On review of the re-designation submittal, Maletis supplemented their objections. They contend that the county should have made additional findings specific to the Maletis property in isolation and not as to the entirety of rural reserve area 4J. However, neither the statute nor or applicable rules require such a parcel-specific evaluation. The county considered the factors for designation of Area 4J as rural reserves under OAR 660-027-0060 and determined that the area was appropriately designated as a rural reserve under the factors. While Maletis identified conflicting evidence before the county regarding designation as an urban, as opposed to rural reserve, the fact of conflicting evidence does not provide a basis for the Commission to remand the decision. The Commission will not substitute its judgment for that of the county and Metro. Under the substantial evidence standard, where the evidence in the record is conflicting, if a reasonable person could reach the decision that the decision maker made in view of *all* the evidence in the record, the choice between the conflicting evidence belongs to the decision maker. *Mazeski v. Wasco County*, 28 Or LUBA 178, 184 (1994), *aff'd* 133 Or App 258, 890 P2d 455 (1995). The Commission finds that the county's rural reserve designation of the challenged portion of Study Area 4J has an adequate factual base and is supported by substantial evidence in the record. The Commission rejects this objection.

2. Multnomah County

a. Areas 9A-D and 9F

The Forest Park Neighborhood Association[68] (FPNA) objects that Multnomah County's (and thus Metro's) decision violates the administrative rule by not explaining fully why and how Areas 9A–D and 9F qualify for rural reserve designation. The objection is submitted in support of Multnomah County's and Metro's decision, as supplemental findings and citations to evidence and arguments in the record that support Metro's decision. FPNA, July 14, 2010 at 1.

> Area Description: Area 9 lines south of Germantown Road and the power-line corridor where it rises from the toe of the west slope of the Tualatin Mountains up to the ridge at Skyline Blvd. Multnomah Co. Record at 3004-3015. The north edge of the area is the

[68] The Forest Park Neighborhood Association objectors include Carol Chesarek, Jim Emerson, Milly Skach, Joseph C. Rayhawk, Greg Malinowski, Christopher H. Foster, Claudia Martin, Kevin O'Donnell, Mary Telford, and Jerry Grossnickle.

start of the Conflicted Agricultural Land section that extends south along the Multnomah/Washington county line to the area around Thompson Road and the Forest Heights subdivision in the City of Portland. The area is adjacent to unincorporated urban land in Washington County on the west, and abuts the city of Portland on the east. Most of the area is mapped as Important Landscape Features that begin adjacent to Forest Park and continue west down the slope to the county line. Multnomah Co. Record at 1767. The area is a mix of headwaters streams, upland forest and open field wildlife habitat. *See* Exhibit B to Ordinance No. 11-1255 at 7, 46.

FPNA's proposed remedy is for the Commission to supplement the findings to address the rural reserve factors, including citations to evidence in the record.

Although the Commission agrees with FPNA that the citations to additional evidence in the record would bolster the Metro Urban and Rural Reserves Submittal, the objection has not established that Metro and Multnomah County did not adequately present their findings. As such, the Commission must reject the objection. However, the Commission accepts that the FPNA have directed it to evidence that "clearly supports" the Metro Urban and Rural Reserves Submittal. *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101, 122 (1995). Thus, based on the evidence in the record, including that cited by FPNA, the Commission finds that Metro and Multnomah County based their decision on consideration of the factors for designation of lands in rural reserves as required by OAR 660-027-0060 and have provided sufficient findings to support their recommendation.

b. Area 9B

The Metropolitan Land Group (MLG) and Dorothy Partlow, Hank Skade, Jim Irvine, John Burnham, Kathy Blumenkron, Robert Burnham, Robert Zahler, and Thomas Vanderzanden individually, object to Multnomah County's designation of certain property within Area 9B as rural reserve. These parties generally object to Multnomah County's designation of an L-shaped portion of land in western rural reserve Area 9B as a rural reserve under OAR 660-027-0060 because they believe that the area better meets the urban reserve factors, and does not meet the rural reserve factors. MLG and Robert Burnham objected more broadly to the designation of Area 9B as rural reserve.

Area Description. Area 9B is defined on the west by the Washington County line, a line that is approximately mid-way between the county line and Skyline Blvd. on the east, and areas adjacent to Forest Heights subdivision on the south, and a power line right-of-way on the north. Multnomah Co. Record at 3011, 3015. The area is a mix of headwaters streams, upland forest and open fields. The specific L-shaped portion of Area 9B referred to in most of the objections is located in the southwestern portion of the study area on the Washington/Multnomah county line, and is bisected by Lower Springville Road. *See* Exhibit B to Ordinance No. 11-1255 at 46.

The common objection is that the area does not satisfy the factors in OAR 660-027-0060 for designation as rural reserve, but does satisfy the factors for designation as urban reserve under OAR 660-027-0050. The objectors also generally assert that while substantial evidence in

the record supports an urban reserve designation, Multnomah County's findings designating the area as rural reserve are not based upon substantial evidence in the record. MLG, July 14, 2010 at 1.

Several of the objections state that the land is not good farmland and cite the ODA designation of the area as "Conflicted." Multnomah County, however, found the area eligible for rural reserve designation under the factors for significant landscape features in OAR 660-027-0060(3), not those for farm or forest lands under OAR 660-027-0060(2). *See* Multnomah Co. Record at 9680.

None of the factors for selecting rural reserves, or any other provision of the applicable statutes or rules, require a parcel-specific analysis for reserve-boundary location decisions. Thus, the objectors have not established that the county was required to evaluate the L-shaped southwest portion of Area 9B distinct from the remainder of that area. As discussed above, where evidence in the record could reasonably support a finding that an area qualify as either urban or rural reserve, the statute and rule provide Metro and the counties substantial discretion in their determination. Generally, the issue here is whether the county considered the rural reserve factors in deciding to include Area 9B, explained why the areas should be rural reserve using the factors listed in the statute and rules, and relied on evidence in the record that a reasonable person would rely upon to decide as the county did. The Commission finds that Multnomah County considered the required factors, based on substantial evidence in the record, to support the designation of Area 9B as rural reserve. Multnomah Co. Record at 9679; Exhibit B to Ordinance No. 11-1255 at 46-47. Additionally, the findings explain why the area is not apt for an urban reserve designation due primarily to efficient use of infrastructure and efficient and cost-effective provision of services. *Id.* Therefore, the Commission rejects the objections.

3. Washington County

a. Area 5F (Tonquin)

The City of Wilsonville and the Audubon Society of Portland object that evidence in the record does not support the urban reserve designation of Area 5F (Tonquin). According to the city, Tonquin was inappropriately designated as an urban reserve, and should be designated rural reserve. Wilsonville, July 14, 2010 at 5. The Audubon Society argues that because of its important natural landscape features, this area qualifies as rural reserves. Audubon, July 14, 2010, at 3-4 (unnumbered pages.)

> Area Description. "Urban Reserve Area 5F is approximately 565 acres and is part of the larger Tonquin Scablands area. Portions of this area are included on Metro's 2007 Natural Landscape Features Inventory map. The area is comprised of the unincorporated land east of the city of Sherwood and includes portions of the Tualatin River National Wildlife Refuge, quarry operations, a gun club practice facility, and a training area for Tualatin Valley Fire and Rescue. Much of the area is included in the county's Goal 5 inventory as a mineral and aggregate resource area. Rock Creek and Coffee Lake Creek are the principal drainages in the reserve area. Approximately 143 acres in this area are

considered buildable lands. WC Rec. 9276-9295." Exhibit B to Ordinance No. 11-1255 at 74.

The city contends that the designation of the Tonquin Geologic Corridor (Area 5F) as an urban reserve is not supported by substantial evidence in the record. The city clarifies in its exception that it supports the inclusion of the portion of Area 5F within the Southwest Tualatin Concept Planning Area as an urban reserve, but maintains its objection to the urban reserve designation for the remainder of 5F. Wilsonville Exception, October 8, 2010 at 3. According to the city, the Metro Urban and Rural Reserve Submittal has inappropriately included land within the Tonquin Geologic Corridor within the urban reserves, in spite of being mapped for its significance in Metro's Natural Landscape Feature Inventory and therefore subject to OAR 660-027-0060(3). The city argues that Metro did not adequately address the required factors of OAR 660-027-0050 in designating Area 5F as an urban reserve, and that there is no reasonable expectation that this area can be developed to urban standards.

The city's objection includes arguments specific to several of the urban reserve factors in OAR 660-027-0050:

> (1) There is no efficient way to provide a full range of urban infrastructure across a broad riparian zone and there is no evidence that the area can be "developed at urban densities."
>
> (3) Metro's conclusion that the area "can be efficiently and cost- effectively served by appropriate and financially capable service providers" is not supported by evidence in the record.
>
> (5) There is no basis upon which Metro could appropriately conclude that this area "can be designed to preserve and enhance natural ecological systems" while including it within the urban reserves.
>
> (7) Metro cannot realistically conclude that this area can be designated an urban reserve and that it "can be developed in a way that preserves important natural landscape features included in urban reserves."
>
> (8) The Tonquin Geologic Corridor cannot be urbanized and still "be designed to avoid or minimize adverse effects on important natural landscape features."

The Audubon Society objection evaluates how the area satisfies the rural reserve factors. Both objectors propose that the Commission to remand this designation to the county and to Metro to delete the Tonquin Geologic Corridor (Area 5-F) from the urban reserves and designate it a rural reserve.

The Metro Urban and Rural Reserve submittal describes Area 5F and the urban reserve factors at Exhibit B to Ordinance No. 11-1255 at 74-75. In part, the submittal designated urban reserves that are not Foundation Agricultural Lands in order to meet the farm and forest land objectives of reserves, knowing these lands will be more difficult and expensive to urbanize. *Id.*

at 6. A portion of urban reserve Area 5F is included in the Pre-Qualifying Concept Plans (PQCP) submitted by the City of Tualatin to meet its long-term industrial needs. The remainder of the area was shown as residential on the City of Sherwood's PQCP for the area. Washington Co. Record at 3495-3518. Tualatin included a 117-acre portion of this reserve in its PQCP and the area is of interest to that city primarily for transportation connectivity to extend SW 124th Avenue and to expand the city's industrial land base. The area was rated high for suitability for sewer service, medium suitability for water service, and medium suitability for transportation.

Metro's findings state the natural features in this area can be protected and enhanced under the existing regulatory framework in Washington County, Sherwood and Tualatin. Exhibit B to Ordinance No. 11-1255 at 75. The 565-acre Area 5F area is located between the cities of Sherwood and Tualatin and is bordered on three sides by the existing UGB. The City of Tualatin has developed general service costs estimates, and has agreed to provide governance and public facilities and services to the eastern portion of this area.

While the City of Wilsonville and the Audubon Society disagree with the analysis of the Metro Urban and Rural Reserve Submittal, neither objector has established that there is not substantial evidence in the record to support Metro's urban reserve designation, or that Metro's findings, considering each of the urban reserve factors under OAR 660-027-0050, do not have an adequate factual base. Therefore, the Commission rejects these objections.

b. Portion of Area 6E; 28577 SW Herd Lane and abutting land

David Hunnicutt objects to Washington County's rural reserve designation of his property at 28577 SW Herd Lane and other land abutting Herd Lane and Neugebauer Road in Area 6E. He argues the rural reserve of that property is unlawful under OAR 660-027-0060 because the property does not satisfy the rural reserve factors.

> Area Description: The 25,381-acre rural reserve Area 6E is split by the Tualatin River, a key natural feature in the reserve. The Chehalem Mountains are also a prominent natural feature. The north half of the reserve area is typified by farm parcels adjacent to and north of the river. South of the river and Highway 219, lots are smaller and uses are more varied, including residential use, nursery use, and farm and forest uses on small parcels. *See* Exhibit B to Ordinance No. 11-1255 at 96.

Mr. Hunnicutt argues that the portion of the study area containing his residence at 28577 SW Herd Lane and other land abutting Herd Lane and Neugebauer Road does not satisfy the rural reserve factors in OAR 660-027-0060(2)(a)–(d) and does not have important natural landscape features that would qualify it as a rural reserve designation under OAR 660-027-0060(3). Mr. Hunnicutt maintains that the land in question is not threatened by urbanization during the planning period because it is located more than three miles from the nearest city within Metro and the closest boundaries of the current Metro UGB.

As discussed above, the statute and rule do not contemplate that county perform a parcel-specific evaluation in the reserves selection process when evaluating areas for rural and urban reserve. The Metro Urban and Rural Reserves Submittal evaluated Area 6E and made findings

under the rural reserve factors in OAR 660-027-0060. Exhibit B to Ordinance No. 1255 at 96-97. The Commission recognizes that in several instances, the large study areas employed by Washington County, in this case more than 25,000 acres, have led to imprecise fits when considered over a smaller area as objector suggests is appropriate. However, the Commission is tasked with reviewing what in fact has been submitted. As such, the Commission finds that with regard to 6E, there is substantial evidence in the record and an adequate factual base in designation. Although the subject property and the surrounding area adjacent to Herd Lane and Neugebauer Road in Rural Reserve Area 6E are located well over five miles from the Metro UGB, the area is recognized by Washington County as part of an important natural landscape feature (the Chehalem Mountains) and are designated as Important Agricultural Land in the Oregon Department of Agriculture study. Washington Co. Record at 2998 and 3000. The county has adequately addressed the findings to support the rural reserve designation for Area 6E. This objection is rejected.

c. Areas 7I and 7B (Initial Designation)

The ODA, Melissa Jacobsen, and 1000 Friends all objected to Washington County's initial designation submittal of area 7I in North Cornelius as an urban reserve under OAR 660-027-0050 and 660-027-0060(2). ODA, July 14, 2010 at 6; 1000 Friends, July 12, 2010 at 13–16; Jacobsen, July 2, 2010 at 1. 1000 Friends also objected to the urban reserve designation of Area 7B.

> Area Description: Area 7I consists of approximately 624 acres of land, 470 acres (75%) of which is considered buildable. This area, consisting of class I, II and III (High Value) agricultural soils, lies north of and adjacent to Council Creek and the Cornelius urban growth boundary and southwest of Dairy Creek. The area is a well-established agricultural community with significant investment in agricultural infrastructure that lies within the Tualatin Valley Irrigation District. The area has been identified as Foundation Agricultural Land by ODA. Both Council Creek and Dairy Creek include floodplains, wetlands and riparian corridors that have been designated on Metro's Natural Landscape Features Inventory. Washington Co. Record at 88-89.
>
> Area 7I is a portion of a larger Pre-Qualifying Concept Plan area analyzed by the City of Cornelius to satisfy long-term growth needs. The area was originally selected as an urban reserve in part because of its suitability for large-parcel industrial use. Part of it was originally recommended by the City of Cornelius for a 2010 UGB expansion.
>
> Area 7B is located along the northern edge of Forest Grove and generally extends from the existing UGB north to Purdin Road between Highway 47 on the east and Thatcher Road on the west. This area is approximately 508 acres. Approximately 40 percent of Area 7B is north of Council Creek. Washington Co. Record at 9288; Metro Record at 85

1000 Friends objected to the original designation of both 7I and 7B, arguing that there was insufficient justification showing this land is needed as an urban reserve. 1000 Friends noted that the City of Cornelius currently has 125 to150 acres of vacant, buildable land inside the

UGB as well as other urban reserves designated to the east and south of the city. 1000 Friends further argued that the proposed expansion of development across Council Creek and its floodplain is contrary to the urban reserve factors, as it would not facilitate compact growth and would frustrate planned transit facilities within Cornelius. Ms. Jacobsen argued that Northwest Susbauer Road and other area roads close nearly every year due to flooding in the Council Creek floodplain. 1000 Friends asserted that neither Washington County nor Metro addressed two urban reserve factors: OAR 660-027-0050(7) (whether the area can be developed in a way that preserves important natural landscape features) and (8) (whether the area can be designed to avoid or minimize adverse effects on farm and forest practices and important natural landscape features on nearby land) with regard to these lands.

Regarding the rural reserve factors, all three objectors asserted that Area 7I qualifies as a rural reserve because it satisfies all rural reserve factors (OAR 660-027-0060(2)(a)–(d)). ODA argued that the area is under "constant threat" of urbanization as evidenced by a long history of advocacy for inclusion within the Cornelius UGB. ODA further asserted that the area would constitute a protrusion of urban land into the farm landscape, creating two additional urban edges for agricultural operations to deal with and creating long-term implications for surrounding agricultural lands. 1000 Friends argued that this large intact block of farmland supports and sustains long-term agricultural operations and that this area is the heart of the Tualatin Valley agricultural industry, containing some of the most productive farmland in the state. 1000 Friends further argued that the area is critical to the economic health of farm infrastructure and industry in the area and that several food processors and other farm infrastructure are present in Area 7I. Finally, 1000 Friends asserted that the county did not address rural reserve factor OAR 660-027-0060(2)(d)(B) (the existence of buffers between agricultural or forest operations and non-farm or non-forest uses) as the reserves rules require. 1000 Friends and Jacobsen further assert that Area 7I qualifies as rural reserve because it is a mapped significant natural landscape feature under factor 3 that forms a natural boundary separating urban and rural uses.

In the initial reserves designations, Metro and Washington County addressed OAR 660-027-0050(1)–(8) (the urban reserve factors) in a general fashion, concluding that all factors have been met for these areas. Metro Record at 85-86 (7B), and 88-89 (7I); Washington Co. Record at 9668. These findings stated that the areas could "reasonably be developed at urban densities which would efficiently utilize existing and future infrastructure investments" (factor 1) and that buildable lands "provide sufficient development capacity to support a healthy economy" (factor 2). The cities of Forest Grove and Cornelius prepared pre-qualifying concept plans for these two areas, indicating that the lands "can be designed to be walkable and appropriately served with a well-connected system of streets, bikeways, recreation trails and public transit" (factor 4) and "can be efficiently and cost-effectively served with schools and other urban facilities and services" (factor 3). The findings further stated that the "existing regulatory framework in Washington County and Cornelius will preserve and support enhancement of natural ecological systems" potentially impacted by future urbanization (factor 5), the area "can support a range of needed housing types" (factor 6) and can be designed to avoid or minimize potential adverse effects" on surrounding farms and natural landscape features (factor 8). Factor 7 – can be developed in a way that preserves important natural landscape features – was not directly addressed. Metro Record at 89.

However, as discussed above, because these two areas are located on lands identified by ODA as Foundation Agricultural Lands, OAR 660-027-0040(11) requires a more rigorous evaluation of these areas prior to their designation as urban reserves:

> "Because the January 2007 Oregon Department of Agriculture report entitled 'Identification and Assessment of the Long-Term Commercial viability of Metro Region Agricultural Lands' indicates that Foundation Agricultural Land is the most important land for the viability and vitality of the agricultural industry, if Metro designates such land as urban reserves, the findings and statement of reasons shall explain, by reference to the factors in OAR 660-027-0050 and 660-027-0060(2), why Metro chose the Foundation Agricultural Land for designation as urban reserves rather than other land considered under this division." OAR 660-027-0040(11).

The initial submittal findings provided a general explanation of why Metro chose Foundation Agricultural Land rather than other lands as urban reserves. *See* Metro Record at 119-120. These findings note that most of the lands surrounding existing urban areas in Washington County are identified as Foundation Agricultural Land, with the result that any significant urban reserve designations in Washington County would necessarily require using some Foundation Agricultural Lands, particularly if urban reserves were to be designated around the City of Cornelius (and, to a lesser extent, Forest Grove and Hillsboro). *See* Washington Co. Record at 2998 (map of ODA classifications in Washington County). The findings state that:

> "Throughout the technical analysis and review process leading to preliminary recommendations on urban and rural reserves, the consistent message from the Washington County Farm Bureau was that lands within the existing UGB should be used more efficiently and, with the exception of lands classified as 'Conflicted' on the map developed by the Oregon Department of Agriculture, all lands in the study area within approximately one mile of a UGB should be designated as rural reserve. Farm Bureau members submitted a map and cover letter depicting their recommendations. WC Rec. 2098-2099; 3026; 3814-3816.
>
> "The needs determination by county and city staff concluded that the one-mile recommendation noted above would not address the county's urban growth needs over the 50-year reserves timeframe. The WCRCC [Washington County Reserves Coordinating Committee] on September 8, 2009 voted 11 to 2 in support of urban reserve areas of approximately 34,200 acres and rural reserve areas of approximately 109,750 aces in Washington County. In consideration of the concerns raised by the Farm Bureau as well as like-minded stakeholders, interest groups and community members, the Core 4 recommended a reduction of approximately 40 percent (34,200 acres to 13,561 acres) to the WCRCC urban reserve recommendation. These adjustments represented the Core 4's judgment in balancing the need for future urban lands with the values placed on 'Foundation' agricultural lands and lands that contain valuable natural landscape features to be preserved from urban encroachment." Metro Record at 62.

The September 23, 2009 WCRCC recommendations report appears in the record at Washington Co. Record at 2942-3034. The technical analysis contained in those

recommendations addresses the rural reserve factors at OAR 660-027-0060(2)(a)–(d) for 41 subareas in the county. Washington Co. Record at 2976. The county also produced a chart that details how each factor was addressed in its review process. Washington Co. Record at 2943. As part of its consideration of the rural reserve factors, the county assigned "tiers" to lands in terms of their suitability for agriculture, with Tier 1 being the most important and Tier 4 being the least. The county assigned Tier 4 status to Area 7I and Tier 1 status to Area 7B. Washington Co. Record 3024. Finally, the analysis also relied on a series of "Issue Papers," which are included with the WCRCC recommendations as Appendix 5. Washington Co. Record at 3780-3819.

For Area 7I, the county noted that it has high urbanization potential, a higher productivity rating and physical features that help define the area, but that it also has a "high dwelling density," a high level of parcelization (Washington Co. Record at 3021), and relatively high land values. Washington Co. Record at 3014, 3022. For Area 7B, the county's technical analysis shows less parcelization, fewer homes, and lower land values.

During the October 2010 Commission hearing, the City of Cornelius and others testified in support of the Metro and Washington County urban reserve designation of Area 7I, based on its satisfaction of all of the urban reserve factors. The PQCP and maps of the proposed urban reserve Area 7I were presented to the Commission, and Washington County specifically identified the evidence in the record supporting the suitability of the area as an urban reserve. Other parties objecting to the urban reserve designation identified evidence that key, high-value agricultural operations were located within Area 7I, and that urbanization of this area would likely lead to conflicts with other agricultural operations to the north.

After consideration of the written materials and the DLCD September 28, 2010 Report, and following substantial oral argument regarding these designations from both proponents and opponents of the designations, the Commission concluded that the findings were not adequate with regard to both Areas 7I and 7B. The Commission concluded that as a matter of law OAR 660-027-0040(11) required more than generalized findings to explain Metro's choice to designate these Foundation Agricultural Land as urban reserves. Rather, the rule requires that "the findings and statement of reasons shall explain, by reference to the factors in OAR 660-027-0050 and 660-027-0060(2), why Metro chose the Foundation Agricultural Land for designation as urban reserves rather than other land considered under this division." The Commission concluded that Metro's general findings did not provide an adequate explanation for the designation of Areas 7I and 7B as urban reserve. The Commission also found that with regard to 7I, there was not substantial evidence in the record to support the urban reserve designation. In the Commission's view, the evidence of suitability for urbanization was at best weak, and the PQCP was far less developed than similar planning for other areas proposed as urban reserves. On the other hand, the evidence of suitability as a rural reserve to protect agricultural values was strong, including evidence of the productive capability of the area and existing farming operations.

Consequently, the Commission voted to reject the urban reserve designation for Area 7I, and to remand the decision regarding Area 7B for further findings that address each of the urban

and rural reserve factors. Specifically, as summarized by the Commission chair, the motion was to:

> "[R]emand to Washington County and Metro to reject 7I; we remand to them to develop findings with regard to 7B; we remand Washington County's rural reserves for Washington County and Metro to consider whether to designate some of that rural reserve to urban reserve, capped at [an acreage equal to that contained in Area] 7I * * * so that it is 7I plus the other amount, plus any amount of undesignated land that they want to designate..." Exhibit B to Ordinance No. 11-1255 at 107.

Following the Commission's remand vote, but without a written final order pursuant to OAR 660-002-0010(6), Metro and Washington County revised their intergovernmental agreement and adopted ordinances amending their respective plan and plan maps, and adopted revisions to their initial reserves decision. The re-designation submittal eliminated the urban reserve designation from Area 7I, re-designated the northern 263 acres of Area 7I rural reserve, and left the southern 360 acres undesignated. The re-designation submittal also removed the urban reserve designation from 28 acres of Area 7B, leaving those 28 acres undesignated.

On review of the Metro Urban and Rural Reserve Submittal, several parties objected to the re-designations of these two areas.

d. Area 7I (Re-designation)

The City of Cornelius objects to the Commission vote to reverse the urban reserve designation of Area 7I, and to Washington County and Metro's subsequent re-designations that resulted in Area 7I being partially designated rural reserve and partially left undesignated. The objection contends that the record that addresses the statutorily required factors for designation of urban and rural reserves does not support these amended reserve designations. The proposed remedy is for the Commission to remand the re-designation decision to Washington County and Metro with direction for them to approve an urban reserve designation for the southern portion of the area that was left undesignated. The undesignated area is 360 acres, and the proposed remedy is for an urban reserve of "about 352 acres" to replace the newly designated urban reserve in Area 8B (adjacent to Helvetia Road).

The Van De Moortele Family also objects to the re-designation of Area 7I, requesting that the Commission re-designate certain land in the vicinity of the City of Cornelius from rural reserves to urban reserves. The Van De Moortele Family includes reasons why the subject land should be designated urban reserve.

The record includes considerable analysis regarding the factors for designation of the urban and rural reserves for Area 7I. As discussed above, in October 2010 the Commission determined that the submittal did not establish that the urban reserve designation of Area 7I was supported by the record and the considerations required by division 27. Subsequently, Washington County and Metro divided the area into two designations – the 360-acre southern area was left undesignated and the northern 263-acre portion was designated rural reserve. Metro and Washington County made findings analyzing the evidence in the record for the re-

designation submittal as it pertains to the undesignated area. Exhibit B to Ordinance No. 11-1255 at 122-127. Washington County's analysis of the evidence in the record for the rural reserves portion of the area start on page 124 of the findings, and in the Washington County Record at 11005-11061. The Metro Urban and Rural Reserves Submittal demonstrates that Metro and Washington County considered the evidence in the record, and applied that evidence to the applicable factors under OARs 660-027-0060.

The City of Cornelius argues that Area 7I is suitable for urbanization, based on the city's pre-qualified concept plan (PQCP), existing and planned infrastructure improvements, the city's desire for more industrial development to address an imbalance of jobs to housing in the city, the existence of areas of exception lands north of Council Creek, and the city's argument that Council Creek is not an appropriate dividing line for urbanization because it has already been broached. The City of Cornelius does not identify evidence in the record that warrants a conclusion contrary to that made by the Commission at the October 2010 hearing. The re-designation findings describe why a portion of the area has been designated as a rural reserve and a portion left undesignated. Exhibit B to Ordinance No. 11-1255 at 124-130. The findings also reflect that Metro and the county considered overall balance, as set forth in the purpose statement of the Commission's rules, in deciding on what portion of Area 7I would be designated as a rural reserve. Metro and the county have considered each of the applicable factors, and substantial evidence in the record as a whole exists to support the county and Metro's decision. The Commission rejects this objection.

In contrast to the City of Cornelius objections regarding Area 7I, ODA, 1000 Friends, and Joseph Rayhawk all object that the failure to designate all of Area 7I as a rural reserve is inconsistent with the reserves statute and rules. ODA and 1000 Friends argue that Metro and Washington County's decision to leave a portion of Area 7I undesignated is inconsistent with the reserves rules and statutes because the area qualifies as rural reserve and should be so designated due to its agricultural productivity, threat of urbanization, and relationship to other farmland in the area.

1000 Friends states the lack of rural reserve designation for the area does not meet the reserves statute and rules and the area does not "qualify as undesignated." The objection lists five points to support claim, four of which focus on why the land is good farmland and deserves the additional protection that a rural reserve designation would provide. The final point maintains Metro did not adequately explain its decision.

ODA alleges that leaving 360 acres of Area 7I undesignated will create a "new edge" to the urban area with farmland on three sides and no protection for the adjacent farmland, unlike the existing buffer created by Council Creek. ODA also contends that "as 'undesignated' lands, these lands in effect become next in line for urbanization and in fact, could move up in line should they be designated by future actions as urban reserves..." and "because these lands could be urbanized sooner, the speculative value of the land becomes much higher than if protected for agricultural use making it difficult at best for farmers to rent, lease or acquire the subject lands." ODA, June 2, 2011, at 4. ODA further objects that "Metro has provided no findings to explain why this area should not be re-designated as rural reserve or any findings that explain why the area was left undesignated." *Id* at 5. ODA fails to explain how this relates to the factors in OAR

660-027-0060 that Washington County was required to consider on making its rural reserve decisions.

ODA makes essentially the same argument it made to the Commission regarding the initial decision to designate Area 7I as an urban reserve, that an urban reserve designation would lead to urban development that has detrimental impact on farm operations well beyond the boundaries of the subject property. ODA, July 14, 2010 at 6; ODA June 2, 2011 at 5. The re-designation submittal is significantly different, however, as it removes the urban reserve designation. While ODA may be correct that the area is under some threat of urbanization, that fact alone does not *require* Washington County to designate the area as a rural reserve. Metro, and Washington County, considered that threat and decided not to designate this area as either rural or urban reserve. While a rural reserve designation may have forestalled immediate speculative increases in the value of the land, the land in question retains rural plan designation and will be a lower priority for urbanization under ORS 197.298 than an urban reserve.

The explanation for removing the designation from Area 7I are in Washington County's supplemental reserve findings at 12726 and 12729-12731 and Exhibit B to Ordinance No. 11-1255 at 163 and 166-167. However, while the county made findings explaining its decision to remove the designation, neither ODA nor 1000 Friends has identified any legal requirements that applies to the Commission's review of a decision by Metro or Washington County *not* to designate an area as a reserve (urban or rural). In fact, neither Metro nor Washington County is required by the reserves statute or rules to justify its decision to leave any particular area undesignated, even if application of the factors indicated it was eligible for one or both reserve designations. The Commission rejects this objection.

e. Area 7B (Re-designation)

1000 Friends objects that the continued designation of Foundation Agricultural Land in the northern portion of Area 7B as an urban reserve violates the reserve statute and rule. 1000 Friends argues that the northern portion of Area 7B should not be designated urban reserve because: (1) the area meets all the rural reserve factors and there is no evidence that it meets the urban reserve factors, (2) the justification for urban reserve improperly focuses on a specific use of the land, (3) adopted findings lack substantial evidence and fail to address the urban reserve factors and balancing, and (4) roads do not effectively separate urban and agricultural lands. The proposed remedy is for the Commission to remand the re-designation decision with instructions for Washington County to designate the northern portion of Area 7B rural reserve. 1000 Friends, June 1, 2011 at 7-12.

Joseph Rayhawk also argues that removing 28 acres of area 7B from urban reserve, and leaving it undesignated is to allow a road, and that this change violates Goal 2. He argues that that the entire Area 7B should be re-designated rural reserves. Rayhawk, June 2, 2011 at 1-2.

As discussed above, following the October 2010 hearing, the Commission found that the consolidated findings did not adequately address each of the urban and rural reserve factors for Area 7B, as required by OAR 660-027-0060(4) (requiring evaluation of both urban and rural reserve factors prior to designating Foundation Agriculture Land as urban reserves.)

Consequently, it remanded the decision to Metro and Washington for additional findings on the designation. The Commission did not necessarily require any re-designation of that area. Metro adopted new findings responsive to the urban and rural reserve factors. The findings explain the reasoning for adding land to the north of Forest Grove and the city's proposed plan designation for the land.[69]

There is no disagreement that Area 7B could have been designated rural reserve. However, while 1000 Friends emphasizes the evidence to support a rural reserve designation, they do not adequately explain their allegation that there is no evidence the area satisfies the urban reserve factors. In fact, based on the evidence and testimony provided to the Commission, there is evidence in the record that could have supported either designation. As discussed at length above, the statutory and rule provisions provide Metro and the county substantial discretion when the facts could support either designation. Metro adopted findings based on consideration of both the urban and rural reserve factors, and the objection does not demonstrate these findings are not supported by substantial evidence. Because Metro's findings are adequate, and based on substantial evidence, to support Metro's decision to continue to designate a portion of Area 7B as urban reserve, the Commission rejects this portion of the objection.

1000 Friends challenged the initial submittal alleging Metro impermissibly designated urban reserve land in general, and area 7B in particular, for industrial use. Following the re-designation, 1000 Friends does not allege Metro impermissibly *designated* the land based on the need or desire for additional large-lot industrial land, but maintains that the justification's strong reliance on the suitability of Area 7B for industrial use is too specific for the time frame considered (30 to 50 years), and that Metro used other impermissible considerations (*e.g.*, presence of an existing large lot) to justify the urban reserve designation.

It may well be that the City of Forest Grove would propose to designate a significant portion of Area 7B industrial if and when it is brought into the UGB. The findings that explain how the area fares when compared to the urban reserve factors are largely, but not exclusively, based on an assumption that the area will be developed with employment uses. 1000 Friends faults this analysis but has not explained how this violates the applicable statute and rules. 1000 Friends suggests that urban reserves cannot identify or contemplate any specific urban use to which urban reserve lands may be put at such time as those lands may be brought into the UGB. However, the urban reserve factors specifically provide for an evaluation of whether an area has sufficient development capacity to support a healthy economy and sufficient land suitable for a range of housing types. OAR 660-027-0050(2), (6). The discussion of Forest Grove's potential economic development based on specific examples as part of this evaluation is not inappropriate. The Commission rejecs this portion of the objection.

1000 Friends further objects that Metro's findings fail to establish that Area 7B satisfies the urban reserve factors, and instead that those findings actually establish that Area 7B does not meet the urban reserve factors. Specifically 1000 Friends objects that Metro did not adequately

[69] The supplemental reserve findings for Area 7B are in Exhibit B to Ordinance No. 11-1255 at 127-148 and Washington County supplemental findings at 12694-12711. Washington County's findings for the undesignated section of 7B are in Washington County supplemental findings at 12728-12729.

respond to Washington County Farm Bureau testimony regarding agricultural infrastructure in and around the proposed Area 7B urban reserve. 1000 Friends believes this evidence demonstrates that the area satisfies rural reserve factor OAR 660-027-0060(2)(d)(D).

As stated above, it is undisputed that Area 7B could have been designated either urban or rural reserves (or left undesignated.) However, 1000 Friends' contention that the area better satisfies the rural reserve factors does not establish that Metro could not equally find that the property satisfies the urban reserve factors. That 1000 Friends would have preferred Metro to evaluate the evidence and testimony differently does not negate the evidence upon which Metro relied. Metro explained in the record why it designated the farmland in Area 7B as urban reserves. The findings adequately explain Metro's decision and are based on substantial evidence in the record.

1000 Friends also specifically challenge Metro's conclusion that Purdin Road makes a better buffer between urban and farm uses than does the drainage way that bisects the urban reserve area. They cite testimony made to state and local hearings bodies that roads do not form effective buffers to reduce the impact of urban activities on farm use. 1000 Friends raises this matter as further evidence that the northern part of the area should be rural, not urban, reserve. However, while 1000 Friends may believe a rural reserve designation would be the better choice as a buffer, others disagreed with that evaluation. As the City of Forest Grove testified,

> "The boundary issue appears in two ways in 1000 Friends objection. 1000 Friends first argues that the tributary to Council Creek makes a better buffer than a road and, second, that improving Purdin Road would have growth-inducing impacts by attracting more traffic and increasing conflicts with farm operations.
>
> "* * * Farming occurs right up to the edge of the tributary channel. Based on on-the-ground measurements (see page 145 of Metro's Findings,) the plowed areas are about seven feet from the edge of the channel. This causes environmental degradation such as erosion, habitat destruction and poor water quality due to farm chemicals reaching the water. As noted in the findings, if the area is designated as urban reserve, 50-foot wide buffers on each side of the tributary will be required, thereby significantly improving the environmental value of the resource. In earlier hearings, the Farm Bureau cited a creek buffer, which is over 200-feet wide with heavy amount of trees on both sides of the creek, as an example of an appropriate buffer. This would not occur at this location.
>
> "While the road widening argument may have some merit in the abstract, in this instance it does not. As shown in the photo of Purdin Road * * * the road is narrow with a pavement width of 22 feet. * * * It carries almost 2250 vehicles per day * * *. This relative high traffic count is substantially from development on the west side of Forest Grove *within the current UGB.* This traffic level is because it is the most <u>direct</u> route for residents to Highway 26, regardless of the condition of Purdin Road. * * * Moreover, traffic on Purdin Road is expected to increase as development on the west-side of the community continues * * * *regardless* of any development in Area 7B. * * * *The conflict between agricultural and urban traffic is unavoidable whether Area 7B develops or not.*" City of Forest Grove, August 18, 2011 written testimony at 1-2 (emphasis in original).

The county's findings also include additional analysis regarding the role roads can play in buffering (Washington Co. Record at 12700) and Metro notes the submittal adopted RFP and UGMFP provisions to address adequate buffering between urban and resource uses.[70] Thus, while 1000 Friends interprets the evidence to support the creek providing the boundary, others interpret the same evidence to reach a different conclusion.

The objection also claims the findings lack substantial evidence. The disagreement seems to be not based on evidence in the record, but rather on interpretation of that evidence, and specifically whether a road or drainage way make a better buffer between urban and farm uses. This disagreement does not establish a basis for remand. While 1000 Friends may disagree that the road makes a better buffer in this instance than the drainage way, there is substantial in the record that Metro could reasonably conclude that either roads are a better buffer or there are adequate safeguards in place to protect nearby resource lands. Moreover, Metro is not charged with selecting the "best" buffer location when designating urban reserves, but rather it must consider the impact of the designation on the viability and vitality of the agricultural industry. While Metro and the objectors disagree, there is substantial evidence in the record to support the submittal, and Metro made adequate findings upon which it based decision. The Commission rejects this objection.

f. Area 8A

ODA, 1000 Friends of Oregon and Thomas Black all object to the designation of Area 8A in North Hillsboro as an urban reserve under OARs 660-027-0040(11), 660-027-0050, and 660-027-0060. ODA, July 14, 2010 at 6; 1000 Friends, July 12, 2010 at 16. 1000 Friends objects to the designation of Area 8A as a whole, while ODA objects only to the inclusion of the land north of Waibel Creek. Mr. Black objects that the designation violates Goals 1, 3 and 5.

> Area Description. Urban reserve area 8A consists of approximately 2,712 acres of land, of which approximately 2,265 acres are buildable. Metro Record at 90. The area is bounded by Hillsboro to the south, McKay Creek to the west and Highway 26 to the north, with Waibel Creek running east-west through the middle of the area. ODA identified the area as Foundation Agricultural Land, and the area is largely irrigated with groundwater. Urban Reserves 8A is not within or served by an irrigation district. Exhibit B to Ordinance No. 11-1255 at 10. Both McKay Creek and Waibel Creek include floodplain, wetlands and riparian habitat that have been designated on Metro's Natural Landscape Features Inventory. Washington Co. Record at 3000.

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[70] Metro amended the Regional Framework Plan Policy to implement urban and rural reserves. Exhibit B to Ordinance No. 10-1238A. RFP 1.9.8 provides:

> "Use natural or built features, whenever practical, to ensure a clear transition from rural to urban land use."

RFP 1.9.8 is implemented by 3.07.1110B(1)(g) and (2)(e) in Title 11 of the Urban Growth Management Functional Plan, which require concept plans to avoid or minimize adverse effects on farm and forest practices and important natural landscape features on nearby rural lands. Exhibit D to Ordinance No. 10-1238A.

Area 8A is a portion of a larger Pre-Qualifying Concept Plan area analyzed by the City of Hillsboro to meet long-term, primarily industrial, growth needs. The area was selected for its "key location along the Sunset Highway and north of existing employment land in Hillsboro and also because of the identified need for large-lot industrial sites" that are "proximate to existing and future labor pools" and will provide opportunities to attract new industries to help diversify and balance the local and regional economy. Metro Record at 90; Exhibit B to Ordinance No. 11-1255 at 86.

ODA asserts that Waibel Creek and Meek Road would provide "excellent edges" and argues that no evidence has been presented that development north of Waibel Creek could be designed to avoid or minimize adverse impacts to surrounding farms as required by OAR 660-027-0050(8). 1000 Friends asserts that the county's decision does not address OAR 660-027-0050(7) ("can be developed in a way that preserves important natural landscape features") or (8) ("can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features,") and that there is no evidence in the record that these urban reserve factors can be "met."

Conversely, both ODA and 1000 Friends state that the area qualifies as a rural reserve because it meets all rural reserve factors (2)(a) through (d)). 1000 Friends asserts that the area is "highly subject to urbanization," while ODA asserts that the area north of Waibel Creek is "under serious threat of urbanization" as indicated by its designation by Metro as an urban reserve and the history and progression of UGB expansions in the vicinity of Highway 26. 1000 Friends states that this large intact block of farmland supports and sustains long-term agricultural operations and that the farm use and ownership patterns demonstrate long-term stability.

Both ODA and 1000 Friends contends the decision does not address OAR 660-027-0050(8) (can be designed to minimize or avoid adverse effects on farm practices) and 1000 Friends also argues it also does not address OAR 660-027-0050(7). However, the initial findings did address those factors generally, and the record contains more specific findings related to these factors. Washington Co. Record at 1013-1017; 3111-3141; Exhibit B to Ordinance No. 11-1255 at 85-86. The City of Hillsboro prepared a Draft Preliminary Concept Plan for the purpose of determining the suitability of North Hillsboro for future urban development. Washington Co. Record at 3114. The city applied the criteria for Urban Reserves set forth in OAR 660-027-0050 to each candidate area; for North Hillsboro, the city specifically addressed OAR 660-027-0050(7) and (8). Washington Co. Record at 3136-3138. The Commission finds that, while the findings in the Metro Urban and Rural Reserves Submittal themselves could have been more thorough, there is substantial evidence in the record to support the conclusion that Metro and Washington County considered and weighed the factors in OAR 660-027-0050(7) and (8); and, in fact, when weighed in conjunction with the other urban reserve factors, there is substantial evidence in the record to support Metro's selection of Area 8A as an urban reserve.

With regard to the rural reserve factors at OARs 660-027-0040(11) and 660-027-0060(2), the findings contain a general explanation of why Foundation Agricultural Lands were designated rather than other lands, as described above in connection with Area 7I. Area 8A falls within subareas 13 and 14 in Washington County's analysis, and is identified as Tier 2 and Tier 3 Farm Land. Washington Co. Record at 3924. According to the county, subarea 14 is

characterized by a high level of urbanization, lower productivity, smaller parcels, and a higher dwelling density. Subarea 13 has a high level of urbanization, a lower productivity rating, but has bigger parcels. Washington Co. Record at 2978-2929. Washington County's analysis for this area shows a relatively large number of existing homes, and small parcels (particularly in the eastern portion of the area). While the findings could have been more specific, the Commission concludes Metro's findings for Area 8A are based on substantial evidence in the record and supported by an adequate factual base.

g. Area 8B (and Area 8SBR) (Initial Designation)

Save Helvetia initially objected to Washington County's and Metro's original designation of Area 8B north of US Highway 26 (Shute Road Interchange) as an urban reserve and the lack of designation of Area "8-SBR." Tom Black also objected to the urban reserve designation of Area 8B.

> Area Description. "Urban Reserve Area 8B is located at the northwest quadrant of the intersection of Sunset Highway and NW Shute Road. This site totals approximately 88 acres and includes land within the 100 year floodplain of Waibel Creek. The existing UGB and the corporate limits of Hillsboro run along the eastern border of the site, while the southern boundary runs along Sunset Highway and is contiguous to Urban Reserve Area 8A. Lands to the north and west of the area are agricultural lands." Exhibit B to Ordinance No. 11-1255 at 86.

Save Helvetia describes Area 8-SBR as a part of study area 8 that is comprised entirely of Foundation Agricultural Land that totals 556.5 acres, north of Highway 26. It is bordered by NW West Union Road on the north, NW Helvetia Road on the east, NW Groveland Drive and Highway 26 on the south, and a line of trees on the west. Save Helvetia, July 12, 2010 at 11.

Save Helvetia objects that the decision contains factual misstatements regarding the location of Area 8B (Save Helvetia, July 12, 2010 at 2); designating Area 8B as urban reserves misapplies the urban reserve factors of OAR 660-027-0050(Save Helvetia, July 12, 2010 at 4); and the findings applying the urban reserve factors are inconsistent with OAR 660-027-0040(2) and OAR 660-027-0040(11) (Save Helvetia, July 12, 2010 at 6.) With regard to Area 8-SBR, Save Helvetia objects that the decision fails to satisfy OAR 660-027-0050 "to provide long-term protection of agriculture" and OAR 660-027-0040 (Save Helvetia, July 12, 2010 at 11); and with regard to both Areas 8B and 8-SBR, Save Helvetia objects that the decision fails to apply the rural reserve factors of OAR 660-027-0060(2)(a) (Save Helvetia, July 12, 2010 at 13). All of these objections also state that the initial decision violated Goal 2, in that the decision is not supported by adequate factual base, based on substantial evidence in the whole record. In its exceptions to the DLCD September 28, 2010 Report, Save Helvetia continues its objections. Save Helvetia Exception, October 8, 2010 at 2-10.

Save Helvetia identifies four ways in which it contends the county misstated the description of Area 8B. Save Helvetia, July 12, 2010 at 3. These relate to the name of a bordering road, the size of Area 8B, whether Area 8B is adjacent to the existing UGB, and whether the area was identified as Foundational Agricultural Land by ODA.

Ordinance No. 10-1238A provided that "[t]he areas shown as 'Urban Reserves' on Map Exhibit A, attached and incorporated into this ordinance, are hereby designated Urban Reserves under ORS 195.141 and OAR [chapter] 660, [d]ivision 27." Metro Record at 2. Exhibit A to Ordinance No. 10-1238A shows Area 8B designated as an urban reserve. Three maps of the area in the county's record provide confirmation and a more detailed description of the area's boundaries. Washington Co. Record at 8860, 9294, 9298 (Exhibit A to the county's resolution and order). *See also* Exhibit A to Ordinance No. 11-1255 (depicting the Urban Growth Boundary and Urban and Rural Reserves Map in UGMFP Title 14). Based on the information in the record, the location and size of Area 8B and its proximity to the existing urban area are described and mapped with sufficient clarity to provide a reasoned evaluation of the area.

Save Helvetia also objects that the sole reason for designating Area 8B as a rural reserve was to accommodate a potential future interchange improvement. Save Helvetia argues that the area does not have to be designated as an urban reserve in order to accommodate infrastructure improvements and that none of the urban reserve factors contemplate potential demands for a freeway interchange expansion. Save Helvetia also argues that not all of Area 8B is required for potential future road and other public facilities.

The record indicates that Metro considered the urban reserve factors with regard to Area 8B. Metro Record at 91-92; Exhibit B to Ordinance No. 11-1255 at 86-87. According to Metro, Area 8B is a small portion of a Pre-Qualifying Concept Plan area analyzed by the City of Hillsboro to meet long-term growth needs and includes findings demonstrating conformance with the "Factors for Designation of Lands as Urban Reserves." Washington Co. Record at 3110–3137. The findings indicate that the area is suitable for a variety of urban uses, beyond the potential for an interchange improvement. Because the area also was identified as Foundation Agricultural Land, OAR 660-027-0040(11) required Metro and the county to evaluate the rural reserve factors for this area in reaching the decision. Metro's findings, together with the analysis performed by Washington County, demonstrate that Metro considered the required factors and made a decision that is supported by an adequate factual base.

Save Helvetia next argues that the decision fails to "satisfy" any of the urban reserve factors of OAR 660-027-0050, and fails to address OAR 660-027-0040(11). Save Helvetia, July 12, 2010 at 7. Again, the rural reserve factors are factors to be considered, not standards that must be satisfied. *See* Section III.4.a above (describing Commission interpretation of "consider and apply the factors" requirement). The record indicates that Metro has based its decision on consideration of the factors for designation of lands as urban reserves. The county's analysis shows this area as "Tier 3" farmland, with a moderate level of parcelization. Washington Co. Record at 3025, 3021. The findings and statements of reasons address the factors in OAR 660-027-0050, and explain why Area 8B was designated an urban reserve. Exhibit B to Ordinance No. 11-1255 at 86-87; Metro Record at 78; Washington Co. Record at 3113–3137. The findings also address Metro's consideration of the factors in OAR 660-027-0060(2) related to rural reserves, as required by OAR 660-027-0040(11). While the Metro Urban and Rural Reserve Submittal findings could have been more detailed, they adequately explained the policy choices under the rules, and the county's record provides an adequate factual base for the decision.

The objection also states, "There are no findings which suggest that Area 8B is needed to accommodate the estimated urban population and employment growth in this particular area" as required under OAR 660-027-0040(2). Save Helvetia, July 12, 2010 at 6. However, despite this objection, the record reflects that the Urban Growth Report 2009-2030 (Metro Record at 611–773) and the 20 and 50 Year Regional Population and Employment Range Forecasts (Metro Record at 1918) were approved by the Metro Council. As noted in the reports, the Metro Council's intent with the reports was to guide its determinations of need and capacity for the 20-year UGB period and the 40- to 50-year urban reserve period. Metro Record at 1937. In addition, the counties devote a portion of the findings to explaining the determination of the amount of land designated urban reserve (Exhibit B to Ordinance No. 11-1255 at 13-15; Metro Record at 22–24). Neither the statute nor the Commission's rule require findings that Area 8B, or any specific area, is needed to accommodate some particular component of the regional estimated long-term urban population and employment growth. Rather, Metro is required to make a determination regarding estimated population and employment, and tie the overall amount of land planned as urban reserves to that determination. Metro's findings satisfy that requirement.

Save Helvetia further objects that both Area 8B and the undesignated adjacent Area 8-SBR are under significant pressure to urbanize and are capable of sustaining long-term agricultural operations. The objection provides a detailed explanation of the agricultural and other resource values of the land in Areas 8B and 8-SBR, and Save Helvetia argues that the decision fails to address the sub-factor in OAR 660 660-027-0060(2)(a). The Commission finds that the county did address this sub-factor. Washington Co. Record at 2970–2979. While Save Helvetia may disagree with the analysis and conclusions, in fact the record shows that the county did address the factor and evaluated it in reaching its decision.

In sum, following the initial hearing, the Commission agreed that Metro made its decision to designate Area 8B as an urban reserve based on its consideration of the factors in OARs 660-027-0040(11), 660-027-0050 and 660-027- 0060(2), and that Metro's decision had an adequate factual base, based on substantial evidence in the record. The Commission did not require in its remand vote that Metro or Washington County reconsider its designation of Area 8B or Area 8-SBR. However, after further proceedings, the re-designation decision in fact added 352 previously undesignated areas in Area 8-SBR to the Area 8B urban reserves, resulting in Area 8B totaling 440 acres designated for urban reserves.

h. Area 8B (and Area 8-SBR) (Re-designation)

In the review of the re-designation decision, Save Helvetia, 1000 Friends, Joseph Rayhawk and Tom Black all object to the urban reserve designation of Area 8B, and continue to object to the lack of rural reserve designation to the remainder of Area 8-SBR. ODA objects to the 440 acres designated urban reserve in Area 8B.

ODA objects that the land added to urban reserve Area 8B should be designated rural reserve or left undesignated. The objection states the area is Foundation Agricultural Land, the larger area has maintained "excellent agricultural integrity," and that designation as an urban reserve "that protrudes out into the larger rural reserve area would have implications on the area

agricultural lands already deemed qualified for rural reserve designation." ODA, June 2, 2011 at 7.

1000 Friends and Save Helvetia also object that Metro violated the reserves statutes, administrative rules and the Goal 2 adequate factual base requirement in adopting findings designating Area 8B urban reserve that are not supported by substantial evidence in the whole record. 1000 Friends asserts both that Metro failed to make findings that the applicable statutes or rules require and to object that the findings Metro did make are not supported by the record. Joseph Rayhawk also argues essentially that Metro did not appropriately consider the urban reserve factors, and that other areas are more suitable for urban reserve designation.

Metro and Washington County have considered Area 8B under the urban reserve factors, OAR 660-027-0050(1)–(8), concluding that the area is suitable for urbanization to meet future industrial employment land needs. Exhibit B to Ordinance No. 11-1255 at 154-164. These findings state that the area "is uniquely suitable for industrial development, as it is in the heart of "Silicon Forest", and has the necessary infrastructure readily available" (factor 1), that the region and Washington County need the type of development the area would accommodate and that the pre-qualifying concept plan illustrates the potential of the area (factor 2). The findings address efficient and timely provision of public services (factor 3) and the accessibility of the area (factor 4).

The findings further state that Hillsboro has adopted overlay zones to protect natural resource sites and, therefore, "[a]ny development in these areas will be required to address preservation of wildlife habitat, natural vegetation, wetlands, water quality, open space and other natural resources important to the ecosystem" (factor 5). Similar findings are made for factor 7. Regarding factor 6, Metro finds that the area is planned for industrial use, but that Hillsboro "will be able to provide an adequate mix of housing to support future industrial uses in Area 8B and the rest of the North Hillsboro Urban Reserves area..." Finally, the findings indicate the area can be adequately buffered from adjacent rural uses (factor 8).

As set out above, for areas identified by ODA as Foundation Agriculture Land, Metro must explain why it chose Foundation Agriculture Land over other lands when designating urban reserves, and this explanation must be by reference to both the urban *and* the rural reserve factors. OAR 660-027-0040(11). Metro's findings regarding Area 8B provide this explanation, and reference more detailed technical analyses that address the rural reserve factors in some detail with respect to particular areas. Exhibit B to Ordinance No. 11-1255 at 154-169.

Metro's findings include a general explanation of why it chose Foundation Agricultural Land rather than other lands as urban reserves. *Id.* at 4-10. These findings note that most of the lands surrounding existing urban areas in Washington County were identified as Foundation Agricultural Land, with the result that *any* significant urban reserve designations in Washington County would necessarily require using some Foundation lands. The findings also state:

> "Throughout the technical analysis and review process leading to preliminary recommendations on urban and rural reserves, the consistent message from the Washington County Farm Bureau was that lands within the existing UGB should be used

more efficiently and, with the exception of lands classified as 'Conflicted' on the map developed by the Oregon Department of Agriculture, all lands in the study area within approximately one mile of a UGB should be designated as rural reserve. Farm Bureau members submitted a map and cover letter depicting their recommendations. WashCo Rec. 2098-2099; 3026; 3814-3816. The needs determination by county and city staff determined that the one-mile recommendation noted above would not address the county's urban growth needs over the 50-year reserves timeframe. The [Washington County Reserves Coordinating Committee] WCRCC on September 8, 2009 voted 11 to 2 in support of urban reserve areas of approximately 34,200 acres and rural reserve areas of approximately 109,750 aces in Washington County. In consideration of the concerns raised by the Farm Bureau as well as like-minded stakeholders, interest groups and community members, the Core 4 recommended a reduction of approximately 40 percent (34,200 acres to 13,561 acres) to the WCRCC's urban reserve recommendation. These adjustments represented the Core 4's judgment in balancing the need for future urban lands with the values placed on 'Foundation' agricultural lands and lands that contain valuable natural landscape features to be preserved from urban encroachment." *Id.* at 58.

The September 23, 2009 recommendations report from the Washington County Reserves Coordinating Committee appears in the record at Washington Co. Record at 2942-3034. The technical analysis contained in those recommendations addresses the rural reserve factors at OAR 660-027-0060(2)(a)–(d) for 41 subareas in the county. Washington Co. Record at 2976. The county also produced a chart that details how each factor was addressed in its review process. Washington Co. Record at 2943. As part of its consideration of the rural reserve factors, the county assigned "tiers" to lands in terms of their suitability for agriculture, with Tier 1 being the most important and Tier 4 being the least. The county assigned Tier 3 status to Area 8B. Exhibit B to Ordinance No. 11-1255 at 159. Finally, the analysis also relies on a series of "Issue Papers," which are included with the Washington County Reserves Coordinating Committee recommendations as Appendix 5. Washington Co. Record at 3780-3819.

Fundamentally, the issues raised by these objections come down to a choice by Metro and Washington County about whether to allow communities that are largely surrounded by some of the best farmland in the state an opportunity for future expansion as part the region's long-term growth. As noted in the findings quoted above, Metro and Washington County substantially curtailed the amount of urban reserve lands in this area of Washington County in order to conserve Foundation Agricultural Lands. As further explained below, the Commission concludes that Metro has established an adequate factual base, based on substantial evidence in the record, to support its urban reserve designation for Area 8B. These objections are denied.

i. Failure to make findings regarding Foundation Agricultural Land.

Identifying Area 8B as "Foundation Agricultural Land" as defined in OAR 660-027-0010(1), 1000 Friends challenges the Metro Urban and Rural Reserves Submittal consideration of the urban reserve factors of OAR 660-027-0050. 1000 Friends argues that OAR 660-027-0040(11) requires that to designate Foundation Agricultural Lands as urban reserve, Metro must make "findings and statement of reasons" that explain, in reference to OAR 660-027-0050, "why Metro chose the Foundation Agricultural Land for designation as urban reserves rather than other

land considered." 1000 Friends argues this provision imposes an extra obligation of identifying what it is about this land that satisfies the urban reserves factors and why that obligation cannot be satisfied by other non-Foundation Lands. 1000 Friends argues that Metro's decision lacks this necessary alternative lands analysis. 1000 Friends, June 2, 2011 at 14-15.

1000 Friends' interpretation of OAR 660-027-0040(11) either overstates or constrains the explanation required by the text of the rule to an analysis of "why that obligation cannot be satisfied by other non-Foundation Lands." Although Metro certainly could, and in fact did, include such an analysis in providing the explanation required by OAR 660-027-0040(11), 1000 Friends does not establish that Metro was required to include such an explanation in its findings and statement of reasons. The Commission interprets OAR 660-027-0040(11) to require Metro to explain why it chose Foundation Agriculture Lands, including those in Area 8B, "rather than other lands considered under this division." Metro has done so in its findings. For the modified Area 8B, Metro and Washington County applied the OAR 660-027-0050 urban reserve factors, followed by an application of OAR 660-027-0060 rural reserve factors. Exhibit B to Ordinance 11-1255 at 154 to 169. Metro and Washington County also made express "Findings and Statement of Reasons for Foundation Agricultural Lands as Urban Reserves." *Id.* at 175-178. Metro made general findings as to why the region designated any Foundation Agricultural Land as urban reserve as well. *Id.* at 4-10. The Commission rejects this objection because Metro and Washington County explained in the findings and statement of reasons why it chose the Foundation Agriculture Lands in Area 8b rather than other lands considered under division 27 as required by OAR 660-027-0040(11).

ii. Unsupported findings

1000 Friends also objects that the findings for Area 8B are not supported by substantial evidence. 1000 Friends indicates that the alternative lands analysis should have considered (a) the St. Mary's property instead of Area 8B, (b) other ODA identified Conflicted and Important lands, and (c) undesignated lands in Washington County. 1000 Friends further argues that Metro's findings lack substantial evidence because "the approximately 2,500 acres of 'undesignated' land reserved by Washington County were not considered as an alternative to Area 8B's Foundation Agricultural Land." 1000 Friends, June 1, 2011 at 15.

In discussing conflicted lands, the findings state "The entirety of the St. Mary's property * * * was included in Urban Reserve Area 6A (Hillsboro South)." Exhibit B to Ordinance 11-1255 at 176; *see also* 75-76 (applying OAR 660-027-0050 urban reserve factors to Area 6A). Because both Areas 8B and 6A are designated urban reserve, OAR 660-027-0040(11) does not, by its text, require any comparative analysis between them. That rule requires Metro to explain why it chose Foundation Agricultural Land rather than *other* lands. Here, Metro did not choose Area 8B rather than Area 6A; it designated them both as urban reserves. Regarding lands ODA identified as Conflicted and Important, Metro provided that analysis for such lands in Washington County. Exhibit B to Ordinance 11-1255 at 175-178. Because Metro discussed all "other land considered" in its discussion of land identified as Conflicted and Important, it appears that 1000 Friends' argument is actually that Metro failed to also consider other Foundation Agricultural Land. Metro Ordinance 11-1255 Exhibit B, at 175. OAR 660-027-

0040(11) does not require an explanation regarding the choice between areas of Foundation Agricultural Land.

1000 Friends also argues that the findings lack substantial evidence because, based on 1000 Friends' analysis, Area 8B is more suitable for rural reserves than for urban reserves. Metro and Washington County analyzed Area 8B under the OAR 660-027-0060 rural reserves factors. Metro Ordinance 11-1255, Exhibit B at 164-169. The analysis shows that Area 8B could be established as a rural reserve under the agricultural factors, but not the forestry or natural landscape features factors. However, as Metro acknowledges, the 15 areas designated urban reserves that are comprised predominantly of Foundation Agricultural Land, including Area 8B, rate highly for both urban reserves and rural reserves. *Id.* at 10. Nothing in ORS 195.137 to 197.145, OAR chapter 660, division 27, or the Goals requires Metro or a county to designate land as either urban or rural reserves, respectively. The Commission reviews what is submitted, not whether a different decision may be more suitable in its opinion. Objections that an area is more suitable as either an urban or rural designation provide the Commission no basis to remand the decision under OAR 660-027-0080(4).

Citing OAR 660-027-0040(2), 1000 Friends also argues that there are no general or particular findings suggesting that Area 8B is needed to accommodate the estimated urban population and employment growth in this particular area. As discussed above, OAR 660-027-0040(2) provides:

> "Urban reserves designated under this division shall be planned to accommodate estimated urban population and employment growth in the Metro area for at least 20 years, and not more than 30 years, beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in the most recent inventory, determination and analysis performed under ORS 197.296. Metro shall specify the particular number of years for which the urban reserves are intended to provide a supply of land, based on the estimated land supply necessary for urban population and employment growth in the Metro area for that number of years. The 20 to 30-year supply of land specified in this rule shall consist of the combined total supply provided by all lands designated for urban reserves in all counties that have executed an intergovernmental agreement with Metro in accordance with OAR 660-027-0030."

Nothing in that rule requires either general or particular findings specific to *any particular area*. Instead, the rule requires estimates for urban population and employment growth for the Metro area. Metro developed a 50-year range forecast for population and employment. Exhibit B to Ordinance 11-1255 at 13. Metro describes the assumptions that lead it to conclude that the region needs 28,256 acres of urban reserves to accommodate 371,860 people and employment land targets over the 50-year reserves planning period. *Id.* at 15.

Finally, noting that the City of Hillsboro's Pre-Qualifying Concept Plan (PQCP) was based on the larger North Hillsboro study area, 1000 Friends also asserts the PQCP is not substantial evidence for designating Area 8B as urban reserve. However, Metro looked to the PQCP as providing the city's infrastructure service availability, deducing that infrastructure planning capable of serving the larger area, could also provide infrastructure for Area 8B under

OAR 660-027-0050(1). Exhibit B to Ordinance 11-1255 at 155. Further, in conducting the OAR 660-027-0050 analysis, the findings refine the preliminary plans of the PQCP. *Id.* at 160. 1000 Friends has not established that Metro could not rely on this evidence. The Commission rejects this portion of the objection.

iii. Inadequate legal or factual basis.

1000 Friends next contends that Area 8B meets none of the eight factors relevant to determining that whether an area qualifies as an urban reserve under OAR 660-027-0050. The objection goes through each urban reserve factor and contends that the findings Metro made are not reasonable, and therefore do not constitute substantial evidence. 1000 Friends does not appear to contend that Metro failed to consider any of the eight factors, but that in its consideration it relied on evidence that a reasonable person would not have.

As discussed above, the OAR 660-027-0050 urban reserves factors are *not criteria* in the sense that Metro has to show each area complies with each factor. Rather, these are each *considerations*, which Metro must take into account when deciding whether to designate an area as an urban reserve. As also discussed above, under OAR 660-027-0080(4)(a) and ORS 197.633(3)(a), the Commission is required to consider whether a decision is supported by substantial evidence. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. ORS 183.482(8)(c). As relevant to this objection, the inquiry is whether there is evidence in the record as a whole that a reasonable person would rely upon to decide as Metro did.

OAR 660-027-0050(1) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB "Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments." 1000 Friends argues that because the PQCP is based on a larger area than Area 8B, Metro could not have reasonably considered it under this factor. However, the findings reflect that Metro accounted for that difference in looking to the PQCP for consideration of Area 8B. *Cf.* Exhibit B Ordinance 11-1255 at 86-87; 154-164. 1 000 Friends provides the example of findings regarding plans for a new water reservoir and states that the planned reservoir is to serve existing areas. However, the Metro findings regarding water note that designating Area 8B urban reserve will impact only the size of new reservoir construction necessary to serve adjacent areas to Area 8B, not the need for a new reservoir. *Id.* at 155. 1000 Friends then takes issue with the accuracy of the original Area 8B findings, arguing that interchange improvements are to address existing capacity issues; however, Metro supplemental reserve findings acknowledge as much. *Cf.* Exhibit B Ordinance 11-1255 at 87 to 156. What Metro does find is that Area 8B is suitable for providing a transportation system capable of accommodating new urban development. *Id.* at 156.

OAR 660-027-0050(2) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB "Includes sufficient development capacity to support a healthy economy." 1000 Friends contends that the record shows that including Area 8B will harm the economy by perpetuating a pattern of inefficient use of land in this area. At its core, the objection challenges the Metro employment land need

determination. That objection is discussed and rejected above. *See* Section IV.N.3 above. While 1000 Friends may not agree with studies and analyses in the record that it takes issue with, it has not established that a reasonable decision maker could not have based a decision on those studies instead of the conflicting evidence 1000 Friends prefers. The Commission concludes that the objection does not establish that there is not substantial evidence in the record as a whole to support the Metro Urban and Rural Reserve Submittal.

OAR 660-027-0050(3) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB, "Can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers." 1000 Friends argues that the fact that the West Union Elementary School is currently located on an 11-acre site on the northeast corner of Area 8B renders the Metro's finding inadequate to support designation of Area 8B as an urban reserve. If the factors were criteria in the sense that Metro must show each area complies with each factor, and if the school property was necessarily designated for industrial use at some future date through a UGB amendment, the current existence of the school could be an issue regarding compliance with OAR 660-027-0050(3). However, the urban reserve designation does not restrict the property to future industrial use and, in any event, the test is whether Metro considered the factor. Should Area 8B be designated for industrial development at the time of UGB expansion, Metro notes that the Metro Code and city industrial zoning will prohibit schools and parks. Exhibit B to Ordinance 11-1255 at 160. The findings demonstrate that Metro has considered this factor. Specifically, Metro determined that Washington County addressed the ability of the city to serve the area with public services, citing Washington County Record at 3129-3130. *Id.*

OAR 660-027-0050(4) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB "Can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers." Metro findings include a general illustration, entitled North Hillsboro Potential Transportation Facilities, of how north Hillsboro urban reserves, including Area 8B could be served with multi-modal transportation. *Id.* Characterizing that figure as showing limited multi-modal transportation options, 1000 Friends concludes that urbanizing Area 8B will be entirely auto-focused with no realistic alternative transportation opportunities. Again, while 1000 Friends may disagree with the conclusions Metro reached, the relevant inquiry under OAR 660-027-0050(4) is whether Metro considered the factor. Figure 1 notes "[c]oncept planning will study opportunities to bring transit to Area 8B and further refine transportation." Metro also relies generally for inclusion of relatively flat, undeveloped Foundation Agricultural Land on its cost of service study *Core 4 Technical Team Preliminary Analysis Reports for Water, Sewer and Transportation.* Metro Record at 1163-1187. Viewing the evidence in the record as a whole, Metro could reasonably conclude that Area 8B and adjacent urban reserves designations in conjunction with land inside the UGB can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers.

OAR 660-027-0050(5) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB "Can be designed to

preserve and enhance natural ecological systems." 1000 Friends argues OAR 660-027-0050(5) "requires a finding that land can be designed to preserve and enhance natural ecological systems and landscape features" and concludes this factor is not met. As discussed above, 1000 Friends' characterization does not accurately describe the applicable standard and provides the Commission no basis to remand the re-designation submittal. Metro found that development in Area 8B would be subject to the City of Hillsboro's Significant Natural Resources overlay zone which will require that development be designed to preserve natural resources.

OAR 660-027-0050(6) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB, "Includes sufficient land suitable for a range of needed housing types." 1000 Friends focuses on Metro's finding that "this area would be targeted for large-lot industrial and employment uses if urbanized and annexed to the City" and argues assuming that certain urban reserve lands will be used for certain purposes during the reserves process is legally flawed. Metro's findings included the required consideration, because it found that the city will provide an adequate mix of housing to support future urbanization of Area 8B with land inside the UGB. Exhibit B to Ordinance 11-1255 at 161.

OAR 660-027-0050(7) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB "Can be developed in a way that preserves important natural landscape features included in urban reserves." 1000 Friends identifies a variety of natural landscape features of Area 8B and argues that because Metro's findings do not mention those resources, there is no indication that these resources can or will be protected. Although Metro certainly could have done so, OAR 660-027-0050(7) does not expressly require that Metro specifically discuss each resource 1000 Friends identifies. Reviewing what Metro actually submitted, Metro found that the city inventories natural resources in annexed areas and adds those determined to be significant and their Impact Areas to the Significant Natural Resource Overlay District as part of the rezoning process. The Commission finds that Metro did consider whether Area 8B can develop in a way that preserves important natural landscape features.

OAR 660-027-0050(8) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB, "Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves." 1000 Friends argues that although Metro's findings discuss the concept of achieving buffering through planning decisions and the use of planning controls, and how buffering standards have potential suitable application to future urban use of Area 8B if it is designated urban reserve, none of it is certain to happen because no rules, ordinances, or legislation to assure the farming community that any of the protections will be in place to adequately buffer the surrounding rural reserves if Area 8B becomes urban reserves. The Commission finds that OAR 660-027-0050(8) requires Metro to consider whether land proposed for urban reserves can be designed in a manner to avoid or minimize adverse effects. It does not require a finding that the avoidance or minimization is "certain to happen." Metro's identification of potential methods of buffering Area 8B is adequate to demonstrate consideration of this factor. The Commission rejects this portion of the objection.

iv. Compliance with rural reserve factors.

1000 Friends goes into greater detail than the re-designation submittal findings in describing how Area 8B meets the rural reserve factors. As discussed above, Metro and Washington County analyzed Area 8B under the OAR 660-027-0060 rural reserves factors and also concluded that Area 8B could be designated a rural reserve. Washington County supplemental record at 12712-12726; Metro supplemental record at 148-157; Exhibit B to Ordinance 11-1255 at 164-169. Again, objections that an area is more suitable as either an urban or rural designation provide the Commission no basis to remand the decision under OAR 660-027-0080(4). The Commission rejects this objection.

v. Failure to Designate Area 8-SBR

1000 Friends and Save Helvetia argue that leaving Area "8-SBR" undesignated fails to satisfy the requirements of OAR 660-027-0005(2), OAR 660-027-0050, and ORS 195.137-195.145. 1000 Friends and Save Helvetia, June 1, 2011 at 35.

As discussed above, neither the statute nor the rules require any evaluation or findings as to why Metro or the counties did not designate any given property. *See* Section III.A.4.c above. Nonetheless, in its re-designation findings, Metro did make findings regarding that choice. Metro was not required to do more; and was not required to provide any particularized findings as to why it left Area 8-SBR undesignated. The Commission rejects this objection.

vi. Failure to make findings "concurrently and in coordination with on another"

1000 Friends and Save Helvetia argue Washington County and Metro failed to apply the rural and urban reserves factors to Area 8B and 8-SBR (undesignated) as contemplated by OAR 660-027-0040(10).[71] The objection states:

> "**[T]he concurrency obligation requires deciding whether the land more closely satisfies rural objectives over urban and if so, the land must be protected for agricultural purposes consistent with the rural reserve factors. Areas 8B and 8-SBR clearly are far more qualified as rural reserves than as urban reserves." June 1, 2011 at 37; *see also* Save Helvetia, April 1, 2011 at 14.

The objections present an issue of law regarding the construction of OAR 660-027-0040(10).

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[71] OAR 660-027-0040(10) provides:

> "Metro and any county that enters into an agreement with Metro under this division shall apply the factors in OAR 660-027-0050 and 660-027-0060 concurrently and in coordination with one another. Metro and those counties that lie partially within Metro with which Metro enters into an agreement shall adopt a single, joint set of findings of fact, statements of reasons and conclusions explaining why areas were chosen as urban or rural reserves, how these designations achieve the objective stated in OAR 660 -027-0005(2), and the factual and policy basis for the estimated land supply determined under section (2) of this rule."

The Commission holds that nothing in OAR 660-027-0040(10) would preclude Metro and a county with which Metro enters into an agreement under division 27 from engaging in the analysis objectors suggest in considering the factors in OAR 660-027-0050 and 660-027-0060. However, the Commission cannot conclude that as a matter of law that OAR 660-027-0040(10) requires the analysis methodology that objectors proffer. Reading OAR 660-027-0040(10) in the context of the balance objective provided in OAR 660-027-0005(2), the Commission holds that division 27 affords Metro and the counties the discretion, even in circumstances as described by objectors where "land more closely satisfies rural objectives over urban" to nonetheless determine that the balance in designation of urban and rural reserves best achieves the objectives of division 27 with an urban designation. "Concurrency" does not imply any particular outcome, and does not require a parcel-by-parcel evaluation. Rather, it requires that Metro and a county with which Metro enters into an agreement to consider urban and rural reserve designations for the county and arrive at a joint set of findings of fact, statement of reasons and conclusions to explain the designations. The Commission finds that Metro and Washington County have considered the designation of both urban and rural reserves in compliance with that rule.

Turning to the objection that asserts that Area 8-SBR is clearly far more qualified as rural reserves than as urban reserves, assuming for purpose of review that that is accurate, the Commission finds that circumstance presents no basis for remand. Because under the Metro Urban and Rural Reserves Submittal, Area 8-SBR is undesignated lands, neither Metro nor Washington County are legally required to apply either an urban or rural designation to it. As established above, the rural and urban reserves factors do not apply to undesignated lands and therefore neither Metro nor the county was required to apply the reserves factors to area 8-SBR. *See* Section III.A.4.c above. The Commission rejects this objection.

i. Portion of Area 8C (Peterkort Property)

Carol Chesarek and Cherry Amabisca (collectively, Chesarek), as individuals, Joseph Rayhawk, and The Audubon Society of Portland object to the designation of Tax Lot 1 N1 18, Lot 100 ("the Peterkort property"), a part of urban reserve Area 8C, as an urban reserve. Chesarek, July 14, 2010 at 2; Rayhawk, July 13, 2010 at 1; Audubon, July 14, 2010 at 2 (unnumbered pages.) Mr. Rayhawk also argues that the decision does not meet the urban reserve factors, and explains factor-by-factor why he believes this to be so.

> Area Description. The Peterkort property is approximately 129 acres and is part of Area 8C. This land is located near the intersection of NW Springville Rd. and NW 185th Avenue at the northern end of the PCC Rock Creek Campus. This area abuts the current UGB along its eastern and southern boundaries. Exhibit B to Ordinance 11-1255 at 87.

The objections generally object that in designating the Peterkort property for urban reserves, the decision misapplies urban reserve factors of OAR 660-027-0050 (Chesarek, July 14, 2010 at 2); fails to satisfy OAR 660-027-0040(10) that both the urban and rural reserve factors must be applied "concurrently and in coordination with one another" (Chesarek, July 14,

2010 at 9);[72] fails to satisfy Goal 2, evaluation of alternative courses of action related to wetland and public facility issues (Chesarek, July 14, 2010 at 20); fails to satisfy Goal 3, Agricultural Lands (Chesarek, July 14, 2010 at 21); violates Goal 5, to protect natural resources and conserve scenic and historic areas and open spaces (Chesarek, July 14, 2010 at 22); and fails to satisfy OAR 660-027-0005(2), long term protection of large blocks of agricultural land and important natural landscape features (Chesarek, July 14, 2010 at 23). Each objection also alleges the decision has an inadequate factual base, in violation of Goal 2.

One of the Metro conditions in the ordinance that brought North Bethany into the UGB called for the county to "recommend appropriate long-range boundaries for consideration by the Council in future expansions of the UGB or designation of urban reserves." Exhibit B to Ordinance 11-1255 at 87. Metro found that additional urban land to the immediate west of the North Bethany Community Planning Area is necessary for the provision of sanitary sewer and storm drainage and to assist in the funding for a primary road link to SW 185th Avenue. In order to address a number of concerns raised in relation to the wetlands and floodplains on the Peterkort property, as well as within the "West Union" portion of Area 8C, a Special Concept Plan Area overlay was added to Washington County Ordinance No. 733 (Special Concept Plan Area C). This special plan overlay requires application of the "Integrating Habitats" approach to planning and development of these lands. Washington Co. Record at 8533.

This urban reserve area is included as an element of the North Bethany Community Planning area. Area 8C is a small portion of a Pre-Qualifying Concept Plan (PQCP) area analyzed by the City of Beaverton to meet long-term growth needs. The PQCP analysis included a detailed review of the initial planning area and provided findings demonstrating conformance with the "Factors for Designation of Lands as Urban Reserves" under OAR 660-027-0050. Washington Co. Record at 3062. The county and Metro made additional findings specific to this property addressing each of the objectors' concerns and all the urban reserve factors in OAR 660-027-0050. Exhibit B to Ordinance 11-1255 at 64-66, 89.

When identifying and selecting lands for designation as urban reserves under OAR 660-027-0050, Metro must base its decision on consideration of whether land proposed for designation as urban reserve, alone or in conjunction with land inside the UGB, addresses eight different factors. The record indicates that Metro has considered these factors. The PQCP analysis included a detailed review of the initial planning area and provided findings demonstrating conformance with the "Factors for Designation of Lands as Urban Reserves". Washington Co. at 3062.

Regarding the first objection, OAR 660-027-0050 does not require that Metro compare the cost of installing facilities for both urban and rural reserves designations, or that Metro demonstrate how local governments will finance future road and infrastructure improvements. Nor do the rules require that Metro determine which designation is more compatible for wetland mitigation and which designation provides better protection of wildlife. While the objectors may

[72] Although the objection cited OAR 660-027-0040(1), the Commission understands the objection to challenge compliance with OAR 660-027-0040(10) and not OAR 660-027-0040(1). The Commission rejects this objection for the same reasons discussed in the immediately preceding analysis of similar objections raised by Save Helvetia and 1000 Friends.

disagree with the analysis and conclusions, they have not established that the analysis of the factors and conclusions Metro reached violate the rule.

The factors for designation for rural reserves in OAR 660-027-0060 provide that, when identifying and selecting lands for a given designation, a county shall "indicate which land was considered[.]" There is no indication in the text or context of the rule that the Commission intended to require that both urban and rural reserve factors must be considered simultaneously for each individual property. Metro and Washington County have provided findings addressing the eight factors under OAR 660-027-0050. Exhibit B to Ordinance 11-1255 at 64-66, 89, Washington Co. Record at 3062. The objectors disagree with the findings and conclusions, but Metro and the county complied with the rule with respect to the Peterkort property.

The objectors also argue that the decision fails to evaluate alternative courses of action related to wetland and public facility issues. As noted above, OAR 660-027-0050 requires that Metro base its identification and selection of lands for designation as urban reserves, alone or in conjunction with land inside the UGB, by considering eight factors. The record indicates that Metro has considered these factors. OAR 660-027-0050 does not require that Metro perform a comparative analysis of wetland mitigation sites, the location of roads, or sewer lines or determine that the site does not meet the rural reserve factors, in order to be designated an urban reserve.

The objections also allege the urban reserve designation violates Goal 3, "Agricultural Lands," and Goal 5, "Natural Resources, Scenic and Historic Areas, and Open Spaces." The provisions of the goals referenced by the objectors are Guideline A.1 in Goal 3 and Guidelines B.1 and B.2 in Goal 5. The Guidelines are advisory, and not requirements. *See* Section IV.M.1 above. The objectors did not identify any requirements in Goal 3 or Goal 5 that the reserves decisions violate. The fifth objection also asserts there are inadequacies in Washington County's existing Goal 5 implementation program. However, the county's existing Goal 5 implementation program is not a part the submittal on review and the objectors have not explained how or why that existing program could be subject to this review in this proceeding.

Finally, the objectors argue that the decision violates the purpose of reserves and long term protection of large blocks of agricultural land and important natural landscape features. However, the purpose statement at OAR 660-027-0005(2) is not a criterion that the local governments must satisfy, but rather a region-wide consideration to be evaluated. The findings adopted by the four local governments explain why they believe their collective decisions satisfy the overall objective of urban and rural reserves. The Commission finds the findings are adequate to comply with the rule. The county and Metro performed considerable analysis and made specific findings regarding each of the urban reserve factors as applied to the Peterkort property. The findings show that they considered the relevant factors and made adequate findings based on substantial evidence in the record.

Mr. Rayhawk also argues that the urban reserve designation appears to be contrary to state land use goals for water quality and habitat protection and possibly the federal Clean Water Act and the federal Endangered Species Act. However, the decision to designate this property as an urban reserve does not authorize any activity or use of the land (in fact, it places some

additional limitations on future uses). As a result, the objection does not establish that the decision has an effect in terms of compliance with these federal laws. Decisions concerning uses of the property will not be made unless the property is added to the Metro UGB and the plan and zoning designations are amended to allow urban uses. The Commission rejects this objection.

Finally, all the objections state the urban reserve decision violates Goal 2 due to an inadequate factual base. As noted above, Washington County and Metro adopted specific findings related to all the issues raised in this objection and in consideration of the urban reserve factors in OAR 660-027-0050. Disagreement with the findings and conclusions does not make them inadequate. The Commission rejects these objections.

j. Portion of Area 8F (Bobosky Property and Bendemeer Community)

Steve and Kelli Bobosky object to Washington County's designation of their property and the Bendemeer community in Area 8F as a rural reserve under OAR 660-027-0060. The Boboskys argue that Washington County and Metro erroneously designated the subject exception area as a rural reserve in violation of OAR 660-027-0060 and ORS 195.139(1)(a), ORS 195.141(2) and (3), and that the property and the surrounding Bendemeer rural residential subdivision meet the urban reserve criteria. Bobosky, July 7, 2010; June 2, 2011.

> Area Description. Rural reserve area 8F is bordered on the south by Highway 26 (Sunset Highway). The area is approximately 21,446 acres. The north and west boundaries are defined by the edge of the study area and the east boundary is formed by Rock Creek. The area is characterized by several tributaries flowing south from the Tualatin Mountains, including Waibel, Storey, and Holcomb Creeks. Sections of McKay Creek and the East Fork of Dairy Creek also flow through this reserve area. The topography of the area is characterized by the foothills of the Tualatin Mountains. The community of Helvetia is located in this reserve. Exhibit B to Ordinance 11-1255 at 103.

The Boboskys contend that both the initial submittal and re-designation submittal fail to establish that the Bobosky property or the residential subdivision within which it is located meets the standards for designation as rural reserve. However, as discussed above, none of the factors for selecting urban or rural reserves, or any other provision of the applicable statutes or rules, require a parcel-specific analysis for reserve-boundary location decisions. The statutory and rule requirements regarding the inquiry and evaluation of what lands to designate as rural reserves does not contemplate a property-specific analysis. Rather, by their terms, the designation of rural reserves is intended to be based on an area-wide evaluation. OAR 660-027-0060 does not require the county to address every parcel or even every group of parcels. The rural reserves factors are not approval criteria and are not determinative in that regard.

Washington County and Metro determined that this area could be designated as either a rural or urban reserve. Exhibit B to Ordinance 11-1255 at 60-61. As discussed herein, the statute and rules do not require that Metro and the county evaluate and provide a factual base for every individual parcel or small group of parcels in their joint submittal. The designation of urban and rural reserves is not intended to be a site-specific, parcel-by-parcel determination. Further, under OAR chapter 660, division 27, an argument that an area is better suited for one

designation than another is not a basis for remand so long as the decision-maker considered the required factors and the overall region-wide decision meets the objective set forth at OAR 660-027-0005(2).

The Boboskys also argue that the reserve area in which their property is located is arbitrary and overly large. Presumably, they argue that, if evaluated as part of a smaller area, their property would not have satisfied the rural reserve factors but would have satisfied the urban reserve factors. The Commission agrees that as a matter of fact, Rural Reserve Area 8F, at a size of 21,446 acres, is indeed a large study area. Might either a smaller or differently configured study area have altered the county's consideration of the factors under OAR 660-027-0060? Perhaps. However, under OAR 660-027-0080(4), the Commission is tasked with reviewing what Metro and the counties submit. The Boboskys have not established that as a matter of law, either the goals or division 27, prohibit the county from employing such a large study area when identifying and selecting lands for designation as rural reserves. As such, the Commission concludes the objection does not provide a basis for the Commission to sustain it, and must be rejected.

The objection maintains that the re-designation submittal is in error by using the Foundation Agricultural Land map as an evaluation mechanism for rural reserves. The objection states several reasons the county cannot rely on the ODA map. The objection states:

> "The Original Decision expressly stated it did not rely on the ODA's map of so-called 'Foundation Agricultural Lands' for designation of Washington County rural reserves and the challenged decision continues that determination. Supp Metro Rec 91. However, it seems that the idea of 'Foundation Agricultural Land' when convenient to do so, was used to justify rural reserves anyway. Thus, to the extent the ODA map that shows the Bobosky property or its Bendemeer subdivision as 'Foundation Agricultural Land' plays any role in the rural reserve designation of the Bobosky property, as could be inferred from the above quoted Area 8F findings, then it is error to rely on such map to that end as a matter of law." Bobosky, June 1, 2011 at 22.

The record shows that Washington County did not rely on ODA's classification scheme of agricultural land in its designation of the Bobosky's property. While it may seem otherwise to the Boboskys, they cite no examples to support the inference they draw, and the evidence in the record does not support a conclusion that the county relied the study area, including their property, being Foundation Agricultural Land. Further, the Commission does not understand that assertion that reliance on identification as Foundation Agricultural Lands would be error as a matter of law. OAR 660-027-0060(4) expressly allows a county to deem Foundation Agricultural Lands that are within three miles of a UGB to qualify as rural reserves.

The Boboskys also object that "[t]he challenged decision inconsistently applies the urban and rural reserves statute and administrative rule factors in an irrational and improper manner leading to an unlawful result." Bobosky, June 1, 2011 at 46. To establish internal inconsistency, the objection catalogues many portions of the Metro Urban and Rural Reserve Submittal in which areas with either shared or distinct characteristics as the Bobosky property were considered differently or similarly when Metro and Washington County applied the urban and

rural reserve factors respectively. The Commission does not disagree that the Bobosky property, considered in isolation, could have been either left undesignated or designated an urban reserve and either action could have been consistent with the applicable law. That, however, is not the inquiry before the Commission. First, none of the factors for selecting urban or rural reserves, or any other provision of the applicable statutes or rules, require or contemplate a parcel-specific analysis. Moreover, under OAR 660-027-0080(4), the Commission must review the decision that was submitted, not what could have been submitted; and it is not the Commission's role to substitute its judgment for that of Metro and the county. In large part, the inconsistencies identified by the Boboskys are inherent in the nature of the urban and rural reserves process. Metro and the counties are tasked with considering specified factors when designating areas as reserves. The factors are considerations; they are not criteria that must individually be met. Ultimately the reserves are on balance to achieve a prescribed purpose. Thus, in considering factors and achieving the prescribed balance, it is not outside the law for two areas with many similar characteristics to not come out with the same designation as urban reserve, rural reserve, or undesignated areas.

The Boboskys have not established either that Washington County could not have determined that their property, as a part of Area 8F and as a matter of law, upon consideration of the factors for designation as a rural reserve could be designated rural reserve; or that, as a matter of law, Area 8F upon consideration of the urban reserve factors could only be designated urban reserve. This objection provides no basis for remand under OAR 660-027-0080(4).

Finally, the Boboskys object that the reserves decision of their property is a collateral attack on the exception they were granted to compliance with Goal 3. The Boboskys argue that since Washington County justified an exception to Goal 3 for their property, the county already determined that the property does not contain farmland that is either suitable for or available for agriculture. According to the Boboskys, for the county to now designate it for rural reserves is essentially a collateral attack on Goal 3. However, as discussed above, the reserves decision does not affect the previously granted Goal 2 exception to compliance with Goal 3. Nor is the designation of rural reserves limited to protection of parcels of agricultural land. Under OAR 660-027-0060, a rural reserve may be designated for one or any combination of three protective purposes; to "provide protection to the agricultural industry or forest industry, or both" and "to protect important natural landscape features." OAR 660-027-0060(2) and (3). The findings address all three. Exhibit B to Ordinance 11-1255 at 103-105. The Commission rejects this objection.

k. Portion of Area 8F (6955 and 7235 NW 185th Avenue)

Tim O'Callaghan objects to Washington County's designation of property located at 6955 and 7235 NW 185th Avenue (part of Area 8F) as rural reserves under OAR 660-027-0060, on the basis the properties better meet the urban reserve factors and do not meet the rural reserve factors. O'Callaghan, July 14, 2010 at 1.

Area Description. The O'Callaghan properties are located along Rock Creek and adjacent to urban reserve Area 8C (Bethany West) and within rural reserve Area 8F. The two

parcels total approximately 58.34 acres and are bordered on the east by the existing urban growth boundary and NW 185th Ave. Exhibit B to Ordinance 11-1255 at 59.

Rural reserve area 8F is bordered on the south by Highway 26 (Sunset Highway). The area is approximately 21,446 acres. The north and west boundaries are defined by the edge of the study area and the east boundary is formed by Rock Creek. The area is characterized by several tributaries flowing south from the Tualatin Mountains, including Waibel, Storey, and Holcomb Creeks. Sections of McKay Creek and the East Fork of Dairy Creek also flow through this reserve area. The topography of the area is characterized by the foothills of the Tualatin Mountains. The community of Helvetia is located in this reserve. Exhibit B to Ordinance 11-1255 at 103.

Mr. O'Callaghan objects both that the evidence in the record supports designating the property as an "urban reserve" and conversely does not support the current designation as "rural reserve;" and that Metro and the counties misconstrued the applicable law and made a decision not supported by substantial evidence in designating the property as a "rural reserve." O'Callaghan, July 14, 2010 at 8, 12.

Mr. O'Callaghan's objection includes reasons, based on each of the urban reserve factors in OAR 660-027-0050, that the subject property "satisfies" the factors for urban reserve designation. The objection draws a comparison with a nearby property that Metro designated urban reserve, and asserts there is no reasonable basis to treat them differently. He also asserts there is no substantial evidence supporting the decision to designate the property as a rural reserve, that the decision was made too early in the reserves process for meaningful input, and that preliminary decisions became *de facto* final decisions before the county's final action.

As discussed herein, the factors in OAR 660-027-0060 are not criteria with which the counties must show compliance, but are rather "factors" to be considered and weighed in making the decision. In explaining their decisions, the jurisdictions must demonstrate that they took the factors into account. The findings show that Washington County and Metro considered the factors related to both the rural reserve factors for both agriculture and natural landscape features and relied on substantial evidence to support the rural reserve designation of Area 8F, including the O'Callaghan properties. Exhibit B to Ordinance 11-1255 at 59 and 103-105; Washington Co. Record at 8592, 9639.

Washington County followed the applicable law in making this decision. Mr. O'Callaghan contends Washington County was under pressure to maintain the reserves designations as they existed at the time they signed the intergovernmental agreement with Metro under OAR 660-027-0020. However, the record shows that the county made adjustments after the agreement with Metro. Washington Co. Record at 9643.

The Commission finds that the rural reserves designation was based on substantial evidence in the record and that the decision complies with applicable law, and for those reasons denies the objections.

l. Portion of Area 6E (Rosedale Road)

1000 Friends, Save Helvetia and ODA object to the removal of the rural reserve designation from the Rosedale Road Area, a 383-acre area located northwest of the intersection of SW 209th and SW Farmington Road. The re-designation submittal leaves that area undesignated. Specifically, both ODA and 1000 Friends argue that the Rosedale Road area is Foundation Agricultural Land and satisfies all the requirements for designation as a rural reserve. ODA specifically states:

> "The 'new' undesignated area would in effect extend the potential for urbanization along the entire length of the urban growth boundary from southern Hillsboro to Kings City. It would also extend the potential for urbanization much farther south than ODA found to be conducive to long-term viable agricultural operation in the area.
>
> "* * * * *
>
> "The shape of the proposed undesignated block of land is also of concern. It does not simply parallel the existing urban growth boundary. Instead, it protrudes out into the larger block of agricultural land creating multiple edges with no buffers to the adjacent agricultural lands." ODA, June 2, 2011 at 7.

Although neither the statute nor the rules require an evaluation and findings for properties not designated urban or rural reserves, Exhibit B to Ordinance No. 11-1255 at 173-174 and the Washington County supplemental record at 12726 explain why Washington County removed the rural reserve designation from the area. That ODA, 1000 Friends and Save Helvetia believe that this property *should* have been designated does not establish that either Metro or the county erred by leaving it undesignated. The Commission rejects this objection.

m. Other Site-Specific Objections

The department received objections to a variety of urban and rural reserve designations across the region. The list below depicts the objector, the subject reserve area number and the proposed remedy.

Name	Reserve Area	Proposed Remedy
Culter	4A–G	Change from urban reserve to undesignated
Audubon Society	6A	Change from urban to rural reserve
Tualatin Riverkeepers	6B	Change from urban to rural reserve
D. Smith	4J	Change from rural to urban reserve
Calcagno	2B	Change from rural reserve to undesignated
Irvine	7C	Remand urban reserve designation
Cherry	9A	Change from rural to urban reserve
Baker	9D	Change from rural to urban reserve
McKenna	3E or 3H	Change from undesignated to rural reserve
Szambelan	4I	Change from rural reserve to undesignated

In each case, the objector asserts the county or Metro, or both, made the wrong decision regarding designation (or non-designation) of a parcel or area. The allegations were that application of the factors in OAR chapter 660, division 27 supported a different conclusion, or that the final decision was not supported by the objector's understanding of the factors.

As discussed above, the designation of urban and rural reserves is not intended to be a site-specific, parcel-by-parcel determination. Moreover, as was the case in many instances, in evaluating the factors, Metro and the counties could find that individual areas could be designated as either urban or rural reserve. The statutory process provides the jurisdictions the discretion as to whether or how to designate areas, provided they have fully evaluated the factors. Each of the counties and Metro has made findings with an adequate factual base, based upon substantial evidence in the record explaining how they considered the urban or rural factors with regard to the areas including these properties. Exhibit B to Ordinance No. 11-1255. The issue is whether Metro and the counties considered the urban and rural reserve factors in deciding to designate particular areas, explained why the areas should be urban or rural reserves using the factors listed in the statute and rules, and whether there is evidence in the record as a whole that a reasonable person could rely upon to decide as Metro and the counties did. With regard to each of these remaining individual parcels or areas, the Commission finds that Metro and the counties appropriately considered the factors and made adequate findings based on substantial evidence for each of the areas subject to the objections listed above.

V. ORDER

Based on the foregoing, the Commission finds that the Metro Urban and Rural Reserves Submittal designating urban and rural reserves in the Portland metro area under ORS 195.137 to 195.145 and OAR chapter 660, division 27 complies with ORS 195.141 and 195.145, OAR chapter 660, division 27, the applicable statewide planning goals, and all other applicable rules of the Commission.

All rulings made on objections and motions during the Commission hearings are hereby affirmed. Any objections or motions not ruled upon during the Commission hearings are hereby overruled.

THEREFORE, IT IS ORDERED THAT:

1. The designation of Rural Reserves by Multnomah County Ordinance No. 2010-1161 is approved.
2. The designation of Rural Reserves by Clackamas County Ordinance No. ZDO-233 is approved.
3. The designation of Rural Reserves by Washington County Ordinance No. 740 is approved.
4. The designation of Urban Reserves by Metro Ordinance No. 11-1255 is approved.
5. The Regional Framework Plan amendments (Exhibit B) and Urban Growth Management Framework Plan Title 5 repeal (Exhibit C) and Title 11 amendment (Exhibit D) by Metro Ordinance No. 10-1238A are approved.

DATED THIS 14th DAY OF August, 2012.

FOR THE COMMISSION:

Jim Rue, Acting Director
Oregon Department of Land
Conservation and Development

NOTE: You may be entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 21 days from the service of this final order. Judicial review is pursuant to the provision of ORS 197.651.

Copies of all documents referenced in this order are available for review at the department's office in Salem.

ATTACHMENTS

1-6

(as referenced in Compliance Acknowledgement Order)

Department of Land Conservation and Development
OAR Chapter 660

DIVISION 025
PERIODIC REVIEW

660-025-0010
Purpose

The purpose of this division is to carry out the state policy outlined in ORS 197.010 and 197.628. This division is intended to implement provisions of ORS 197.626 through 197.646. The purpose for periodic review is to ensure that comprehensive plans and land use regulations remain in compliance with the statewide planning goals adopted pursuant to ORS 197.230, and that adequate provision for needed housing, economic development, transportation, public facilities and services, and urbanization are coordinated as described in ORS 197.015(5). Periodic Review is a cooperative process between the state, local governments, and other interested persons.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef 5-7-04

660-025-0020
Definitions

For the purposes of this division, the definitions contained in ORS 197.015, 197.303, shall apply unless the context requires otherwise. In addition, the following definitions apply:

(1) "Economic Revitalization Team" means the team established under ORS 284.555.

(2) "Filed" or "Submitted" means that the required documents have been received by the Department of Land Conservation and Development at its Salem, Oregon, office.

(3) "Final Decision" means the completion by the local government of a work task on an approved work program, including the adoption of supporting findings and any amendments to the comprehensive plan or land use regulations. A decision is final when the local government's decision is transmitted to the department for review.

(4) "Metropolitan planning organization" means an organization located wholly within the State of Oregon and designated by the Governor to coordinate transportation planning in an urbanized area of the state pursuant to 49 USC 5303(c).

(5) "Objection" means a written complaint concerning the adequacy of an evaluation, proposed work program, or completed work task.

(6) "Participated at the local level" means to have provided substantive comment, evidence, documents, correspondence, or testimony to the local government during the local proceedings regarding a decision on an evaluation, work program or work task.

(7) "Work Program" means a detailed listing of tasks necessary to revise or amend the local comprehensive plan or land use regulations to ensure the plan and regulations achieve the statewide planning goals. A work program must indicate the date that each work task must be submitted to the department for review.

(8) "Work Task" or "task" means an activity, that is included on an approved work program and that generally results in an adopted amendment to a comprehensive plan or land use regulation.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.015 & ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 3-2000, f. & cert. ef. 2-14-00

660-025-0030

Periodic Review Schedule

(1) The commission must approve, and update as necessary, a schedule for periodic review. The schedule must include the date when each local government must be sent a letter by the department requesting the local government to commence the periodic review process.

(2) The schedule developed by the commission must reflect the following:

(a) A city with a population of more than 2,500 within a metropolitan planning organization or a metropolitan service district shall conduct periodic review every seven years after completion of the previous periodic review.

(b) A city with a population of 10,000 or more inside its urban growth boundary that is not within a metropolitan planning organization shall conduct periodic review every 10 years after completion of the previous periodic review.

(c) A county with a portion of its population within the urban growth boundary of a city subject to periodic review under this section shall conduct periodic review for that portion of the county according to the schedule and work program set for the city.

(d) Notwithstanding subsection (c) of this section, if the schedule set for the county is specific as to that portion of the county within the urban growth boundary of a city subject to periodic review under this section, the county shall conduct periodic review for that portion of the county according to the schedule and work program set for the county.

(3) The commission may establish a schedule that varies from the standards in section (2) of this rule if necessary to coordinate approved periodic review work programs or to account for special circumstances. The commission may schedule a local government's periodic review earlier than provided in section (2) of this rule if necessary to ensure that all local governments in a region whose land use decisions would significantly affect other local governments in the region are conducting periodic review concurrently, but not sooner than five years after completion of the previous periodic review.

(4) The director must maintain and implement the schedule. Copies of the schedule must be provided upon request.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 3-2000, f. & cert. ef. 2-14-00

660-025-0035

Initiating Periodic Review Outside the Schedule

(1) A local government may request, and the commission may approve, initiation of periodic review not otherwise provided for in the schedule established under OAR 660-025-0030. The request must be submitted to the commission along with justification for the requested action. The justification must include a statement of local circumstances that warrant periodic review and identification of the statewide planning goals to be addressed.

(2) In consideration of the request filed pursuant to section (1), the commission must consider the needs of the jurisdiction to address the issue(s) identified in periodic review, the interrelationships of the statewide planning goals to be addressed in the periodic review project, and other factors the commission finds relevant. If the commission approves the request, the provisions of this division apply, except as provided in section (3) of this rule.

(3) The Economic Revitalization Team may work with a city to create a voluntary comprehensive plan review that focuses on the unique vision of the city, instead of conducting a standard periodic review, if the team identifies a city that the team determines can benefit from a customized voluntary comprehensive plan review. In order for a voluntary comprehensive plan review to be initiated by the commission, the city must request initiation of such a modified periodic review. The provisions of this division apply except as follows:

(a) If the city is subject to the periodic review schedule in OAR 660-025-0030, the periodic review under this section will not replace or delay the next scheduled periodic review;

(b) If the city misses a deadline related to an evaluation, work program or work task, including any extension, the commission must terminate the evaluation, work program, or work task or impose sanctions pursuant to OAR 660-025-0170(3).

(4) If the commission pays the costs of a local government that is not subject to OAR 660-025-0030 to perform new work programs and work tasks, the commission may require the local government to complete periodic review when the local government has not completed periodic review within the previous five years if:

(a) A city has been growing faster than the annual population growth rate of the state for five consecutive years;

(b) A major transportation project on the Statewide Transportation Improvement Program that is approved for funding by the Oregon Transportation commission is likely to:

(A) Have a significant impact on a city or an urban unincorporated community; or

(B) Be significantly affected by growth and development in a city or an urban unincorporated community;

(c) A major facility, including a prison, is sited or funded by a state agency; or

(d) Approval by the city or county of a facility for a major employer will increase employment opportunities and significantly affect the capacity of housing and public facilities in the city or urban unincorporated community.

(5) As used in section (4) of this rule, "the costs of a local government" means: normal and customary expenses for supplies, personnel and services directly related to preparing a work program, and completing studies and inventories, drafting of ordinances, preparing and sending notices of hearings and meetings, conducting meetings and workshops, and conducting hearings on possible adoption of amendments to plans or codes, to complete a work task.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.:

660-025-0040

Exclusive Jurisdiction of LCDC

(1) The commission, pursuant to ORS 197.644(2), has exclusive jurisdiction to review the evaluation, work program, and all work tasks for compliance with the statewide planning goals and applicable statutes and administrative rules. Pursuant to ORS 197.626, the

commission has exclusive jurisdiction to review the following land use decisions for compliance with the statewide planning goals:

(a) If made by a city with a population of 2,500 or more inside its urban growth boundary, amendments to an urban growth boundary to include more than 50 acres;

(b) If made by a metropolitan service district, amendments to an urban growth boundary to include more than 100 acres;

(c) plan and land use regulations that designate urban reserve areas.

(2) The director may transfer one or more matters arising from review of a work task, urban growth boundary amendment or designation or amendment of an urban reserve area to the Land Use Board of Appeals pursuant to ORS 197.825(2)(c)(A) and OAR 660-025-0250.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.145, ORS 197.628 - ORS 197.646, ORS 197.825

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef 5-7-04

660-025-0050

Commencing Periodic Review

(1) The department must commence the periodic review process by sending a letter to the affected local government pursuant to OAR 660-025-0030 or 660-025-0035. The department may provide advance notice to a local government of the upcoming review and must encourage local governments to review their citizen involvement provisions prior to beginning periodic review.

(2) The periodic review commencement letter must include the following information:

(a) A description of the requirements for citizen involvement, evaluation of the plan and preparation of a work program;

(b) The date the evaluation and work program or evaluation and decision that no work program is required must be submitted;

(c) Applicable evaluation forms; and

(d) Other information the department considers relevant.

(3) The director must provide copies of the materials sent to the local government to interested persons upon written request.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92

660-025-0060

Periodic Review Assistance Team(s)

(1) The director may create one or more Periodic Review Assistance Team(s) to coordinate state, regional or local public agency comment, assistance, and information into the evaluation and work program development process. The director must seek input from agencies, regional governments and local governments on the membership of Periodic Review Assistance Team(s).

(2) Members of the Periodic Review Assistance Team will provide, as appropriate:

(a) Information relevant to the periodic review process;

(b) New and updated information;

(c) Technical and professional land use planning assistance; or

(d) Coordinated evaluation and comment from state agencies.

(3) Membership. The Periodic Review Assistance Team may include representatives of state agencies with programs affecting land use and representatives of regional or local governments who may have an interest in the review.

(4) Meetings. The Periodic Review Assistance Team shall meet as necessary to provide information and advice to a local government in periodic review.

(5) Authority. The Periodic Review Assistance Team shall be an advisory body. The team may make recommendations concerning an evaluation, a work program or work task undertaken pursuant to an approved work program. The team may also make recommendations to cities, counties, state agencies and the commission regarding any other issues related to periodic review.

(6) In addition to the Periodic Review Assistance Team(s), the department may utilize the Economic Revitalization Team or institute an alternative process for coordinating agency participation in the periodic review of comprehensive plans.

(7) Consideration by the commission. The commission must consider the recommendations, if any, of the Periodic Review Assistance Team(s).

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92

660-025-0070

Need for Periodic Review

(1) The following conditions indicate the need for, and establish the scope of, review for periodic review of comprehensive plans and land use regulations when required under OAR 660-025-0030:

(a) There has been a substantial change in circumstances including but not limited to the conditions, findings, or assumptions upon which the comprehensive plan or land use regulations were based, so that the comprehensive plan or land use regulations do not comply with the statewide planning goals relating to economic development, needed housing, transportation, public facilities and services and urbanization;

(b) Decisions based on acknowledged comprehensive plan and land use regulations are inconsistent with the goals relating to economic development, needed housing, transportation, public facilities and services and urbanization;

(c) There are issues of regional or statewide significance, intergovernmental coordination, or state agency plans or programs affecting land use which must be addressed in order to bring comprehensive plans and land use regulations into compliance with the goals relating to economic development, needed housing, transportation, public facilities and services and urbanization; or

(d) The existing comprehensive plan and land use regulations are not achieving the statewide planning goals relating to economic development, needed housing, transportation, public facilities and services and urbanization.

(2) When a local government requests initiation of periodic review under OAR 660-025-0035(2), the need for periodic review may be based on factors not contained in section (1) of this rule and the scope of such a periodic review may be more limited than would be the case for scheduled periodic review under section (1) of this rule.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 3-2000, f. & cert. ef. 2-14-00

660-025-0080
Citizen Involvement

(1) The local government must use its acknowledged or otherwise approved citizen involvement program to provide adequate participation opportunities for citizens and other interested persons in all phases of the local periodic review. Each local government must publish a notice in a newspaper of general circulation within the community informing citizens about the initiation of the local periodic review. The local government must also provide written notice of the initiation of the local periodic review to other persons who, in writing, request such notice.

(2) Each local government must review its citizen involvement program and assure that there is an adequate process for citizen involvement in all phases of the periodic review process. Citizen involvement opportunities must, at a minimum, include:

(a) Interested persons must have the opportunity to comment in writing in advance of or at one or more hearings on the periodic review evaluation. Citizens and other interested persons must have the opportunity to present comments orally at one or more hearings on the periodic review evaluation. Citizens and other interested persons must have the opportunity to propose periodic review work tasks prior to or at one or more hearings. The local government must provide a response to comments at or following the hearing on the evaluation.

(b) Interested persons must have the opportunity to comment in writing in advance of or at one or more hearings on a periodic review work task. Citizens and other interested persons must have the opportunity to present comments orally at one or more hearings on a periodic review work task. The local government must respond to comments at or following the hearing on a work task.

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.628 - ORS 197.646
Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92

660-025-0085
Commission Hearings Notice and Procedures

(1) Hearings before the commission on a referral of a local government submittal of an evaluation, work program, determination that a work program is not necessary, or hearings on referral or appeal of a work task must be noticed and conducted in accordance with this rule.

(2) The commission shall take final action on an appeal or referral within 90 days of the date the appeal was filed or the director issued notice of the referral unless:

(a) At the request of a local government and a person who files a valid objection or appeals the director's decision, the department may provide mediation services to resolve disputes related to the appeal. Where mediation is underway, the commission shall delay its hearing until the mediation process is concluded or the director, after consultation with the mediator, determines that mediation is of no further use in resolution of the work program or work task disagreements;

(b) If the appeal or referral raises new or complex issues of fact or law that make it unreasonable for the commission to give adequate consideration to the issues within the 90-day limit the commission is not required to take final action within that time limit; or

(c) If the parties to the appeal and the commission agree to an extension, the hearing may be continued for a period not to exceed an additional 90 days.

(3) The director must provide written notice of the hearing to the local government, the appellant, objectors, and individuals requesting notice in writing. The notice must contain the date and location of the hearing.

(4) The director may prepare a written report to the commission on an appeal or referral. If a report is prepared, the director must mail a copy to the local government, objectors, the appellant, and individuals requesting the report in writing.

(5) Commission hearings will be conducted using the following procedures:

(a) The chair will open the hearing and explain the proceedings;

(b) The director or designee will present an oral report regarding the nature of the matter before the commission, an explanation of the director's decision, if any, and other information to assist the commission in reaching a decision. If another state agency participated in the periodic review under ORS 197.637 or 197.638, the agency may participate in the director's oral report.

(c) Oral argument will be allowed. The local government or governments whose decision is under review and parties who filed objections or an appeal may present oral argument. Oral argument will not be an opportunity to present new evidence regarding the matter before the commission. The local government that submitted the task may provide general information on the task submittal and address those issues raised in the department review, objections and the appeal. Persons who submitted objections or an appeal may address only those issues raised in objections or the appeal. Other affected local governments may address only those issues raised in objections or the appeal.

(d) The commission may request new evidence or information at its discretion and will allow the parties an opportunity to review and respond to the new evidence or information, subject to the time limits in section (2) of this rule.

(e) The director or commission may take official notice of law defined as:

(A) The decisional, constitutional and public statutory law of Oregon, the United States and any state, territory or other jurisdiction of the United States.

(B) Public and private official acts of the legislative, executive and judicial departments of this state, the United States, and any other state, territory or other jurisdiction of the United States.

(C) Regulations, ordinances and similar legislative enactments issued by or under the authority of the United States or any state, territory or possession of the United States.

(D) Rules of court of any court of this state or any court of record of the United States or of any state, territory or other jurisdiction of the United States.

(E) The law of an organization of nations and of foreign nations and public entities in foreign nations.

(F) An ordinance, comprehensive plan or enactment of any local government in this state, or a right derived therefrom.

(f) The commission must make a decision on the appeal or referral as provided in this division.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.:

660-025-0090

Evaluation, Work Program or Decision That No Work is Necessary

(1) The local government must conduct an evaluation of its plan and land use regulations based on the periodic review conditions in ORS 197.628 and OAR 660-025-0070. The local evaluation process must comply with the following requirements:

(a) The local government must follow its citizen involvement program and the requirements of OAR 660-025-0080 for conducting the evaluation and determining the scope of a work program.

(b) The local government must provide opportunities for participation by the department and Periodic Review Assistance Team. Issues related to coordination between local government comprehensive plan provisions and certified state agency coordination programs that are raised by the affected agency, or Periodic Review Assistance Team must be considered by the local government.

(c) The local government may provide opportunities for participation by the Economic Revitalization Team.

(d) At least 21 days before submitting the evaluation and work program, or decision that no work program is required, the local government must provide copies of the evaluation to members of the Periodic Review Assistance Team, if formed, and others who have, in writing, requested copies.

(e) After review of comments from interested persons, the local government must adopt an evaluation and work program or decision that no work program is required.

(2) The local government must submit the evaluation and work program, or decision that no work program is required, to the department according to the following requirements:

(a) The evaluation must include completed evaluation forms that are appropriate to the jurisdiction as determined by the director. Evaluation forms will be based on the jurisdiction's size, growth rate, geographic location, and other factors that relate to the planning situation at the time of periodic review. Issues related to coordination between local government comprehensive plan provisions and certified agency coordination programs may be included in evaluation forms.

(b) The local government must also submit to the department a list of persons who requested notice of the evaluation and work program or decision that no work program is required.

(c) The evaluation and work program, or decision that no work program is necessary, must be submitted within six months of the date the department sent the letter initiating the periodic review process, including any extension granted under section (3) of this rule.

(3) A local government may request an extension of time for submitting its evaluation and work program, or decision that no work program is required. The director may grant the request if the local government shows good cause for the extension. A local government may be permitted only one extension, which shall be for no more than 90 days.

(4) A decision by the director to deny a request for an extension may be appealed to the commission according to the procedures in OAR 660-025-0110(5), or the director may refer a request for extension under section (3) of this rule to the commission pursuant to OAR 660-025-0085.

(5) If a local government fails to submit its evaluation and work program, or decision that no work program is necessary, by the deadline set by the director or the commission, including any extension, the director shall schedule a hearing before the commission according to OAR 660-025-0170(3).

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 3-2000, f. & cert. ef. 2-14-00

660-025-0100

Notice and Filing of Objections (Work Program Phase)

(1) After the local government approves the evaluation and work program, or the evaluation and decision that no work program is necessary, the local government must notify the department and persons who participated at the local level orally or in writing during the local process. The local government notice must contain the following information:

(a) Where a person can review a copy of the local government's evaluation and work program or the evaluation and decision that no work program is necessary, and how a person may obtain a copy of the decision;

(b) The requirements listed in section (2) of this rule for filing a valid objection to the evaluation, work program or decision that no work program is necessary; and

(c) That objectors must give a copy of the objection to the local government.

(2) Persons who participated at the local level orally or in writing during the local process leading to the evaluation and work program or decision that no work program is necessary may object to the local government's decision. To be valid, an objection must:

(a) Be in writing and filed with the department no later than 21days from the date the notice was mailed by the local government;

(b) Clearly identify an alleged deficiency in the evaluation, work program or decision that no work program is necessary;

(c) Suggest a specific work task that would resolve the deficiency;

(d) Demonstrate that the objecting party participated at the local level orally or in writing during the local process.

(3) Objections that do not meet the requirements of section (2) of this rule must not be considered by the director or commission.

(4) If no valid objections are received within the 21-day objection period, the director may approve the evaluation and work program or decision that no work program is required. Regardless of whether valid objections are received, the department may make its own determination of the sufficiency of the evaluation and work program or determination that no work program is necessary.

(5) If valid objections are received or the department conducts its own review, the department must issue a report. The report must focus on the issues raised in valid objections and concerns of the department. The report must identify specific work tasks to resolve valid objections or department concerns. A valid objection must either be sustained or rejected by the department or commission based on the statewide planning goals and related statutes and administrative rules.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 3-2000, f. & cert. ef. 2-14-00

660-025-0110
Director and Commission Action (Work Program Phase)

(1) The director may:

(a) Issue an order approving the evaluation and work program or evaluation and determination that no work program is necessary;

(b) Issue an order rejecting the evaluation and work program or evaluation and determination that no work program is necessary and suggest modifications to the local government including a date for resubmittal; or

(c) Refer the evaluation and work program or evaluation and determination that no work program is necessary to the commission for review and action.

(2) The director may postpone action, pursuant to subsections (1)(a)-(c) of this rule to allow the department, the jurisdiction, objectors or other persons who participated orally or in writing at the local level to reach agreement on specific issues relating to the evaluation and work program or evaluation and determination that no work program is necessary.

(3) The director must provide written notice of the decision to the local government persons who filed objections, and persons who requested notice of the local government decision.

(4) The director's decision to approve an evaluation and work program or evaluation and determination that no work program is necessary is final and may not be appealed.

(5) The director's decision to deny an evaluation and work program or evaluation and determination that no work program is necessary may be appealed to the commission by the local government, or a person who filed an objection, or other person who participated orally or in writing at the local level.

(a) Appeal of the director's decision must be filed with the department within 21 days of the date notice of the director's action was mailed;

(b) A person appealing the director's decision must show that the person participated in the local government decision. The person appealing the director's decision must show a deficiency in the director's decision to deny the evaluation, work program or decision that no work program is necessary. The person appealing the director's decision also must suggest a specific modification to the evaluation, work program or decision that no work program is necessary to resolve the alleged deficiency.

(6) If no such appeal is filed, the director's decision shall be final.

(7) In response to an appeal, the director may prepare and submit a report to the commission. The provisions in OAR 660-025-0160(3) and (4) apply.

(8) The commission shall hear referrals and appeals of evaluations and work programs according to the procedures in OAR 660-025-0085.

(9) Following its hearing, the commission must issue an order that either:

(a) Establishes a work program; or

(b) Determines that no work program is necessary.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

[660-025-0120 renumbered 660-025-0085]

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef 5-7-04

660-025-0130

Submission of Completed Work Task

(1) A local government must submit completed work tasks as provided in the approved work program to the department along with any form required by the department. A local government must submit to the department a list of persons who participated orally or in writing in the local decision process or who requested notice of the local government's final decision on a work task.

(2) After receipt of a work task, the department must determine whether the submittal is complete.

(3) To be complete a submittal must be a final decision containing all required elements identified for that task in the work program. A portion of a task or subtask may be accepted as a complete submittal if the work program identified that portion of the task or subtask as a separate item for adoption by the local government. Task submittals are subject to the following requirements:

(a) If the local record does not exceed 2,000 pages, a submittal must include the entire local record, including but not limited to adopted ordinances and orders, studies, inventories, findings, staff reports, correspondence, hearings minutes, written testimony and evidence, and any other items specifically listed in the work program;

(b) If the local record exceeds 2,000 pages, a submittal must include adopted ordinances and orders, findings, hearings minutes, written testimony and evidence, and a detailed index listing items not included in the submittal. Items in the local record not included in the submittal must be made available for public review during the period for submitting objections under OAR 660-025-0140. The director or Commission may require submission of any materials not included in the initial submittal;

(c) A task submittal of over 500 pages must include an index of all submitted materials.

(4) A submittal includes only the materials provided to the department pursuant to section (3) of this rule. Following submission of objections pursuant to OAR 660-025-0140, the local government may provide written correspondence that is not part of the local record which identifies material in the record relevant to filed objections. The correspondence may not include or refer to materials not in the record submitted or listed pursuant to section (3) of this rule. The local government must provide the correspondence to each objector at the same time it is sent to the department.

(5) If the department determines that a submittal is incomplete, it must notify the local government. If the department determines that the submittal should be reviewed despite missing information, the department may commence a formal review of the submittal. Missing material may be identified as a deficiency in the review process and be a basis to require further work by the local government.

(6) A local government may request an extension of time for submitting a work task. The director may grant the request if the local government shows good cause for the extension. A local government may be permitted only one extension, which shall be for no more than one year.

(7) If a local government fails to submit a complete work task by the deadline set by the director, or the commission, including any extension, the director must schedule a hearing

before the commission. The hearing must be conducted according to the procedures in OAR 660-025-0090(5).

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef 5-7-04

660-025-0140

Notice and Filing of Objections (Work Task Phase)

(1) After the local government makes a final decision on a work task, the local government must notify the department and persons who participated at the local level orally or in writing during the local process or who requested notice in writing. The local government notice must contain the following information:

(a) Where a person can review a copy of the local government's final decision, and how a person may obtain a copy of the final decision;

(b) The requirements listed in section (2) of this rule for filing a valid objection to the work task; and

(c) That objectors must give a copy of the objection to the local government.

(2) Persons who participated at the local level orally or in writing during the local process leading to the final decision may object to the local government's work task submittal. To be valid, objections must:

(a) Be in writing and filed with the department's Salem office no later than 21 days from the date the notice was mailed by the local government;

(b) Clearly identify an alleged deficiency in the work task sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the task submittal is alleged to have violated;

(c) Suggest specific revisions that would resolve the objection; and

(d) Demonstrate that the objecting party participated at the local level orally or in writing during the local process.

(3) Objections that do not meet the requirements of section (2) of this rule will not be considered by the director or commission.

(4) If no valid objections are received within the 21-day objection period, the director may approve the work task. Regardless of whether valid objections are received, the director may make a determination of whether the work task final decision complies with the statewide planning goals and applicable statutes and administrative rules.

(5) When a subsequent work task conflicts with a work task that has been deemed acknowledged, or violates a statewide planning goal related to a previous work task, the director or commission shall not approve the submittal until all conflicts and goal compliance issues are resolved. In such case, the director or commission may enter an order deferring acknowledgment of all, or part, of the work task until completion of additional tasks.

(6) If valid objections are received or the department conducts its own review, the department must issue a report. The report shall focus on the issues raised in valid objections and issues of compliance identified by the department. The report shall identify specific work tasks to resolve valid objections or department concerns. A valid objection shall either be sustained or rejected by the department or commission based on the the statewide planning goals and applicable statutes and administrative rules.

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.628 - ORS 197.646
Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef 5-7-04

660-025-0150
Director Action and Appeal of Director Action (Work Task Phase)

(1) The director may:

(a) Issue an order approving the completed work task;

(b) Issue an order remanding the work task to the local government including a date for resubmittal;

(c) Refer the work task and recommendation to the commission for review and action; or

(d) The director may issue an order approving portions of the completed work task provided these portions are not affected by an order remanding or referring the completed work task.

(2) The director must send the order to the local government, persons who filed objections, and persons who, in writing, requested a copy of the action.

(3) The director's action in section (1) of this rule must be sent pursuant to section (2) of this rule within 120 days of the date the department received the task submittal from the local government unless the local government waives the 120-day deadline or the commission grants the director an extension. The local government may withdraw the submittal, in which case the 120-day deadline does not apply, provided the withdrawal will not result in the local government passing the deadline for work task submittal in the work program and any extension allowed in OAR 660-025-0130(7). If the director does not take action as prescribed in this section:

(a) If the department does not receive valid objections to the work task pursuant to OAR 660-025-0140(2), the work task shall be deemed approved and the department must provide a letter to the local government certifying that the work task is approved;

(b) If the department received one or more valid objections to the work task pursuant to OAR 660-025-0140(2), the director must refer the work task to the commission for review and action.

(4) Appeals of director decisions are subject to the requirements of this section.

(a) A person who filed a valid objection may appeal a director's approval or partial approval of a work task to the commission.

(b) The local government, a person who filed a valid objection, or other person who participated orally or in writing at the local level during the local process on the work task may appeal a director's remand or partial remand of a work task to the commission.

(c) Appeals of the director's decision must be filed with the department's Salem office within 21 days of the date the director's action was mailed;

(d) A person appealing the director's decision must:

(A) Show that the person participated at the local level orally or in writing during the local process;

(B) Clearly identify a deficiency in the work task sufficiently to identify the relevant section of the submitted task and the statute, goal, or administrative rule the local government is alleged to have violated; and

(C) Suggest a specific modification to the work task necessary to resolve the alleged deficiency.

(5) If no appeal to the commission is filed within the time provided by section (4) of this rule, the work tasks approved by the director are considered acknowledged. If the director's decision is to remand a work task and no appeal to the commission is filed within the time provided in section (4) of this rule, the decision is final.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef 5-7-04

660-025-0160

Commission Review of Referrals and Appeals (Work Task Phase)

(1) The commission shall hear appeals and referrals of work tasks according to the procedures in OAR 660-025-0085.

(2) In response to a referral or appeal, the director may prepare and submit a report to the commission.

(3) The department must mail a copy of the report to the local government, all persons who submitted objections, and other persons who appealed the director's decision. The department must mail the report at least 21 days before the commission meeting to consider the referral or appeal.

(4) Persons who filed valid objections or an appeal, and the submitting local government, may file written exceptions to the director's report within ten (10) days of the date the report is mailed. The director may issue a response to exceptions and may make revisions to the director's report in response to exceptions. A response or revised report may be provided to the commission at or prior to its hearing on the referral or appeal. A revised director's report does not require mailing 21 days prior to the commission hearing.

(5) The commission shall hear appeals based on the record unless the commission requests new evidence or information at its discretion and allows the parties an opportunity to review and respond to the new evidence or information. The written record shall consist of the submittal, timely objections, the director's report, timely exceptions to the director's report, the director's response to exceptions and revised report if any, and the appeal if one was filed.

(6) Following its hearing, the commission must issue an order that does one or more of the following:

(a) Approves the work task or a portion of the task;

(b) Remands the work task or a portion of the task to the local government, including a date for resubmittal;

(c) Requires specific plan or land use regulation revisions to be completed by a specific date. Where specific revisions are required, the order shall specify that no further review is necessary. These changes are final when adopted by the local government. The failure to adopt the required revisions by the date established in the order shall constitute failure to complete a work task by the specified deadline requiring the director to initiate a hearing before the commission according to the procedures in OAR 660-025-0170(3);

(d) Amends the work program to add a task authorized under OAR 660-025-0170(1)(b); or

(e) Modifies the schedule for the approved work program in order to accommodate additional work on a remanded work task.

(7) If the commission approves the work task under subsection (6)(a) of this section and no appeal to the Court of Appeals is filed within the time provided in ORS 183.482, the work task shall be deemed acknowledged. If the commission decision on a work task is under subsection (6)(b) through (e) of this section and no appeal to the Court of Appeals is filed within the time provided in ORS 183.482, the decision is final.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef 5-7-04

660-025-0170

Modification of an Approved Work Program, Extensions, and Sanctions for Failure to Meet Deadlines

(1) The commission may direct, or, upon request of the local government, the director authorize a local government to modify an approved work program when:

(a) Issues of regional or statewide significance arising out of another local government's periodic review requires an enhanced level of coordination;

(b) Issues of goal compliance are raised as a result of completion of a work task resulting in a need to undertake further review or revisions;

(c) Issues relating to the organization of the work program, coordination with affected agencies or persons, or orderly implementation of work tasks result in a need for further review or revision; or

(d) Issues relating to needed housing, economic development, transportation, public facilities and services, or urbanization were omitted from the work program but must be addressed in order to ensure compliance with the statewide planning goals.

(2) Failure to complete a modified work task shall constitute failure to complete a work task by the specified deadline, requiring the director to initiate a hearing before the commission according to the procedures in section (3).

(3) If a local government fails to submit its evaluation and work program, a decision that no work program is necessary, or a work task by the deadline set by the director or the commission, including any extension, the director shall schedule a hearing before the commission. The notice must state the date and location at which the commission will conduct the hearing. The hearing will be conducted pursuant to OAR 660-025-0085 and as follows:

(a) The director shall notify the local government in writing that its submittal is past due and that the commission will conduct a hearing and consider imposing sanctions against the local government as required by ORS 197.636(2);

(b) The director and the local government may prepare written statements to the commission addressing the circumstances causing the local government to miss the deadline and the appropriateness of any of the sanctions listed in ORS 197.636(2). The written statements must be filed in a manner and according to a schedule established by the director;

(c) The commission shall issue an order imposing one or more of the sanctions listed in ORS 197.636(2) until the local government submits its evaluation and work program or its decision that no work program is required, or its work task required under OAR 660-025-0130, as follows:

(A) Require the local government to apply those portions of the goals and rules to land use decisions as specified in an order issued by the commission,

(B) Forfeiture of all or a portion of the grant money received to conduct the review, develop the work program or complete the work task,

(C) Completion of the work program or work task by the department. The commission may require the local government to pay the cost for completion of work performed by the department, following the withholding process set forth in ORS 197.335(4),

(D) Application of such interim measures as the commission deems necessary to ensure compliance with the statewide planning goals.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628-ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 1-1998, f. & cert. ef. 4-15-98; LCDD 3-2000, f. & cert. ef. 2-14-00

660-025-0175

Review of UGB amendments and Urban Reserve Area designations.

(1) Land use decisions establishing or amending an urban growth boundary or urban reserve area must be submitted to the department for review with the statewide planning goals and related statutes and rules when not on a work program and:

(a) A metropolitan service district amends its urban growth boundary to include more than 100 acres;

(b) A city with a population of 2,500 or more within its urban growth boundary amends the urban growth boundary to include more than 50 acres; or

(c) A city or metropolitan service district designates or amends urban reserve areas under ORS 195.145.

(2) The standards and procedures in this rule govern the local government process and submittal, and department and commission review.

(3) The local government must provide notice of the proposed amendment according to the procedures and requirements for post-acknowledgement plan amendments in ORS 197.610 and OAR 660-018-0020.

(4) The local government must submit its final decision amending its urban growth boundary, or designating urban reserve areas, to the department according to all the requirements for a work task submittal in OAR 660-025-0130 and 660-025-0140.

(5) Department and commission review and decision on the submittal from the local government must follow the procedures and requirements for review and decision of a work task submittal in OAR 660-025-0140 to 660-025-0160.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.145, 197.626 – 197.646

Hist.: LCDC 3-2000, f. & cert. ef. 2-14-00; LCDC 3-2004, f. & cert. ef 5-7-04

660-025-0180

Stay Provisions

(1) When a local government makes a final decision on a work task or portion of a work task that is required by, or carries out, an approved work program, or if the local government is a city with a population of 2,500 or more and either adopts a decision adding more than 50 acres to its urban growth boundary or designates or amends urban reserve areas, or a metropolitan service district that adopts a decision adding more than 100 acres to its

urban growth boundary or designates or amends urban reserve areas, interested persons may request a stay of the local government's final decision by filing a request for a stay with the commission. In taking an action on a request to stay a local government's final decision on a work task, the commission must use the standards and procedures contained in OAR chapter 660, division 1.

(2) The director may grant a temporary stay of a final decision on a local government decision described in section (1) of this rule. A temporary stay must meet applicable stay requirements of the Administrative Procedures Act. A temporary stay issued by the director shall only be effective until the commission has acted on a stay request pursuant to section (1) of this rule.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.145, ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 1-1998, f. & cert. ef. 4-15-98; LCDC 3-2000, f. & cert. ef. 2-14-00

660-025-0210

Updated Planning Documents

(1) Pursuant to ORS 195.025 and 195.040 and the legislative policy described in ORS 197.010, each local government must file two complete and accurate copies of its comprehensive plan and land use regulations bearing the date of adoption (including plan and zone maps bearing the date of adoption) with the department following completion of periodic review. These materials may be either a new printing or an up-to-date compilation of the required materials or upon approval of the department, an up-to-date copy on computer disk(s) or other electronic format.

(2) Materials described in section (1) of this rule must be submitted to the department within six months of completion of the last work task.

(3) The updated plan must be accompanied by a statement signed by a city or county official certifying that the materials are an accurate copy of current planning documents and that they reflect changes made as part of periodic review.

(4) Jurisdictions that do not file an updated plan on time shall not be eligible for grants from the department until such time as the required materials are provided to the department.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.025 and 195.040 & ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

660-025-0220

Computation of Time

(1) For the purposes of OAR chapter 660, division 25, periodic review rule, unless otherwise provided by rule, the time to complete required tasks, notices, objections, and appeals shall be computed as follows. The first day of the designated period to complete the task, notice, objection or appeal shall not be counted. The last day of the period shall be counted unless it is a Saturday, Sunday or legal holiday recognized by the State of Oregon. In that event the period shall run until the end of the next day that is not a Saturday, Sunday or state legal holiday.

(2) When the period of time to complete the task is less than seven (7) days, intervening Saturdays, Sundays or state legal holidays shall not be counted.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 187.010, 187.020, 197.628 to 197.650

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

660-025-0230
Applicability

(1) Amendments to this division apply as follows:

(a) Local governments in periodic review that have not submitted an evaluation and work program, or decision that no work program is required, when rule amendments become effective shall apply the new requirements to the evaluation and work program or decision than no work program is required;

(b) Local governments in periodic review must apply amendments to work tasks not completed or submitted to the department on the effective date of the amendments;

(c) The commission may modify approved work programs to carry out the priorities and standards reflected in amendments;

(d) The procedures and standards in amendments for department and commission review and action on periodic review submittals, requests for extensions, and late submittals apply to all such submittals and requests filed after the effective date of the amendments, as well as any such submittals and requests awaiting initial department action on the effective date of the amendments.

(2) Amendments to OAR 660-025-0030 and 660-025-0035(3) and (4) become effective July 1, 2007.

Stat. Auth.: ORS 197.040-197.245
Stats. Implemented: ORS 197.628 to 197.646
Hist.: LCDC 3-2000, f. & cert. ef. 2-14-00

660-025-0250
Transfer of Matters to the Land Use Board of Appeals

(1) When the department receives an appeal of a director's decision pursuant to OAR 660-025-0150(4), the director may elect to transfer a matter raised in the appeal to the Land Use Board of Appeals (board) under ORS 197.825(2)(c)(A).

(2) Matters raised in an appeal may be transferred by the director to the board when:

(a) The matter is an urban growth boundary expansion approved by the local government based on a quasi-judicial land use application and does not require an interpretation of first impression of statewide planning Goal 14, ORS 197.296 or ORS 197.298; or

(b) (A) The matter alleges the work task submittal violates a provision of law not directly related to compliance with a statewide planning goal;

(B) The appeal clearly identifies the provision of the task submittal that is alleged to violate a provision of law and clearly identifies the provision of law that is alleged to have been violated; and

(C) The matter is sufficiently well-defined that it can be separated from other allegations in the appeal.

(3) When the director elects to transfer a matter to the board, notice of the decision must be sent to the local jurisdiction, the appellant, objectors, and the board within 60 days of the date the appeal was filed with the department. The notice shall include identification of the matter to be transferred and explanation of the procedures and deadline for appeal of the matter to the board.

(4) The director's decision under this rule is final and may not be appealed.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.825

Hist.:

Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
Phone: (503) 373-0050
Fax: (503) 378-5518
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MEMORANDUM

FROM: Richard Whitman, Steve Shipsey

TO: LCDC Commissioners

RE: Metro Reserves Deliberations

DATE: October 28, 2010

This memo is intended to assist the commission in its final deliberations concerning Metro urban and rural reserves, by clarifying the department's understanding of what the commission needs to decide with regard to the three specific areas the commission indicated it wants to focus on, and what the commission's standard(s) are for making those decisions. To further assist the commission, we are providing four exhibits to this memo. Those exhibits are: (A) Three maps of the current zoning designations for Areas 7B, 7I and 8A; (B) Excerpts of the Objections and Exception relating most directly to these three areas; (C) A compilation from Washington County and Metro of the evidence in the record showing how the county and Metro considered and applied the factors to these three areas; and (D) A transcript of a portion of the final rulemaking hearing where the commission adopted its division 27 rules for urban and rural reserves. To the extent that these attachments include new evidence, we ask that the commission request these materials to assist it in its deliberations.

1. What Does the Commission Need to Decide? (Scope of Review)

What the commission reviews (it's scope of review) is set in its own rule: 660-027-0080(4). That rule provides that the commission reviews the reserves decision for four basic things (the four basic things are summarized in the bracketed capitalized language):

"* * * The Commission shall review the submittal for:

(a) Compliance with the applicable statewide planning goals. Under ORS 197.747 "compliance with the goals" means the submittal on the whole conforms with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature. To determine compliance with the Goal 2 requirement for an adequate factual base, the Commission shall consider whether the submittal is supported by

substantial evidence. Under ORS 183.482(8)(c), substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding [THE STATEWIDE PLANNING GOALS];

(b) Compliance with applicable administrative rules, including but not limited to the objective provided in OAR 660-027-0005(2) [e.g. a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents] [THE BEST ACHIEVES STANDARD] *and* the urban and rural reserve designation standards provided in OAR 660-027-0040 [THE AMOUNT OF LAND STANDARD]; and

(c) Consideration of the factors in OAR 660-027-0050 or 660-027-0060, whichever are applicable [COMPARISON OF ALTERNATIVE AREAS BY APPLYING FACTORS]. " OAR 660-027-0080(4)

What each of these four things means, is described in more detail, below.

A. Compliance with the Statewide Planning Goals

OAR 660-027-0080(4)(a) and ORS 197.747 provide that "compliance with the goals" means the submittal on the whole conforms with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature. In addition, not all goals apply to the reserves decision. For example, in the Department's opinion, Goal 10 does not apply to the reserves decision because the designation of urban and rural reserves does not commit land to urbanization or to any particular future use (that would occur only after the land was included within an urban growth boundary and planned and zoned for urban development). Similarly, some goals may apply, but only in a limited fashion. For instance, the element of Goal 11 that requires public facility plans applies only to areas within an urban growth boundary (and so does not apply to the reserves decision). However, other elements of Goal 11 could (in theory) be implicated by the reserves decision.

The requirement to comply with the goals focuses on assuring that the underlying main purpose of the goal is met, even if there are minor deviations from the technical requirements of the goal or LCDC implementing rule. *1000 Friends of Oregon v. LCDC (Lane County)*, 305 Or. 384 (Or., 1988). Thus, for example, the main purpose of Goal 3 is to preserve and maintain agricultural lands for farm use.

Goal compliance does not appear to be a major issue with regard to the three areas the commission has indicated it wants to consider more carefully, although goal compliance issues have been raised in a number of general and specific objections.

B. Compliance with the Best Achieves Standard

OAR 660-027-0005(2) states that the objective of the reserves is "a balance in the designation of urban and rural reserves that, *in its entirety*, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important

natural landscape features that define the region for its residents." (Emphasis added.) According to the records of the commission's adoption of this rule, the intent was that this standard would set a higher bar for the reserves decision than the normal requirements for locational decisions about where to expand an urban growth boundary (to consider and apply factors to alternative candidate areas – discussed below). The standard applies to the designation "in its entirety," it does not require Metro or a county to rank alternative areas. It is a standard that Metro and the counties, in the first instance, must demonstrate has been met, by explaining why in their findings.

Although the standard applies to the designation[s] in its entirety, the department believes that the commission could find that the standard is not met as a result of concerns about one or more areas (e.g., the designation[s] in its entirely could fail to meet this standard because of problems with one or more particular areas).

In addition, the department believes that there is a relation between the "factors" that Metro and the counties must consider for urban reserves (under 027-0050) and rural reserves (under 027-0060), and the overall objective in 0005(2). The relation is that the way that Metro and the counties explain how the overall objective is met is through their findings applying the urban and rural reserve factors to decide which alternative areas to designate as urban and rural reserves.

The meaning of the "best achieves" standard is best described in the transcript of the commission's January 2008 rulemaking hearing, attached as Exhibit D to this memo.

C. Compliance with the Amount of Land Standard

This standard has already been addressed in the proceedings, and is not directly relevant to the Commission's remaining deliberations. In brief, the statute and rules provide a fair degree of discretion to Metro concerning: (a) the time period that the urban reserves are planned to accommodate population and employment growth for; and (b) the methods and policy considerations that Metro uses to project future population and employment. The statute and rules also provide Metro significant discretion in determining how to apply its overall regional projections to parts of the region (counties).

If the commission were to remand one or more urban reserve areas, with direction to evaluate the area(s) in a particular way under the commission's rules and/or to drop the area from designation, it should also indicate whether Metro and the county(ies) involved would be required to replace any lands removed as a result of the remand. The department believes that, because Metro based its determination of need on a range forecast and made a policy choice to plan for the upper end of the middle third of its projection, Metro could remove some lands without adding other lands by either altering its policy choice (to, for example, plan for the middle of the middle third) or by shortening the number of years that the reserves are planned for. Alternatively, the department believes that Metro and the county(ies), could chose to leave the decisions concerning the amount of land unchanged, and add other lands as an urban reserve.

D. Comparing Alternative Areas by Applying Factors

OAR 660-027-0040(10) and (11), together with OAR 660-027-0050 (urban) and 0060 (rural), require the commission to consider *and apply* the factors for urban and rural reserves. If the lands in question are foundation farm land (as is the case for all three of the areas the commission has focused on) OAR 660-027-0040(11) requires the commission to consider and apply *both* the urban reserve factors and the rural reserve factors. The rule provisions raise at least two basic questions that the commission should decide: (a) what does it mean for Metro and the counties to consider and apply the factors; and (b) does the rule require Metro and the counties to consider and apply the factors to each area, to the region as a whole, or to each county?

a. What Does it Mean to Consider and Apply the Factors?

The department believes that the commission's rule requires Metro and the county(ies) to evaluate alternative areas in terms of each of the factors, and to then explain why it selected a particular area as an urban reserve or a rural reserve. For areas containing Foundation Agricultural Land that are considered as urban reserves, the rules require this evaluation to be done in terms of both the urban and rural factors.

It is important to note that this does *not* require a ranking, nor (under Goal 14 (as opposed to Metro's Code) does it require that the "*best*" suited lands be included) but it does require the county and Metro to show that they evaluated alternative areas in terms of each of the factors, (***Ryland Homes***, at 154), and that their findings explain why each area is appropriate as an urban or rural reserve. Finally, "[n]o single factor is of such importance as to be determinative in an UGB amendment proceeding, nor are the individual factors necessarily thresholds that must be met." ***Citizens Against Irrespons. Growth v. Metro***, 38 P.3d 956, 179 Or. App. 12 (Or. App., 2002). In other words, any one area does not have to comply with or meet every factor. The factors are considered together, and weighed and balanced as a whole.

b. What Lands Does Metro or a County Apply the Factors To?

The department's report to the commission states that we believe that Metro applies the factors to *areas* (not to individual properties, and not to the entire region). The department's position is based on the fact that the reserve factors derive from the Goal 14 locational factors (this is stated clearly in the history of the commission's rulemaking for division 27, *and* in the legislative history for Senate Bill 1011). The Goal 14 locational factors are *applied* to alternative locations for expanding an urban growth boundary to decide which one(s) to select to include within the expanded UGB. ***1000 Friends of Oregon v. Metro (Ryland Homes)***, 26 P.3d 151, 174 Or. App. 406 (2001). Similarly, under the Commission's other urban reserves rules, the Goal 14 factors are applied to proposed urban reserve *areas*. ***D.S. Parklane v. Metro***, 35 Or LUBA 516 (1999). We believe that the legislative and commission intent is the same with regard to the role of the factors in deciding which lands to designate as urban and rural reserves – e.g., the factors are applied to alternative areas to decide which ones to include as urban reserves, and which areas to include as rural reserves.

Furthermore, because SB 1011 and the commission's reserves rules require urban and rural reserves to be decided upon jointly between Metro and a county, we believe that the factors are *applied* to alternative areas within a county to decide which ones to designate as urban or rural reserves.

OAR 660-027-0040(10) requires Metro and the counties to "adopt a single, joint set of findings of fact, statements of reasons and conclusions explaining why *areas* were chosen as urban or rural reserves, how these designations achieve the objective stated in OAR 660-027-0005(2), and the factural and policy bais for the estimated land supply determined under section (2) of this rule." (Emphasis added) In other words, the commission's rules clearly require the factors to be applied to "areas" rather than specific properties or to the region or a county as a whole. OAR 660-027-0040(11) supplements the requirements of 0040(10) by requiring additional findings if "Foundation Agricultural Land" is designated as urban reserves (that term is defined by OAR 660-027-0010(1) as the lands mapped by ODA as foundation farm lands in its 2007 assessment). The department believes that the supplemental findings required by subsection (11) for Foundation Agricultural Lands do not alter the geographic unit that Metro and the counties must adopt findings for – the findings must still be by "area" rather than on a property-by-property or region-wide basis. What this means is that if Metro designates some portion or all of an area as an urban reserve, and that area includes Foundation Agricultural Land, then the joint findings must explain why the area was selected as an urban reserve by applying *both* the urban and rural factors to that area and explaining why that area is more suitable as an urban reserve than other lands within Metro's study area that are not Foundation Agricultural Lands.

c. What Did Metro and the Counties Do?

Metro adopted a single set of joint findings that explain why the region designated some areas including Foundation Agricultural Land as urban reserves. Metro Rec. at 15-19. Those findings explain why the region did not designate other (non-Foundation) lands as urban reserves, generally. The findings include some explanation of why other (non=Foundation) lands were not designated as urban reserves (instead of the Foundation lands). The findings also state: "[t]hese reasons are more fully set forth in the explanations for specific urban and rural reserves in sections VI-VIII."

Section VI contains the findings for Clackamas County, explaining why it designated Area 1F an an urban reserve (this is the only area of Foundation Agricultural Land designated as an urban reserve in Clackamas County). The findings address both the urban factors and (to at least some degree) the rural factors. Metro Rec. 25-28.

Section VII contains the findings for Multnomah County, explaining why it designated Area 1C as an urban reserve (this is the only area of Foundation Agrigultural Land designated as an urban reserve (this is the only area of Foundation Agricultural Land designated as an urban reserve in Multnomah County. The findings address, in general terms, both the urban factors and the rural factors, and explain why the county decided to designate the area as an urban reserve. Metro Rec. 48-49.

Section VIII contains the findings for Washington County. Washington County's findings address Areas 7B, 7I and 8A, individually (as well as other areas in the county), and explain why the areas were designated as urban reserves, but do not apply the rural reserve factors to the areas containing Foundation Agricultural Lands. Although the findings do not apply both sets of factors, there is evidence in the record that Washington County did so (this evidence is summarized in Exhibit C).

2. What Standard Does the Commission Use to Decide Each of the Things That it is Required to Decide? (Standard of Review)

The Oregon Court of Appeals addressed LCDC's standard of review in a UGB amendment decision at length in ***City of West Linn v. LCDC***, 119 P.3d 285, 201 Or. App. 419 (2005). While that case provides some useful guidance, it is important to note that the standard of review for the court is different from the standard for LCDC, and that the standard of judicial review in the event the commission's decision in this matter is appealed is controlled by a slightly different statute than the one that applied in ***City of West Linn*** (ORS 197.651, not ORS 197.650).

In this proceeding, the commission reviews Metro and the county findings to determine whether they provide an adequate explanation of why each area was designated as an urban or rural reserve (using the factors). The commission reviews any factual questions to determine whether there is substantial evidence in the record as a whole to support Metro and the county's decision. And, the commission reviews any legal questions to determine whether Metro correctly decided the question.

A. Adequacy of Findings

The commission's own rules require findings that explain why Metro and the counties made the decisions that they did. OAR 660-027-0040(10) provides that: Metro * * * [and the county(ies)] shall adopt a single, joint set of findings of fact, statements of reasons and conclusions explaining why areas were chosen as urban or rural reserves, how these designations achieve the objective stated in OAR 660-027-0005(2), and the factual and policy basis for the estimated land supply determined under section (2) of this rule." OAR 660-027-0040(11) requires that "* * * if Metro designates [Foundation Agricultural Land] as urban reserves, the findings and statement of reasons shall explain, by reference to the factors in OAR 660-027-0050 and 660-027-0060(2), why Metro chose the Foundation Agricultural Land for designation as urban reserves rather than other land considered under this division." And, OAR 660-027-0080(4) requires that: "(4) The joint and concurrent submittal to the Commission shall include findings of fact and conclusions of law that demonstrate that the adopted or amended plans, policies and other implementing measures to designate urban and rural reserves comply with this division, the applicable statewide planning goals, and other applicable administrative rules."

The requirement for findings is not simply a technicality, its purpose is to assure that the commission can perform its review function, and that it does not substitute its judgment for that of Metro and the counties. *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16, 38 P3d 956 (2002); *Naumes Properties v. City of Central Point*, LUBA No. 2003-107 (Or. LUBA 1/21/2004).

In a recent decision on the City of Bend proposed urban growth boundary, the commission decided that where local findings are inadequate, it may still affirm the local decision if the local government identifies evidence in the record that "clearly supports" its decision. This is analogous to express statutory authority for the Land Use Board of Appeals to affirm local land use decisions in these circumstances (the commission indicated that it was adopting the same approach). In the LUBA cases applying its express authority to affirm decisions where the findings are inadequate but the evidence clearly supports the local government's decision, LUBA distinguishes between cases where the inadequacy in findings concerns a pure question of fact and cases where the inadequacy is in a local government's explanation of its policy choice – why it made a particular decision.

> " LUBA has narrowly interpreted the term "clearly supports" in ORS 197.835(11)(b) to mean "makes obvious" or "makes inevitable." Marcott Holdings, Inc. v. City of Tigard, 30 Or LUBA 101, 122 (1995). ORS 197.835(11)(b) authorizes LUBA to remedy minor oversights and imperfections in local government land use decisions, but does not allow LUBA to assume the responsibilities assigned to local governments, such as the weighing of evidence." ***Salo v. Oregon City***, LUBA No. 98-173 (Or. LUBA 7/14/1999).

As indicated in its report in this matter, the department believes that if the commission determines that the Metro/county findings are inadequate, it then should decide whether or not the record "clearly supports" the local decision and, if so, whether this is an appropriate case to apply this practice. That decision could depend on both how clear the evidence is, and how much policy judgment (if any) is involved in resolving the underlying question.

B. Factual Questions

The commission's rules clearly provide that it reviews Metro and the counties' factual determinations for substantial evidence in the record as a whole. OAR 660-027-0080(4)(a).

C. Compliance with Legal Standards

The commission reviews Metro and the counties' resolution of any legal questions de novo, to determine whether they correctly applied the law. There do not appear to be any pure legal questions concerning the three remaining areas that the commission will deliberate on.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ACCEPTING THE POPULATION AND EMPLOYMENT FORECASTS AND THE URBAN GROWTH REPORT AS SUPPORT FOR DETERMINATION OF CAPACITY OF THE URBAN GROWTH BOUNDARY	))))))	RESOLUTION NO. 09-4094 Introduced by Chief Operating Officer Michael Jordan with the Concurrence of Council President David Bragdon

WHEREAS, state law requires Metro to determine the capacity of the urban growth boundary (UGB) to accommodate the next 20 years' worth of population and employment growth by the end of December, 2009; and

WHEREAS, the Metro Council will direct its efforts to provide capacity for the next 20 years' worth of growth toward achieving the Outcomes that are part of its overall Making the Greatest Place initiative, as indicated by performance measures; and

WHEREAS, Metro published range forecasts of population and employment growth to the years 2030 and 2060 on March 19, 2009; and

WHEREAS, Metro published a preliminary analysis of the capacity of the existing UGB to accommodate the range of new dwelling units relating to the range of forecast population growth on March 31, 2009; and

WHEREAS, state law requires Metro to provide capacity to encourage the availability of dwelling units at price ranges and rent levels, and of transportation choices, that are commensurate with the financial capabilities of households expected over the planning period; and

WHEREAS, Metro published a preliminary Housing Needs Analysis on April 22, 2009, that showed the effects on housing affordability and household transportation costs of forecast growth under existing policies and investment levels; and

WHEREAS, Metro published a preliminary analysis of the capacity of the existing UGB to accommodate the range of new employment relating to the range of forecast employment growth on May 6, 2009; and

WHEREAS, the region has an interest in an adequate supply of land appropriate for industries that prefer larger tracts of land near transportation facilities and an interest in efficient use of existing land and transportation facilities; and

WHEREAS, Metro sought and received comments on the preliminary analyses of housing and employment capacity from its Metro Policy Advisory Committee (MPAC) and its Joint Policy Advisory Committee on Transportation (JPACT), local governments in the region, public, private and non-profit organizations and citizens; and

WHEREAS, Metro considered the comments and published revised draft analyses of the capacity of the existing UGB to accommodate growth to year 2030 on September 15, 2009; and

WHEREAS, Metro sought and received comments on the revised draft analyses from MPAC and JPACT; local governments in the region; and public, private and non-profit organizations and citizens; and

WHEREAS, the Metro Council held open houses and public hearings on the revised draft analyses on September 21, 22 and 24 and October 1, 8 and 15, 2009; and

WHEREAS, Metro considered comments received and made revisions to the final draft analyses of the capacity of the existing UGB to accommodate the range of new dwelling units and employment relating to the range of forecast population and employment growth; now, therefore,

BE IT RESOLVED that the Metro Council

1. The Council accepts the "20 and 50 year Regional population and employment forecasts" incorporated into the "Draft Urban Growth Report 2009-2030", dated September 15, 2009, as revised by this resolution, as a basis for analysis of need for capacity in the UGB to accommodate growth to the year 2030 and for actions the Council will take to add capacity by ordinance in 2010, pursuant to ORS 197.296(6) and statewide planning Goal 14.

2. The Council accepts the "Draft Urban Growth Report 2009-2030", dated September 15, 2009, with its analysis of housing needs, attached and incorporated into this resolution as Exhibit A, with the revisions described in the Staff Report dated December 3, 2009, attached as Exhibit B, as a basis for analysis of need for capacity in the UGB to accommodate growth to the year 2030 and for actions the Council will take to add housing and employment capacity by ordinance in 2010, pursuant to ORS 197.296(6) and statewide planning Goals 14 and 10.

3. The Council directs the staff to work with MPAC to identify site opportunities for industries that prefer large tracts, with a priority to mechanisms to remediate brownfields and assemble smaller parcels inside the UGB to make them more "market-ready."

4. Acceptance of Exhibit A by the Council meets Metro's responsibility under state law to analyze the capacity of the UGB to accommodate growth to the year 2030 as a preliminary step toward providing sufficient capacity to accommodate that growth. The Council will make a final land use decision to respond to this capacity analysis in 2010.

5. The Council directs the Chief Operating Officer to submit Exhibit A , together with such actions the Council adopts by ordinance to add any needed capacity pursuant to ORS 197.296(6) and statewide planning Goal 14, to the Land Conservation and Development Commission as part of periodic review pursuant to ORS 197.626, following adoption of the capacity ordinance in 2010.

ADOPTED by the Metro Council this 10th day of December, 2009

David Bragdon, Council President

Approved as to form:

Daniel B. Cooper, Metro Attorney

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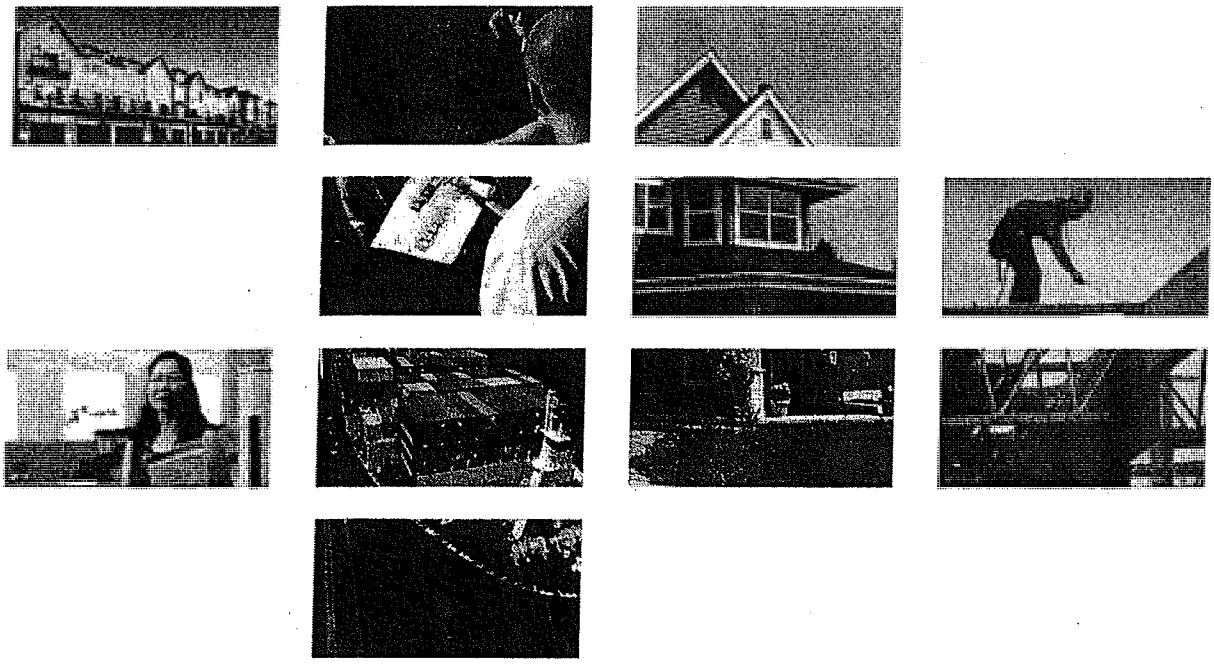

DRAFT URBAN GROWTH REPORT

2009 – 2030

Employment and residential

September 15, 2009

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Resolution 09-4094
September 15, 2009 Exhibit A
Employment and residential

DRAFT URBAN GROWTH REPORT

2009 – 2030

Appendices 2 - 13

September 15, 2009

EXHIBIT B
STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4094, FOR THE PURPOSE OF ACCEPTING THE POPULATION AND EMPLOYMENT FORECASTS AND THE URBAN GROWTH REPORT AS SUPPORT FOR DETERMINATION OF CAPACITY OF THE URBAN GROWTH BOUNDARY

Date: December 3, 2009 Prepared by: Malu Wilkinson, x1680

BACKGROUND

Purpose of the forecast and the urban growth report

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.

On the advice of the Metro Policy Advisory Committee, the Metro Council has indicated its intent to take an outcomes-based approach to assessing growth management options in 2010. It is intended that growth management decisions 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. 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.

Should the Metro Council vote in favor of this resolution, it would be accepting the UGR and 20-year forecast as a reasonable and complete basis for making growth management decisions in 2010. By this resolution, the Council would also be accepting the 50-year forecast as a basis for designating urban and rural reserves. Council acceptance of the forecasts and the UGR does not constitute a land use decision, but provides a platform for subsequent growth management decisions.

Summary of forecast and UGR findings

Population and employment range forecast

20-and-50-year range forecasts of population and employment growth have been completed by Metro staff and peer reviewed by economists and demographers. The 20-year range forecast informs the UGR

and the 50-year range forecast informs the Urban and Rural Reserves process. The use of a range forecast acknowledges uncertainty and allows for growth management decisions to focus on desired outcomes rather than a specific number. The forecast is for the seven-county primary metropolitan statistical area, which includes Clackamas, Multnomah, Washington, Yamhill, Columbia, Clark, and Skamania counties.

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 chance that growth will occur within this range.

The 50-year forecast indicates that, by the year 2060, there will be a total of 1,478,400 to 1,792,500 households and a total of 1,648,400 to 2,422,900 jobs in the larger seven-county area. There is a 90 percent chance that growth will occur within this range.

In his September 15, 2009 recommendation, Metro's Chief Operating Officer, Michael Jordan, recommended that growth management decisions made by the Council in 2010 focus not on the extreme ends of the range forecast, but on the middle third of the forecast range.

Urban Growth Report

In addition to the 20-year range forecast, the UGR 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 assumes a continuation of current policies and investment trends. No changes to existing zoning are 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 is based on historic data, 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—that are summarized as follows:

Residential capacity

There is ample zoned capacity within the current UGB to accommodate the next 20 years of residential growth. However, the UGR's analysis indicates that, without additional infrastructure investments or other policy changes, insufficient zoned capacity will be available for development. At both ends of the range forecast (high and low) there is a gap in the UGB's capacity to accommodate the next 20 years of residential growth on vacant land or through redevelopment and infill (refill). Depending on the amount of residential growth that may be realized, the UGR finds demand for additional capacity to accommodate 27,400 to 104,900 dwelling units.

The UGR also includes an assessment of future cost-burdened households in the region. The assessment defines a household as cost-burdened if they rent and spend more than half of their after-tax income on housing and transportation expenditures. If current policy and investment trends are continued, the number of cost-burdened households in the region may double by the year 2030. Under that scenario, between 17 to 23 percent of all households inside the Metro UGB may be cost-burdened. This would represent between 51 to 69 percent of renter households. This analysis also finds that, as is the case today, there are likely to be concentrations of cost-burdened households in some communities and very few in others. Centers and corridors provide residents with the most affordable transportation options, but high market demand in those locations is likely to continue driving housing prices upwards. Investing in housing and transit in centers and corridors is one way of closing the residential capacity gap and reducing the number of cost-burdened households.

General industrial employment capacity
This portion 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. The UGR finds that, at both ends of the employment range forecast, there is adequate capacity inside the current UGB to accommodate the next 20 years of general industrial job growth.

General non-industrial employment capacity
This 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 analysis indicates sufficient zoned capacity, but a need to make investments or policy changes to support the high end of the demand range. Depending on the amount of non-industrial employment growth that is realized, the UGR finds that there is demand for zero to 1,168 acres of additional capacity for non-industrial employment.

Large lot employment capacity
The "large lot" portion of the UGR's analysis was completed in recognition of the fact that some firms in traded-sector industries prefer or require large, vacant lots. The UGR defines a large lot as a single taxlot with at least 25 acres of vacant, buildable area. Demand for large lots is likely to be the product of the decisions of individual firms rather than larger industry sector trends. The UGR's forecast-based assessment originally 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.

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 lot demand will be the result of the decisions of individual firms, so it is inherently difficult to forecast.
- Some cities in the region have identified large, traded-sector firms as the focus of their economic development plans.
- It may be preferable from a policy standpoint to have flexibility to accommodate traded-sector firms.
- The use of an employment forecast may be an inadequate means of estimating large lot demand for freight, rail, and marine terminal uses.

Consequently, MPAC has recommended that the UGR identify a demand for 200 to 1,500 acres of additional capacity for large-lot industrial uses. This demand may be satisfied through a variety of means, including brownfield cleanup, infrastructure investments, taxlot assembly, or UGB expansions.

Process for writing the forecast and the urban growth report

Process overview
The forecast and UGR have been written and revised over the course of over a year and are informed by the expertise of economic consultants and Metro staff, business focus groups, comments from numerous stakeholders, advisory committee input, a panel of economic advisors, scenario modeling, and historic data. The analyses have benefited from this extensive review.

Expert review of the population and employment forecast
The national data that drives the regional forecast comes from IHS Global Insight, an internationally respected economics firm whose data is relied upon by numerous public and private entities. Metro's

econometric model, which is used to create the regional population and employment forecast, has been subjected to considerable expert scrutiny over the years. A November 24, 2009 memo from Metro's Chief Economist, to Malu Wilkinson, Metro Principal Regional Planner, describes recent peer reviews of the forecast model and its results and is included as Attachment 3 to this staff report.

In 2006, a panel of economic advisors was convened to evaluate Metro's econometric model and forecasts. The panel included:

- Tim McDaniels, professor and interim director, Institute of Resources and Environment, School of Community and Regional Planning, University of British Columbia
- Marshall Vest, economist and director of the Economic and Business Research Center at the University of Arizona's Eller College of Management
- Tom Potiowsky, State Economist for the State of Oregon

The panel of economic advisors reviewed the model's equations, overall statistical fit and results, finding:

- The Metro econometric model is one of the more advanced regional econometric models in the country and that it exhibits sound economic theory.
- The Metro econometric model is the right type of model for the purposes for which it is used.
- It is appropriate to use national economic projections from IHS Global Insight to drive the regional forecast. It was noted that the State of Oregon also uses IHS Global Insight data in preparing the biennial budget.
- In the context of performing risk analysis, a range forecast can be superior to a single point forecast.

A Public Review Draft 2005-2060 Regional Population and Employment Forecast was released on May 19, 2008. Accompanying this release, Metro hosted a panel discussion of the forecast. To inform the UGR, a preliminary 20 and 50-Year Regional Population and Employment Forecast was released in March 2009. This newer forecast incorporates the short-and long-term effects of the current recession. During the summer of 2009, the forecast was subjected to a peer review by local economists and demographers. The peer review panel found the forecast range to be reasonable and generally felt that actual growth may end up in the lower to middle portion of the range, but that, as a policy matter, it may be beneficial to plan somewhere in the higher portion of the employment range forecast. Peer review comments were addressed in a draft forecast released in September 2009. These changes did not involve amendments to the forecast's data.

External expertise that informed the employment analysis

To complete the employment analysis portion of the UGR, Metro staff worked with a consultant team led by E.D. Hovee and Co. that included FCS Group, Bonnie Gee Yosick, and Davis Hibbits Midghall, well-respected economic and public opinion consulting firms. Metro staff also formed the Employment Coordination and Advisory Committee (ECAC), which consisted of representatives from local city staff, business advocacy groups, the Port of Portland, and the Portland Development Commission. ECAC met on multiple occasions to provide comments and input on the UGR. Additionally, from December 2008 through February 2009, business representatives were included in focus groups that discussed the region's opportunities and challenges in fostering job growth.

Preliminary versions of analyses released for comment

In order to solicit early feedback, Metro staff released: a preliminary population and employment forecast and a preliminary residential UGR in March 2009; a preliminary housing needs analysis in April 2009;

and a preliminary employment UGR in May 2009. To the extent possible, comments received on the preliminary forecast, preliminary UGRs, and the preliminary housing needs analysis were addressed in the draft forecast and draft UGR, which were released in September 2009.

Metro advisory committee involvement

For over a year, MPAC, the Joint Policy Advisory Committee on Transportation (JPACT), and the Metro Technical Advisory Committee (MTAC) have been engaged in discussions of the UGR and possible growth management strategies. Beginning in September 2008, MPAC and JPACT considered the demographic changes that may impact residential growth and how the region plans to address population growth. This included a presentation on the topic by a visiting national scholar, Dr. Arthur (Chris) Nelson. During fall 2008, staff also presented to MPAC and JPACT the results of a series of "cause and effect" scenarios intended to illustrate the potential effectiveness of several different growth management and investment strategies. These "cause and effect" scenarios were also presented to the Transportation Policy Advisory Committee (TPAC) and to MTAC in an extended session.

Throughout the spring and summer of 2009, MTAC discussed the forecast, the preliminary UGRs and the preliminary housing needs analysis. During the summer of 2009, MTAC held two, three-hour-long sessions devoted entirely to discussing the preliminary analyses. These longer sessions were in addition to regular MTAC meetings where the forecast and the UGR were frequent agenda items. At the longer MTAC sessions, MTAC made recommendations on the UGR that were addressed in the draft UGR, which was released in September 2009.

MPAC discussed the forecast, UGR, and housing needs analysis on multiple occasions during the spring and summer of 2009. Several MPAC meetings included small group discussion formats to allow for more in-depth dialogue. At an October 23, 2009 retreat, MPAC took up the topic of the forecast and the draft UGR for four hours. Eric Hovee, the economic consultant who assisted in the UGR's employment analysis, was available at the retreat to answer questions posed by MPAC.

Additional stakeholder and public comment

Throughout 2009, the Metro Council and Metro staff have also engaged with numerous stakeholders on the topics of the forecast and the UGR. These meetings have included business interest groups, elected officials, land use planning advocacy groups, housing affordability advocacy groups, and city and county staff.

To solicit comments on the draft UGR (and other elements of the *Making the Greatest Place* initiative), seven open houses and five public hearings were held in locations throughout the region in September and October 2009. During this public comment period, comments were received in writing, as oral testimony, and electronically.

Comments received on the draft UGR

Because the UGR makes projections regarding future conditions, it elicits a variety of strong opinions from different perspectives. Staff believes that the forecast and UGR are based on sound and careful analysis and that the outstanding differences of opinion expressed by some cannot be reconciled with additional technical analysis. To aid the Council in its consideration of the completeness of the forecast and UGR, comments received on the draft UGR and staff responses are summarized in Attachment 1 to this staff report. To the extent possible or appropriate, staff has addressed comments in the final urban growth report. The general nature of comments is summarized below.

Business advocacy groups, the Port of Portland, Washington County, and the cities of Hillsboro, Cornelius, and Forest Grove have called for more optimistic employment forecasts (particularly in the high-tech manufacturing sector), higher capture rates[1], and lower refill rates[2]. These stakeholders have also suggested that the UGR's analysis should more fully take into account the site characteristics sought after by specific industry sectors. Finally, these stakeholders have requested that the UGR incorporate the conclusions of Economic Opportunity Analyses recently conducted by several cities.

The Homebuilder's Association of Metropolitan Portland disagrees with some of the UGR's assumptions and conclusions. Most notably, they find infeasible the 33 percent residential refill rate assumed in the UGR.

The cities of Portland, Lake Oswego, and Wilsonville as well as land use and housing affordability advocacy groups have expressed confidence in the analysis, calling for a focus on making more efficient use of the UGB's existing capacity and pointing to the need to take measures that address a changing economy, shifting demographics, climate change, brownfield cleanup, and housing affordability.

Comments from the general public typically focused on UGB decisions that the Council may consider in 2010 (rather than providing comments on the forecast and UGR analyses themselves). Those public comments were overwhelmingly in favor of making more efficient use of the region's existing capacity.

All of these discussions and comments have resulted in improvements to the final UGR's technical assumptions and its framing of policy choices. The revisions and technical corrections that Metro staff recommends making to the September 15, 2009 Draft UGR are summarized in Attachment 2 to this staff report.

Staff recommends two noteworthy revisions to the analysis. The first revision is the expansion of the range of additional capacity that may be demanded for large lot industrial uses (revised from 200-800 acres to 200-1,500 acres), as unanimously recommended by MPAC. The second is a revision to the estimate of acres that may be demanded for future parks, which, to a small degree, reduces the current UGB's residential capacity. This revision for future park acreage uses the approach recommended by MPAC in 2002, but provides an updated estimate that correlates to the current population forecast.

MPAC recommendation

On November 18, 2009, the UGR and forecast were taken up as an action item by MPAC. MPAC recommended several additions to the language of the resolution that is before the Council. MPAC's key additions to the resolution are a specific reference to the importance of addressing housing affordability and the need to focus on brownfield cleanup and lot assembly to address large lot industrial demand. MPAC also recommended a revision to the UGR's estimate of large-lot demand, which was discussed earlier in this staff report. With those revisions, MPAC unanimously recommended that the Metro Council vote in favor of this resolution.

Next steps

If the Metro Council votes in favor of this resolution, it accepts the forecast and the UGR as complete. The Council is not yet making a decision on where within the demand ranges to plan or whether to make

[1] Capture rate refers to the share of the larger 7-county area's population or employment growth that is expected to come to the Metro UGB.

[2] Refill rate refers to the share of future residential or employment development that occurs through redevelopment or infill.

a UGB expansion. During 2010, Metro staff will work with cities in the region to identify new policies or investments that increase the capacity of the current UGB (e.g. zoning) or increase the likelihood that capacity in the current UGB will be developed in the next 20 years (e.g. investments in centers, corridors, employment and industrial areas, and recent UGB expansion areas). Only policies or investments that are formally adopted or approved can be considered. The effects of those actions will be assessed by the end of 2010, when the Metro Council considers the adoption of a capacity ordinance. Any remaining capacity gap would need to be addressed through UGB expansions.

2010: At least 50 (and up to 100) percent of any capacity need must be addressed by the end of 2010. Any capacity need that is being addressed through efficiency measures inside the current UGB must be identified.

2011: The end of 2011 is the State deadline for making UGB expansions, if needed.

ANALYSIS/INFORMATION

1. **Known Opposition**
   Business interest groups, the Port of Portland, several cities in Washington County, and Washington County itself previously indicated that the September 15, 2009 Draft UGR did not identify a large enough gap in the UGB's capacity to accommodate employment growth. A particular focus of their criticism of the UGR has been large-lot employment demand, which these stakeholders contend is underestimated in the UGR to the detriment of the region's future economic health. MPAC has recommended a revision to the range of capacity demanded for large-lot employment uses. This revision has satisfied cities in Washington County with seats at MPAC, but Metro staff is unaware whether this revision satisfies all others who have voiced concern.

2. **Legal Antecedents**
   The forecast and UGR are completed to satisfy:
   - Statewide Planning Goals 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 Code, section 3.01.020(a) and (b)

3. **Anticipated Effects**
   Council acceptance of the forecast and UGR will allow Metro to meet its legal requirements under State law and to begin work identifying the possible policy options to consider in 2010 to enable the region to achieve its desired outcomes.

4. **Budget Impacts**
   The budget for fiscal year 2009/2010 includes staff resources for this work program. The fiscal year 2010/2011 budget will need to include staff resources.

RECOMMENDED ACTION

Staff recommends that the Metro Council accept the 20 and 50 year Regional population and employment forecasts and the capacity analysis in the Urban Growth Report 2009-2030, with the revisions recommended in this Staff Report.

ATTACHMENT 1

DRAFT URBAN GROWTH REPORT COMMENT INDEX
Fall 2009

FROM	*AFFILIATION*	*DATE*
Alford, Heidi		October 14, 2009
Anderson, Michael	Oregon Opportunity Network	October 14, 2009
Arcana, Judith		September 18, 2009
Battan, Jim		September 16, 2009
Becker, Michael		September 18, 2009
Bender, Rodney		September 18, 2009
Bidwell, Michael Patrick		September 18, 2009
Bookin, Beverly	Commercial Real Estate Economic Coalition	September 24, 2009
Boone, James L.		September 20, 2009
Brewster, Ginny		September 17, 2009
Brewster, Ginny		September 17, 2009
Brown, David		September 18, 2009
Brown, R.		September 18, 2009
Burke, Elizabeth		September 18, 2009
Carley, Ron and Fuglister, Jill	Coalition for a Livable Future	October 15, 2009
Carillo, Ken		September 18, 2009
Cavenaugh, Kevin		September 16, 2009
Cohen, Gerald J.	AARP – Oregon State Office	October 15, 2009
Conable, Barbara		September 18, 2009
Cox, Bill		September 18, 2009
Cusack, Tom		
Cushwa, Nancy		September 18, 2009
Davis, Tim		September 17, 2009
Deagle, Susie		September 18, 2009
Dibblee, Martha		September 15, 2009
Digman, Joe		September 18, 2009
Dorner, Catherine		September 18, 2009
Durtschi, Kay	Citizen Member – Metro Technical Advisory Committee	October 15, 2009
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Fain, Lisa		September 18, 2009
Fitzgerald, Marianne	Southwest Neighborhoods, Inc.	October 15, 2009
Franchesi, Cheryl and Terry		October 15, 2009
Frank, Lona Nelsen	ALPACAS of Tualatin Valley LLC	September 16, 2009
Gadea, Francisco		September 18, 2009
Gerth, John		September 18, 2009
Goldfarb, Gabriela		October 8, 2009
Goldsmith, Dell		October 10, 2009
Green, Karla		September 18, 2009
Gregory, Michele	Multnomah County Planning Commissioner	September 16, 2009
Hagen Jr., Jon Edwin		September 18, 2009
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Hanrahan, Steve		September 18, 2009
Harvey, Linda A.		September 18, 2009
Hauk, Marna		September 18, 2009
Helm, Polly		October 15, 2009
Heyne, Klaus		September 18, 2009

City of Hillsboro (Alwin Turiel)	City of Hillsboro	October 8, 2009
Hoem, Shirley		September 15, 2009
Houck, Mike	Urban Greenspaces Institute	October 10, 2009
Hunter, Christopher		September 18, 2009
Jackson, Kelly M.		September 18, 2009
Jacobson, Pat and Jake		September 18, 2009
Johnson, Chuck		September 18, 2009
Johnson, Ellen	Housing Land Advocates	October 15, 2009
Johnson, Michael		September 18, 2009
Jones, D.		September 18, 2009
Kaplan, Seth		September 18, 2009
Karlock, Jim		October 15, 2009
Kemper, Heather	Legal Aid Services of Oregon	October 15, 2009
Kraft, Tom		September 15, 2009
Kulley, Marlowe		September 17, 2009
City of Lake Oswego (Mayor Jack Hoffman)	City of Lake Oswego	October 13, 2009
LeFeber, Bob	Commercial Realty Advisors	October 14, 2009
Lanker, Stefan		September 18, 2009
Larco, Dorothy		September 18, 2009
Laws, Kathleen		September 18, 2009
Leinova, Avery S.		September 18, 2009
Lindsey, Carolyn		September 18, 2009
Lord, Pamela J.		September 18, 2009
Malmquist, Bret		September 18, 2009
Meehan, Hilary		September 18, 2009
Merchant, Bonnie		September 18, 2009
Micheletti, Dustin		September 18, 2009
McClanahan, Gary		September 18, 2009
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McDonough, Sandra	Portland Business Alliance	October 15, 2009
McGrath, Teresa		September 20, 2009
McKinney, Trenton		September 18, 2009
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Nielsen, Charles E.		October 10, 2009
Nielsen, David	Home Builders Association of Metropolitan Portland	October 13, 2009
Newman II, Will		September 17, 2009
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Platt, Thomas		September 18, 2009
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City of Portland (Mayor Sam Adams)	City of Portland	October 15, 2009
Pratt, Elizabeth	The League of Women Voters of Portland	October 15, 2009
Price, William R.		September 18, 2009
Qamar, Lawrence		October 15, 2009
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Roberts, Jeff		September 21, 2009

Rojas, Carlos		September 16, 2009
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Ross, Kelly	Western Advocates	October 15, 2009
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Sweeney, J. J.		September 18, 2009
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Thrower, Ashley		September 18, 2009
Toll, Peter		September 16, 2009
City of Tualatin (Mayor Lou Ogden)	City of Tualatin	October 14, 2009
Waksman, Steve and Deborah		September 18, 2009
Wallauer, Martha and Robert		September 17, 2009
Washington County (Greg Miller)	Washington County	October 15, 2009
Waterston, Debra		September 18, 2009
Wilkerson, Carol Metzger		September 18, 2009
City of Wilsonville (Stephan Lashbrook)	City of Wilsonville	October 15, 2009
Wixson, Gene		September 18, 2009
Woodruff, Claire		September 18, 2009
Woods, Deanna G.		September 18, 2009
Young, Laura		October 12, 2009
Cities of Banks, Cornelius, Forest Grove, Hillsboro and North Plains (Mayors Kinsky, Bash, Kidd, Willey and Hatcher	Multiple Cities	October 9, 2009

Employment UGR—technical comments		
Comment attribution	**Comment summary**	**Metro staff response**
City of Cornelius City of Forest Grove City of North Plains City of Hillsboro City of Banks Johnson-Reid	Metro's cluster forecast is incorrect because it does not include NAICS code 334, which is the code under which solar panel manufacturing would fall.	All NAICS codes, including 334, are included in the Metro forecast. NAICS code 334 is also included in the cluster forecast. The UGR's narrative erroneously states that SolarWorld is in NAICS code 2211, but this text error has no effect on the forecast or the assessment of land need. See Appendix 3 to the UGR for a list of the NAICS codes that are included in each cluster. See Appendix 12 to the UGR for the complete forecast, which includes all sectors.
City of Cornelius City of Forest Grove City of North Plains City of Hillsboro City of Banks Johnson-Reid	The UGR should forecast future land needs for specific industry clusters, including high tech, solar manufacturing, and bio-pharma.	Statewide Planning Goal 14 (Urbanization) requires that Metro ensure capacity for housing and employment. It does not require Metro to supply land with the specific characteristics that may be desired by individual industries or industry clusters. Long-term predictions about the site needs of specific (and emerging) industries are likely to be incorrect. When making specific decisions to expand the UGB, the needs of industry clusters may be considered.
City of Cornelius, City of Forest Grove, City of North Plains, City of Hillsboro, City of Banks, Johnson-Reid, Port of Portland, Portland Business Alliance, Commercial Association of Realtors	The UGR does not adequately incorporate the analysis found in the Hillsboro Draft Economic Opportunities Analysis.	Statewide Planning Goal 9 (Economic Development) requires cities and counties to provide for the specific types of employment needs and opportunities they identify in their Economic Opportunity Analyses (EOA). Goal 9 does not, however, apply to Metro. Oregon Administrative Rule 660-024-0040(5) states that "except for a metropolitan service district [Metro]... the determination of 20-year employment land need for an urban area must comply with applicable requirements of Goal 9..." EOAs often identify specific employment sectors that are the focus of a city's economic development strategy. In EOAs, those priority clusters are sometimes assumed to see additional growth beyond what is indicated in a trend forecast. The UGR, on the other hand, provides an assessment of all employment sectors without identifying priority sectors. Though it may be beneficial to have a regional economic development strategy, Metro has not been charged with the task of developing that strategy and does not presume to have that role. Metro does, however, have a role in coordinating the population and employment forecasts for the region. Adding up the results of individual city forecasts would likely overstate regional growth in some sectors and understate it in others. Metro has some methodological concerns with the Hillsboro Draft Economic Opportunity Analysis (EOA). Primary concerns include: 1) The Hillsboro EOA's forecast treats Metro's older, pre-recession, medium forecast as a low (baseline) forecast. The Hillsboro EOA forecast explicitly rejects

Employment UGR—technical comments		
Comment attribution	**Comment summary**	**Metro staff response**
		the long-term impacts of the current recession on manufacturing sectors. 2) The Hillsboro forecast for NAICS code 334 (computer and electronic product manufacturing), and photovoltaic panel manufacturing, in particular, is so optimistic that it overwhelms the entire seven-county forecast for this sector. Population growth rates as well as the growth rates for other employment sectors have to have some logical consistency and also fit within the context of a national forecast. If the Hillsboro forecast for this sector were correct, it would have serious implications for overall regional growth as well. Factoring in the multiplier impact of the Hillsboro photovoltaic forecast would essentially explode the forecast for manufacturing, which in turn would stimulate growth in nonmanufacturing sectors such as services, retail, finance and other industries. Assuming the multipliers play out as usual, the employment forecast would likely increase from 1.5 percent annual growth (the current Metro forecast) and exceed two percent annual growth. Already, the Metro regional forecast is projected to grow faster than the U.S. average by 75 percent. At above two percent, our region's projected growth would exceed twice the normal rate. In addition, population growth would have to follow suit. Over a 20 year period, greater than two percent population and total employment growth is not realistic or sustainable. It is unlikely that a mature region like Portland metro can grow so much faster over the long-term than the regional, state and national trends depicted by other forecasters. The Hillsboro forecast for photovoltaic panel manufacturing employment is based on the Oregon Department of Energy goal for megawatts of electricity generated from solar panels. This methodology is predicated on the assumption that a significant share of the world's solar panels will be manufactured in Hillsboro. Solar panel manufacturing has entered a phase of standardization and overseas production, where companies will be competing based on low prices and low wages. Ramped up solar panel production in China and a softening of demand in Europe have resulted in a 50 percent drop in solar panel prices over the last year. This same trend has occurred in many other manufacturing sectors and is not expected to reverse itself. The greater degree of specificity found in the Hillsboro forecast, with its effort to make predictions about particular technologies (e.g. solar panels) makes it more

Employment UGR—technical comments		
Comment attribution	**Comment summary**	**Metro staff response**
		likely to be incorrect. When planning for the longer term, policy decisions will be much better served by forecasts that portray generalized aggregates that are tied to national data that have been exposed to continuous scrutiny. The Hillsboro EOA does not provide documentation of the methodologies used to forecast additional growth in the bio-tech and high tech clusters.
City of Cornelius City of Forest Grove City of North Plains City of Hillsboro City of Banks Johnson-Reid	Metro's forecast understates growth in solar manufacturing, bio-pharma, and high tech manufacturing, sectors in which our region has historic strengths.	The Metro forecast is based on data from IHS Global Insight, an internationally respected economic forecasting firm whose data is used by numerous public and private institutions. That data is subsequently adjusted to reflect our region's historic trends and economic strengths. Metro's forecast, in fact, indicates that the region will have a faster rate of growth in manufacturing and, more specifically, electronics manufacturing than the United States as a whole. But, as with the rest of the U.S., it is anticipated that manufacturing will represent a smaller share of total employment in the future. The recent recession is anticipated to have long-lasting effects, particularly on industrial sectors. Metro's forecast model has been peer-reviewed as has the recent Metro forecast (which includes the employment forecast). The peer review panel expressed confidence in the forecast's methodologies and results.
Westside Economic Alliance	Metro's forecast calls for a substantial decrease in manufacturing employment. "The Westside Economic Alliance rejects the premises used to explain these forecasts and challenges Metro to reconsider the implications of this vision."	The Metro seven-county forecast indicates growth in manufacturing employment at both the high and low ends of the forecast range. The forecast indicates that manufacturing will represent a smaller share of future employment. The Metro forecast also indicates that at the high end of the employment range forecast, manufacturing may bounce back faster than the rest of the economy.
Westside Economic Alliance	Metro's forecast is incorrect because it assumes that phenomena such as global warming, rising fuel prices, and a degraded environment will stifle population growth in the seven-county region.	Metro's seven-county forecast makes no assumptions about possible catastrophic events. Forecasted population growth rates are the product of large-scale demographic trends. The UGR suggests that rising fuel prices and climate change are compelling reasons to consider growth management policies carefully. The use of a range forecast allows for that policy discussion.
Urban Greenspaces Institute	If Climate Change increases the number of floods and wildland fires, temperatures elsewhere in the U. S., especially in the arid regions of the Southwest, is it possible Climate Change "refugees" might increase population projects even more than your current	Metro staff agrees that there is evidence to suggest that climate change may cause inter-regional migrations, but it is not clear what the degree and direction of these migrations may be. Consequently, Metro's seven-county forecast makes no assumptions about possible catastrophic events. The UGR suggests that rising fuel prices and climate change are compelling reasons to consider growth

Employment UGR—technical comments		
Comment attribution	**Comment summary**	**Metro staff response**
	modeling suggests?	management policies carefully. The use of a range forecast allows for that policy discussion.
Westside Economic Alliance	The seven-county forecast is wrong because growth rates are lower than at any time since Oregon was granted statehood.	Growth rates are forecasted to decline, but this is because of the mathematics of having an ever larger base (existing) population. When expressed in absolute numbers, the forecast is consistent with previous forecasts, which have proven accurate (see Table 1, attached to the end of this document, for a comparison of an older Metro forecast with actual growth).
City of Cornelius City of Forest Grove City of North Plains City of Hillsboro City of Banks Johnson-Reid	The presence of an existing solar manufacturing cluster in Hillsboro will result in western Washington County capturing the bulk of future high tech and solar manufacturing jobs.	Solar manufacturing firms can be found throughout Oregon, the United States, and the world. Please see Table 2, attached to the end of this document, for a summary of Oregon's recent solar recruits' location choices. Two out of the nine recruits are in Hillsboro (one of those two, SpectraWatt, has since relocated to New York because of public subsidies), while the remaining firms are dispersed throughout the state.
Port of Portland	A job forecast is inadequate for assessing land needs associated with commodity flows (freight, logistics).	This is a comment that Metro received on the preliminary UGR as well. Metro would welcome specific suggestions on how to perform this portion of the assessment differently, but has not received any to date. Staff proposes that the final UGR should reflect the Metro Policy Advisory Committee's recommendation to revise the identified demand for large lot capacity from 200-800 acres to 200-1,500 acres. This revision would acknowledge the potential shortcomings of using an employment forecast as the sole basis for assessing large lot demand. The UGR's analysis considers land extensive uses with fewer employees. The overall demand model assumptions on employees per square foot by building type have also been revised based on the feedback received on the preliminary analysis. These adjustments should address some concerns about land demand for freight uses.
Port of Portland	Freight facility expansion would likely consume other industrial land, which, in turn, would trigger demand for additional industrial land elsewhere in the region.	Freight-related jobs are included in the regional forecast and demand for capacity that is generated by these jobs is included in the UGR's assessment. Suggestions that a job forecast is not an adequate means of estimating land demand for freight uses have not been accompanied by specific suggestions for an alternative methodology.

Employment UGR—technical comments		
Comment attribution	**Comment summary**	**Metro staff response**
		Staff proposes that the final UGR should reflect the Metro Policy Advisory Committee's recommendation to revise the identified demand for large lot capacity from 200-800 acres to 200-1,500 acres. This revision would acknowledge the potential shortcomings of using an employment forecast as the sole basis for assessing large lot demand.
Port of Portland	Modify the region's assumed job capture rate to make it more aggressive.	The capture rates (industrial and non-industrial) used by Metro in the UGR are an output of scenario modeling. The policy and investment inputs into that modeling are intended to represent a continuation of current policies and investment trends. If the region is to achieve a higher job capture rate, it would likely need to implement new policies and investments. Expressing a different point of view, we have received comments from Clark County and Vancouver that the assumed capture rate is too high.
City of Cornelius City of Forest Grove City of North Plains City of Hillsboro City of Banks Johnson-Reid	Large, vacant lots are needed in order to attract solar manufacturers to the Portland metropolitan region.	The location choices of several of Oregon's recent solar manufacturing recruits indicate that large, vacant lots are not needed by most firms. Please see Table 2, attached to the end of this document, for a summary of Oregon's recent solar recruits' location choices. Of the nine recent recruits listed, seven are on properties smaller than 25 acres (three of those are on less than 10 acres). Two-thirds of these recent recruits, including SolarWorld, North America's largest solar manufacturer, have located in existing buildings. One firm, SpectraWatt, has left Oregon for New York despite having a vacant 20 acre site (cited reason is because the public subsidies offered were more enticing). Staff proposes that the final UGR should reflect the Metro Policy Advisory Committee's recommendation to revise the identified demand for large lot capacity from 200-800 acres to 200-1,500 acres. This revision would acknowledge the potential shortcomings of using an employment forecast as the sole basis for assessing large lot demand. The Metro staff recommendation is that the region should find ways to use our existing inventory of land more efficiently.
Port of Portland, Commercial Real Estate Economic Coalition	Land must be in the right amount and in the right location for the needed purpose.	Statewide Planning Goal 14 (Urbanization) requires that Metro ensure capacity for housing and employment. It does not require Metro to supply land with the specific characteristics that may be desired by individual industries or industry clusters.

Employment UGR—technical comments		
Comment attribution	**Comment summary**	**Metro staff response**
		The purpose of the UGR is to identify any gap in capacity, not to assess how and where to address the gap. Local and regional investments can support efficient utilization of land inside the UGB.
Port of Portland	Much of the region's inventory of industrial land is not ready for development due to substantial constraints including brownfield status, location or lack of infrastructure, and regulatory overlays.	These constraints are taken into account in the UGR. Brownfield sites are assumed to only be available for development in the longer term. Only half of the capacity in recent UGB expansion areas is assumed to be available in the 20-year time frame because of infrastructure shortcomings. Portions of tax lots with environmental constraints are not included in the buildable land inventory. See Tables 27 and 28 on pages 72 and 73 of the UGR for additional information.
Commercial Association of Realtors	The UGR should not assume that public financing will be in place for unknown targeted public investments.	The UGR only assumes those policies and investment trends that currently exist.
Port of Portland	The buildable land inventory does not account for upland habitat protections that reduce capacity for development.	Title 13 (Nature in Neighborhoods) upland habitat protections only apply to future UGB expansion areas. The UGR assesses the current UGB's capacity.
Urban Greenspaces Institute	How many acres of the region's supply of buildable land for employment are urban forest canopy, headwaters areas, and other natural resource lands?	The UGR's buildable land inventory takes into account existing environmental regulations, discounting the inventory where appropriate.
Port of Portland	The lack of development in new urban areas (areas brought into the UGB since 1997) is not necessarily because of a lack of infrastructure or governance, but because the land is not suitable for industrial development.	Past UGB expansions have been made in the types of locations that are dictated by current State law. Over time, these areas are intended to develop into complete communities, including employment opportunities. It is hoped that the designation of urban reserves will identify sites that are well-suited for development. Metro staff believes that infrastructure and governance must be addressed to make any future UGB expansion areas developable.
City of Tualatin, Commercial Association of Realtors	The UGR should not assume that industrial uses will locate in multi-story buildings.	The UGR's analysis does not assume that industrial uses will locate in multi-story buildings.
Commercial Association of Realtors	The UGR should not assume "ever-increasing" floor-area ratios for all building types with no regard for market feasibility.	Metro staff concurs and asserts that the UGR's assumptions regarding floor-area ratios (FAR) are conservative. No change in FAR is assumed in the short-term and very modest increases (10%) are assumed in the long-term. Assumptions about increases in FARs for industrial uses are particularly modest. The FARs that are assumed in the UGR account for the thresholds at which structured parking becomes necessary.
Commercial Association	The refill rates assumed in the UGR do not seem	The refill rates assumed in the UGR are the product of modeling that is informed

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Comment attribution	**Comment summary**	**Metro staff response**
of Realtors	reasonable.	by historic data and professional expertise.

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City of Cornelius, City of Forest Grove, City of North Plains, City of Hillsboro, City of Banks, Johnson-Reid, Port of Portland, Portland Business Alliance, Commercial Real Estate Economic Coalition	Undersupplying land for priority industry clusters would be harmful to the economy.	Metro performs the UGR analysis every five years to ensure a 20-year supply of capacity for jobs. The effect of this is that, in the short-term (five years), there will be four times the needed capacity for jobs. It is extremely unlikely that amount will be insufficient to accommodate growth before the next UGR analysis in five years. This five-year cycle creates a built-in cushion to allow for choices among sites. Experience has shown that the majority of recent solar manufacturing recruits have located in existing buildings and on smaller sites. The final UGR will reflect the Metro Policy Advisory Committee's recommendation to revise the identified demand for large lot capacity from 200-800 acres to 200-1,500 acres. This revision acknowledges potential shortcomings of using an employment forecast as the sole basis for assessing large lot demand.
Port of Portland	Regional choices related to land supply and transportation will determine the economic future of the region.	Many factors at the global, national, state, regional and local levels have effects on the region's economy. The UGR is not intended to serve as an economic development strategy; it informs land supply decisions that will be made in 2010.
Port of Portland	One of the "six desired outcomes" is economic competitiveness and prosperity—why is there no strategy presented to achieve this outcome or an assessment of how other desired outcomes may conflict with this outcome?	The purpose of the UGR is to identify whether a capacity gap exists and, if so, to what degree. This UGR intentionally presented a variety of policy options to consider for addressing land demand and achieving the region's desired outcomes, but it is not the purpose of the UGR to determine the specifics of those policy options. The viability of those policy options does not have an impact on the capacity analysis. Those policy options can be more thoroughly considered in 2010.
Port of Portland	The UGR and transportation investment strategy need to link up with industry cluster needs. Use the Portland Regional Partners for Business list of clusters instead of the Portland Development Commission's (PDC) list.	Though it may be beneficial to have a regional economic development strategy, Metro has not been charged with the task of developing that strategy and does not presume to have that role. Because there is no agreed upon regional economic development strategy, there is no "right" cluster list to use. The Draft UGR used the PDC list as a way of presenting information in a format that addresses the economic development priorities of many cities in the region. The full forecast, which includes all employment sectors, is the basis for the capacity assessment. The cluster forecast does not figure into the capacity assessment. New cluster definitions will not change the capacity assessment.
City of Portland	The vast majority of our jobs are created through the growth of small businesses. We need to nurture and	Metro's analysis indicates that most employment will occur in smaller firms. Attracting larger firms is also of importance to the region's economy.

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Comment attribution	**Comment summary**	**Metro staff response**
	retain those companies while attracting others.	
Port of Portland	Two key elements of the strategy for providing large lot supply (brownfield cleanup and fast process for UGB expansions) will be undefined at the close of public comment on October 15.	The purpose of the UGR is to identify whether a capacity gap exists and, if so, to what degree. This UGR intentionally presented a variety of policy options to consider for addressing land demand, but it is not the purpose of the UGR to determine the specifics of those policy options. The viability of those policy options does not have an impact on the capacity analysis. Those policy options can be more thoroughly considered in late 2009 and in 2010.
Port of Portland, Commercial Real Estate Economic Coalition	Brownfield cleanup should be a priority	Metro concurs that brownfield cleanup should be a regional priority and welcomes partnerships to institute more brownfield cleanup programs. A MPAC subcommittee will be looking at brownfield cleanup as one option to make more of the region's existing industrial capacity available.
City of Portland	The City of Portland is committed to cleaning up, over time, the City's brownfield sites.	The City has a strong brownfields cleanup program and Metro efforts, focused elsewhere in the region, serve as a complement. Metro staff is open to new opportunities to partner with the City of Portland in brownfield cleanup.
City of Portland	The City of Portland is committed to consolidating and assembling adjoining parcels to provide larger sites. Opening up huge tracts of otherwise excellent agricultural land for industry, when we have land with services already in the UGB, doesn't make sense from a regional investment point of view.	Metro staff is open to opportunities to partner with the City of Portland in employment land assembly.
Port of Portland	A regional infrastructure fund is needed to make industrial sites shovel ready.	Infrastructure funding shortfalls have made it difficult to develop the region's existing supply of land for industrial uses. Metro welcomes a discussion of developing a regional investment strategy, including discussions about possible funding sources.
Portland Business Alliance	There is no reason to expect that funding will be more readily available for refill development than for expansion and to assume otherwise overstates the region's ability to accommodate growth in the existing land supply.	The refill rates that are assumed in the UGR are based on a continuation of existing public investment trends.
Commercial Association of Realtors	The Association appreciates the UGR's improved analytical approach and sensitivity to market realities, but does not believe its estimates or projections. The UGR should make conservative, market-based assumptions.	Metro staff appreciates the input given by the Commercial Association of Realtors that informed some of the UGR's technical assumptions. Metro staff believes that its approach to this analysis is market reality-based.

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Commercial Association of Realtors	The UGR should not assume that the market will respond to our policies and investments.	As pointed out by the Commercial Association of Realtors, this UGR has an improved analytical approach that acknowledges market dynamics. The UGR's market assumptions are informed by modeling, historic evidence and the professional expertise of Metro staff, consultants, and private sector representatives.
Commercial Association of Realtors	The UGR should not assume political support for some set of future policy actions	The UGR only assumes those policies and investment trends that currently exist.
Port of Portland Portland Business Alliance	The "fast track" UGB expansion process that has been proposed by some will not be fast enough once planning, annexation, zoning, and infrastructure construction are considered.	An MPAC subcommittee will take up the issue of how to ensure that large lots are available and protected for industrial uses. The fast-track process is one proposal. Metro welcome other proposals.
Johnson-Reid	The draft UGR does not consider lands north of the existing Washington County UGB as candidate expansion areas for employment growth, modeling, and employment land capacity study.	The UGR's purpose is to identify any gap in the capacity of the current urban growth boundary (UGB) to accommodate growth. The UGR is not intended to examine how or where to fill a capacity gap outside of the current UGB. Scenario modeling was used to inform the UGR. Those scenarios assume a continuation of current policies and investment trends and, as such, assume that future UGB expansions will follow the existing hierarchy of lands as defined by State law. When urban and rural reserve designations are made, scenario assumptions about future UGB expansions will be adjusted.
Port of Portland	Habitat protection programs at the regional and local levels reduce the efficiency with which land is used inside the UGB.	Habitat protection and provision of parks and open spaces are key components of the 2040 Growth Concept. Balancing these goals with efficient development of land is often challenging and Metro is always looking for new ways of doing so.
Port of Portland	The UGR implies that there has been a problem of industrial land conversion and that there is a need to revise Title 4 of the Urban Growth Management Functional Plan. Title 4 provides adequate protection. If there are conversions from industrial uses, it is an enforcement issue.	Metro staff hopes to compile more information to determine whether industrial land conversion has been occurring and, if so, why. An MPAC subcommittee will take up the issue of how to ensure that large lots are available and protected for industrial uses.
Commercial Association of Realtors, Citizen comments (less than five)	Expand the UGB	The decision about whether or not to expand the UGB will be made by the Metro Council, in consultation with MPAC, in 2010. That decision will be based on the UGR's analysis and any new policies or public investments that are adopted by the end of 2010 that affect the region's capacity.
Citizen comments	Focus growth inside the existing UGB	The decision about whether or not to expand the UGB will be made by the Metro

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Comment attribution	**Comment summary**	**Metro staff response**
(approximately 100)		Council, in consultation with MPAC, in 2010. That decision will be based on the UGR's analysis and any new policies or public investments that are adopted by the end of 2010 that affect the region's capacity.
Port of Portland, Portland Business Alliance, Commercial Association of Realtors	30 days is not an adequate amount of time for public review and comment on the UGR	Metro must meet a State-mandated deadline (end of 2009) for the Metro Council's acceptance of the UGR. The public will be able to comment throughout most of 2010 on the various policy choices that will be considered for closing any capacity gap identified in the UGR. Metro staff appreciates the time commitment that various advisory committees have made in providing review of the UGR. Metro has been working with advisory committees to refine the approach and contents of the UGR since winter of 2008. A preliminary UGR was released in May 2009 in order to proactively solicit and respond to technical comments. To the extent possible, comments received on the preliminary UGR have been addressed in the draft UGR. Please see Appendix 1 to the Draft UGR for a summary of comments received and draft Metro staff responses.

Residential UGR—technical comments		
Comment attribution	**Comment summary**	**Metro staff response**
City of Portland	Future trends such as higher energy costs, carbon taxes or regulations, and changing demographics make Portland well-positioned to provide future residents with the kinds of housing choices that they will desire. Portland has the ability to accommodate 140,000 more households without any changes to zoning.	The UGR's analysis indicates that the City of Portland and the region have ample zoned capacity to accommodate the next 20 years of residential growth. The UGR shows a need to attract the residential market to that zoned capacity. Policies and investments that encourage redevelopment and infill in centers and corridors should remain the region's focus. The trends cited by the City may attract more of the forecasted households to existing urban areas than contemplated by the UGR.
Home Builders Association of Metropolitan Portland	How does Metro plan on achieving refill rates of 50 percent?	The draft UGR assumes a 33 percent refill rate, which is in keeping with historic rates and, according to Metro's market-based economic model, is likely to be achieved under current zoning.
City of Tualatin Portland Business Alliance	A 33 percent refill rate may not be a reasonable expectation.	The draft UGR assumes a 33 percent refill rate, which is in keeping with historic rates and, according to Metro's market-based economic model, is likely to be achieved under current zoning.
City of Tualatin	Where is the analysis that indicates where refill will be occurring?	Refill rates are expected to vary from city to city, with generally higher rates in Portland than in outlying communities. Please see Maps 1-4, attached to the end of this summary, which show historic and forecasted refill rates throughout the region for single-family and multi-family residential development.
Home Builders Association of Metropolitan Portland	Lands that are likely spots ("low-hanging fruit") for refill have already seen refill occur.	Redevelopment and infill (redevelopment in particular) are ongoing market phenomena. There are many underutilized sites throughout the region that remain ripe for redevelopment and new opportunities will continue to emerge over time.
Home Builders Association of Metropolitan Portland	How does Metro anticipate having 71,000 housing units subsidized to the tune of up to $50,000 per home and what will the impact be on schools and other public services if urban renewal districts are used to created these subsidies and pull money away from other public services?	The Home Builders Association is referring to scenario assumptions in its comment. For the purpose of scenario modeling, Metro assumed a continuation of existing investment trends. The residential incentive assumptions that Metro made were reviewed by cities, counties, the Portland Development Commission, and the Metro Technical Advisory Committee. There are no assumptions made about new levels of investment. Better performance may be achieved with additional investments, investments in different locations, or simply with additional time. It is not the role of the UGR to determine the possible impact on schools and other public services if cities continue their urban renewal programs.
Home Builders Association of Metropolitan Portland,	The assumption about future park needs that is made in the UGR capacity calculation is incorrect. Cities and park providers have more financial resources today than they	There is no specific guidance in state planning law, from ORS 197.296 or Goal 8 on Recreational Needs, on methods to determine park needs. There is no perfect way of estimating future park needs since there is no regional level of service standard

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Western Advocates, Inc.	did in 2002 (year of previous UGR) to purchase park land.	for parks. To maintain an approach that is consistent with the approach used in 2002, staff proposes keeping the implicit parks level of service found in the 2002 UGR: In 2002 UGR: Forecasted 220,700 dwelling unit growth in 20 year period System-development-charge-based park deduction = 1,100 acres Implied level of service = 1,100 park acres for 220,700 new dwelling units Assuming same implied level of service as in 2002, then in 2009 UGR: Forecasted 262,400 dwelling unit growth in 20 years (baseline assumption) 1,100 /220,700 * 262,400 = **1,300 acres** of new park deduction The acres of parks and open space cited in the Regional Infrastructure Analysis include natural areas and other non-active use spaces. The UGR's parks calculation is only intended to estimate the land demand for active-use parks (i.e. not natural areas) since these are lands that could otherwise be buildable for residential purposes. The buildable land inventory takes into account vacant lands that are not buildable because of regulatory protections (Titles 3 and 13 of the Urban Growth Management Functional Plan).
Legal Aid Services of Oregon (Hillsboro Regional Office), Tom Cusack	Revise the table appearing on page 21 of Appendix 8 (needed housing data tables) to more accurately show the need for subsidies at higher rent levels than the less-than-$400 rent level currently shown.	Metro staff appreciates the careful review of the data and agrees that additional rent and ownership price categories should be denoted as "partially assisted." All categories of rental housing below $1,100 in rent and owner-occupied housing that is $200,000 or less in value may need government assistance. Corrections to tables 303.1a and 303.1b in Appendix 8 will be made in the final UGR.
Tom Cusack	Metro should review existing reports, Census data, and the American Community Survey data to determine the relative rate of Portland Metro housing mismatch by income and rent levels and adjust their demand/supply projections accordingly.	The UGR's method and the method proposed by Mr. Cusack are both valid approaches, but are suitable for different purposes. The method proposed by Mr. Cusack would provide an assessment of current conditions, but would not depict the housing production that is likely to occur in the next 20 years as required for the UGR. To get a sense of the mismatch referenced by Mr. Cusack, the housing needs analysis scenarios forecast future housing production and the number of future cost-burdened households (renters paying more than 50 percent of their income

Residential UGR—technical comments		
Comment attribution	**Comment summary**	**Metro staff response**
		for housing and transportation). The UGR's approach acknowledges the fact that higher income households cannot be prevented from occupying market rate housing that is cheaper than what they could potentially afford.
Legal Aide Services of Oregon (Hillsboro Regional Office)	The report fails to mention and account for the impact of units otherwise affordable to lower income households being occupied by higher income households.	As pointed out in the comment, the analysis doesn't indicate what a household should pay (given their income), just what they do pay. This approach acknowledges that, rather than being static, housing prices are a product of market demand. This analytical approach is true to the dynamic faced by low income households in today's market. Without a housing quota system that sets aside housing for different income levels, this is also how future housing markets are expected to function. To assess affordability, the analysis provides information about the share of income spent on housing and transportation. For some households, this share is relatively small and for others it is substantial. It remains for policy discussion what can be done to improve these outcomes.
Legal Aid Services of Oregon (Hillsboro Regional Office), Tom Cusack	Add a narrative discussion and table that shows the relevant need for government housing including housing that receives public assistance.	Metro staff will add narrative to better describe affordable housing needs. The analysis indicates how many households (by rent or home price) may need government assistance. However, the question of how many households should receive government assistance is a policy matter that is open to interpretation. The UGR provides several analyses that can inform that discussion: Tables 303.1a and 303.1b, found in Appendix 8, provide the number of new, renter-occupied and owner-occupied dwelling units by rent or value range. In most rent ranges, there would appear to be a need for some amount of government assistance. This determination would also depend on wage levels. Tables 303.2a and 3032.b, found in Appendix 8, provide the number of renter-occupied dwelling units where the occupant is spending more than 50 percent of their income on transportation and housing. The UGR deems these households to be cost-burdened. The UGR further asserts that costs to these households may be reduced through a number of mechanisms including, but not limited to, subsidies. Other mechanisms include transit investments and changes to local zoning codes to allow a greater diversity of housing types and sizes.

Residential UGR—technical comments		
Comment attribution	**Comment summary**	**Metro staff response**
Legal Aid Services of Oregon (Hillsboro Regional Office)	Households with children, not seniors, will represent the majority of low income renters.	In trying to make the report more readable, Appendix 7 blends owners and renters. As a consequence, the low income renters with children household type is perhaps not as visible in the report as it could be. Household type two for renters has the same low income as household type one but is younger and has a larger household with a much greater chance of children being present. This household type has a higher propensity to consume renter single family homes and to travel much further than renter household type one. As noted in the comment, they consume a larger house or apartment than do seniors. As a consequence their cost burden is substantially higher (15 – 30%) than household type one.

Residential UGR—policy comments		
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City of Lake Oswego	The City supports the UGR's analysis and is committed to helping expand capacity in the Foothills area of Lake Oswego to create a dense, new transit-oriented neighborhood.	Metro looks forward to working with Lake Oswego and other cities to identify how to regional and local actions can be coordinated to achieve local aspirations that are supportive of the 2040 Growth Concept.
Home Builders Association of Metropolitan Portland	The public will not accept higher densities.	The UGR analysis does not assume any change to current zoning, so the UGR does not assume higher zoned densities in existing neighborhoods. The 2040 Growth Concept calls for focusing growth in centers and corridors as directed by the region's citizens.
City of Wilsonville Coalition for a Livable Future	Infill and redevelopment in centers and corridors are generally preferable and more efficient that outward expansion. Infill and redevelopment protect natural resources. There is no money for infrastructure in UGB expansion areas. Infill and redevelopment can help to fund the maintenance of existing infrastructure. Infill and redevelopment will be necessary to reduce carbon emissions.	Infill and redevelopment are key market responses that the 2040 Growth Concept calls for in centers and corridors.
League of Women Voters of Portland	Compact urban form and the integration of land use and transportation will be essential for addressing climate change and providing equity of opportunity. Areas around transit centers and light rail stations, such as Lents and Gateway offer great potential and deserve attention in the investment strategy.	Metro staff concurs.
Home Builders Association of Metropolitan Portland	Policies that push more households to live outside the Metro UGB do not mesh with Metro's goals for sustainability.	Metro staff concurs that there are negative implications of having more people choose to live in neighboring cities and commuting back to the Metro region. The draft UGR identifies a residential capacity gap. There are multiple ways to fill that gap that will be discussed in 2010.
Urban Greenspaces Institute	The urban forest canopy, headwaters areas, and upland habitat must receive heightened protection if the region is to pursue infill and redevelopment. Title 13 is insufficient protection.	In determining the region's capacity for growth, the UGR must only assume regulations that are currently in place.
League of Women Voters of Portland	The League supports the diversification of the region's housing stock, by type and price.	Metro staff concurs that additional housing options are needed in the region in order to reduce the number and share of households that are cost-burdened.
Oregon Opportunity Network,	Housing and transportation affordability must be considered in growth management and investment	Metro staff concurs and notes that the UGR analysis finds that many of the region's existing centers and corridors offer the most affordable housing and

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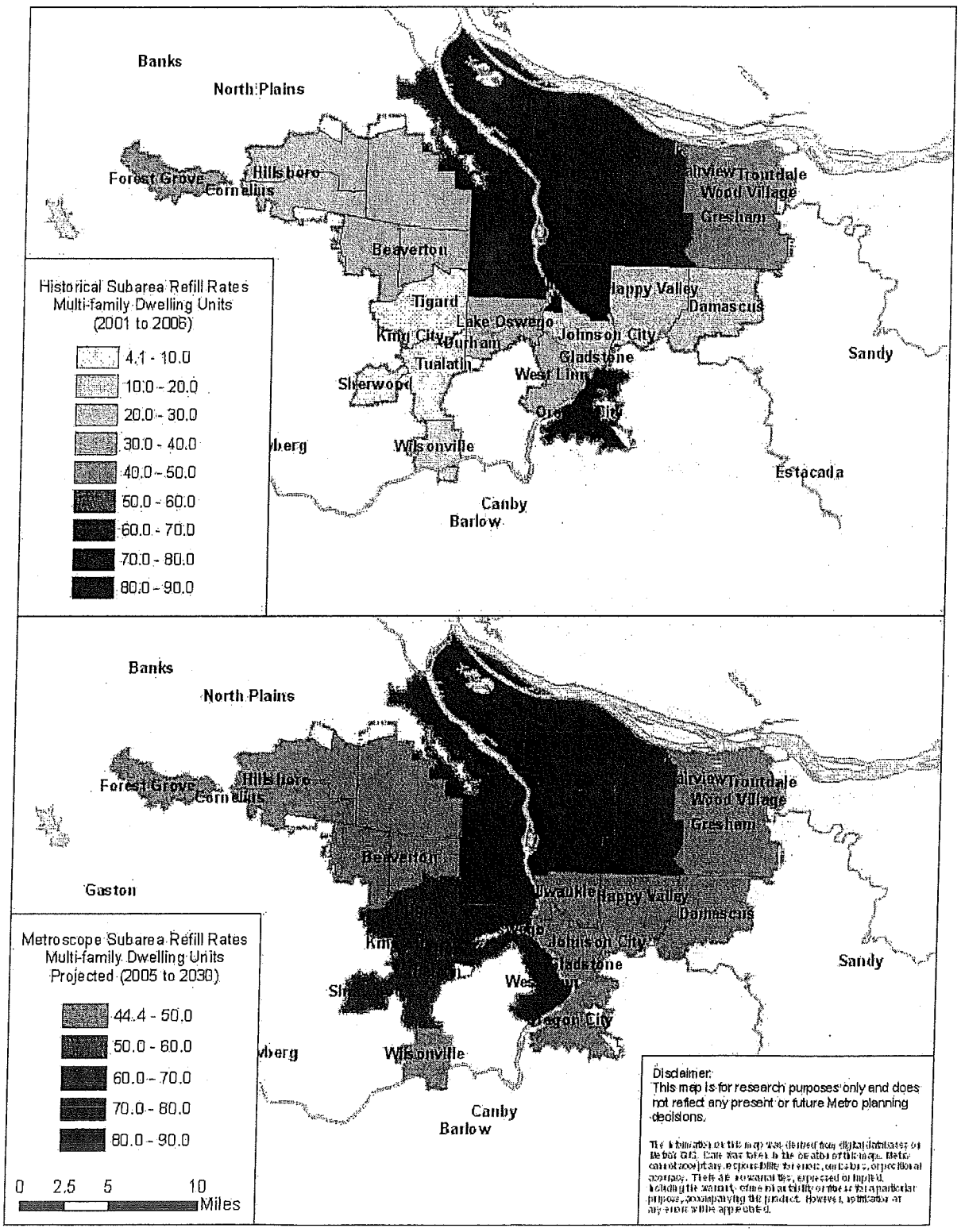
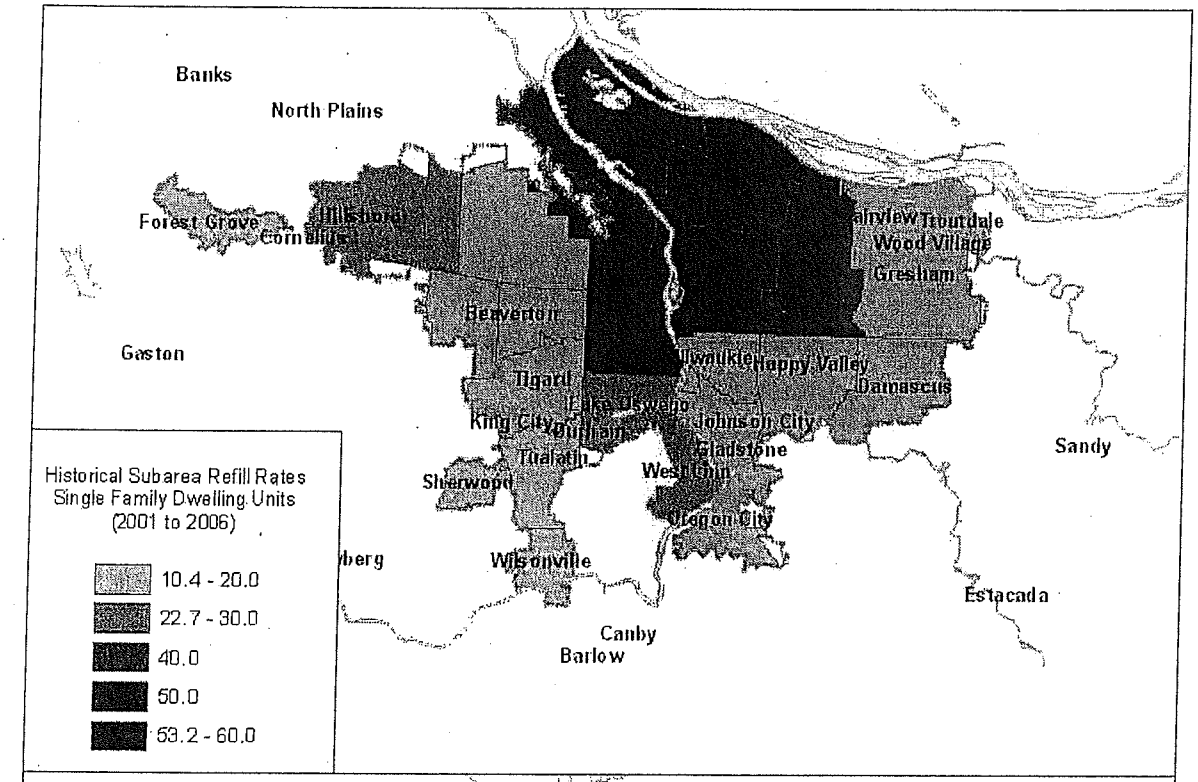
Housing Land Advocates, AARP, Legal Aid Services of Oregon (Hillsboro Regional Office)	decisions. Transit-Oriented Development should be promoted.	transportation options. Yet, an affordability problem is likely to persist and perhaps worsen with a continuation of current policies and investment trends. Growth management policies and transportation investments alone will not, however, solve the affordability problem.
Legal Aid Services of Oregon (Hillsboro Regional Office)	Set concrete, regional goals, objectives and performance measures for housing affordability. Go beyond voluntary measures as they have not resulted in local jurisdictions making affordable housing a priority.	Metro staff appreciates this input. These tasks do not, however, fall under the purview of the UGR.
Home Builders Association of Metropolitan Portland	30 days is not an adequate amount of time for public review and comment on the UGR	The public will be able to comment throughout most of 2010 on the various policy choices that will be considered for closing any capacity gap identified in the UGR. Metro staff appreciates the time commitment that various advisory committees have made in providing review of the UGR. Metro has been working with advisory committees to refine the approach and contents of the UGR since winter of 2009. A preliminary UGR was released in May 2009 in order to proactively solicit and respond to technical comments. To the extent possible, comments received on the preliminary UGR have been addressed in the draft UGR. Please see Appendix 1 to the Draft UGR for a summary of comments received and draft Metro staff responses. Metro continues to try to give review and comment opportunities, but must meet a State-mandated deadline (end of 2009) for the Metro Council's acceptance of the UGR.
Citizen comments (less than five)	Expand the UGB	The decision about whether or not to expand the UGB will be made by the Metro Council, in consultation with MPAC, in 2010. That decision will be based on the UGR's analysis and any new policies or public investments that are adopted by the end of 2010 that affect the region's capacity.
Citizen comments (approximately 100), Southwest Neighborhoods, Inc.	Focus growth inside the existing UGB	The decision about whether or not to expand the UGB will be made by the Metro Council, in consultation with MPAC, in 2010. That decision will be based on the UGR's analysis and any new policies or public investments that are adopted by the end of 2010 that affect the region's capacity.

Maps 1 through 4:
Multi-family residential refill rates (historical and forecasted)



Single-family residential refill rates (historic and forecasted)



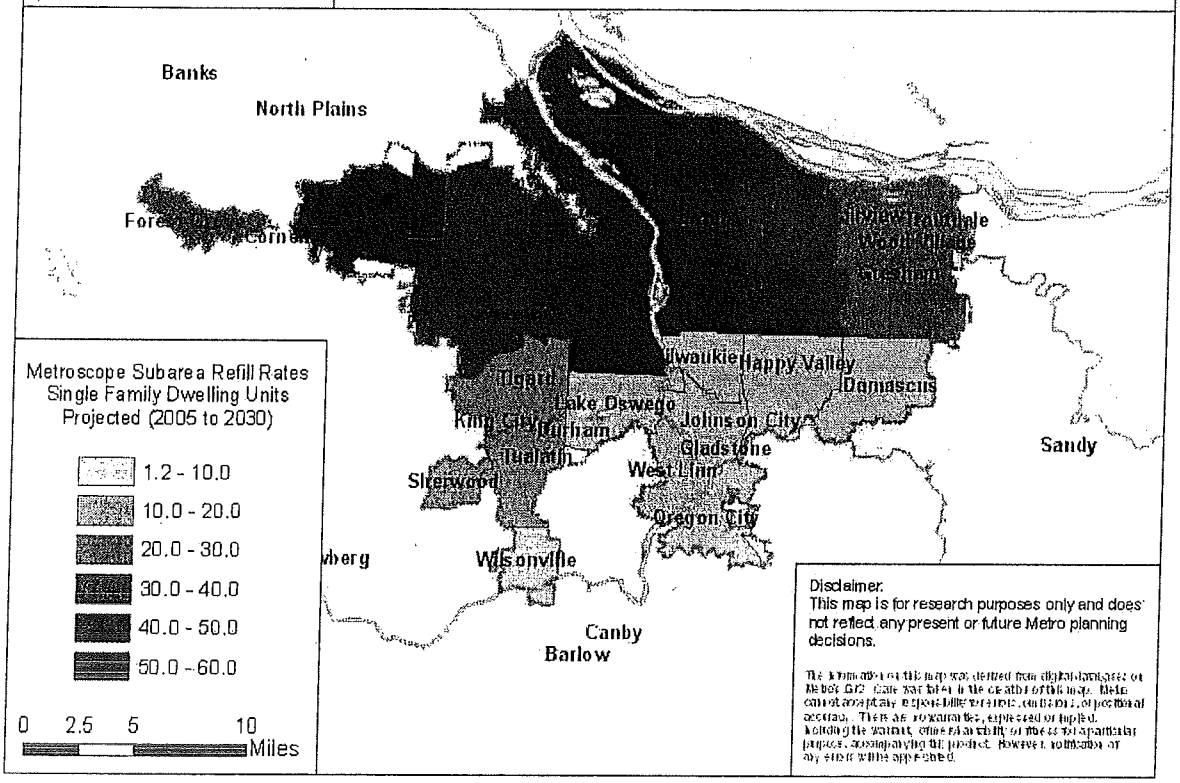


Table 1: Regional Forecast Comparison: History and 2000 UGR Forecast

Population - Portland Region (5 counties)

	Forecast	History	Difference	% Difference	commentary
2000	1,874,450	1,874,450	0	0.0%	forecast base year was 2000 Census
2001	1,902,500	1,922,984	-20,484	-1.1%	recession clouds pessimism in forecast outlook --> underforecast population growth
2002	1,934,340	1,958,976	-24,636	-1.3%	
2003	1,963,690	1,983,367	-19,677	-1.0%	
2004	2,007,710	2,003,354	4,356	0.2%	jobless recovery dampens regional up turn
2005	2,049,190	2,035,565	13,625	0.7%	
2006	2,090,960	2,075,034	15,926	0.8%	
2007	2,132,750	2,115,394	17,356	0.8%	
2008	2,170,100	2,147,260	22,840	1.1%	unforeseen recession taints trend forecast --> over forecast population growth
2009	2,203,000	2,158,115	44,885	2.1%	as steep drop in housing prices and economy depresses in-migration flows

Sources: Metro Regional Forecast: 2000-2030, Sept. 2002; U.S. Census Bureau; PSU; OFM

Employment - Portland Region (5 counties)

	Forecast	History	Difference	% Difference	commentary
2000	958,010	960,910	-2,900	-0.3%	forecast base year was 2000 BLS jobs
2001	954,750	953,750	1,000	0.1%	job growth stalls as recession hits the region
2002	951,300	932,260	19,040	2.0%	recession grips regional economy over a longer and deeper duration
2003	976,480	922,520	53,960	5.8%	--> over forecast growth during this down-cycle
2004	1,009,280	941,930	67,350	7.2%	
2005	1,043,510	971,190	72,320	7.4%	"jobless" recovery begins adding to a jobs recovery as real estate & finance bubble
2006	1,068,030	1,002,487	65,543	6.5%	spurs economic growth across the nation as growth inches towards pre-recession
2007	1,090,440	1,021,862	68,578	6.7%	growth trend
2008	1,120,200	1,022,319	97,881	9.6%	recession hits again --> over forecast jobs as growth again cycles deeper below
2009	1,144,900	N.A.			expected pre-recession employment trends

sources: Metro Regional Forecast: 2000-2030, Sept. 2000; U.S. Bureau of Labor Statistics and Oregon State Employment Division

5 counties = Multnomah, Clackamas, Washington, Yamhill and Clark

Table 2: Site choices of solar manufacturing firms in Oregon

Company	City	Acres	Using existing building?	Notes
PV Powered	Bend	9	Undetermined (appears yes)	Company founded in Bend. 100,000 square feet of building on former Oregon Woodworking site. Manufactures power inverters.
Solaicx	Portland	21	yes	
SolarWorld	Hillsboro	94	yes	Company in final stages of expansion at Hillsboro site. Moved into existing Komatsu silicon wafer facility.
Peak Sun Silicon	Millersburg	8	no	Company has option to purchase an additional 90 acres in Millersburg
XsunX	Wood Village	8.28	yes	Company first chose Oregon as a location and then began a site selection process, looking for existing buildings. The building that XsunX leases previously housed Merix, a high-tech manufacturer.
SpectraWatt	Hillsboro	20	no	Intel spinoff on Intel campus (has 20 acres). Halted construction because of a lack of investment money. Moved to New York because of public incentives.
Sanyo	Salem	20	no	
Oregon Crystal Technologies	Gresham	Less than 1	yes	In Rockwood urban renewal area – deciding between 2 existing buildings
Uni-Chem	Eugene	200	yes	Locating in old Hynix semiconductor factory, which is 1,000,000 square feet. Remainder of property is vacant.

ATTACHMENT 2

Proposed revisions and corrections to September 15, 2009 Draft Urban Growth Report

Additions to text are shown underlined
Deletions are shown ~~strikethrough~~

Employment analysis

Pg. 35:
Delete the final paragraph on the page.

Appendix 3, page 1:
Delete the final paragraph on the page.

Pg. 54, Table 20:
Edit the caption to read as follows:
"Table 20: ~~Net~~ New employment, square feet and acreage demand, net of refill, by market ring under two growth scenarios (2010 to 2030)"

Pg. 55:
Text to be revised as follows:

"Capacity demand varies by market subarea, accounting for market realities in the location decisions made by the region's employers. Based on analysis of the trends just described, net of refill demand, there will be ~~a need~~ demand for between 274 and 4,930 acres of ~~additional~~ industrial capacity and between 1,944 and 3,832 acres of ~~additional~~ non-industrial capacity within the UGB by 2030."

"Figures 14-17 show the 20-year capacity demand (net of refill ~~redevelopment~~ demand) by market subarea. At the low end of the population and employment forecast there is a projected flat demand for industrial jobs, commensurate with national trends showing a decline in manufacturing."

Pgs. 56-57, Figures 14-17:
Edit captions to clarify that demand is net of refill demand

Pg. 58:
Edit the first paragraph on the page as follows:

"New industrial opportunities that require large buildable lots are difficult to forecast accurately. Demand for large industrial lots (greater than 25 gross acres) is usually precipitated by one or more large employers looking for a new location for a production or warehouse facility. This is dependent on the decisions of individual firms and not the trends of an industry as a whole. Consequently, forecasts of large lot demand are inevitably uncertain. With that caveat, this analysis looks at the large lot preferences of large employers and multi-tenant business parks using a forecast-based approach. Given this uncertainty, the Metro Policy Advisory Committee has recommended the consideration of additional large lot demand that supplements the demand identified through the employment forecast-based approach."

Edit the final paragraph on the page as follows:

"Large-lot demand for marine and rail terminal uses is not included in this analysis. These types of facilities may have relatively few employees and little building square footage. Consequently, a job forecast may be an inadequate means of forecasting land demand for these uses. This is another reason why additional large lot demand is considered as a supplement to the demand identified through the employment forecast-based approach." ~~Furthermore~~ However, ~~t~~these uses are extremely location specific and their preferences are not likely to be met ~~accommodated~~ through UGB expansions.

Pg. 83:
Last paragraph on page to be revised as follows:

"Figures 30 and 31 depict the 5- and 20-year acreage ~~building square foot~~ demand range (from the 20-year forecast) for industrial and ~~commercial~~ non-industrial employment along with the previously described capacity range. Large lot demand and capacity are addressed separately. The demand range is illustrated with two lines that show the upper and lower end of the acreage ~~building square foot~~ demand forecast."

Pg. 84:
Insert the following text below figure 30:

"This portion of the analysis assesses the current urban growth boundary's capacity to accommodate industrial job growth on vacant, buildable land or through refill. The assessment of demand for large, vacant lots for industrial uses is handled separately. At both ends of the employment range forecast, there is adequate capacity inside the current urban growth boundary to accommodate the next 20 years of general industrial job growth."

Pg. 85:
Insert the following text below figure 31:

"Depending on the amount of non-industrial employment growth that is realized, there is demand for zero to 1,168 acres of additional capacity."

Pg. 86:
To reflect MPAC's recommendation on large lots for industrial uses, edit the heading at the top of the page to read as follows:

"Comparison of large lot supply with forecast-based assessment of ~~potential~~ large lot demand"

To reflect MPAC's recommendation, edit the second paragraph on the page to read as follows:

"Without any assumption about tax lot assembly, this employment forecast-based analysis identifies surplus capacity of 25-to-50-acre lots, but a potential deficit of tax lots over 50 acres and lots over 100 acres (under both the high and low growth forecasts), as shown in Table 32."

To reflect MPAC's recommendation, add the following section to the end of the page:

"**Policy basis for considering an expanded range of large lot demand**
The forecast-based assessment of large lot demand provides policy makers with an initial range of potential demand to consider. However, as noted, assessing future large lot demand with a job forecast-based approach has limitations. There are legitimate policy reasons to consider a wider range of demand for large lots, using the initial forecast-based approach for a sense of scale. Doing so gives policy makers the flexibility to weigh the risks and benefits of providing too much or too little large lot capacity.

There is inherent uncertainty in forecasting employment in large, traded-sector firms, which may consider several cities, regions, states or countries when choosing a site. These firms can have economic multiplier effects, bringing wealth into the region and leading to spinoff firms and employment. A few cities in the region have identified large lot users (particularly high-tech manufacturers) as a primary focus of their economic development plans. The range of large lots that will be in demand over the next 20 years will be the product of a number of factors that are impossible to forecast, including:

- Decisions of individual firms that participate in a global marketplace; and
- The political will of cities, the region, and the State (both here and in other regions) to implement economic development strategies.

The forecast-based analysis also assumes that preferences for large lots will remain largely the same in the future as they are today. There are at least two countervailing trends that indicate preferences may change, particularly for industrial, warehouse, and distribution uses. The direction and degree of change is open to interpretation:

- Rising land prices may lead to more efficient use of land, thereby increasing the number of employees per acre; and
- The substitution of machinery and robotics for human labor may reduce the number of employees per acre.

An employment forecast-based approach may also have shortcomings for estimating land demand for rail, air and marine terminal uses. These uses are critical to the health of the region's economy. Freight terminal uses can require relatively large areas of land, but do not necessarily require high employment densities. Consequently, demand for these uses may not be adequately accounted for using an employment forecast alone.

No amount of technical analysis can provide a completely precise assessment of future large lot demand. Thus, the Metro Policy Advisory Committee has expressed a desire to have flexibility in the region's plans to attract and retain potential traded-sector employment growth. Due to the limitations of further technical analysis, the expansion of the potential range of large lot demand is being done on a policy basis rather than through technical analysis. This expansion of the range is consistent with the guidance offered by Oregon Administrative Rule 660-024-0040, which states that: *"the 20-year need determinations are estimates which, although based on the best available information and methodologies, should not be held to an unreasonably high level of precision."*

When the forecast-based analysis and policy considerations are taken into account, as recommended by the Metro Policy Advisory Committee, the total 20-year demand for additional capacity in large lot

configurations is between 200 and 1,500 acres. Within this range, there is a need for policy flexibility in determining the sizes and locations of large lots to provide, so this final analysis does not specify those characteristics."

Residential analysis

Pg. 114:

Insert a map of the residential buildable land inventory.

Pages 115-117

Edit the section on parks as follows:

"Parks: To calculate the UGB's capacity for residential growth, this urban growth report deducts the amount of vacant land inside the UGB that may be used for future parks (effectively, this amount of land is not available for residential development). This calculation only includes future parks that are intended for active uses, such as ball fields or playgrounds. Habitat or natural areas are not included since they are already deducted from the vacant land inventory.

There are several possible ways to calculate the number of acres that may be used for future parks. ~~One approach would be to use a level-of-service standard for parks. However, an agreed upon regional standard does not exist. Since no alternative approach has been suggested,~~ This urban growth report builds on ~~uses~~ the ~~same~~ methodology that was used for the 2002 report. That ~~This~~ methodology was recommended by MPAC in 2002 and was based on estimated park land acquisition revenues~~, based on~~ from system development charges (SDCs).

To inform the analysis in this report, current park SDC rates were inventoried for each city in the region. (Information may be found in Appendix 6.) Most of the local governments that levied parks SDCs in 2002 have increased their rates. In addition, two cities, King City and Rivergrove, have started levying parks SDCs since 2002. Also, a few local governments are currently employing a system whereby different fees are levied in different locations.

The 2002 urban growth report estimated that 1,100 acres of vacant land inside the UGB would be used for future parks. Like other possible approaches to estimating future park acreage inside the UGB, this SDC approach has its limitations and should be taken as a reasonable estimate rather than a precise accounting. Due to these limitations (summarized below), the updated inventory of park SDC rates does not provide a compelling reason to substantially alter ~~change~~ this assumption:

- Each city will respond to residential growth in different ways. For instance, some cities may not have much vacant land left for parks, but will use SDC revenues to make capital improvements to existing parks.
- Different cities will witness different amounts of residential growth. A local government with high parks SDCs may not see a lot of growth over the next 20 years, while a local government with low SDC rates may see tremendous growth, or vice versa.
- While a majority of local governments around the region have increased their parks SDCs over the last several years, this does not mean that there is additional money for land acquisition.
    - It is likely that the increased rates are an attempt to more fully recuperate land acquisition or capital improvement costs and that updated SDC rates still do not cover all costs.

    - The cost of flat, vacant land will continue to increase. SDC revenues will not necessarily keep pace with land values.
- Funding for parks is and probably will continue to be limited. Metro's 2008 *Regional Infrastructure Analysis* found that the cost and availability of land is one of the biggest challenges in providing sufficient parks to accommodate future growth.
- A line item in an urban growth report for parks will not necessarily result in parks for citizens to enjoy. The effect is simply that the vacant land supply assumption is reduced, increasing the potential need for UGB expansions. A UGB expansion will not address park needs in existing urban areas, which are likely to see substantial growth.
    - There is a Major UGB Amendment process that can be initiated by local jurisdictions to bring land into the UGB for park needs that are not anticipated in cyclical legislative UGB expansions (as contemplated in the context of this report). The Major Amendment Process may be a more appropriate means of addressing specific park needs that can be accommodated through UGB expansions.

Limited funding and limited vacant land in urban locations point to a need for creative and collaborative solutions that help ensure the future provision of parks throughout the region:

- Efficient use of existing land and infrastructure by taking advantage of power line easements or the space around reservoirs and water towers. For example, Tualatin Hills Park and Recreation District utilizes existing Bonneville Power Administration rights of way to operate parks and trails.
- Collaboration between multiple districts or other local governments. Sunnyside Village Green Park is a collaborative effort between North Clackamas Parks and Recreation District and Clackamas County's Water Environment Services Department that combines park facilities with stormwater management infrastructure.
- The Trust for Public Land's 2009 article on "shoehorn parks" recognizes that school facilities can be leveraged to create park capacity, but doing so requires great collaboration and commitment to success from park districts and the school system (Harnik, 2009). Popular events like Portland's Sunday Parkways demonstrate that streets can serve as temporary park space.

To maintain an approach that is consistent with the one recommended by MPAC in 2002, an implied parks level of service was calculated as follows:

The 2002 Urban Growth Report forecasted growth of 220,700 dwelling units over the 20 year period and identified that 1,100 acres should be deducted from the vacant land supply for future parks for the same time period. The implied level of service was 1,100 park acres for 220,700 new dwelling units. The current Urban Growth Report forecasts 262,400 new dwelling units in the UGB over the next 20 years (baseline assumption). Applying the same implied level of service standard as used in 2002 (1,100 /220,700 * 262,400) results in a deduction of 1,300 acres from the region's vacant land supply to address future park demand."

Appendix 6, page 11
Edit the final paragraph on the page to read as follows:

"The 2002 urban growth report estimated that 1,100 acres of vacant land inside the UGB would be demanded ~~used~~ for future parks. Like other possible approaches to estimating future park acreage demand inside the UGB, this SDC approach has its limitations and should be taken as a reasonable estimate rather than a precise accounting. Due to these limitations (summarized below), the updated inventory of park SDC rates does not provide a compelling reason to substantially alter ~~change~~ this assumption:"

Add the following text:

"To maintain an approach that is consistent with the one recommended by MPAC in 2002, an implied parks level of service was calculated as follows:

The 2002 Urban Growth Report forecasted growth of 220,700 dwelling units over the 20 year period and identified that 1,100 acres should be deducted from the vacant land supply for future parks for the same time period. The implied level of service was 1,100 park acres for 220,700 new dwelling units. The current Urban Growth Report forecasts 262,400 new dwelling units in the UGB over the next 20 years (baseline assumption). Applying the same implied level of service standard as used in 2002 (1,100 /220,700 * 262,400) results in a deduction of 1,300 acres from the region's vacant land supply to address future park demand."

Pg. 127:
Correct the residential supply range on the bottom of the page such that the expected supply is 196,900 dwelling units and the potential supply is 356,800 dwelling units. This correction is necessary because of the revised estimate of future parks acreage demand and to correct calculation errors.

Appendix 6, page 2:

Replace the table with the following. This table contains changes that are necessary because of the revised future parks acreage estimate and to correct calculation errors.

2009 to 2030 Urban Growth Report (UGR)

Residential Dwelling Capacity Range Assessment

December 2009

Line No.		Residential DEMAND Assumption Low	Baseline	High	
	Residential Demand Estimates (in Dwelling Units)				
1a/	7-County Population Forecast (2007 to 2030)	728,200	875,000	1,024,400	
1b/	7-County Household Forecast (2007 to 2030)	348,600	408,300	469,100	
2/	**Capture 61.8% of 7-County Forecast in Metro UGB**	**215,400**	**252,300**	**289,900**	
3/	plus: 4% vacancy rate (source: 2000 Census)	8,600	10,100	11,600	
4/	**Dwelling Unit Demand in the Metro UGB:**	**224,000**	**262,400**	**301,500**	
		Residential SUPPLY Assumptions			
	July 2007 Vacant Land Inventory (Metro UGB):		**BASELINE**		
5/	**Gross Vacant Land in current Metro UGB**		44,800		
6/	less: Local Water Quality, floodways and Habitat Protection areas (ENV)		8,600		
7/	**Gross Vacant Buildable Acres in Metro UGB (GVBA)**		36,200		
8/	less: Fed., State, Municipal exempt land (actual count)		3,200		
9/	less: Acres of Platted Single Family Lots (actual count)		1,300		A
10/	less: Acres for Future Places of Worship and Social Org. (actual = 600 acres)		700		C
11/	less: Major Easements (Natural Gas, Electric & Petroleum) (actual count)		1,000		R
12/	less: Acres for Future Streets (0%, 10%, 18.5%)		4,900		E
13/	less: Acres for New Schools (H=45, M=55, E=70; actual = 1,000 acres)		1,000		S
14/	less: Acres for New Parks (based on SDC fees)		1,300		
15/	less: New Urban Areas (actual net of ENV, future streeets and dev. land)		7,900		
16/	**Net Vacant Buildable Acres (NVBA) - total**		14,800		
	Net Vacant Buildable Acres (NVBA) by Type (less New Urban Areas):		Metro UGB		
17a/	Net Vacant Buildable Acres - Mixed Use Residential (MUR)		1,000		
17b/	Net Vacant Buildable Acres - Residential		6,300		
		Residential CAPACITY Assumption			
	Residential Housing Supply Assessment - Metro UGB	**Low**	**Baseline**	**High**	
18/	**Dwelling Unit Capacity of Vacant Land at Local Zoning (or Plan) - 2008 Q3**	**62,500**	**62,500**	**62,500**	
18a/	less: High-density MFR products not market feasible within next 20 years	(18,400)	(18,400)		
19/	add: Res. Development in vac. Mixed Use Districts (MUR)	28,600	28,600	28,600	
20/	less: Capacity Lost to SFR Underbuild @ 5%	(2,200)	(2,200)	(2,200)	
21a/	add: Res. Development Capacity on ENV land (no. taxlots wholly in Title 3)	100	100	100	
21b/	add: Res. Development Capacity on Title 13 areas (80% of zoned capacity)	19,300	19,300	19,300	U
22/	add: Units from Platted Single Family Lots under 3/8 acre (actual count)	8,800	8,800	8,800	N
23/	add: Units from Residential Refill @ 33%	73,900	86,600	99,500	I
23a/	add: Units from Residential Refill @ 40% (addition of 7% more)			21,100	T
23b/	add: Potential Units from *Subsidized* Residential Refill			71,100	S
24/	add: Estimated Capacity from New Urban Areas	48,000	48,000	48,000	
25/	less: New Urban Development not yet market feasible	(24,000)	(24,000)		
26/	**Subtotal: Dwelling Unit Capacity Supply Range**	**196,600**	**209,300**	**356,800**	
		Low Supply - High Demand		Low Demand - High Supply	
27/	**Full range of difference between capacity and demand (dwelling units):**	(104,900)	(53,100)	132,800	
		Low Supply- Low Demand		Low Supply- High Demand	
28/	**UGR assessment of difference between capacity and supply (dwelling units)**	(27,400)		(104,900)	

Pg. 128:
Insert the following text after the second-to-last paragraph on the page:

"Through the year 2030, counting only the "solid" capacity, there is demand for additional capacity to accommodate between 27,400 to 104,900 households."

Appendix 7, pg. 3:
Revise the table to include median household income levels for the eight household types. Include this information throughout the appendix.

Appendix 8, pg. 8:
Edit the text to read as follows:
"Figure~~s~~ 4.1AB ~~and C~~ show~~s~~ the region's residential capacity by generalized zoning. Figure 4.1AB depicts the gross buildable acres of ~~residential~~ land by "vacant" and "partially vacant" categories."

Appendix 8, pg. 8:
Insert the following table and notes:

Table 4.1AB: Gross vacant and partially vacant acres inside the UGB by zoning class (year 2007)

Zone Class	Fully Vacant Tax lot Acres	Partially Vacant Tax Lot Acres	Total Vacant Acres
CC	21	24	45
CG	349	195	543
CN	28	34	62
CO	89	51	140
FF	2,788	3,570	6,358
IH	768	1,066	1,834
IL	2,415	2,386	4,801
MFR1	41	95	135
MFR2	168	174	341
MFR3	116	144	260
MFR4	95	96	191
MFR5	9	32	41
MFR6	1		1
MFR7	73	51	124
MU	2	0	2
MUE	1,114	1,371	2,485
MUR1	79	35	114
MUR10	105	66	170
MUR2	120	160	279
MUR3	24	21	45
MUR4	141	150	291
MUR5	177	71	249
MUR6	21	9	31
MUR7	200	87	286
MUR8	128	146	275
MUR9	110	97	207
PF	54	246	299
POS	274	349	622
RRFU	4,130	7,253	11,383
SFR1	47	61	108
SFR10	40	46	86
SFR11	41	16	57
SFR12	77	74	152
SFR14	44	8	52
SFR15	26	44	71

SFR2	778	884	1,662
SFR3	36	41	77
SFR4	1,463	1,663	3,126
SFR5	1,032	1,045	2,077
SFR6	1,043	1,470	2,513
SFR7	407	331	739
SFR8	21	34	55
SFR9	164	378	541
Total	**18,859**	**24,073**	**42,932**

Note: Acreages reported in this table differ somewhat from the acres reported in the UGR because of differences in how public rights of way, public lands, etc. are accounted for.

Appendix 8, pg. 8:

Delete references to Table 4.1C. Data for Table 4.1C has been consolidated to appear in table 4.1AB.

Appendix 8, pg. 10:
Insert the following table and notes:

Table 5.1: Metro UGB historical land use consumption in acres: 2002-2007

Year	2002	2003	2004	2005	2006	2007
Developed land	201,336	203,145	204,456	205,894	209,419	210,582
Vacant land	52,514	50,705	51,151	49,727	46,235	45,076
Total	*253,849*	*253,850*	*255,607*	*255,621*	*255,654*	*255,658*
Vacant land detail	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**
Residential vacant	16,488	15,617	14,944	13,672	12,307	12,099
Nonresidential vacant	12,047	11,679	11,865	9,764	8,881	8,485
Open space, rural, parks	16,560	16,290	17,303	15,362	15,610	15,307
Total gross buildable acres	*45,095*	*43,586*	*44,112*	*38,798*	*36,797*	*35,891*
Constrained land	7,419	7,118	7,039	10,929	9,437	9,185
Total vacant land	*52,514*	*50,705*	*51,151*	*49,727*	*46,235*	*45,076*

Notes:

- *Acreages reported in this table differ somewhat from the acres reported in the UGR because of differences in how public rights of way, public lands, etc. are accounted for.*
- *For years 2005 - 2007: res = MFR, MUR, SFR; non-res = COM, IND, MUE; other = PF, POS, RUR. Except: no PF in 2005*
- *For years 2002 - 2004: res = MFR, SFR; non-res = COM, IND, MUC; other = POS, RUR*
- *For years 2002 - 2005: PF are part of COM*
- *Constrained land for years 2005 - 2007 is based on the constrained land analysis completed for the 2009 UGR and includes Title 3 and Title 13 land*
- *Constrained land for years 2002 - 2004 is based on Title 3 land only*

Appendix 8, pg. 20:
Insert the following sentence in first paragraph:

"All dollar amounts are expressed in 2005 dollars."

Appendix 8, pgs. 20 and 21:
Correct tables 303.1a and 303.1b to reflect potential demand for government assistance at more price levels. Corrected tables to appear as follows:

Figure 303.1a: owner-occupied dwelling units by price (2005$) and housing type (2005 and 2030)

Owner-occupied dwelling units

	Total dwelling units			Detached Housing		Attached Housing	
Approx. dwelling value	Year 2005	Year 2030	Difference in dwelling units 2005 to 2030)	Single-family and manufactured units	Manufactured units in parks	Single family units	Apartments, townhouses, condos
< $150,000	30,259	44,411	14,152	A	A	A	A
$150,000 - $200,000	27,191	26,954	(237)	A	A	A	A
$200,000 - $250,000	31,796	15,301	(16,495)	MRKT	MRKT	MRKT	MRKT
$250,000 - $300,000	21,442	30,657	9,215	MRKT	MRKT	MRKT	MRKT
$300,000 - $400,000	44,089	41,522	(2,566)	MRKT	MRKT	MRKT	MRKT
$400,000 - $500,000	49,363	52,167	2,804	MRKT	MRKT	MRKT	MRKT
$500,000 - $750,000	58,184	107,613	49,429	MRKT	MRKT	MRKT	MRKT
> $750,000	96,294	265,820	169,527	MRKT	MRKT	MRKT	MRKT
Total Units	358,617	584,445	225,828	116,848	*	*	108,980

Figure 303.1b: renter-occupied dwelling units by price (2005$) and housing type (2005 and 2030)

Renter-occupied dwelling units							
	Total dwelling units			Detached Housing		Attached Housing	
Approx. monthly rent	Year 2005	Year 2030	Difference in dwelling	Single-family and manufactured	Manufactured units in parks	Single family units	Apartments, townhouses, condos
< $400	43,167	19,195	(23,972)	A	A	A	A
$400 - $475	18,967	31,926	12,958	A	A	A	A
$475 - $550	25,514	25,812	298	A	A	A	A
$550 - $625	27,479	24,531	(2,948)	A	A	A	A
$625 - $750	24,854	38,485	13,630	A	A	A	A
$750 - $900	34,359	43,000	8,641	A	A	A	A
$900 - $1,100	13,315	40,881	27,566	A	A	A	A
> $1,100	26,038	64,724	38,686	MRKT	MRKT	MRKT	MRKT
Total Units	213,693	288,554	74,861	1,676	*	*	73,185

Appendix 8, pgs. 20 and 21:
Edit note that accompanies tables 303.1a and 303.1b to read as follows:

"A" denotes housing that would be partially assisted, given the dwelling unit value. It is a question for policy makers how many of these units will receive government assistance. As of November 2007, 10,608 households in the tri-county area received Section 8 vouchers.

Pgs. 133 and 135:
Correct data labels on pie charts (charts for high growth erroneously show the same percentages as low growth).

Pg. 151:
Under "policy choices," insert the following additional policy option:

"Expansion of housing voucher programs could increase housing choices for more households."

Pg. 153:
Edit the first paragraph of the "future cost burden" section as follows:

"If we continue with current policy and investment direction, the number of cost-burdened households could double by the year 2030. In the year 2005, there were approximately 94,000 cost-burdened households inside the Metro UGB (about 16 percent of all households in the Metro region or about 43 percent of renter households). By the year 2030, if current trends and policies continue, between 17 to 23 percent of all ~~the~~ households inside the Metro region or 51 to 69 percent of renter households could be described as cost-burdened. If the high end of the population range forecast is reached by the year 2030

and new policies and investments are not pursued, the number of cost-burdened households may more than double, totaling 200,000 households."

Pg. 154:
Correct the number of cost burdened households in the year 2005 (92,060).

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ATTACHMENT 3

Metro | *Memo*

Date:	November 24, 2009
To:	Malu Wilkinson, urban growth report project manager
From:	Dennis Yee, Metro Chief Economist
Re:	Technical Reviews Conducted to Validate Metro's Regional Macro-economic modeling and forecasting

Background

Leading up to Metro's periodic assessment of the urban growth boundary's capacity to accommodate residential and employment growth, three separate review panels were formed at various times to assist Metro in the validation of its economic/demographic modeling and forecasting methods and to analyze forecast results. The population and economic trends of the Portland-Beaverton-Vancouver PMSA region were examined by these review panels. Each panel validated Metro's overall modeling and forecasting methods and was asked to look closely at a certain aspect of the modeling and forecasting methodology. The panels' independent expertise was utilized to review and recommend improvements.

Review Panel One *(National review panel convened to validate forecast theory and practice)*

The first review panel was convened in 2006 – mainly to review the forecast methodology, analyze the technical efficiency of econometric equations and model specifications and to review the soundness of Metro's proposed probabilistic population forecast approach [i.e., range forecast methodology] and range / risk forecasting and analysis.

Composition of review panel one

- Dr. Lawrence Carter, University of Oregon – expert in demographic forecasting
- Dr. George Hough, Portland State University – director of center for population research and census
- Dr. Tom Potiowsky – State Economist, Oregon
- Dr. Marshall Vest – director of Economic and Business Research Center, Professor of Economics, University of Arizona
- Dr. Mary Allender, University of Portland – Assoc. Professor of Economics and Statistics
- Dr. Tim McDaniels, University of British Columbia – environmental policy, decision making & risk management

Summary remarks and conclusions of review panel one

1. The panel was asked to review and then validate Metro's economic and demographic forecast methodology and confirm the correctness of using a range forecast approach.

- Panel members unanimously agreed that a range forecast is the preferred approach in helping decision makers with managing an uncertain economic future and providing leeway for managing forecast risk especially in the extreme long-run as is the case in Metro's management of the urban growth boundary. The nature of Metro's decision making should, according to the panel, rely upon an economic model that utilizes a structural approach for forecasting growth trends, and also permits analysts to run scenarios and test policy sensitivities to various land use, economic or transportation policy variables. Metro's modeling framework according to the panel is well suited for the type of analytical applications employed by Metro.

2. Upon confirming the general approach of the Metro economic model, the panel turned to analyzing and validating the individual structures of the economic model and its efficacy for Metro planning and policy analysis purposes.
   - Panel members reviewed the technical specifications of each economic equation, variable and statistical efficiency and soundness of the equations. They determined that the Metro economic model represented the current practice of modeling regional economies and employed state of the art theories and practices.
   - They found the use of the inter-industry demand variables which capture the input-output relationships between regional industries to be a unique and innovative approach that should improve forecasting accuracies and represent well the possibilities of testing policy sensitivity on industry employment changes.
   - The panel analyzed the linkages between regional job growth and national job trends. Staff explained that the econometric equations were developed to maximize the information that national forecasts would reveal in regional growth and that Metro utilized as national forecast drivers the projections produced by IHS Global Insight, Inc., a nationally recognized firm. Panel members did not believe we could necessarily do any better assuming forecast drivers from other vendors. In fact both, Oregon and Arizona forecasters utilize to a high degree products produced by Global Insight.

3. Certify the overall fitness of the Metro economic model for its use in projecting population and employment growth for the Portland-Beaverton-Vancouver, OR-WA PMSA.
   - The panel reviewed the soundness of the model by comparing the job multipliers[3] reported by Metro's econometric model and those of other known models for other regions in the U.S. The regional model passed all the battery of usual econometric and statistical tests for goodness of fit.

[3] Multipliers summarize and describe the internal properties and workings of the model –they are one of many diagnostic tools. Exceedingly large multipliers would cause the model to exhibit unstable properties and explosive non-convergence, which would tend to invalidate the model. None of the employment multipliers in the short or long-run displayed a significant problem.

Review Panel Two *(Statewide review panel convened to validate the 50-year range forecast and assumptions)*

In May 2008, Metro forecasters developed a 50-year regional forecast and implemented the recommendations from the first panel to utilize probabilistic population forecasting techniques and to produce a range forecast. Statewide professionals who were more familiar with Oregon and in particular Portland's economy were called together to discuss their views and analyze the 50-year forecast outlook for the Metro region. In front of an audience of 200 interested stakeholders, these two moderated panels discussed the merits of the range forecast (per the recommendation of the first panel) and validated the soundness of Metro's modeling and assumptions with the objective of certifying the reasonableness of a 50-year population and employment outlook. One panel also discussed the long-range demographic, economic, climate, energy and land use trends that could emerge during the forecast period to influence regional population, employment and land use.

Composition of review panel two

Panel discussion exploring long-range issues and trends that influence regional population, economy and land use

Moderated by Duncan Wyse, President of Oregon Business Council

- Eric Hovee, Principal at ED Hovee & Co., LLC
- Joe Cortright, President of Impressa LLC
- Mike Martens, Director of Spatial Analysis, EcoTrust
- Dr. Bruce Weber, Prof. of Agriculture and Resource Economics, Oregon State University

Expert panel to present and discuss results from different forecasting methods and to provide perspectives through a moderated discussion.

- Dr. Kanhaiya Vaidya – Senior State Demographer, Oregon Office of Economic Analysis
- Art Ayre – State Labor Economist, Oregon Employment Department
- Terry Morlan – Director of Planning, Northwest Power & Conservation Council
- Dennis Yee – Chief Economist, Metro

Summary remarks and conclusions of review panel two

1. Among the topics discussed were: aging population and its impact on future housing demand; economic growth and what could be drivers for the next wave of growth and innovation in the state; climate change and its impact on migration in the US; climate change and Oregon's emphasis on "green development"; and the future makeup of the Willamette Valley's agricultural economy in light of urban development pressures.
    - Although the panelists raised interesting issues that would likely confront the Portland region and impact Portland area population and economic projections, it was plain from the tenor of the discussion that these highly informed commentators had a sense of the risks to the regional forecast, but it was unclear as to how these "mega-trends" would ultimately impact the forecast in a quantifiable fashion.
    - Panelists concluded that these "mega-trends" can impact the forecast and impose significant uncertainty and risk to a forecast. The appropriate response to this very uncertain future is to use a range forecast that affords a high degree of planning flexibility.

2. The chief objective of the afternoon review panel was to gather input and comments about how "mega-trends" may eventually feed through to impact regional long-term growth. Each of the panel members are forecast practitioners who have had significant experience in forecasting growth in Oregon. The panel was charged with reviewing the implementation and results of Metro's 50-year regional range forecast.
   - The state demographer confirmed that the state and Metro employ similar cohort-component models for forecast long-run population trends. There are differences in key assumptions, but they owe to variations between state-level demographics vs. Metro demographics which tend to more urban conditions that impact fertility and mortality rate assumptions.
   - The state labor economist prepares county-level employment estimates. Although no two forecasts are necessarily alike, he concluded that the underlying assumptions are consistent between the Metro model vs. the state's county-level economic model. Growth rates in Metro's base case scenario and the state's forecasts were highly comparable (the state does not produce a range forecast so only base case numbers could be compared).
   - The NW Power Planning Council utilizes sophisticated forecast simulation software. This software is capable of generating a multitude of scenarios which are combined to form a "solution space" or "forecast envelope" (i.e., range forecast). The forecast director for the Power Planning Council echoed numerous times the importance of risk planning and the need for economic and demographic forecasts to recognize uncertainty in its growth trends. Although Metro uses a different software approach in formulating its forecast ranges, there was agreement that "range forecasting" is the appropriate means to project long-term regional growth.

Review panel three *(Local review panel convened to validate the 20-year range forecast and regional growth assumptions which could impact the economy, population and land use trends)*
A third panel was formed in 2009 to review the 20-year regional forecast that became the basis for the urban growth report for housing and employment. This panel's chief responsibility was to validate the 20-year range forecast and to identify any regional trends that didn't comport with national trends. This panel was composed of local practitioners, forecasters, consultants and stakeholders who rely on the forecast for municipal planning purposes.

Composition of review panel three

- Steve Kelley, Senior Planner, Washington County
- Scott Drumm, Manager, Research & Market Information, Port of Portland
- Eric Hovee, Principal at ED Hovee & Co., LLC
- Scott Bailey, Washington State Economist, Vancouver area focus
- Brendan Buckley, Johnson-Reid LLC
- Uma Krishnan, City of Portland Demographer
- Todd Chase, FCS group LLC

Summary remarks and conclusions of review panel three

1. Review appropriateness of range forecast methodology
   - The panel agreed that due to forecast uncertainty and the degree of risk going into the future, a "range forecast" was more preferable than a "point forecast". Planning flexibility was an oft-cited reason in favor of proceeding with a range forecast.

2. Discuss reasonableness of the "width of the range forecast"
   - The panel did not spend much effort reviewing the variance assumptions that comprise the range, but generally believed that using historical variances as a surrogate for future forecast variances was a satisfactory means of estimating future ranges. The ranges were estimated using "monte carlo" simulation software such that a 90% cumulative distribution function was defined as the forecast range for population. Overall, total employment and population "widths" for the forecast range seemed statistically appropriate, but some disagreement arose when discussion turned to individual industry projections for employment. (see next bullet)

3. Review soundness of forecast outlook
   - There was minimal concern that the annualized growth rates for both population and employment projections for the region were slower than at any recent historical experience except for decade of the 80's which saw growth plummet due to the recession. It was explained that in the last 30 years, the Portland region is now (over 2 million people) twice its former size. Even with lower predicted growth rates (1.4% APR), growth compounding each year the region is expected to again nearly double in size during the next 30 years.
   - The debate on the regional forecast centered mostly around selected industries and, in particular, the potential for some emerging industry(s) to erupt with significant job growth and, with that job trend, bring large firms that could anchor growth in that particular industry for decades to come. The debate circled around how much faster can we reasonably predict job growth in one industry to outpace the U.S. average or U.S. forecast. The Metro forecast already assumes (as a placeholder) the high tech sector in the region to be a sector that we predict to be a "high-flyer" in manufacturing. (Most other Metro manufacturing sectors are projected to perform slightly better over the forecast period than the U.S. projected average, but high-tech has been singled out to be an above average growth sector.) [Please see Metro Regional Forecast Employment appendix that compares the US forecast against the Metro forecast.] The debate boils down to a matter of degree about how much faster high tech in the region will likely outpace nationwide trends. Metro believes that its forecasting is sound and based on statistically valid relationships modeled between the regional economy and the U.S. A minority of the panel members disagreed, believing that anecdotal interviews and ad hoc evidence point to significantly faster economic growth.

4. Discuss impact land supply has on regional growth projections
   - Land supply is not presently an explicit explanatory variable in the regional macro-economic model. In the past, there was no statistical evidence that showed land supply as a sticking point to economic growth. However, in the past, vacant land was not as scarce as it is today for urban style development purposes. Land has not been a limiting factor in the past, so it's not surprising that Metro's statistical modeling would not reveal any tangible correlation.
   - Recently, practical measurements of land supply indicate much less available land than previous measures have shown. Members agreed that land is a factor input into production and a key ingredient in promoting economic development. Still, there has been scant statistical evidence that we can draw upon to embed a land and capital substitution parameter into the econometric model that would stand up to statistical inquiry. On the other hand, there is mounting conjectural evidence that large tracts of inexpensive land can be a motivating factor to attracting large scale manufacturing plants to a particular region.
   - Technological innovation and comparative manufacturing advantages may make this point moot in the distant future, but again the panel could not settle on a conclusion. This issue is still unresolved and to be determined in future forecasts.

BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF	)	**APPROVAL**
THE PERIODIC REVIEW OF	)	**ORDER**
THE REGIONAL URBAN GROWTH	)	**07-WKTASK-001726**
BOUNDARY FOR METRO	)	

This matter came before the Land Conservation and Development Commission (Commission) on March 23 and April 12, 2006, as a referral of Metro's re-submittal of periodic review Work Task 2, pursuant to ORS 197.633, ORS 197.644(2) and OAR chapter 660, division 25.[1] Metro adopted the submittal in response to the Commission's Partial Approval and Remand Order 05-WKTASK-001673 and Remand Order 05-WKTASK-001685. The Commission fully considered Metro's Work Task 2 re-submittal; oral argument and written comments, objections and exceptions of parties and Metro; and the report of the Director of the Department of Land Conservation and Development (Department).

History and Summary of Work Task 2

The Commission approved Metro's Periodic Review Work Program on July 28, 2000 (Approval Order #001243). Work Task 2 of the approved Work Program required Metro to estimate 20-year population and employment growth to the year 2022 and assess the capacity of the regional Urban Growth Boundary (UGB) to accommodate the identified need, and, if necessary, increase the capacity of the UGB. Work Task 2 consisted of specified subtasks (12a – Regional Forecast; 12b – Housing Needs Analysis; 13 – Land Supply Analysis; 14a – Residential Land Needs Analysis; 14b – Employment Land Need Analysis; 15 – Alternative Analysis; 16 – Technical Amendments to the UGB; 17 – Selection of Lands for UGB Amendment).

Metro forecasted a population increase of 525,000 people and identified a need to accommodate 355,000 jobs by 2022. Metro analyzed the capacity of land within the UGB to accommodate the determined need. Metro's Task 2 submittals have included measures both to increase the capacity of residential and employment land within the present UGB and to expand the UGB to accommodate the determined need. On March 20, 2003, the Commission granted partial approval of Task 2 to acknowledge Metro's amendment of the regional UGB to include five "Regionally Significant Industrial Areas." LCDC Order 03-WKTASK-001491. On July 7, 2003, the Commission approved an UGB expansion of 18,638 acres to accommodate Metro's identified

[1] The Land Conservation and Development Commission amended OAR chapter 660, division 25 effective May 15, 2006. The prior version of OAR chapter 660, division 25, filed and certified effective February 14, 2000, applies to the Commission review of Metro's submittal. *See* OAR 660-025-0230(1)(d) (establishing applicable date for amendments as relevant to this submittal). Where this order cites to OAR chapter 660, division 25, it is citing to the applicable version of that rule.

residential and a portion of the identified employment need. LCDC Order 03-WKTASK-001524. The Commission also remanded portions of Task 2 to Metro to address three issues. *Id.* at 50. On judicial review of that order, the Oregon Court of Appeals reversed and remanded for reconsideration Metro's decision to include Study Areas 37 and 94, but otherwise affirmed the order. *See City of West Linn v. LCDC*, 201 Or App 419, 119 P3d 285 (2005). On October 31, 2005, the Commission modified its Partial Approval and Remand Order 03-WKTASK-001524 to reverse the approval of the inclusion of Study Areas 37 and 94 and to remand to Metro the inclusion of Study Areas 37 and 94 for further findings under Metro Code 3.01.020. LCDC Order 05-WKTASK-001685. The Commission instructed Metro on remand to "either include Study Areas 37 and 94 based on findings under Metro Code 3.01.020 that are supported by substantial evidence, or fulfill the requirements of Work Task 2 in any other manner that complies with the statewide planning goals." *Id.* at 2.

On July 22, 2005, the Commission approved an UGB expansion of 1,678 acres to accommodate a portion of Metro's identified employment need. LCDC Order 05-WKTASK-001673. The Commission also remanded portions of Task 2 to Metro to complete work on six issues. *Id.* at 70-71. The Commission partially remanded Metro's submittal to:

> "(a) Ensure that the amount of land added to the UGB under Task 2 includes an adequate amount of land for public infrastructure including streets;
> "(b) Amend the *2002–2022 Urban Growth Report: An Employment Land Needs Analysis* as necessary, to incorporate any changes to assumptions in that analysis (such as the change in the 52 percent redevelopment and infill rate on industrial lands);
> "(c) Demonstrate that the supply of large lots within the UGB is sufficient to meet the need identified in the *2002-2022 Urban Growth Report: An Employment Land Need Analysis*, provide additional large lot parcels to meet the identified need, or demonstrate how the need can be accommodated within the existing UGB;
> "(d) Clarify whether the 70 percent of land for warehousing and distribution uses applies to all vacant industrial land or only to the need to add land to the UGB;
> "(e) Based on the results of the analysis of (a) through (c), recalculate the total acreage of industrial land supply and compare that number with the identified land need of 1,180 net acres; and
> "(f) Refine the analysis of how Metro 'balanced' the locational factors of Goal 14 (factors 3 through 7) in reaching its decision to include the Cornelius area as described in Exhibit E to Ordinance No. 04-1040B in the UGB over other areas of equal statutory priority, including why the economic consequences outweighed the retention of agricultural land and compatibility with adjacent agricultural uses." LCDC Order 05-WKTASK-001673 at 70-71.

No party sought judicial review of that order pursuant to ORS 197.650 and ORS 183.482.

On remand of LCDC Order 05-WKTASK-001673 and LCDC Order 05-WKTASK-001685, Metro adopted Ordinance No. 05-1070A on November 17, 2005.

Metro Ordinance No. 07-1070A amends the Metro UGB to include 65 gross acres of land near Cornelius; 550 gross acres of land near Hillsboro (Evergreen); and 261 acres of land at Hayden Island Terminal 6. That Ordinance excludes the portions of Study Areas 37 and 94 that were added to the UGB by Ordinance No. 02-969B. Metro also amended the *2002-2022 Urban Growth Report: An Employment Land Need Analysis*. Additionally, Metro adopted findings of fact and conclusions of law to explain how the submittal complies with applicable statewide and regional land use law provisions.

Pursuant to OAR 660-025-0150(1)(c), the Director referred Metro's submittal to the Commission for review and action. As discussed below, the Commission concludes that Ordinance No. 05-1070A complies with applicable statewide and regional land use law provisions. The Commission therefore orders that Metro Work Task 2 is approved, pursuant to OAR 660-025-0160(8)(a).

Objections

The Department received a total of eight objections it determined to be valid under OAR 660-025-0140(2). The valid objectors are the City of Hillsboro, the City of Cornelius, the City of Forest Grove, 1000 Friends of Oregon, Commercial Real Estate Economic Coalition (CREEC), National Association of Industrial and Office Properties (NAIOP), Westside Economic Alliance, and the Washington County Farm Bureau.[2] The Department determined that the objection of James H. Burns was not filed within the 21-day deadline provided in OAR 660-025-0140(2)(a); therefore, Mr. Burns did not file a valid objection and the Commission did not consider it. OAR 660-025-0140(3).

Exceptions

Under the Commission's rules, persons that filed a valid objection to this Task 2 submittal are permitted to file written exceptions to the director's report. OAR 660-025-0160(3). The City of Hillsboro, the City of Cornelius, 1000 Friends of Oregon, CREEC, NAIOP, and Westside Economic Alliance filed valid exceptions.

Oral Argument

On its own motion, the Commission decided to allow oral argument, pursuant to OAR 660-025-0160(7). The Commission provided an opportunity for the department, objectors and Metro to argue. The Commission did not request any new evidence or information. The Commission did allow the City of Hillsboro's motion to take new information in the form of three newspaper articles:

1. Jim Redden, *Plant may signal a biotech future*, Portland Tribune, March 21, 2006

2. *Oregon hits a big score with Genentech*, The Oregonian, March 18, 2006

[2] The Washington County Farm Bureau objection is signed by Tad VanderZanden, Dave Vanasche, Larry Duyck, and Keith Fishback as individuals and members of the Washington County Farm Bureau. This order refers to those individuals and the farm bureau collectively as the Washington County Farm Bureau.

3. Ted Sickinger and Joe Rojas-Burke, *Genentech will build site in Hillsboro,* The Oregonian, March 18, 2006

The City of Hillsboro submitted the articles to demonstrate that a large tract of the Shute Road site added to the UGB by Ordinance No. 02-983B and acknowledged by LCDC Order 03-WKTASK-001491 on March 20, 2003, is being purchased for a biotechnology manufacturing use. The Commission provided the other objectors and Metro the opportunity to comment on the information that the City of Hillsboro submitted. The Commission otherwise heard the referral based on the written record.

Review of Metro's Submittal

Removal of Study Areas 37 and 94

The Commission remanded Metro Task 2, in part, ordering Metro to "either include Study Areas 37 and 94 based on findings under Metro Code 3.01.020 that are supported by substantial evidence, or fulfill the requirements of Work Task 2 in any other manner that complies with the statewide planning goals." LCDC Order 05-WKTASK-001685 at 2. Metro amended the UGB to exclude the portions of Study Areas 37 and 94 that were previously added to the UGB. Ordinance No. 05-1070A at 2. Metro determined that the exclusion of Study Areas 37 and 94 would eliminate 1,221 dwelling units, eliminating the previous surplus of 666 dwelling units. Metro determined that overall, it had met 99.6 percent of the identified need for residential land. November 8, 2005 Memorandum to Metro Council from Lydia Neill. The Department received no objections regarding this portion of Metro's submittal.

On review of Work Task 2, the Commission previously decided that "Metro's inclusion of capacity for 666 dwelling units in excess of the estimated 20-year demand for 220,700 dwelling units conforms with the purposes of Goal 10 to encourage adequate numbers of needed housing and Goal 14 to provide for an orderly and efficient transition from rural to urban use." LCDC Order 03-WKTASK-001524 at 27. The Commission likewise now concludes that Metro has complied with the goals on the whole, and that the .4 percent deficit from the identified need for dwelling units is both technical and minor in nature under ORS 197.747. The Commission concludes that Metro has complied with this requirement of LCDC Order 05-WKTASK-001685 and the goals.

Land for Public Infrastructure

The Commission remanded Metro Task 2 to "[e]nsure that the amount of land added to the UGB under Task 2 includes an adequate amount of land for public infrastructure including streets[.]" LCDC Order 05-WKTASK-001673 at 70. On remand, Metro found that 175 acres must be deducted from the amount of buildable land added to the UGB. Ordinance No. 05-1070A amends the Metro UGB to add 345 net buildable acres of industrial land, including the 175 acres to address the deduction for infrastructure. Exhibit D to Ordinance No. 05-1070A at 2. The Department concluded

that Metro's submittal satisfied this remand item. DLCD Revised Staff Report at 6. The Department did not receive any objections to this portion of Metro's submittal. The Commission concludes that Metro has complied with this requirement of LCDC Order 05-WKTASK-001673 and the goals.

Amend *2002 –2022 Urban Growth Report: An Employment Land Needs Analysis*

The Commission remanded Metro Task 2 to "[a]mend the *2002–2022 Urban Growth Report: An Employment Land Needs Analysis* as necessary, to incorporate any changes to assumptions in that analysis (such as the change in the 52 percent redevelopment and infill rate on industrial lands)[.]" LCDC Order 05-WKTASK-001673 at 70. On remand, Metro amended the *2002–2022 Urban Growth Report: An Employment Land Needs Analysis* to include an addendum that changes the commercial refill rate to recognize changes taking place in the marketplace. Exhibit C to Ordinance No. 05-1070A. The Department concluded that Metro's submittal satisfied this remand item. DLCD Revised Staff Report at 6. The Department did not receive any objections to this portion of Metro's submittal. The Commission concludes that Metro has complied with this requirement of LCDC Order 05-WKTASK-001673 and the goals.

Satisfy Identified Industrial Need for Large Lots

The Commission remanded Metro Task 2 to "[d]emonstrate that the supply of large lots within the UGB is sufficient to meet the need identified in the *2002—2022 Urban Growth Report: An Employment Land Need Analysis*, provide additional large lot parcels to meet the identified need, or demonstrate how the need can be accommodated within the existing UGB[.]" LCDC Order 05-WKTASK-001673 at 71. On remand, Metro amended the UGB to include the Evergreen Expansion Area. Metro placed a condition of approval on the Evergreen Expansion Area that requires the City of Hillsboro to develop a lot/parcel reconfiguration plan that results in at least one parcel that is 100 acres or larger in size. Exhibit B to Ordinance No. 05-1070A at 1. Metro found that the addition of the Evergreen Expansion Area large lot would fulfill the identified need for large parcels of industrial lands. Exhibit D to Ordinance No. 05-1070A at 2-3. The Department concluded that Metro's submittal satisfied this remand item. DLCD Revised Staff Report at 7. The Department received objections and an exception challenging on this and other bases Metro's inclusion of the Evergreen Expansion Area. Because Metro met its identified employment need for large parcels of industrial land in part by the inclusion of the Evergreen Expansion Area, the Commission turns to consideration of the site specific objections to the Evergreen Expansion Area.

Objections to Evergreen Expansion Area

Metro amended the UGB to include 550 gross acres of the Evergreen Study Area north of Hillsboro.[3] Ordinance No. 05-1070A. The Evergreen Expansion Area,

[3] Metro identified the Evergreen Study Area in the 2003 Industrial Land Alternative Analysis Study as a 985 total acre area composed of 2002 Alternative Analysis Study Areas 79 and 80 and 2003 Alternative Analysis Study Area L. 2003 Industrial Land Alternative Analysis Study at 100. The Evergreen

comprised of 337 acres of EFU-zoned resource land and 213 acres of exception land, would provide 416 gross buildable acres, which after deducting 95 acres for public infrastructure, adds 321 net buildable acres of land to the UGB designated for industrial use. Exhibit A-1 to Ordinance No. 05-1070A. 1000 Friends of Oregon objects that the inclusion of the Evergreen Expansion Area does not comply with Metro Regional Framework Plan (RFP) Policies 1.1 (Urban Form), 1.4 (Economic Opportunity & Industrial Lands), 1.6 (Growth Management) 1.7 (Urban/Rural Transition) and 1.12 (Protection of Agricultural and Forest Resource Lands); Statewide Planning Goal 14, and ORS 197.298.[4] The Washington County Farm Bureau objects generally that the inclusion of the Evergreen Expansion Area takes land from an agricultural industrial use to make it available for other industrial uses, and specifically that it does not comply with RFP Policies 1.7 and 1.12, Statewide Planning Goals 9 and 14, and ORS 197.298.

Statewide Planning Goal 9

The Washington County Farm Bureau objects that taking land "from a going and growing industry for mere speculation" seems contrary to Statewide Planning Goal 9. Goal 9 is "[t]o provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens." The Washington County Farm Bureau observes that the Evergreen Expansion Area is presently employed in an industrial use, to wit, agricultural production, that currently produces traded sector products and that the region's agricultural industry requires an adequate land base. Metro recognized that all of the areas under consideration, including the Evergreen Expansion Area, contribute to the agricultural economy of the region. Exhibit D to Ordinance No. 05-1070A at 10. Metro placed significance on its determination that the Evergreen Expansion Area "lies next to some of the most important industrial land in the region and the state." *Id.* at 13. The Commission observes that Goal 9 does not specifically address changing land from one type of industry to another type of industry. However, the Commission rejects this objection as a matter of law, because neither Goal 9 nor the Goal 9 rule applies to Metro. LCDC Order 05-WKTASK-001673 at 14.

Statewide Planning Goal 14, factors 6 and 7, RFP Policy 1.12, and ORS 197.298

1000 Friends of Oregon and the Washington County Farm Bureau both object that inclusion of the Evergreen Expansion Area is a significant incursion into the Tualatin Valley's agricultural land base, contrary to the provisions of RFP Policy 1.12, Goal 14, factors 6 and 7, and ORS 197.298. 1000 Friends of Oregon and the Washington County Farm Bureau also cite to the rankings of the Oregon Department of Agriculture's *Limited Choices* report, which ranked Evergreen as a low priority for urbanization.

Expansion Area Metro added in Ordinance No. 05-1070A is a 550-acre portion of the Evergreen Study Area. *See* Exhibit A-1 to Ordinance No. 05-1070A. This order refers to the area added to the UGB as the Evergreen Expansion Area.

[4] 1000 Friends of Oregon filed a timely exception that renewed the arguments made in its objections. The Commission considers 1000 Friends of Oregon's exception in the discussion and disposition of their objection.

ORS 197.298 provides a hierarchy of lands for inclusion within an UGB, with higher value agricultural lands being last in the hierarchy under most circumstances. Goal 14, factors 6 and 7 require Metro to consider retention of agricultural lands and compatibility of urban uses with nearby rural agricultural uses.[5] RFP Policy 1.12 provides in part:

> "1.12.1 Agricultural and forest land outside the UGB shall be protected from urbanization, and accounted for in regional economic and development plans, consistent with this Plan. However, Metro recognizes that all the statewide goals, including Statewide Goal 10, and Goal 14, Urbanization, are of equal importance to Goals 3 and 4, which protect agriculture and forest resource lands. These goals represent competing and, some times, conflicting policy interest which need to be balanced.
>
> "1.12.2 When the Council must choose among agricultural lands of the same soil classification for addition to the UGB, the Council shall choose agricultural land deemed less important to the continuation of commercial agriculture in the region."[6]

The Evergreen Expansion Area contains Class II soils. Because Metro determined that it had utilized all lands of higher priority under ORS 197.298 capable of accommodating the identified need for industrial land, Metro considered 12 areas of predominantly Class II soils: Forest Grove West, Forest Grove East, Jackson School Road, Wilsonville East, Wilsonville South, Cornelius (rest of 1,154 acres studied), Farmington, Helvetia, West Union, Evergreen, Noyer Creek and Hillsboro South. Exhibit D to Ordinance No. 05-1070A at 4. The Commission agreed that ORS 197.298 does not establish a priority between areas of Class II soils and that Metro must look to the Goal 14 locational factors 3-7 to determine which areas of Class II soils should be brought into the UGB to meet the identified industrial need. LCDC Order 05-WKTASK-001673 at 43-44.

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[5] Goal 14 provides in part:

> "Urban growth boundaries shall be established to identify and separate urbanizable land from rural land. Establishment and change of the boundaries shall be based upon considerations of the following factors:
>
> "* * *
>
> "(6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,
>
> "(7) Compatibility of the proposed urban uses with nearby agricultural activities."

[6] The Commission acknowledged Metro amendments to RFP Policy 1.12. LCDC Order 05-WKTASK-001673 at 70. The Commission concluded "the amendments to RFP Policy 1.12 comply with the statewide planning goals and ORS 197.340(1), which requires Metro to give the goals equal weight." LCDC Order 05-WKTASK-001673 at 41.

Metro described its methodology for selecting amongst the study areas of the same soil type:

> "Finally, the Council turned to the many lands under consideration with predominantly Class II soils. To choose among thousands of acres of this flat farmland near urban industrial areas or near freeway interchanges, the Council considered the locational factors of Goal 14 and policies in its Regional Framework Plan ('RFP') and Regional Transportation Plan ('RTP'). Further, the Council sought advice from a group of farmers and agriculturalists in the three counties, assembled by the Oregon Department of Agriculture ('ODA'). This group submitted a report to the Council entitled 'Limited Choices: The Protection of Agricultural Lands and the Expansion of the Metro Area Urban Growth Boundary for Industrial Use.' [Appendix A, Item (i).)] Preliminary guidance from ODA led the Council to consider an amendment to Policy 1.12 of the RFP on agricultural land, adopted and applied in Ordinance No. 04-1040B: 'When the Council must choose among agricultural lands of the same soil classification for addition to the UGB, the Council shall choose agricultural land deemed less important to the continuation of commercial agriculture in the region.'" Exhibit G to Ordinance No. 04-1040B at 5.

The Commission has discussed the role of the RFP in Metro's consideration of areas for inclusion in the regional UGB:

> "[F]or lands of the same priority under ORS 197.298 that can reasonably accommodate Metro's identified need for industrial land, Metro considers and balances Goal 14, factors 3 to 7 to determine locations to expand the UGB. Although they do not take precedence over criteria in state law, Metro also bases the selection of lands of the same priority for inclusion on RFP policies. *See* Ordinance No. 04-1040B, Appendix A, item a at 5 and Attachment 1 (describing and diagramming relationship of applicable provisions). In RFP Policy 1.12.2, Metro has refined the consideration and balancing that it undertakes under the Goal 14, factors 3 to 7. RFP Policy 1.12.2 relates to the maximum efficiency of commercial agriculture on the fringe of the UGB (factor 4); the economics of commercial agriculture (factor 5); and refines the retention of agricultural land (factor 6) and compatibility (factor 7) analysis." LCDC Order 05-WKTASK-001673 at 41.

For the Evergreen Expansion Area, Metro made findings regarding Goal 14, factors 6 and 7 and RFP Policy 1.12. Metro concluded that the Evergreen and West Union study areas contain a lower percentage of Class I and II soils than the other areas. Exhibit D to Ordinance No. 05-1070A at 11. Metro noted that the Evergreen Expansion Area resource land is neither irrigated nor within an irrigation district, and that only Wilsonville East ranks lower in importance for commercial agriculture than Evergreen in ODA's *Limited Choices* report. *Id.* Metro concluded that of the 12 study areas, inclusion

of Evergreen Expansion Area would best protect farmland that is most important to the continuation of commercial agriculture in the region. *Id.*

Metro also considered the compatibility of urban uses of the Evergreen Expansion Area with nearby agricultural activities on resource lands outside the UGB as required by Goal 14, factor 7 and RFP Policy 1.12. Metro found:

> "Development in the Evergreen area would have some adverse effects on nearby farm practices, but less significant than the effects generated by industrial development in most other areas under consideration. Evergreen borders the UGB on the east and south and rural residential development and roads on the west. In *Limited Choices: The Protection of Agricultural Lands and the Expansion of the Metro Area Urban Growth Boundary for Industrial Use*, April, 2004, the Oregon Department of Agriculture characterized the Evergreen area south of Waible/Gulch Creek as 'nearly surrounded', and for that reason, advised Metro to include the area before including other farmland areas under consideration except Wilsonville East. Following the recommendation, Ordinance No. 05-1070A includes only that portion of the Evergreen Study Area that lies south of the creek." Exhibit D to Ordinance No. 05-1070A at 8.

Metro concluded "inclusion of the Noyer Creek Area or portions of the Cornelius and Evergreen Study Area would have the fewest adverse effects on nearby farm or forest practices." *Id.* at 9.

The Commission finds that Metro considered the provisions of RFP Policy 1.12 and considered and balanced the location factors of Goal 14, including factors 6 and 7, and complied with the hierarchy of ORS 197.298. The Commission rejects these objections by 1000 Friends of Oregon and the Washington County Farm Bureau.

RFP Policy 1.1 (Urban Form), **RFP Policy 1.6** (Growth Management), and **RFP Policy 1.7** (Urban/Rural Transition)

1000 Friends of Oregon objects that the Evergreen Expansion Area does not meet Metro's urban form polices, contending that the Evergreen Expansion Area is not compact, does not use natural or built features as a boundary, and does not provide a clear distinction between urban and rural lands. 1000 Friends of Oregon and the Washington County Farm Bureau contend that Shute Road serves as a logical western edge for the UGB, or alternatively that the exception area at Sewell Road better demarks a distinction between urban and rural lands.

Metro RFP Policy 1.1, relating to Urban Form, provides:

"It is the policy of the Metro Council to:
"1.1.1 Balance the region's growth by:
"a. Maintaining a compact urban form, with easy access to nature.

"b. Preserving existing stable and distinct neighborhoods by focusing commercial and residential growth in mixed-use centers and corridors at a pedestrian scale.
"c. Ensuring affordability and maintaining a variety of housing choices with good access to jobs and assuring that market-based preferences are not eliminated by regulation.
"d. Targeting public investments to reinforce a compact urban form."

Consistent with RFP Policy 1.1, and Goal 14, factor 4,[7] Metro compared the candidate study areas for efficient use of land, both the land considered for addition to the UGB and the adjacent land within the UGB. *See* Exhibit D to Ordinance No. 05-1070A at 5-7. Metro concluded that the Evergreen Expansion Area could efficiently provide large industrial sites in an area that joins an existing industrial area on two sides. The Commission concludes that Metro considered maintaining a compact urban form in concluding that adding industrial land adjacent to an important industrial area within the UGB maximizes the efficient use of both areas. 1000 Friends of Oregon does not explain how the Evergreen Expansion Area detracts from Metro's policy to maintain "compact" urban growth. The Commission rejects 1000 Friends of Oregon's objection that Metro's inclusion of the portion of the Evergreen Study Area does not comply with RFP Policy 1.1.

Metro RFP Policy 1.6, relating to Growth Management, provides in part:

"It is the policy of the Metro Council to:
"1.6.1 Manage the urban land supply in a manner consistent with state law by:
"* * *
"b. Providing a clear distinction between urban and rural lands."

Complementary to RFP Policy 1.6.1(b), Metro RFP Policy 1.7, relating to Urban/Rural Transition, provides in part:

"It is the policy of the Metro Council to:
"1.7.1 Ensure that there is a clear transition between urban and rural land that makes best use of natural and built landscape features and that recognizes the likely long-term prospects for regional urban growth.
"1.7.2 Locate the Metro UGB using natural and built features, including roads, rivers, creeks, streams, drainage basin boundaries, floodplains, power lines, major topographic features and historic patterns of land use or settlement."

Metro included the Evergreen Expansion Area, which adjoins the UGB to the south and to the east. To the north, Metro decided to include only the portions of the Evergreen Study Area that are south of Waible/Gulch Creek, finding that to be consistent with the advice in the "*Limited Choices: The Protection of Agricultural Lands and the Expansion of the Metro Area Urban growth Boundary for Industrial Use*" report. Exhibit D to Ordinance No. 05-1070A at 8. The "*Limited Choices*" report states, "[Waible] Creek, its

[7] Goal 14, factor 4 requires Metro to consider "[m]aximum efficiency of land uses within and on the fringe of the existing urban area."

associated riparian corridor and the exceptions lands located along Sewell Road would provide buffers between future urbanization and farming operations located further to the and to the west." Ordinance No. 04-1040B, Appendix A, item i at 10. The "*Limited Choices*" report does support 1000 Friends of Oregon's and the Washington County Farm Bureau's contention that the Sewell Road exception area would provide a buffer between rural and urban uses. However, as exception lands, ORS 197.298 prioritizes that area for urbanization. The Commission cannot conclude that Metro erred in including the Sewell Road exception area as part of the Evergreen Expansion Area. Metro chose a road for the western boundary of the expansion area. RFP Policy 1.7.2 expressly allows built features, including roads to locate the UGB. The Commission concludes that Metro considered and applied the provisions of RFP Policies 1.6 and 1.7 in establishing the portion of the Evergreen Study Area to include in the UGB. The Commission rejects the objections of 1000 Friends of Oregon and the Washington County Farm Bureau under and related to RFP Polices 1.6 and 1.7.

RFP Policy 1.4 (Economic Opportunity & Industrial Lands)

1000 Friends of Oregon objects that the Evergreen Expansion Area violates RFP Policy 1.4 (Economic Opportunity & Industrial Lands). 1000 Friends of Oregon objection at 2. 1000 Friends of Oregon states "Metro Policies 1.4 calls for Metro to 'maintain a strong economic climate' through a 'diverse and sufficient supply of jobs' and to designate and protect those areas 'with site characteristics that make them especially suitable to the particular requirements of industries'[.]" *Id.* at 3. The Commission does not find the quoted policies in the applicable RFP Policy 1.4. LCDC Order 03-WKTASK-001524 acknowledged Metro's amendments to RFP Policy 1.4 (Exhibit D to Ordinance 02-969B).[8] The Evergreen Expansion Area is not designated a

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[8] Exhibit D to Ordinance No. 02-969B states:

> "New Regional Framework Plan Policy on Economic Opportunity
>
> "According to the Regional Industrial Land Study, economic expansion of the 1990s diminished the region's inventory of land suitable for industries that offer the best opportunities for new family-wage jobs. Sites suitable for these industries should be identified and protected from incompatible uses.
>
> "1.4.1 Metro, with the aid of leaders in the business and development community and local governments in the region, shall designate as Regionally Significant Industrial Areas those areas with site characteristics that make them especially suitable for the particular requirements of industries that offer the best opportunities for family-wage jobs.
>
> "1.4.2 Metro, through the Urban Growth Management Functional Plan, and local governments shall exercise their comprehensive planning and zoning authorities to protect Regionally Significant Industrial Areas from incompatible uses."

Presently, RFP Policy 1.4 "Economic Opportunity" provides:

> "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.

Regionally Significant Industrial Area by this submittal. The Commission concludes that the submittal does not violate the applicable provisions of RFP Policy 1.4.

Regardless, the Commission understands the gist of 1000 Friends of Oregon's objection to be that Metro is taking land from the land base of the agriculture industry in favor of urban industrial land use. The Commission does not find that the goals specifically address changing land from one type of industry to another type of industry. To the extent the restriction 1000 Friends of Oregon assigns RFP Policy 1.4 in its objection implicated the Evergreen Expansion Area, the Commission finds that the Goal 14 "locational factors" are the means for considering the impact of taking land from the land base of the agriculture industry in favor of urban industrial land use. The Commission rejected 1000 Friends of Oregon's objection based on Goal 14, factors 4, 6, and 7, above. 1000 Friends of Oregon asserts that Metro's Goal 14, factor 5 staff report regarding the economic, social, and energy impacts of taking this land out of the county's agricultural land base is not adequate.[9] The staff report is part of Metro's submittal in support of Ordinance No. 05-1070B. Attachment 5 to that report, the September 2005 Addendum to the Alternatives Analysis, concludes that inclusion of the Evergreen Expansion Area would result in moderate social, energy, and economic consequences. That conclusion appears in the overall consideration of the locational factors. *See* Staff Report Table 4 to Ordinance No. 05-1070 at 11. Metro identified that a con of the Evergreen Expansion Area is the impact on commercial agriculture by pushing urban development further into the agricultural base in Washington County, but concluded:

> "The nearly surrounded nature of the agriculture lands in the Evergreen area (between the UGB on the east and south and exceptions lands to the west), potential for good edges, moderate level of small parcels and the fact that the areas is not in an irrigation district are the primary reasons that this area received consideration." Staff Report to Ordinance No. 05-1070 at 13.

"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 and Affordable Housing, 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."

[9] Goal 14, factor 5 requires consideration of:

"Environmental, energy, economic and social consequences[.]"

1000 Friends of Oregon's objection does not fault Metro's 'environmental' analysis of the Evergreen Expansion Area. *See* Addendum to the Alternatives Analysis (September 2005) at 3-4.

In the findings, Metro also found that because the Evergreen Expansion Area would be available for industrial use sooner than any other study area under consideration, perhaps as a "shovel-ready" site, it would have the best overall consequences for the region. Exhibit D to Ordinance No. 05-1070 at 8. The Commission finds that collectively, the social, energy, and economic analysis submitted by Metro is an adequate consideration of the locational factors of Goal 14. The Commission rejects this objection of 1000 Friends of Oregon.

1000 Friends of Oregon and the Washington County Farm Bureau both observe that urban industrial use of the Evergreen Expansion Area will place greater transportation and infrastructure demands than agricultural use of the area. Both parties also observe that urbanization will make it more difficult to move farm equipment. Washington County Farm Bureau observes that much of the region's growth has occurred in Washington County, that farmland is a natural resource and contributes to livability. Neither party explains how these observations amount to a deficiency in Metro's submittal. The Commission finds that Metro considered these consequences of urbanization of the Evergreen Expansion Area. In recognition of these and consequences, Metro adopted conditions of approval, including a requirement that the City of Hillsboro adopt land use regulations to enhance the compatibility between industrial uses in the Evergreen Expansion Area and agricultural practices on adjacent land outside the UGB. Exhibit B to Ordinance No. 05-1070. The Commission rejects these objections of 1000 Friends of Oregon and the Washington County Farm Bureau.

1000 Friends of Oregon argues that the Evergreen Expansion Area is not necessary to meet the region's large industrial lots or warehouse and distribution needs. The Commission disagrees. As discussed above, Metro found that the addition of the Evergreen Expansion Area large lot would fulfill the identified need for large parcels of industrial lands. Exhibit D to Ordinance No. 05-1070A at 2-3. Although 1000 Friends of Oregon correctly observes that the addition of the Evergreen Expansion Area would not fulfill the identified need for the warehouse and distribution industry, as discussed below, Metro determined that "more than 70 percent of vacant, buildable industrial land within the UGB is suitable for the warehouse and distribution industry." Exhibit D to Ordinance No. 05-1070A at 3. Therefore, although the Evergreen Expansion Area is not needed to meet the warehouse and distribution component of the identified employment need, it does satisfy part of the identified need for large parcels of industrial lands. The Commission rejects this objection of 1000 Friends of Oregon.

The Commission, having rejected all objections to Metro's inclusion of the Evergreen Expansion Area, approves Metro's inclusion of that area and the condition requiring reconfiguration to produce at least one parcel that is 100 acres or larger in size. The Commission concludes that Metro has complied with remand item 7(c) of LCDC Order 05-WKTASK-001673 and the goals.

Land for Warehousing and Distribution

The Commission remanded Metro Task 2 to "[c]larify whether the 70 percent of land for warehousing and distribution uses applies to all vacant industrial land or only to the need to add land to the UGB[.]" LCDC Order 05-WKTASK-001673 at 71. On remand, Metro evaluated all of the vacant buildable land in the region including land added to the UGB, finding that "more than 70 percent of vacant, buildable industrial land within the UGB is suitable for the warehouse and distribution industry." Exhibit D to Ordinance No. 05-1070A at 3. The Department concluded that Metro's submittal satisfied this remand item. DLCD Revised Staff Report at 7. The Department did not receive any objections to this portion of Metro's submittal. The Commission concludes that Metro has complied with this requirement of LCDC Order 05-WKTASK-001673 and the goals.

Recalculate Total Acreage of Industrial Land Supply

The Commission remanded Metro Task 2 to "recalculate the total acreage of industrial land supply and compare that number with the identified land need of 1,180 net acres[.]" LCDC Order 05-WKTASK-001673 at 71. Metro calculated that it had not met 435 net acres of the total identified need of 9,366 acres for industrial land. Exhibit D to Ordinance No. 05-1070A at 3-4. On remand, Metro added 345 net acres, bringing the industrial land capacity of the UGB to 9,276 acres, 90 acres shy of the need Metro identified in the *2002-2022 Urban Growth Report: An Employment Land Need Analysis* (UGR-E). Metro found that this "supply is so close to the calculated need that it is well within the limits of precision of the many assumptions that are part of the need determination (the population forecast; the employment capture rate; the industrial refill rate; employment density; the rate of encroachment by non-industrial uses; the vintage industrial relocation rate)." Exhibit D to Ordinance No. 05-1070A at 4. Metro concluded that the difference of less than one percent between the need and the supply is so small as to be minor and technical in nature. *Id.* The Department received objections and exceptions challenging Metro's conclusion that it has provided a 20-year supply of industrial land for the region in compliance with Goal 14.

Statewide Planning Goal 14

Several objectors contend that Metro's submittal does not comply with Statewide Planning Goal 14. Generally, the objections and exceptions contend that either as a matter of law or based on a prior Commission decision in this matter, that Goal 14 requires Metro to provide an amount of land necessary to precisely meet or exceed the identified employment need in the UGR-E. Some objectors contend that Metro must be able to meet some of the identified employment need in the immediate or short-term. One objector contends that the Commission should require Metro to reevaluate its identified need.

Goal 14 is "[t]o provide for an orderly and efficient transition from rural to urban land use."[10] OAR 660-015-0000(14). Goal 14 requires that change to a UGB be based upon considerations of seven factors:

> "(1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
>
> "(2) Need for housing, employment opportunities, and livability;
>
> "(3) Orderly and economic provision for public facilities and services;
>
> "(4) Maximum efficiency of land uses within and on the fringe of the existing urban area;
>
> "(5) Environmental, energy, economic and social consequences;
>
> "(6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,
>
> "(7) Compatibility of the proposed urban uses with nearby agricultural activities."

Factors 1 and 2 are the "need" factors. *Friends of Linn County v. Linn County*, 41 Or LUBA 342, 344 (2002). Factors 3 to 7 are known as the "locational factors." *D.S. Parklane Development, Inc. v. Metro*, 165 Or App 1, 7 n 1, 994 P2d 1205 (2000).

Identified Need

The Westside Economic Alliance objects that the need forecasted in the UGR-E understates the true needs of the region and suggests that the Commission should remand Metro's submittal with direction to meet the region's true employment need, not that identified in the acknowledged UGR-E. The Westside Economic Alliance objection argues "the region and the state would be better served if Metro were ordered to rely on Metro's updated information, and to satisfy the need as it is now anticipated to exist." Westside Economic Alliance objection at 4. The Westside Economic Alliance renews this concern in its exception, stating "we believe the Commission should require Metro to use the new information they have, to accommodate the demands we now agree are coming much faster than expected." Westside Economic Alliance exception at 3. Because sustaining this objection or exception would require Metro to reevaluate its identified need for employment opportunities, the Commission considers it first.

Pursuant to Goal 14, factor 2, Work Task 2, Subtask 14b required Metro to analyze the region's projected need for employment land to 2022. The *2002—2022 Urban Growth Report: An Employment Land Need Analysis* (Ordinance No. 02-969B,

[10] On April 28, 2005, the Commission adopted amendments to Goal 14 and amended related OARs. The Commission reviews this work task submittal under the prior version of Goal 14 effective at the time the Commission approved Metro's periodic review work program in 2000.

Appendix A, item 4) and the supplement to the UGR-E (Ordinance No. 04-1040B, Appendix A, item b) provide Metro's analysis of the need for land for new jobs through the year 2022. Metro defined its industrial land need as having particular characteristics:

> "Metro defined the need as 1,968 acres of land composed generally of less than 10 percent slope that lies either within two miles of a freeway interchange or within one mile of an existing industrial area." Exhibit G to Ordinance No. 04-1040B at 2.

The Commission previously rejected objections to Metro's employment lands needs analysis, Subtask 14b, the UGR-E and approved Metro's identified employment opportunities need. LCDC Order No. 03-WKTASK-001524 at 2, 22, 50. While the Commission subsequently remanded the UGR-E for amendment pursuant to the consistency provisions of Goal 2, the Commission did not sustain any objections to Metro's identified employment opportunities need. *See* LCDC Order No. 001673 at 16-32. Because the Commission approved the employment need identified in the UGR-E and no party sought judicial review of that approval, the employment need identified in the UGR-E is acknowledged. OAR 660-025-0160(9). The Commission finds that nothing in Metro's current submittal requires Metro to rework the employment need of the previously acknowledged UGR-E. *Hummel v. LCDC*, 152 Or App 404, 410-411, 954 P2d 824 (1998). The Commission rejects Westside Economic Alliance's objection, exception, and proposed remedy regarding Metro's acknowledged need for employment opportunities.

Means of Meeting the Identified Need

Westside Economic Alliance contends that the Commission should require Metro to add 1,968 acres of land representing the employment need that was identified in 2002. In previously rejecting a similar objection, the Commission stated:

> "The Commission finds that Metro did not reduce the identified industrial land need. Metro started with an unmet industrial need of 1,968 acres, consistent with the UGR-E and LCDC Order 03-WKTASK-001524. To the extent that this and other objections contend that the Commission directed Metro to simply add 1,968 net acres to the UGB, the objections misconstrue the Commission's order and the Goal 2 and 14 requirements for expanding a UGB. The Commission concludes that Metro complied with the goals and the requirements of its acknowledged Periodic Review Work Program in first determining whether the identified need for industrial employment opportunities could be accommodated within the existing UGB before adding land to the UGB to meet the identified need. Goal 2, Goal 14, and OAR 660-004-0010(1)(c)(B)(ii); *see also* Metro Periodic Review Work Program, Subtask 17 at 13 (requiring 'consideration of whether needs can be accommodated within the existing UGB before expanding it.')." LCDC Order No. 001673 at 21-22.

The Commission also specifically determined that Metro had an adequate factual base to demonstrate that the efficiency measures in Title 4 of the Urban Growth Management Functional Plan (UGMFP) would save an estimated 1,400 acres of industrial land. *Id.* at 22. Neither Westside Economic Alliance nor any other party sought judicial review of that conclusion. The Commission rejects this objection both on the merits and as an untimely challenge to its prior order.

Meeting the Identified Need

The City of Hillsboro, the City of Cornelius, the City of Forest Grove, CREEC, and NAIOP argue that, as a matter of law the Goal 14, factor 1 and 2 "Need" requirement imposes upon Metro a legal obligation to provide an amount of land that is "at least" equal to the projected land needs for a 20-year supply of industrial land. City of Hillsboro objection at 6; exception at 1-2; City of Forest Grove objection at 4-5, NAIOP objection at 3; exception at 1-2; CREEC objection at 5; exception at 1-2. The objectors contend that the Commission must strictly construe and Metro must accommodate the 1,180 net acres industrial land need Metro identified. The City of Hillsboro takes exception to the notion that Goal 14 allows land need deficits that are minor in nature. City of Hillsboro exception at 2. The Westside Economic Alliance objects that Metro was directed to correct the 133 acre deficit, but failed to add 133 acres to do so. Westside Economic Alliance objection at 4; exception at 2. The City of Cornelius argues "Metro must fully accommodate its identified land need as a matter of law and policy." City of Cornelius Exception at 1.

The City of Cornelius objection cites to the commission's 2003 Order as "the law of the case"[11] that held that Metro must provide an amount of land "at least" equal to the identified employment need for industrial land. The Commission stated:

> "The Associated General Contractors, Portland Business Alliance, and Regional Economic Development Partners object that Metro did not provide sufficient industrial land to meet all of the need which it has identified. OAR 660-009-0025(2) requires Metro to provide an amount of land that is at least equal to the projected land needs for a 20-year supply of industrial land. The Commission concludes that Work Task 2 has not provided sufficient industrial land to meet the identified need. The Commission sustains the objections to the incomplete accommodation of the need for industrial lands." LCDC Order 03-WKTASK-001524 at 28.

In that passage, the Commission analogized to the requirements of the Goal 9 rule, OAR chapter 660, division 9. As this Commission clarified in its more recent order, neither Goal 9 nor the Goal 9 rule applies to Metro. LCDC Order 05-WKTASK-001673 at 14-16. The Commission clarified that Metro's responsibility to ensure a long-term supply of employment land inside the UGB stems from Goal 14, not Goal 9. LCDC Order 05-

[11] The "law of the case" doctrine "is that principle under which determination of questions of law will generally be held to govern case throughout all its subsequent stages where such determination has already been made on a prior appeal to a court of last resort." *Black's Law Dictionary* 798 (5th ed 1979).

WKTASK-001673 at 16 n 8. The Commission considered and rejected arguments that either Goal 14 or the Commission's 2003 order obliged Metro to "fully accommodate" the identified need for employment lands. The Commission *specifically* left open the possibility that a shortfall in meeting the employment land needs would be deemed "minor in nature" under ORS 197.747.

> "The Commission concludes that a 133-acre shortfall, constituting one percent of the total overall land need of 9,366 acres for the 20-year planning period (UGR-E), may ultimately be considered 'minor in nature' as a matter of law. However, the Commission further concludes that such a determination is premature in light of the Commission's partial remand in this Order for Metro to evaluate elements of its Goal 14 needs analysis." LCDC Order 05-WKTASK-001673 at 30.

To the extent that the law of the case doctrine pertains to this issue, it is the latter holding of the Commission – that a shortfall may be minor in nature as a matter of law – that is the law of the case. No party sought judicial review of that holding.

Ordinance No. 05-1070A adds 345 net acres of land to the UGB, bringing the industrial land capacity of the UGB to 9,276 acres, 90 acres shy of the total need for industrial land identified in the UGR-E. Exhibit D to Ordinance No. 05-1070A at 4. The Commission now turns to whether a 90-acre shortfall, constituting less than one percent of the total overall identified land need of 9,366 acres for the 20-year planning period, may be considered 'minor in nature' as a matter of law. The objectors contend that either Goal 14 or *former* RFP Policy 1.9[12] require Metro to precisely provide a 20-year supply of land to satisfy the employment opportunities need. Several objectors note that nothing in the plain language of the Goal 14 need factors state or imply that accommodating anything less than full 20-year land need is permissible. While the Commission agrees that Goal 14 requires Metro to project its 20-year need for employment opportunity and to take steps to reasonably accommodate the identified need, the objector's contention that Metro must "fully accommodate" or provide "at least" its identified need of 9,366 acres of industrial land ignores ORS 197.747. ORS 197.747 defines "compliance with the goals" to mean that the submittal, "on the whole, conform with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature." It is ORS 197.747, not Goal 14 that allows a minor shortfall in accommodating an identified need. Metro found that the 9,276 acre "supply is so close to the calculated need that it is well within the limits of precision of the many assumptions that are part of the need determination (the population forecast; the employment forecast; the capture rate; the industrial refill rate, employment density; the rate of encroachment by non-industrial uses; the vintage industrial relocation rate)." Exhibit D to Ordinance No. 05-1070A at 4. Metro concluded that the difference of less than one percent between the need and the supply is so small as to be minor and technical in nature. *Id.* The Commission concludes that Goal 14 read together with ORS 197.747 allows the

[12] The City of Forest Grove, CREEC, and NAIOP cite to *former* RFP Policy 1.9, which provided in part:

> "The regional UGB, a long-term planning tool, shall separate urbanizable from rural land and be based on the region's 20-year projected need for land[.]"

Commission to approve Metro's submittal where it accommodates over 99 percent of its acknowledged need for employment opportunities. The Commission rejects each objection and exception that contends otherwise.

Finally, the City of Cornelius argues that by adding the entire Cornelius study area, Metro would have exceeded its identified employment land need by one-acre, which is more "minor in nature" than a 90-acre deficit is. Assuming for purposes of discussion that contention is correct, that is not what Metro has submitted as its completed work task, and is not what is before the Commission. The Commission has jurisdiction to review Metro's completed work task submittals. ORS 197.644(2). The Commission is not in a position to anticipate how Metro would satisfy the 90-acre deficit if the Commission were to direct Metro to do so. Thus, the issue properly before the Commission on its review of this submittal is whether a 90-acre shortfall, constituting less than one percent of the total overall land need of 9,366 acres for the 20-year planning period (UGR-E), is 'minor in nature' as a matter of law. As decided above, the Commission concludes that the shortfall is minor in nature and that Metro had provided an adequate supply of industrial land to meet the need identified in the UGR-E.

Short-term needs

The Westside Economic Alliance objects that Metro failed to accommodate the region's short-term industrial land needs, contrary to Goal 9 and Goal 14. WEA objection at 6-8. Objectors the City of Forest Grove, NAIOP, and CREEC contend that Metro failed to insure that a reasonable portion of the 20-year supply of industrial land is either development ready or capable of being made so within a short period of time. City of Forest Grove objection at 3, CREEC objection at 5, NAIOP objection at 4. The Commission has rejected the assertion that Metro has an obligation under state law to provide a short-term supply of industrial land.

"Short-term Supply of Land

"Langdon Farms, Hillsboro, and Westside Economic Alliance raised objections and exceptions regarding the short-term supply of industrial land, specifically that for warehouse/distribution. The obligation to provide a short-term supply of serviceable sites comes from OAR chapter 660, division 009, which implements Goal 9 and ORS 197.712. As discussed above, Goal 9, ORS 197.712, and division 009 do not apply to Metro. OAR 660-009-0025(3), pertaining to short-term supply of serviceable sites, provides "[i]f the local government is required to prepare a public facility plan by OAR chapter 660, division 011." Because Metro is not a local government that is required prepare a public facility plan by OAR chapter 660, division 011, the rule on its face does not apply to Metro. *The Commission concludes that Metro is not responsible for planning a short-term supply of industrial land.*" LCDC Order 05-WKTASK-001673 at 16 (emphasis added).

The Commission rejects these objections of Westside Economic Alliance, the City of Forest Grove, CREEC, and NAIOP.

The Commission concludes that Metro has complied with Goal 14 and the requirement of LCDC Order 05-WKTASK-001673 to "recalculate the total acreage of industrial land supply and compare that number with the identified land need of 1,180 net acres[.]"

Objections to Cornelius Expansion Area

The Commission remanded Metro Task 2 to "[r]efine the analysis of how Metro 'balanced' the locational factors of Goal 14 (factors 3 through 7) in reaching its decision to include the Cornelius area as described in Exhibit E to Ordinance No. 04-1040B in the UGB over other areas of equal statutory priority, including why the economic consequences outweighed the retention of agricultural land and compatibility with adjacent agricultural uses." LCDC Order 05-WKTASK-001673 at 70-71. On remand, Metro concluded that adding 65 acres (24 net acres) north of the City of Cornelius best achieves the RFP policies and complies with state law.[13] Metro found that the Cornelius Expansion Area reduces the impact of UGB expansion on the agriculture industry; is among the easiest study areas to serve efficiently; accommodates industrial development more efficiently than other study areas; reduces impacts on area roads relative to the prior submittal; avoids negative economic and social consequences from loss of the agricultural land base; and supports the designated Main Street in the City of Cornelius, which effectively serves as the "center" of Cornelius. *See* Exhibit D to Ordinance No. 05-1070A at 5-20 (Metro findings comparing Cornelius Expansion Area to 12 study areas under consideration).

ORS 197.298

The City of Hillsboro contends "the exception land must be brought into the UGB before (or concurrent with) any Class II resource land within the Cornelius Site in order to avoid violating the ORS 197.298(1) priorities." City of Hillsboro objection at 9. The City of Hillsboro, the City of Forest Grove, NAIOP and CREEC object that Metro violated ORS 197.298 by not including exception land to the north of Council Creek on the basis that Council Creek is a "natural boundary." City of Hillsboro objection at 7-10, City of Forest Grove objection at 5-6, NAIOP objection at 4-5; exception at 2, CREEC objection at 6-7; exception at 2. The City of Cornelius objects that the Cornelius Study

[13] Metro identified the Cornelius Study Area in the 2003 Industrial Land Alternative Analysis Study as a 1,154 total-acre area composed of 2002 Alternative Analysis Study Areas 75 and 76 and 2003 Alternative Analysis Study Area H. 2003 Industrial Land Alternative Analysis Study at 84. Metro submitted a 262-acre portion of the Cornelius Study Area for inclusion in the UGB in Ordinance No. 04-1040B, which the Commission remanded for further consideration. *See* Exhibit E to Ordinance No. 04-1040B (depicting 262-acre portion submitted for inclusion in the UGB). The Cornelius Expansion Area Metro added in Ordinance No. 05-1070A is a 65-acre portion of the Cornelius Study Area. *See* Exhibit A-1 to Ordinance No. 05-1070A. This order refers to the area added to the UGB as the Cornelius Expansion Area.

Area has the highest priority under ORS 197.298 of the areas Metro studied. City of Cornelius objection at 7; exception at 2-3.

As discussed above with respect to the Evergreen Expansion Area, for this expansion effort, Metro was considering 12 areas of predominantly Class II soils.[14] Exhibit D to Ordinance No. 05-1070A at 4. ORS 197.298 does not establish a priority between areas of Class II soils; therefore, Metro must look to the Goal 14 locational factors 3-7 to determine which areas of Class II soils should be brought into the UGB to meet the identified industrial need. LCDC Order 05-WKTASK-001673 at 43-44. Metro recognized that the Cornelius Expansion Area did not include areas of exception land that had previously been submitted to the Commission as an UGB expansion in Ordinance No. 04-1040B. Metro provided three reasons for not including the exception areas north of Council Creek:

> "First, the exception land, like the excluded farmland, lies north of Council Creek. Both the Oregon Department of Agriculture and the Washington County Farm Bureau urged the Council not to expand the UGB north of this creek. Council Creek is the best barrier between urbanization in Cornelius and commercial agriculture to the north. Urbanization of this exception land would not only threaten commercial agriculture on the excluded farmland that lies between the two exception areas. It would also allow development that would worsen the existing intrusion into the commercial farm area north of Council Creek and erode the confidence of area farmers in the viability of commercial agriculture in the area.
>
> "Second, provision of urban services to the two exception areas would not be efficient without providing services to the farmland that lies between them. Extension of streets into the exception areas alone would limit accessibility to fire and life safety vehicles and place additional demands on local streets within the pre-expansion UGB. Development of looped water and sewer systems – more efficient and safer – through the exception areas and intervening farmland becomes less feasible without development of the farmland and may not be legally possible under state planning laws.
>
> "Third, the exception land that lies to the east of the excluded farmland borders residential land across the UGB to the south. It does not adjoin industrial land. Further, Council Creek also traverses the area east to west, following approximately the course of the UGB. As noted in the Alternative Analysis attached to the September 20, 2005, Staff Report, there is protected corridor

[14] The City of Cornelius contends that the Cornelius Study Area is "exceedingly close to qualifying as second priority land under ORS 197.298(1)(b)." Assuming that is correct, the Commission does not conclude that Metro can be held to have erred on this record for considering the Cornelius Study Area as Soil Class II resource land under ORS 197.298(1)(d) and (2). The 1,154 acre Cornelius Study Area contained 55 percent Class II soils and 20 percent exception land. October 13, 2005 Staff Report to Ordinance No. 05-1070 at 11. The 262-acre portion of the Cornelius Study Area for inclusion in the UGB in Ordinance No. 04-1040B also contained 55 percent Class II soils. *Id.*

averaging 280 feet wide along the creek that would separate industrial uses in the exception area from uses within the existing UGB.

"In sum, in order to protect the commercial agricultural land base and use industrial land efficiently, it is necessary to exclude all land north of Council Creek."

Exhibit D to Ordinance No. 05-1070A at 19-20. Metro applied the locational factors of Goal 14 and its RFP Polices to determine which of the 12 identified study areas should be utilized to accommodate the identified need for employment opportunities in the UGR-E. Metro's findings under those criteria are at Exhibit D to Ordinance No. 05-1070A at 5-20.

Statewide Planning Goal 2 – Adequate Factual Base

The City of Cornelius objects that Metro lacked an adequate factual base under Goal 2 to decide to meet industrial need in the Cornelius area only on lands south of Council Creek. City of Cornelius objection at 5; exception at 4. The City of Cornelius argues that an adequate factual base exists to support the portion of the Cornelius Study Area that Metro submitted in Ordinance No. 04-1040B.

The Goal 2 requirement for an adequate factual base requires that legislative land use decision be supported by substantial evidence. *DLCD v. Douglas County*, 37 Or LUBA 129, 132 (1999). Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make the finding. ORS 183.482(8)(c) and *Dodd v. Hood River County,* 317 Or 172, 179, 855 P2d 608 (1993). Where the evidence in the record is conflicting, if a reasonable person could reach the decision Metro made in view of all the evidence in the record, the choice between the conflicting evidence belongs to Metro. *Mazeski v. Wasco County,* 28 Or LUBA 178, 185 (1994), *aff'd* 133 Or App 258, 890 P2d 455 (1995).

The Commission has jurisdiction to review Metro's completed work task submittals. ORS 197.644(2). The Commission does not foretell whether Metro would determine, based on consideration of the locational factors of Goal 14, that the portion of the Cornelius Study Area that Metro submitted in Ordinance No. 04-1040B was on balance an appropriate place to expand the UGB at this time. As a matter of law, that is precisely why the Commission remanded Metro's analysis of the "balancing of the locational factors of Goal 14 (factors 3 through 7) in reaching its decision to include the Cornelius area as described in Exhibit E to Ordinance No. 04-1040B in the UGB over other areas of equal statutory priority, including why the economic consequences outweighed the retention of agricultural land and compatibility with adjacent agricultural uses." LCDC Order 05-WKTASK-001673 at 70-71. The question before the Commission is not that posed in the City of Cornelius' objection – whether there would have been substantial evidence to support a decision to bring in the portion of the Cornelius Study Area that Metro submitted in Ordinance No. 04-1040B – the question

before the Commission is whether Metro's decision to include the Cornelius Expansion Area was supported by substantial evidence.[15]

> Metro's findings regarding the Cornelius Expansion Area include the following:
>
> "The Council was persuaded by testimony of farmers in the area and the Oregon Department of Agriculture that adding land north of Council Creek would create an intrusion into an area of critical importance to commercial agriculture in the Tualatin Valley." Exhibit D to Ordinance No. 05-1070A at 4.

and

> "Avoidance of negative economic and social consequences from loss of agricultural land was one of the reasons the Council reduced the size of this area, based upon testimony by the Oregon Department of Agriculture and the Washington County Farm Bureau that land to the north of Council Creek is important to the commercial Agricultural land base in the Tualatin Valley. *Id.* at 16.

and

> "The Washington County Farm Bureau testified that inclusion of *any* land north of Council Creek – farmland or exception land (some of which is being farmed) – would harm commercial agriculture in the Tualatin Valley by diminishing the land base and introducing conflicts. Development north of Council Creek would encounter no significant barrier to further expansion to the north, eroding certainty among farmers in the Tualatin Valley. Letters from a farm products processor and a farm implement dealer in Cornelius expressed concern that further loss of farmland would make it difficult for them to remain in business. All of this evidence persuades the Council that inclusion of land north of Council Creek would be inconsistent with [RFP] Policy 1.12 and Goal 14 and would be more harmful to commercial agriculture than inclusion of farmland in the Evergreen Area." *Id.* at 18.

The record contains a report to Metro entitled "*Limited Choices: The Protection of Agricultural Lands and the Expansion of the Metro Area Urban growth Boundary for Industrial Use*" that was prepared by a group of farmers and agriculturists assembled by the Oregon Department of Agriculture. With regard to the Cornelius Study Area, the report states:

> "The workgroup is very concerned about beginning a pattern of development that would protrude out into the agricultural lands located north of Cornelius and

[15] The City of Cornelius also argues that Metro could have brought in the resource land north of Council Creek pursuant to ORS 197.298(3)(b) and (c). Assuming that is correct, the Commission does not consider this possibility a basis to remand Metro's decision. As discussed above, the Commission's jurisdiction is limited to review of Metro's submittal.

> Forest Grove and west of Hillsboro. The current urban growth boundary corresponds with Council Creek. Council Creek and its associated floodplain and riparian zone currently provide a good edge and buffer between urban and resource lands. *The area located north of these cities and west of the City of Hillsboro is considered by the workgroup to be a core agricultural area in the county and metro area. The long-term integrity of this agricultural core area could be compromised with the protrusion of development into the core area.*" Ordinance No. 04-1040B, Appendix A, item i at 11-12 (emphasis in the original).

Metro's submittal includes an October 25, 2005 letter from the Oregon Department of Agriculture which expresses concern about introducing development into agricultural core areas, stating "Expansion north of [Council] Creek would project a finger of urban development with several edges into prime farmland."

The record also includes the 2003 Industrial Land Alternative Analysis Study, which determined that urbanization of the entire Cornelius Study Area would have high adverse consequences for nearby agriculture. *Id.* at 85-86; Table A-4. By comparison, urbanization of the Cornelius Expansion Area "would have a medium impact on adjacent agricultural activity to the north, east and west." September 2005 Addendum to the Alternative Analysis, Cornelius Supplement at 3. The Commission concludes that Metro's decision to meet some of its identified industrial need in the Cornelius Expansion Area, *i.e.*, only on lands south of Council Creek, is supported by substantial evidence. The Commission further concludes that although the record included evidence that could support inclusion of a larger portion of the Cornelius Study Area, such evidence was in conflict with the substantial evidence described above. Under those circumstances, because the Commission concludes Metro reasonably could reach the decision it made in view of all the evidence in the record, the choice between the conflicting evidence belongs to Metro. *Mazeski v. Wasco County,* 28 Or LUBA at 185.

Scope of LCDC Order 05-WKTASK-001673 Remand

The City of Cornelius contends the Commission's remand order simply directed Metro to adopt new findings under the locational factors to justify inclusion of the portion of the Cornelius study area previously submitted in Ordinance No. 04-1040B. City of Cornelius objection at 9-10; exception at 4. The City of Cornelius further contends that Metro lacked the authority to include less than all of the Cornelius Study Area, or to conclude that another area studied for inclusion was more suitable based upon consideration of the locational factors of Goal 14. The City of Hillsboro argued that the Commission's remand to Metro directed Metro "how" to comply with Goal 2 Coordination, stating "It was only supposed to prepare sufficient findings to support the entire Site being added to the UGB." Remarks of Hillsboro to the Commission on March 23, 2006.

The Commission remanded the inclusion of the Cornelius Study Area for further analysis by Metro and additional findings to demonstrate its consideration and balancing

of the Goal 14, factors 3 to 7. LCDC Order 05-WKTASK-001673 at 35. The Commission remanded the Cornelius study area to:

> "Refine the analysis of how Metro 'balanced' the locational factors of Goal 14 (factors 3 through 7) in reaching its decision to include the Cornelius area as described in Exhibit E to Ordinance No. 04-1040B in the UGB over those areas of equal statutory priority, including why the economic consequences outweighed the retention of agricultural land and compatibility with adjacent agricultural uses." *Id.* at 70-71.

The Commission did not order Metro to include the Cornelius area, either in whole or in part. *See* OAR 660-025-0160(8)(c) (authorizing Commission to order specific plan or land use regulation revisions which are final and do not require further Commission review). The Commission specifically remanded to Metro to refine its analysis of that area under the locational factors emphasizing the focus to include factors 6 and 7. Metro did so and determined that at this time, the urbanization of the agricultural lands north of Council Creek was neither compatible with the continuation of Washington County agricultural activities nor an efficient use of industrial land.

Goal 14, factors 3 to 7, known as the "locational factors," do not stand alone as five independent approval criterion, the factors must be individually addressed and applied equally, and then Metro must consider and balance the five factors in reaching a conclusion concerning whether adding a specific area to the UGB achieves the overall goal to provide for an orderly and efficient transition from rural to urban land use. *D.S. Parklane Development, Inc.*, 165 Or App at 24; *1000 Friends of Oregon v. Metro*, 174 Or App 406, 410, 26 P3d 1108 (2001). The purpose of evaluation of the locational factors of Goal 14 is to determine which lands are best able to meet the identified need and Goal 14 overall. In this instance, Metro determined that the lands south of Council Creek met some of the identified need, but because the lands north of Council Creek posed such a negative impact to the integrity of the agricultural enterprise in the area, that in balancing the locational factors, the regional UGB should not include the area north of Council Creek. This is exactly the type of analysis that the Commission remanded the prior submittal to Metro to perform. The Commission concludes that Metro did not exceed its authority on remand.

The Westside Economic Alliance Objection 3 contends that the Commission should direct Metro "to reinstate, with justifications already ordered, the 262 acre expansion north of Cornelius previously proposed in Ordinance 04-1040B" or in the alternative "include other lands that satisfy the identified regional need for industrial lands." Westside Economic Alliance objection at 4. As discussed above, the Commission previously remanded for clarification Metro's justification for submitting the portion of the Cornelius Study Area in Ordinance No. 04-1040B. Inherent in that remand is the Commission's conclusion that the justification for the 262 acre area was not clear as to how Metro justified the submittal. The Commission concludes that reinstating those same justifications now would still not be sufficiently clear to include the 262 acre expansion. The Commission also notes that it has concluded above that

Metro's submittal has met its identified employment need, because the remaining shortfall for the region is minor in nature.

Hard Boundaries

Westside Economic Alliance Objection 4 contends that establishing "hard boundaries" in general, and specifically the decision to not include lands north of Council Creek, is inconsistent with ORS 197.298 and Goal 14. Westside Economic Alliance objection at 4. The City of Forest Grove, NAIOP, and CREEC object to the use of "'artificial edges', whether natural, e.g., creeks, or man-made, e.g., highways to 'trump' the land hierarchy established in ORS 197.298." *See also* CREEC and NAIOP exception at 2. As discussed above, to meet the identified employment need, Metro was considering 12 study areas that included Class II soils. Exhibit D Ordinance No. 05-1070A at 4. The Commission agreed that ORS 197.298 does not establish a priority between areas of Class II soils and that Metro must look to the Goal 14 locational factors 3-7 to determine which areas of Class II soils should be brought into the UGB to meet the identified industrial need. LCDC Order 05-WKTASK-001673 at 43-44. The Commission has held

> "for lands of the same priority under ORS 197.298 that can reasonably accommodate Metro's identified need for industrial land, Metro considers and balances Goal 14, factors 3 to 7 to determine locations to expand the UGB. Although they do not take precedence over criteria in state law, Metro also bases the selection of lands of the same priority for inclusion on RFP policies. *See* Ordinance No. 04-1040B, Appendix A, item a at 5 and Attachment 1 (describing and diagramming relationship of applicable provisions)." LCDC Order 05-WKTASK-001673 at 41.

To the extent that Metro's submittal had the effect of establishing a "hard boundary" or "artificial edge" at Council Creek, the Commission concludes that Metro did so by applying the locational factors of Goal 14 and consistent with RFP 1.7.2. The Commission does not find that Metro established either "hard boundaries" or an "artificial edge" that are not in compliance with either ORS 197.298 or Goal 14. The Commission rejects Westside Economic Alliance Objection 4 and this aspect of the City of Forest Grove's third objection, NAIOP's second objection, and CREEC's third objection.

Statewide Planning Goal 2 – Coordination

The City of Forest Grove and CREEC object that Metro did not comply with ORS 197.015(5), Statewide Planning Goal 2, and OAR 660-015-0000(2). Forest Grove and CREEC contend Metro "failed to respect MPAC's original recommendation and failed to afford an opportunity for MPAC and the most affected jurisdictions, the Cities of Hillsboro and Cornelius, to advise it regarding new information attained at the 11/10/0[5] hearing in a timely and meaningful way before final adoption." Forest Grove objection at 4; CREEC objection at 4. The City of Hillsboro objects and filed an exception

contending that Metro did not comply with the coordination requirements of Goal 2. The Westside Economic Alliance also objects that Metro ignored its Goal 2 obligation to coordinate with local government by ignoring the findings and recommendations of local officials. Westside Economic Alliance objection at 5.

Goal 2 provides "[e]ach plan and related implementation measure shall be coordinated with the plans of affected governmental units."[16] As used in Goal 2, a regional framework plan is "coordinated" once "the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible." ORS 197.015(5). Previously, the Commission has stated the coordination requirement as follows;

> "the coordination requirement is satisfied where Metro has engaged in an exchange of information regarding an affected governmental unit's concerns, put forth a reasonable effort to accommodate those concerns and legitimate interests as much as possible, and made findings responding to legitimate concerns." LCDC Order 05-WKTASK-001673 at 10.

Metro detailed its coordination with local governments and special districts, finding that it "accommodated the requests and concerns of local governments as much as it could, consistent with statewide planning Goal 2, ORS 195.025 and ORS 268.385,[17] Regional Framework Plan Policy 1.11 and Regional Transportation Plan Policy 2.0." Exhibit D to Ordinance No. 05-1070A at 1. The record includes a November 14, 2005 letter from Metro Council President David Bragdon to Cornelius Mayor Terry Rilling setting forth Metro's reasons regarding the Cornelius Expansion Area. The City of Cornelius and others submitted additional written testimony to Metro and testified at the November 17, 2005 hearing. The record reflects that in this instance, Metro has exchanged information with the affected local governments of the cities of Cornelius, Forest Grove, and Hillsboro, and also MPAC. The record also reflects that Metro exchanged information with the Oregon Department of Agriculture pertinent to the Cornelius Expansion Area.

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[16] Goal 2 defines "Affected Governmental Units" as "those local governments * * * which have programs, land ownerships, or responsibilities within the area included in the plan."

[17] ORS 195.025 provide in part:

> "(1) In addition to the responsibilities stated in ORS 197.175, each county, through its governing body, shall be responsible for coordinating all planning activities affecting land uses within the county, including planning activities of the county, cities, special districts and state agencies, to assure an integrated comprehensive plan for the entire area of the county. In addition to being subject to the provisions of ORS chapters 195, 196 and 197 with respect to city or special district boundary changes, as defined by ORS 197.175 (1), the governing body of the Metropolitan Service District shall be considered the county review, advisory and coordinative body for Multnomah, Clackamas and Washington Counties for the areas within that district."

ORS 268.385(1) provides:

> "For the purposes of ORS 195.025, the district formed under this chapter shall exercise within the district the review, advisory and coordinative functions assigned under ORS 195.025 (1) to each county and city that is within the district."

Ultimately, Metro made a determination that under the locational factors of Goal 14, the area south, but north of Council Creek should be brought into the regional UGB. Metro made findings relating how concern over intrusion into the agricultural area north of Council Creek led Metro to conclude that that area was not appropriate for urbanization at this time. The coordination requirement of Goal 2 does not dictate outcomes, only a good faith obligation to a process.

The City of Cornelius argues that Metro's initial decision on November 10, 2005 to include the Cornelius Expansion Area that the City then testified on at the November 17, 2005 hearing did not permit the City to make any substantive comments because Metro had not yet adopted findings for the Cornelius Expansion Area. The Commission does not find anything in Goal 2 that requires Metro to provide an opportunity to comment on *findings*, let alone an opportunity to do so before Metro adopts them. *See DLCD v. Fargo Interchange Service District*, 27 Or LUBA 150, 154, *rev'd & rem'd on other grounds* 129 Or App 447, 879 P2d 224 (1994) (no statute, statewide planning goal or administrative rule requires that a local government adopt findings to support a legislative land use decision); *Citizens for Resp. Growth v. City of Seaside*, 23 Or LUBA 100, 115 *rev'd & rem'd on other grounds* 116 Or App 275, 840 P2d 1370 (1992) (no prohibition against a local government making a tentative oral decision, followed by adoption of a final written decision containing its supporting findings). The City of Cornelius argues "we believe Goal 2 required Metro to provide Cornelius more than seven days to rebut the farmer's conclusions and demonstrate why including all of the site would not constitute an intrusion into farmland[.]" City of Cornelius exception at 3-4. To the extent the City of Cornelius contends that seven days between hearings was not an adequate amount of time for coordination, the Commission disagrees. See *Residents of Rosemont v. Metro*, 38 Or LUBA 199, 230 (2000) *aff'd; rev'd & rem'd on other grounds* 173 Or App 321, 21 P3d 1108(2001) (LUBA held that a seven day comment period on a revised UGB expansion by Metro to be consistent with Goal 2 coordination requirement under circumstances where local government had opportunity to comment on original plan).

The City of Hillsboro argues "we believe Metro had the Goal 2 duty to 'accommodate as much as possible' the Cornelius need for the entire Cornelius site to remain within the UGB" because including the site was "possible." City of Hillsboro exception at 3. The Commission concludes that nothing Goal 2 or ORS 195.025 and ORS 268.385 require Metro to include a site within the UGB if a local government asks Metro to do so and the proposed site meets the legal standards for a UGB amendment. *City of Sandy v. Metro*, 48 Or LUBA 363, 379 *aff'd* 200 Or App 481, 115 P3d 960 (2005). As LUBA noted, "Metro could have any number of reasons why it might favor one site that meets those standards over another site that also meets those standards." *Id.* at 379 n 16. Thus, the Goal 2 duty to 'accommodate as much as possible' does not carry an "obligation" of accommodation. *Id.* at 379.

CREEC and NAIOP argue that "The Regional Goal 2 obligates Metro to do more than just 'exchange information' with the Cornelius and its advisory committees, MTAC and MPAC, about the size of the Cornelius Site it includes in the Regional UGB."

CREEC and NAIOP exception at 2. To the extent CREEC and NAIOP contend that there is a "Regional Goal 2" that requires more of Metro than Goal 2, the Commission disagrees. Metro does not have a higher obligation in performing its coordination than is imposed under Goal 2. *City of Sandy v. Metro*, 48 Or LUBA at 379.

The Commission has considered all of the objections and exceptions raised regarding the Goal 2 coordination obligation. The Commission rejects those objections and exceptions.

Complete Communities

The City of Cornelius generally objects that Metro's submittal does not advance the 2040 Growth Concept ambition of creating "complete communities." City of Cornelius objection at 10. Metro found that the Cornelius Expansion Area supports the designated Main Street in the City of Cornelius, which effectively serves as the "center" of Cornelius, and will provide employment opportunities for the many residents of Cornelius who now travel to other parts of the region for work. Exhibit D to Ordinance No. 05-1070A at 17. The City of Cornelius does not explain how the submittal is not in compliance with an applicable provision of state or regional planning law; it only asserts that a larger expansion area would do more to further regional policy. The Commission does not find a basis to sustain this objection.

Port of Portland Terminal 6

Metro amended the UGB to include 261 acres of land at the Port of Portland's Terminal 6 at Hayden Island. Exhibit A-4 to Ordinance No. 05-1070A. The Hayden Island Expansion Area makes the UGB conterminous with the City of Portland City Boundary. The department found no issues with this aspect of Metro's submittal. DLCD Revised Staff Report at 8 The department did not receive any objections to this portion of Metro's submittal. The Commission concludes that Metro's inclusion of this area complies with the goals.

COMPLIANCE WITH STATEWIDE PLANNING GOALS

Goal 1 – Citizen Involvement

Metro's citizen involvement efforts comply with Goal 1 and Metro's public involvement policies that implement Goal 1.

Goal 2 – Land Use Planning

Metro complied with the Goal 2 requirement that it provide opportunities for review and comment by citizens and affected governmental units.

Metro complied with the Goal 2 requirement for an adequate factual base because the Task 2 submittal is supported by substantial evidence in the record, viewed as a whole.

Metro also complied with the requirement of Goal 2 that it coordinate its Task 2 subtasks with affected units of local government. Metro included, retained, or decided not to include some areas within the UGB over the objections of several local governments. The coordination requirement requires Metro to offer the local government a meaningful opportunity to make its concerns known to Metro, to accommodate those concerns as much as possible, and to make responsive findings to legitimate concerns.

Goal 2 also requires the submittal to be consistent with applicable plan and implementation measures, including Metro's RFP and the Regional Transportation Plan ("RTP"). Metro complied with Goal 2.

Goal 3 – Agricultural Lands

By complying with Goal 14 and the priorities of ORS 197.298(1), Metro has complied with Goal 3.

Goal 4 – Forest Lands

By complying with Goal 14 and the priorities of ORS 197.298(1), Metro has complied with Goal 4.

Goal 5 – Open Spaces, Scenic and Historic Areas and Natural Resources

Metro's submittal complies with Goal 5. UGMFP Title 11 (acknowledged) carries previously acknowledged Goal 5 code provisions of Clackamas, Multnomah and Washington Counties forward until local governments adopt plan amendments and zone changes to authorize urbanization of land added to the UGB. Goal 5 will apply to those amendments.

Goal 6 – Air, Water and Land Resources Quality

UGMFP Title 11 (acknowledged) requires each local government to comply with UGMFP Title 3 (acknowledged) when it amends its comprehensive plan and land use regulations to authorize urbanization of land added to the UGB. Metro's Task 2 decisions comply with the policies of the RTP. The Commission acknowledged UGMFP Title 3 and the RTP to comply with Goal 6. Metro's submittal complies with Goal 6.

Goal 7 - Areas Subject to Natural Disasters and Hazards

Metro excluded environmentally constrained areas from the inventory of buildable land or limited its capacity in its calculation of the employment capacity of each study area (see Alternatives Analysis). Each local government responsible for an

area added to the UGB must complete the planning requirements of UGMFP Title 11 (acknowledged), including compliance with UGMFP Title 3 (acknowledged) on floodplains, riparian areas and erosion control. Metro's submittal complies with Goal 7.

Goal 8 – Recreational Needs

The UGR-E removed parks and open space from the inventory of buildable land. UGMFP Title 11 (acknowledged) requires local governments to show general locations for new parks and open spaces in "urban growth diagrams" for territory added to the UGB. The submittal complies with Goal 8.

Goal 9 - Economic Development

Goal 9 assigns no direct responsibility to Metro. Under Task 2, Metro reviewed the economic development elements of the comprehensive plans of the 24 cities and three counties that comprise the metropolitan area. Metro used the review in its determination of the region's need for employment land and for coordination with local governments of its choices to add land to the UGB for employment purposes.

Metro revised UGMFP Title 4 (Industrial and Other Employment Areas) to improve protection of the land base for industrial uses from conflicts with other uses. Metro also, in adding land to the UGB for industrial use, placed conditions to help ensure the land's availability for that purpose. These measures comply with Goal 9.

Goal 10 - Housing

Metro's submittal removes Areas 37 and 94, resulting in a .4 percent deficit from the identified need for dwelling units. That deficit is both technical and minor in nature under ORS 197.747; therefore Metro has complied with Goal 10 on the whole.

Goal 11 – Public Facilities and Services

Goal 11 requires cities and counties, not Metro, to develop public facility plans. Goal 11 does make Metro responsible for coordination of city and county public facility plans. OAR 660-011-0015(2). For areas added to the UGB, Metro accomplishes coordination through implementation of UGMFP Title 11 (acknowledged). UGMFP Title 11 requires the local government with planning responsibility over land added to the UGB to include public facility planning in the amendments to its comprehensive plan and land use regulations prior to urbanization. Goal 11 applies directly to these local amendments. Metro's submittal complies with Goal 11.

Goal 12 – Transportation

Metro found and concluded that its submittal complies with its acknowledged RTP policies. As with public facilities, UGMFP Title 11 (acknowledged) requires the local government with planning responsibility over land added to the UGB to include

transportation planning in the amendments to its comprehensive plan and land use regulations prior to urbanization. Goal 12 applies directly to these local amendments. Metro's submittal complies with Goal 12.

Goal 13 – Energy Conservation

Through compliance with Goal 14, which requires an efficient transition from rural to urban land use, and the RFP (2040 Growth Concept), which requires a compact urban form, Metro's Task 2 decisions comply with Goal 13.

Goal 14 – Urbanization

Metro's submittal addressed the remand tasks related to Goal 14. Metro has based its change to the UGB on the need to provide adequate employment opportunities. Pursuant to ORS 197.747, the Commission concluded that where Metro accommodated more than 99 percent of its acknowledged need for employment opportunities, any shortfall is technical or minor in nature. Metro's submittal, on the whole, complies with Goal 14.

Goal 15 – Willamette River Greenway

UGMFP Title 11 (acknowledged) carries previously acknowledged Goal 5 code provisions of Clackamas, Multnomah and Washington Counties taken to comply with Goal 15 forward until local governments adopt plan amendments and zone changes to authorize urbanization of land added to the UGB. Goal 15 will apply to those amendments.

UGMFP Title 11 also requires local governments to apply UGMFP Title 3 (acknowledged) to lands added to the UGB. Included within Title 3 are limitations on the use of floodplains and riparian areas.

Metro's Task 2 submittal complies with Goal 15.

Conclusion

Based on consideration of the record as a whole, the foregoing discussion, the director's report, and responses to the objections, exceptions, and oral argument, the Commission concludes that Metro's periodic review Task 2 complies with the statewide planning goals and is approved, pursuant to OAR 660-025-0150 and 660-025-0160.

THEREFORE, IT IS ORDERED THAT:

Pursuant to OAR 660-025-0160(8)(a), the Commission orders that Metro Work Task 2 is approved. If no appeal to the Court of Appeals is filed within the time provided in ORS 183.482, Work Task 2 shall be deemed acknowledged. OAR 660-025-0160(9).

The Commission has considered every valid objection and exception. The Commission rejects all objections and exceptions, whether discussed herein or not.

Scope of Appellate Review: Pursuant to the Commission's authority under OAR 660-025-0160(7) to take appropriate action on Metro Periodic Review Work Task 2, the Commission hereby orders that to the extent any of the UGB Expansion Areas are not affected by a specific appeal of another UGB Expansion Area, and to the extent no appeal is made on an objection that affects all expansions, any unaffected expansion areas are severed from any further proceedings or appeals associated with Work Task 2, and Metro's decision regarding those unaffected expansion areas is acknowledged.

DATED THIS 2nd DAY OF MAY 2007.

FOR THE COMMISSION:

Lane Shetterly, Director
Department of Land
Conservation and Development

NOTE: You may be entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this final order. Judicial review is pursuant to the provision of ORS 183.482 and 197.650.

Copies of all exhibits are available for review at the department's office at 635 Capitol Street NE, Suite 150, Salem.

J:\PR\Metro\Metro T2 UGB LCDC 07-WKTASK-001726 Order 5-2-2007.DOC

LCDC January 24-25, 2008
Metro Urban and Rural Reserves

2:01:28

John VanLandingham – Issue is best and balance. Dick Benner just said to us before our break that the workgroup is fine with it that's the best they can do. So, what do we think. Marilyn do you want to say something.

Marilyn Worrix – spent a great deal of time on this. Without including best, even though there was an attempt to keep the process fluid um some people felt there just simply was not enough direction and there wasn't a measurement of any kind. While recognizing that best may be difficult to evaluate um by putting it in the objective it was intended to serve as a guidepost. You're headed toward the best overall balance of these various issues. The um we we were taught about best originally um in ah 0040(10) or (11). But we um we related it back to the objective and decided to include the word best early on as a sort of beacon this is where we are going. But it needs to be um the overall context is important because the overall objective was to create a process that was consensus building and a product that was a balance of protecting farm, forest and natural landscapes at the same time creating livable communities. And while this balancing did require some clear guidelines the path had to be well marked. The workgroup purposely avoided making this process too detailed. We wanted to acknowledge that foundation ag land is the most important for long term viability. And we wanted to say that if Metro designates land as urban reserves for example they have to explain in findings and statements of reasons why they chose it. It was anticipated that that process would end up in a series of packages of alternatives but by the time it got to the final decision making stage and at that point Metro would have to explain very clearly why they chose one package or another or possibly combinations between them. And that analysis would look at various packages or combinations um taken as a whole and would take you back to the objective and say how does this whole package achieve the best overall balance that we highlighted in the objective. I think it's important to recognize that the workgroup never saw that best requirement as being something that would require a detailed parcel to parcel type analysis. And there was real worry that it would even be construed that way because that was the opposite of the kind of fluid creative process we were hoping to be able to create. And that instead of being a process that would require exactitude found in like a parcel to parcel comparison that this best concept is supposed to focus on the collective overall regional ah process. It would be looking for the best fundamental balance between the competing areas. Um it would not require a ranking um best, second best, third best ah it's much more general than that. So we felt it was important to have that in there um it was a strong concern from the agricultural community in particular that there needed to be something that highlighted the importance of foundation land and gave them that little extra bit of scrutiny in the best solution was best was seen to be the best solution for them. So we're comfortable with it. We know that it's loose um but this process was never designed to be did you touch all the basis, did you double check all your maps, did you calculate the right area on this particular parcel. Ah everybody been there, that's not where we wanted to go. We wanted to say how about good rational thinking supported by strong findings that make a reasonable balance between the needs to protect ag, forest and the natural landscapes and the need to create livable communities. So we sort of did it purposely and while we are really open to any comments we worked a long time on this one and I was extremely pleased that not only did the workgroup feel comfortable with the language but I really think the workgroup

saw the language in the same context that I've just outlined and I would invite anybody from the table, because they all listened to this, if they heard anything different now would be the time to say it but that's my background.
John VanLandingham – anybody disagree with her description.
Hanley Jenkins – here here
John VanLandingham – ok thank you. Comments from commissioners.
Margaret Kirkpatrick – Well ah I really let me start out by saying I don't really think we should mess with this um I think it's such a the fact that there is consensus and I think, unless there is further discussion that evidences me otherwise that this is something we should stick with. That I would love to have because it is yesterday so unusual to have a word like best kinda out there I would love to hear Steve or Richard or any of the other very talented lawyers here just explain I mean it looks to like as I read 0040(10) when it talks about the single joint finding and statement of reasons that you're going to be discussing each of the factors in then that there is going to be a discussion about how in the aggregate these meet the best objective best unquote objective in 0005(2). So assuming that people will be coming and arguing to the commission that what Metro and the counties have done is not the best balance how do we what is our role in in that review process and how do we approach it. So that's really my question and if I can get to the point where I feel like I understand that then I'm good.
Steve Shipsey – Metro and the counties who are making the joint submittal to the commission will include that submittal under 0080(4) findings of fact and conclusions regarding how that's best. So what we will be reviewing will be whether or not there determination of this overall package of the balance is the best. Whether it's an adequate factual basis for that, whether it's touched on the goals and considered all the goals whether it has complied with the rules both procedurally and the substantive requirements but it will be a review of a presentation of what has been deemed locally the best. And you won't be I don't think you will be required by objectors to do a new analysis of whether or not this is the best. You'll be reviewing the analysis of whether it's the best to see if that analysis is supported and presented in a way that has a substantial evidence basis and the conclusions of law are consistent with the law that needed to be applied.
Margaret – So this really is a substantial evidence review that we'll be doing and if there is substantial evidence (inaudible). We are good we are not second guessing we're not getting into the details of any of this.
John VanLandingham – Steve you are shaking your head yes.
Steve Shipsey – yes
John VanLandingham – You don't foresee as Mark Greenfield worried that we're going to find ourselves picking this parcel over here and saying no it's not the best without that parcel we want to add that parcel.
Steve Shipsey – I think we will receive objections of that nature and the question will be whether those objections are if we need to sustain those objections where we conclude that Metro and the counties in the submittal showed that what they actually did met the best standard. Could something else also have met the best standard.
John VanLandingham – Richard.
Richard Whitman – So the only think I would add to what Steve said and it's really in response to the comments from Mark Greenfield yesterday is um as a policy practical matter for the department I don't think that we view this objective as creating an

optimization standard that there's only one best outcome. It um because best is used in the context of a balance between designation of urban and rural reserves number 1 and number 2 is as commissioner Worrix said it's a balance that in its entirety looking at the region as a whole number 2 best achieves three different things livable communities, viability and vitality of agricultural and forest industries and protection of important natural landscape features. Those three things are in some tension obviously and so the balancing in between those is going to require a fair amount of judgments. So in addition to the evidentiary issue I think there is because of the context that best is used in here there is substantial discretion initially for Metro and counties to make their decisions and then in terms of the commission's review for the commission's review of that.

Female voice – So would we also be looking at abuse of discretion potentially.

Richard Whitman – Well I don't think legally that's a standard for review um I think the standard is what's articulated here and alls I am saying is I think the words that are articulated here um it probably lead you to something like that ah in terms of how the commission would review this um so while say abuse of discretion I think functionally if there's a range of outcomes that are plausible for the commission in its review role um in effect that may be the review standard.

John VanLandingham – Do you want to say anything about abuse of discretion. Not everybody is a lawyer.

Margaret Kirkpatrick – I'll let a real lawyer talk about it. I'm not one anymore (inaudible)

Richard Whitman – Well I that's a legal standard that should be used in situations that you have a law that creates a range of possible outcomes and the question is whether the decision that was made that you're reviewing is outside that range and so I think that fits with what I just articulated which is that I think this objective creates a range of possible outcomes that Metro and the counties can come to. Ah and um for the commission and its review role I think as long as it's within that range you would ah need to uphold the decision.

John VanLandingham – Any other thoughts from commissioners. Marilyn you want to add anything to the discussion.

Marilyn Worrix – Well on that I've everybody recognizes it's a challenging word from a review perspective but I'm sure the commissioners share the thought that I have prefaced some of my previous votes on other issues by saying well it isn't a best solution but its legally correct and I'm ready to try best.

Male voice – It seems counterintuitive but I'm going to go with the attorneys.

John VanLandingham – So panel any thoughts. Anybody worried about Mark Greenfield's argument. Ok I didn't see anybody that wants to (inaudible). Ok next issue.

Margaret Kirkpatrick – Can I just say one more thing.

John VanLandingham – Yes

Margaret Kirkpatrick – Um is there a way to make sure that the legislative history of this rulemaking includes the discussion there's some guidance for future commissions.

John VanLandingham – Um well I think that <interrupted>

Margaret Kirkpatrick – Actually see but maybe I didn't.

John VanLandingham - Bob is there some in the report isn't there.

Bob Rindy – There's a legislative history of the statute.

Margaret Kirkpatrick – That's different.

Bob Rindy – That um these minutes will be in the history and we have the staff report ah the comments that were made now you could specify that your minutes go into more detail than might typically occur to record those.
John VanLandingham – That would be good. So let's make sure especially make sure that Marilyn's comments are included and I see that at the bottom of page nine of the staff report there's some of that also saying that the first, second, third best in its entirety. Dick
Dick Benner – Dick Benner for Metro, on the legislative history question speaking for myself and we'll see if everybody agrees but I think we do. When we heard Richard, commissioner Worrix and Steve talk about this I thought to myself yes this is the way we understand this test. And I would suggest that if the commission feels that the way they described it is the way you would like it to be understood that you say so um don't necessarily have to have a vote but then I think its more clearly legislative history.
Margaret Kirkpatrick – Yeah if there would be some way actually to almost transcribe the statements of commissioner Worrix, Steve, Richard maybe what Dick just said and have us kinda validate that's our understanding then that would provide the kind of guidance to future commissions that I'm thinking of.
Male voice – (inaudible)
Margaret Kirkpatrick – I think we just did it.
John VanLandingham – Yeah I mean does anybody disagree with that. So that's our understanding we adopt that. So I'm saying that all seven six commissioners agree with that as our interpretation. Ok. Next issue.
2:17:32
##end##

January 11, 2008

TO: Land Conservation and Development Commission

FROM: Bob Rindy, Policy Analyst

SUBJECT: Agenda Items 1 and 6; January 23-25, 2008, LCDC Meeting.

Public Hearing, Work Session, and Possible Adoption of Proposed New and Amended Administrative Rules Regarding Metro Area Urban and Rural Reserves

This report pertains to two agenda items: Item 1is intended for public comment on proposed administrative rules establishing a process and criteria for designation of urban and rural reserves in the Portland Metro region, and Item 6 is intended for the Land Conservation and Development Commission (LCDC) to consider and possibly adopt the proposed new and amended administrative rules. The proposed new rules are Attachment A to this report, and the proposed conforming amendments (and related "housekeeping" amendments") to other existing LCDC rules are Attachment B to this report.

Senate Bill 1011, enacted by the 2007 legislature (see Attachment C, especially sections 3, 6, and 11) requires that LCDC adopt rules to establish a process and criteria for designating Metro area urban and rural reserves. SB 1011, codified as Oregon Laws 2007, chapter 723, took effect immediately upon the Governor's signature last July, and specifies that LCDC must adopt the implementing administrative rules by January 31, 2008.

Under item 1 (scheduled for 1:30 PM on January 23rd) the Commission will receive public testimony regarding the proposed new and amended rules, and may close or continue the public hearing at the conclusion of testimony. Under agenda item 6, scheduled for January 24th (and, if necessary, January 25th), LCDC will consider the oral and written testimony and other information received, deliberate regarding the proposed new and amended rules, and may formally adopt the proposed new and amended rules. If adopted, the new and amended rules will take affect upon filing with the Secretary of State's office.

For additional information on these agenda items, please contact Bob Rindy at 503-373-0050 ext. 229, or by email bob.rindy@state.or.us. Information on these items, including background materials, rule notices, and agendas and minutes from the rulemaking workgroup meetings, are also posted on DLCD's website at http://www.lcd.state.or.us/LCD/metro_urban_and_rural_reserves.shtml.

Advisory Rulemaking Workgroup

LCDC appointed a rule advisory workgroup in August 2007 to assist the department and the Commission in drafting the proposed rules (see Attachment D regarding the membership of the workgroup). The workgroup has met seven times since it was appointed by LCDC in August 2007, including two meetings subsequent to LCDC's first public hearing on the draft rules last November 29, 2007. The workgroup has reached a consensus in recommending the revised draft rules attached for the Commission's consideration. However, it is understood that not all workgroup members necessarily favor all the provisions in these rule proposals, and the workgroup members have been invited to submit testimony to the Commission about the rules.

Background

Urban Reserve Areas were a relatively late addition to the Oregon Land Use Program. This planning tool was created in 1992 through LCDC rules (OAR 660, division 21), several years after the state's initial acknowledgement of all land use plans and urban growth boundaries (UGBs) under the statewide planning goals. Unlike UGBs, designation of urban reserves is optional for local governments.[1]

An "Urban Reserve Area" (SB 1011 shortened this term to "Urban Reserve") is land outside of – but contiguous to – an existing urban growth boundary; it must be shown on a city and county comprehensive plan map and is designated for ultimate urbanization as the city (or region) expands its urban area. LCDC's division 21 rules specified that urban reserves must "include an amount of land estimated to be at least a 10-year supply and no more than a 30-year supply of developable land beyond the 20-year time frame used to establish the urban growth boundary.[2] In other words, by adopting an urban reserve area in conjunction with the 20-year UGB, local governments (including Metro) may designate and plan for a 50-year supply of land for urbanization. However, it is important to note that land in an urban reserve is outside the UGB, and must remain planned and zoned as "rural land" under farm, forest or other rural zoning requirements until such time as it is brought in to the UGB. The designation of urban reserves does not change the rules for UGB expansion except on one vital point: Urban reserves are defined (by statute) as the highest priority for inclusion in the urban growth boundary when the boundary is expanded, regardless of whether the land in the urban reserve is farm or forest resource land.

LCDC authorized local governments to plan for urban reserves for several reasons. First, cities expressed a wish to plan for a longer-term horizon than the 20-year period provided inside a UGB, in part because many public facilities and transportation facilities are typically designed and built to last significantly longer than 20 years. By designating urban reserves, a city gains more certainty with regard to the direction of long-term growth and, for example, may therefore size and position sewer and water lines to ultimately serve a 50-

[1] LCDC's 1992 urban reserve rules authorized LCDC to require some local governments to adopt urban reserves. After modification of the rules by subsequent legislation, only the cities of Sandy and Newberg were required to designate reserves.
[2] Rather than a 10-30 year horizon, SB 1011 specifies a 20-30 year urban reserve horizon.

year growth area beyond the UGB. Second, urban reserves are intended as a tool to manage the parcelization of residential "exception areas" adjacent to many UGBs, areas that would be anticipated to be high priority for eventual expansion of the UGB. The piecemeal division of this potentially urbanizable land would impede efficient urbanization and, in many cases, prevent efficient provision of roads and other facilities within and beyond these areas. The original urban reserve rules required some cities to adopt reserves because of a substantial amount of exception areas surrounding those UGBs.[3] Finally, designation of urban reserves streamlines UGB expansion, since it identifies areas that must be first priority for UGB expansion, and as such may save time and costs for local governments performing the "locational" analysis required for UGB expansion.

As a side note, LCDC's urban reserve rules provided a "hierarchy" for choosing land for the reserves, in order to ensure that non-resource land, exception land and the "least-important" farm or forest resource land is considered first in designating reserves. Shortly after the adoption of these rules, the legislature "barrowed" the hierarchy (almost word-for-word, but not exactly) and placed it in legislation (ORS 197.298) so as to require the hierarchy to UGB amendments, with one significant change: the legislation specifies that the highest priority land (i.e., first considered) for UGB expansion must be land designated as urban reserves. At the same time, the legislature enacted new urban reserve provisions in statute (ORS 195.145) in order to modify LCDC's urban reserve rules (especially to reduce the number of cities required to adopt urban reserves; however, having urban reserves specified in legislation provides a more solid foundation for these rules). As one probably unintended consequence of the new UGB hierarchy, urban reserves include farm and forest land and provide a method to more easily include that land in a UGB. This land might otherwise be unavailable under the statutory UGB hierarchy.

Very few local governments have designated urban reserves. Newberg and Sandy successfully completed this task in the mid-1990's.[4] Metro designated urban reserves about 1998, but these were struck down on appeal (LCDC and ODOT joined in bringing that appeal, arguing that the designation was not in accord with the urban reserve rules). Following that, there was little interest in designating urban reserves statewide, and local governments frequently suggested that LCDC revisit and modify these requirements. However, there has been a recent resurgence in local interest in urban reserves; Redmond, Ontario and Pendleton recently designated reserves[5] and other cities are underway with urban reserve planning, including Newberg (a revision of their current reserve) and all the Rogue Valley RPS jurisdictions.

Senate Bill 1011

Senate Bill 1011, enacted by the 2007 legislature (codified as Chapter 723, Oregon Laws

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[3] Some of the proposed amendments to current rules under OAR 660, division 21 (see Attachment B) propose that the Commission repeal provisions that were intended only for cities required to designate urban reserves – because these cities have completed that task and the requirements are no longer pertinent.

[4] Also, some cities (Bend, Eugene, Salem-Keizer) designated "priority expansion areas beyond the UGB" prior to LCDC's urban reserve rules, but these areas are not "acknowledged" as urban reserves, even though they may function as such, and may not be valid since they probably violate the ORS 107.298 hierarchy.

[5] Redmond officials have praised this process and suggest that other local governments take this step.

2007), authorizes Metro and Metro area counties to designate urban and rural reserves through a new process and criteria to be established by LCDC rules. SB 1011 was supported by a broad coalition of interests in the region, and was based on research conducted under Metro's 2007 "Shape of the Region" study (see Attachment E). Metro joined with Washington, Multnomah, and Clackamas counties, DLCD and the Oregon Department of Agriculture (ODA), to conduct the "Shape of the Region" study "in order to better inform the region's approach to growth management and future urban expansion." The study examined land outside Metro's UGB and asked three broad questions:

- What lands are functionally critical to the region's agricultural economy?
- What natural landscape features are important in terms of ecological function and defining a sense of place for residents of the region?
- What attributes allow lands to most efficiently and effectively be integrated into the urban fabric of the region to create sustainable and complete communities?

The "Shape of the Region" report, "symposium" and related studies are available on Metro's website at the following link:
http://www.metro-region.org/index.cfm/go/by.web/id=25147

A section-by section explanation or "legislative history" of Senate Bill 1011 is provided in Attachment C to this report. In summary, the bill establishes a system under which the region may designate lands outside the regional UGB on which urban expansion will and will not occur over a 40-50-year period. The bill has three main elements:

- Section 3 authorizes the establishment of rural reserves that will be off-limits to urban expansion during the 40-50-year planning period. These lands would be selected based upon their importance to the agriculture and forestry industries and for the protection of natural systems and landscape features.

- Section 6 provides a new pathway for the creation of urban reserves – areas that would be first in line for addition to the UGB – in the Portland metropolitan area. This new pathway would authorize the designation of urban reserves that, in conjunction with land already in the UGB, would provide 40-50 years of "capacity" for urban growth. Designation of these areas would be based upon a set of "factors" that emphasizes suitability for urban development (more explanation of "factors" is provided later in this report).

- Because it is important that urban and rural reserves be addressed as part of an integrated planning process, Section 4 of the statute stipulates that they must be considered concurrently and may be designated only through "intergovernmental agreements" between Metro and participating counties.

There are two fundamental principles regarding the new process for designation of urban and rural reserves: (1) Intergovernmental agreements are a prerequisite to formal designation, and (2) the identification and selection of reserves is requires the consideration of "factors." These issues are discussed in more detail below, in the description of the proposed rules.

Urban reserves authorized under SB 1011 will have the same effect as urban reserves authorized by current LCDC rules at OAR 660, div 21, adopted in 1992 (See attachment F). Urban reserves are also authorized by previous statutes (ORS 195.145 enacted in 1993 and amended by SB 1011). Urban reserves are defined in this statute (the definition was also amended by SB 1011) as "lands outside an urban growth boundary that will provide for (a) future expansion over a long-term period; and (b) the cost-effective provision of public facilities and service within the area when the lands are included within the urban growth boundary." As mentioned above, urban reserves are also declared to be "the highest priority for inclusion in the urban growth boundary when the boundary is expanded." It is important to note that the new SB 1011 urban reserve designation process for Metro is intended as an alternative to the urban reserve designation process provided under current LCDC rules at OAR 660, division 21. However, once designated, urban reserves for Metro designated through division 27 would be functionally equivalent to urban reserves designated under division 21.

SB 1011 provides "factors"[6] for determining urban reserves as follows:

> "... a county and a metropolitan service district shall base the designation on consideration of factors, including, but not limited to, whether land proposed for designation as urban reserves, alone or in conjunction with land inside the urban growth boundary:
> (a) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments;
> (a) Includes sufficient development capacity to support a healthy urban economy;
> (b) Can be served by public schools and other urban-level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers;
> (c) Can be designed to be walkable and served by a well-connected system of streets by appropriate service providers;
> (d) Can be designed to preserve and enhance natural ecological systems; and
> (e) Includes sufficient land suitable for a range of housing types."

These statutory factors for urban reserves are not a closed list; the statute indicates the factors "include, but are not limited to" those specified above. Based on this, the workgroup has recommended that that the rules include additional factors.

Rural reserves authorized under SB 1011 are a new category of rural lands not previously mentioned or authorized in Oregon land use laws. Rural reserves are "rural land" that, once designated, cannot be included within a UGB or re-designated as urban reserves for a period of at least 20 years, but not more than 30 years, beyond "the 20-year period for which the district has demonstrated a buildable land supply in the most recent inventory, determination and analysis" for the Metro UGB. In other words, once designated, rural reserves are required to remain designated as rural reserves for a 40 to 50 year time period. The zoning of land in rural reserves would remain rural; designation of rural reserves does

[6] See pages 15 and 16 of this report for a detailed discussion of factors.

not require a rezoning of the land in the reserves, and prevents the rezoning of such land for certain uses. Also, the statute specifies that designation as rural reserves "does not impair the rights and immunities provided under ORS 30.930 to 30.947" (Oregon's "right to farm" laws).

The statute also provides that designation and protection of these reserves is not a basis for a claim for compensation under Measure 37 "unless the designation and protection of rural reserves or urban reserves imposes a new restriction on the use of private real property." As there would be no change in the zoning of rural reserves, it does not appear that their designation would trigger Measure 49 claims.

Throughout the history of the statewide land use program, Goals 3 and 4 and urban growth boundaries (UGBs) have been the primary tool to protect farm and forest land. UGB expansion, over time, generally consumes (i.e., leads to development of) farm and forest land, especially in the Metro region where, over the next 20 to 30 years, Metro has few options for UGB expansion that would not encroach on farm land. Rural reserves therefore represent an improved farm and forest land protection mechanism, and also protect other natural features. Under SB 1011, "Rural reserves" are defined as "land reserved to provide long-term protection for agriculture, forestry or important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes and floodplains."

SB 1011 provides that rural reserves may be designated (i.e., reserves are not required) through an intergovernmental agreement between a county and Metro. However, as indicated above, if Metro and counties agree to designate urban reserves under the new statute, those counties must also agree to designate rural reserves. At the same time, although not explicitly stated, the statute appears to allow a county to designate rural reserves even if no urban reserves are designated in that county. The statute provides that "A county and a metropolitan service district may not enter into an intergovernmental agreement to designate urban reserves in the county ... unless the county and the district also agree to designate rural reserves in the county." However, the statute does not include the converse of this requirement.

When designating rural reserves, a county and Metro are required to select land based on consideration of "factors." For rural reserves for the purpose of protecting the agricultural industry, the statutory factors include:

"...whether land proposed for rural reserves is:
(a) Land situated in an area that is "potentially subject to urbanization" during the urban reserve planning period described above, as indicated by proximity to the urban growth boundary, and as indicated by proximity to "properties with fair market values that significantly exceed agricultural values;"
(b) Land "capable of sustaining long-term agricultural operations;"
(c) Land that "has suitable soils and available water where needed to sustain long-term agricultural operations;
(d) Land suitable to sustain long-term agricultural operations, taking into account:

- The existence of a large block of agricultural or other resource land with a concentration or cluster of farms;
- The adjacent land use pattern, including its location in relation to adjacent nonfarm uses and the existence of buffers between agricultural operations and nonfarm uses;
- The agricultural land use pattern, including parcelization, tenure and ownership patterns; and
- The sufficiency of agricultural infrastructure in the area."

According to Metro and others involved in drafting the legislation, these factors derive from the "Shape of the Region" studies, including studies of agricultural land by the Oregon Department of Agriculture, which were part of the "Shape of the Region" Project (See Attachment E). As such, the rural reserve factors in the statute primarily focus on protection of the agricultural industry. However, the statute also indicates that rural reserves are intended "to provide long-term protection for agriculture, forestry or important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes and floodplains." Also, as discussed above regarding urban reserves, this list of factors is not a "closed list" for LCDC rulemaking. Therefore, the rules recommended by the workgroup also include additional rural reserve factors, i.e., in addition to those in the statute, concerning forest land and important natural landscape features.

The overall statutory intent and general requirements regarding designation of Metro urban and rural reserves are included in this statute. The preamble to SB 1011 provides the reasons and general policy direction underlying the authorization for a new urban and rural reserve process. It declares in part that "Long-range planning for population and employment growth by local governments can offer greater certainty for ... the agricultural and forest industries, by offering long-term protection of large blocks of land with the characteristics necessary to maintain their viability; and for ... commerce, other industries, other private landowners and providers of public services, by determining the more and less likely locations of future expansion of urban growth boundaries and urban development."

This preamble also declares that "State planning laws must support and facilitate long-range planning to provide this greater certainty." To this end (as noted above) Section 11 of the legislation directs that the Land Conservation and Development Commission shall adopt the goals or rules required by section 3 and section 6 of the Act "not later than January 31, 2008." Those sections of the act specifically require LCDC to adopt new goals or rules regarding the "process and criteria" for designation of Metro area urban reserves and rural reserves.

Because Section 3 of SB 1011 provides that Metro's and counties' designation of urban and rural reserves is not mandatory, as discussed above, Metro and Metro area county governments are authorized to choose whether or not to declare these reserves, and by implication, may also choose instead to follow the current urban reserve process in OAR 660, division 21, which does not require the simultaneous designation of rural reserves. Again, if a county and Metro choose to designate urban reserves under this statute, the

county and Metro must designate rural reserves simultaneously. The statute indicates that urban and rural reserves must be designated in accordance with an intergovernmental agreement between Metro and a county, and "such agreement must provide for a coordinated and concurrent process for adoption by the county of comprehensive plan provisions and by the district of regional framework plan provisions to implement the agreement."

LCDC Approval and Judicial Review: The statute amends current statutory provisions under ORS 197 so as to reference the new urban and rural reserve process, and to require LCDC review and approval of a Metro amendment of "the district's regional framework plan or land use regulations implementing the plan to establish urban reserves ...", and simultaneous LCDC review and approval regarding "amendment of the county's [or counties'] comprehensive plan or land use regulations implementing the plan to establish rural reserves ...".

Related to this, the statute provides an expedited process for judicial review of a Land Conservation and Development Commission order concerning the designation of urban reserves or rural reserves under the new process provided in SB 1011. Jurisdiction for judicial review is conferred upon the Court of Appeals, notwithstanding other laws regarding LUBA review of land use decisions (ORS 197.650). SB 1011 provides timelines for LUBA and Court review, and indicates that review of the Commission's order is confined to the record. Furthermore, the court "may not substitute its judgment for that of the Land Conservation and Development Commission as to an issue of fact." The Court of Appeals may affirm, reverse or remand" the Commission's order, but may reverse or remand the order only if the court finds the order is:

> "(a) Unlawful in substance or procedure. However, error in procedure is not cause for reversal or remand unless the Court of Appeals determines that substantial rights of the petitioner were prejudiced.
> (b) Unconstitutional. [or,]
> (c) Not supported by substantial evidence in the whole record as to facts found by the commission."

Furthermore, the statute provides that "the Court of Appeals shall issue a final order on the petition for judicial review with the greatest possible expediency. ... If the order of the commission is remanded by the Court of Appeals or the Supreme Court, the commission shall respond to the court's appellate judgment within 30 days."

Summary and Explanation of Proposed Rules

After seven meetings, the workgroup has recommended that the Commission consider the attached new rules providing criteria and procedures for adoption of both Urban Reserves and Rural Reserves (Attachment A). The new rules would be codified in OAR 660 as a new "division 27." The department has also recommended conforming amendments and related

"housekeeping amendments" to several existing rules (Attachment B).[7]

The proposed new division 27 under OAR 660 is organized as nine different sets of rules, as follows:

660-027-0005 Purpose

The proposed introduction to the new rules does two things. First, it generally describes the intent of the rules, not only by indicating that they implement SB 1011 (2007 Oregon Laws Chapter 723) and paraphrasing the statutory intent, but also by announcing that they prescribe "criteria and factors" that counties and Metro must apply when choosing lands for designation as urban or rural reserves. Second, the purpose section, and especially the "objective" declared at the end of section (2), anchors the "findings" that local governments must make in designating urban and rural reserves (see OAR 660-027-0080(10)). In that regard, this purpose statement also provides a yardstick that the Commission will use in evaluating the designation once it is submitted by Metro and counties for Commission review (see OAR 660-027-0080).

The proposed purpose statement clarifies that the urban reserve process described by these rules is intended to provide Metro with "an alternative process" to LCDC's current urban reserve designation process under OAR 660, division 21. Metro and counties have the opportunity to designate urban reserves under these new rules, but may instead choose instead to designate urban reserves through the existing process under division 21, or may choose to NOT designate any reserves.

Section (2) of the purpose statement was the subject of a great deal of workgroup discussion, including a "subgroup" appointed by the workgroup after the first LCDC hearing in order to consider and propose alternative language to resolve disagreement among the workgroup. The final sentence in that section is somewhat different than the wording provided in the November 8 draft, and now indicates that "The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents."[8] The workgroup spent a substantial amount of time on this provision, since it was agreed that the words "best achieve" and "balance" are intended to "raise the bar" with respect to the rule's standards – the required "factors" – for designating reserves. It was also agreed that the "best" standard applies to the designation "in its entirety," rather than to individual areas or parcels. The workgroup also agreed that the addition of this objective is not intended to necessitate a numeric "ranking" of alternatives for reserve designation in order to determine the highest ranked, and therefore "the best," alternative.

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[7] The department provided the proposed amendments to existing rules to the workgroup, but while there was no particular objection raised, there was little discussion of these proposals. As such, it may not be accurate to describe the amendments to other rules as "recommended by the workgroup."

[8] It has been suggested that the grammar of this provision could be improved if changed to "The objective of this division is a balanced designation ..."

660-027-0010 Definitions

The proposal includes definitions for terms used throughout the division. Definitions currently in state land use laws (ORS 195 and 197) and definitions adopted as part of the Statewide Planning Goals also apply to terms used in the proposed new rules (there are a number of terms in the proposed new rules that are already defined by law or by the Commission, and the workgroup agreed we do not need to repeat each of these definitions for purposes of this rule. However, there are probably some terms in the proposed rules that are not defined here or elsewhere.) Also, there are some terms considered so basic to these rules that, even though they are defined elsewhere, they are also defined here in order to make the rules more user friendly (e.g., UGB). Finally, there is at least one term – "public facilities" – that is intentionally defined more narrowly than in other rules or goals. Although most of the definitions are straightforward, it may be helpful to further explain the intent of some definitions:

Definitions (1) and (2) refer to two categories of land mapped in the 2007 Department of Agriculture (ODA) report to Metro entitled "*Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands.*" That report (provided to LCDC for its November 2007 meeting) mapped land throughout the region in three categories, and was an important basis of the region's proposal for the enactment of SB 1011. According to Metro and others who proposed SB 1011, the criteria that ODA used in mapping agricultural lands in the region are reflected in that SB 1011 "factors" for the selection of rural reserves. Two of the mapped categories of farmland are specifically mentioned in the proposed rules, as discussed below, and as such those terms are by referring to the ODA report (the ODA report itself is available online at Metro's website and through a link on DLCD's website). The reference in the rule intends to refer to the 2007 report; any later amendments to the report or mapping in that report would <u>not</u> replace the report referred to in this definition. There is more discussion about this term under rules at 0040, below.

Definition (3) concerns the "intergovernmental agreements," between Metro and each participating county, that are a prerequisite to adopting urban and rural reserves in the metro area. SB 1011 defines these agreements by citing some general statutes about agreements (such as the statute describing intergovernmental agreements for Regional Problem Solving). The department notes that many provisions of the particular statutes referenced in SB 1011 appear unrelated to the agreements contemplated with respect to Metro reserves. Furthermore, the statute definition for agreements does not include citizen involvement requirements for an intergovernmental agreement process. Because the agreement process is central and is the first step with regard designating urban and rural reserves, and because the agreements are expected to include maps of the reserves, the workgroup decided to add requirements that are not in statute regarding citizen involvement, discussed under Rule 0030, below. As such, the definition indicates that an agreement must also meet "requirements in this division," in recognition that the referenced statutes referenced in SB 1011 do not include all the requirements that the workgroup believes are necessary for these particular agreements. We noted that Metro and counties have indicated they anticipate that the agreements will also include a map of the areas to be

designated as urban or rural reserves. This statutory and rule definition does not require that an intergovernmental agreement include a map of the proposed reserve areas, but it does not preclude such a map.

Definition (4) regarding "livable communities" is provided because that term is used as part of the intent statement (see discussion under Rules 0005, above). There is no precedent in LCDC rules for this term. As such, Metro proposed the definition to the workgroup and it is included in the recommended rules.

Definition (6) regarding "important natural landscape features" is provided because this term occurs in several of the proposed rules in the division; by providing a definition we avoid the statute's expanded explanation of the term each time it is used. However, members of the workgroup discussed a preference to further expand and clarify the statutory "definition" of the term (actually, the statute does not define "important natural landscape features," but does define "rural reserves" as "land reserved to provide long-term protection for ... important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes and floodplains."). The expanded definition in the rule provides that rural reserves, by "limiting"[9] urban development, "provide long-term protection and enhancement of the region's natural resources, public health and safety, and unique sense of place." This wording may also serve as an expanded "purpose statement" regarding the protection of important natural landscape features addressed later in the rule.

The expanded definition of "important natural landscape features" further provides that "these features include, but are not limited to, plant, fish and wildlife habitat; corridors important for ecological, scenic and recreational connectivity; steep slopes, floodplains and other natural hazard lands; areas critical to the region's air and water quality; historic and cultural areas; and other geographic features that define and distinguish the region." The individuals who proposed this definition, including at least one workgroup member (Jim Labbe), the Department of Fish and Wildlife, and other interested parties such as Audubon, based the expanded definition on the SB1011 wording and "work that was the basis of the statute itself performed by 'The Greenspaces Policy Advisory Committee' and an associated 'Ecological Elements Charette' used in developing a 'Natural Landscape Features Inventory' for Metro's 'Shape of the Region Project'."[10]

The intent of the expanded definition "is to be inclusive enough in the specific examples listed to capture the component elements of the Natural Features Inventory." (NOTE: DLCD's website for this rulemaking includes a link to Metro's "Shape the Region Symposium," which links to several studies, including the "Natural Features Inventory" mentioned here. The department believes the additional words in this definition would not

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[9] The workgroup discussed the word "limit" and expressed some concern as to which of at least two possible meanings may have been intended by the statute. For example, the word may mean something that bounds or confines, i.e., by setting a line or boundary, but it may instead connote something that restricts or hampers development within boundaries. Discussion among staff and workgroup members seemed to conclude that the former meaning is the intent here.

[10] According to an October 30 email from Jim Labbe to the Department, forwarded to workgroup members.

conflict with the statute because, by prefacing the examples with the word "including," the statute does not intend to provide a closed set of examples.

However, the department also notes that workgroup member Jim Labbe has suggested one further refinement to this definition, in an email exchange with the department and some other workgroup members after the workgroup concluded its work. Jim suggests that we simply drop the word "geographic" because "this would be more in keeping with the statute which repeatedly refers to 'natural boundaries' instead of specifically 'geographic boundaries'."

Finally, definition (12), for the term "walkable," was suggested by staff from DLCD and ODOT's Transportation and Growth Management Program based on several studies and sources concerning walkable neighborhoods. Staff was unable to locate a formal definition in state law or other agency rules. The term is used in Section 6(4)(d) of SB 1011, but is not defined there, and is used in 660-027-0050(1)(d) of the proposed rules.

660-027-0020 Authority to Designate Urban and Rural Reserves

This section is intended to establish which entity – Metro or counties or both – has authority to designate reserves, and to make it clear that this division is "an alternative" to the authority to designate urban reserve areas granted by LCDC's current urban reserve rules under OAR 660, division 021. As explained above, one very important difference between the SB 1011 urban reserve process and the current division 21 urban reserve process is that, under the proposed new rules, an intergovernmental agreement is a prerequisite for designating reserves.

The rules proposed under 0020 specify that Metro alone has authority to designate urban reserves provided Metro first adopts an intergovernmental agreement with each county where urban reserves are designated, and provided the agreements are implemented by amendment of the regional framework plan and the county comprehensive plan in accordance with the process and criteria in the proposed new division. The statute and proposed rule also grants counties – rather than Metro – the authority to designate rural reserves, provided there is an intergovernmental agreement concerning these reserves, between the county and metro for each county where the reserves are designated, and provided the county amends its plan and zoning to implement the agreement.

Finally, this rule makes it clear that a county and Metro may not enter into an intergovernmental agreement to designate urban reserves in the county under the SB 1011 process unless the county and Metro simultaneously agree to designate rural reserves in the county.

660-027-0030 Urban and Rural Reserve Intergovernmental Agreements

This rule is intended to provide criteria for the intergovernmental agreements that are prerequisite to urban and rural reserve designation. First, this rule specifies that an intergovernmental agreement between Metro and a county to establish urban reserves and

rural reserves must provide for a "coordinated and concurrent process" for adoption (by Metro) of regional framework plan provisions and (by the county) of comprehensive plan and zoning provisions to implement the agreement. SB 1011 also requires that Metro and counties designate reserves in a manner that is "coordinated and concurrent." It is expected that a county and Metro would do their "considering" and "evaluating" together, in the same meeting or meetings, and Metro and each county would simultaneously adopt (or sign) the agreement. The formal "designation," however, would be the adoption of implementing plan provisions, which cannot legally or practically be done "concurrently" by a county and Metro, or by all the counties and Metro, i.e., at the identical moment in time. However, "concurrently" probably means that Metro and the local governments would schedule the formal plan and/ordinance adoptions to occur in approximately the same time frame, and in a coordinated manner. The rules under 0080 require submittal to LCDC "jointly."

The second provision of this rule provides for citizen involvement in the development of an intergovernmental agreement. For plan amendments that implement agreements, Goal 1, the acknowledged local plans and state laws provide for broad notice and citizen involvement. However, intergovernmental agreements are not necessarily covered by these laws or local plans. Because the agreements to designate reserves will probably include maps of reserve areas, the workgroup suggested that it is very important for citizen involvement and broad notice during the development of the agreements, rather than later, after the agreements have been signed, when formal amendments are proposed to implement the agreements. As such, the proposed rules require Metro and counties to follow a coordinated citizen involvement process that provides for broad public notice and opportunities for public comment regarding lands proposed for designation as urban and rural reserves under the agreement. Furthermore, the rules require that the State Citizen Involvement Advisory Committee (CIAC) be provided an opportunity to review and comment on the proposed citizen involvement process.

Finally, the proposed rules would clarify that an intergovernmental agreement made under this division is not a final land use decision under ORS 197.015(11). The department sought DOJ legal counsel advice on this provision and it was suggested that the proposed rules should clarify that "an intergovernmental agreement made under this division shall be deemed a preliminary decision that is a prerequisite to the designation of reserves by amendments to Metro's regional framework plan and to a county's comprehensive plan" (emphasis added). Because an agreement is not a final land use decision, LUBA review would not be appropriate. Rather, the Commission will be required to determine whether statutory and rule requirements have been followed with respect to such agreements, since, by law, the agreements are a prerequisite to the designation of reserves. The rule provides that an intergovernmental agreement must be submitted to LCDC, along with adopted amendments to the regional framework plan and county comprehensive plans.

660-027-0040 Designation of Urban and Rural Reserves

The new statutes pertaining to Metro reserves specify that the reserves are "designated." The department, on advice from legal counsel, believes the term "designate" means the formal "adoption" of the reserves by adoption or amendment of Metro framework plan

provisions for Urban Reserves, and by adoption or amendment of County land use plan and zoning provisions for Rural Reserves. The proposed rules under 0040 provide several requirements that pertain to the designation of urban and rural reserves. These include rules for designating urban reserves, as follows:

- Metro may not designate urban reserves until Metro and applicable counties have entered into an intergovernmental agreement that identifies the land to be designated by Metro as urban reserves.
- Urban reserves must be based on an amount of land estimated as necessary for urban population and employment growth in the Metro area for a 20 to 30 year period, and must be planned to accommodate urban population and employment growth for that time period. These amounts refer to the combined total of all the urban reserve land designated in the participating counties.
- Metro is required to specify the particular number of years (e.g., 25 years) for which the urban reserves are intended.
- If Metro designates urban reserves prior to December 31, 2009, the 20 to 30 year period is to begin on the year 2029.
- Metro must adopt policies to implement the reserves and must show the reserves on its regional framework plan map.
- A county in which urban reserves are designated must adopt policies to implement the reserves and show the reserves on its comprehensive plan and zone maps.
- Designation of urban reserves must be "coordinated" with the cities in any county where such reserves are considered, and with local governments, state agencies, special districts and school districts that may provide services to the urban reserves when they are added to the UGB.[11]

The rules under 0040 include designation requirements for Rural Reserves, as follows:

- Neither Metro nor a local government may amend a UGB to include land designated as rural reserves during the 20-30 year period described above. Since this period is in addition to the 20-year UGB period, rural reserves may not be included in any UGB (i.e., the Metro UGB as well as any other UGB in counties that have designated rural reserves) for a 40-50 year period.
- Also, Metro may not re-designate rural reserves as urban reserves, and a county may not re-designate land in rural reserves to any other land use, during the 40-50 year period.
- Metro and counties must adopt policies to implement the rural reserves. Counties must show the reserves on their comprehensive plan and zone maps, and Metro must show the reserves on its regional framework plan maps.

[11] The term "coordinated" is defined in ORS 197.015(6) as "when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible." although in that context it refers to the coordination of a comprehensive plan, that definition seems applicable to this process since the designation of reserves involves adoption of a plan.

- Designation rural reserves must be "coordinated" with the cities in any county where such reserves are considered.

Sections (9) and (10) of the proposed designation rules specify the "factors" that must be considered in the Metro and County decisions to "simultaneously identify, select and designate both urban and rural reserves." The "factors" are specified in rules under 0050 and 0060, described below in this report, and the rule derived these factors from the factors that are included in SB 1011.

Factors: It is important to note that the intent is for the rule to include and, where necessary, clarify the factors in SB 1011, but also to expand the list of factors (as allowed by that statute) in order to address additional concerns discussed by the workgroup (see rules 0050 and 0060 below for more detailed discussion of the particular additional factors proposed as part of these rules by the workgroup).

The workgroup discussed the term "consideration of factors." The proposed rules are based on the understanding that "factors" are a special type of "criteria" similar to the "factors" proscribed for UGB location under Goal 14. As such, a general principle for Goal 14 factors applies here: factors are not "independent criteria" – every parcel or area considered for urban or rural reserves would not be required to meet each and every factor. Instead, the factors are applied, weighed and balanced to select and evaluate areas for designation as urban or rural reserves. Metro and the counties must apply all the factors, not merely "consider" them, and must use the factors to compare alternative locations for the reserves. The group decided that the requirement to "consider" the factors in the statute is not meant to imply that any factor may be simply "considered but then disregarded" – all the factors must be considered, applied together (which also implies they must be "balanced" in the manner of Goal 14), and Metro and counties must demonstrate that they have done this.

The term "consideration of factors" was previously adopted by LCDC in specifying the evaluation and selection of land for a UGB under Goal 14. Thus, there is precedent set by both LCDC and the courts regarding the interpretation and employment of "factors." As indicated above, there was considerable discussion of the term "factors" by the workgroup, including advice from LCDC legal counsel, and the group has concluded that "factors" under SB 1011 are intended to be employed and interpreted in the same manner as the UGB factors in Goal 14.[12] According to legal counsel, while the courts have not been entirely consistent in their interpretation of "factors," some legal precedent is worth noting in order to clarify the intent of "factors" under the proposed reserve rules.

First, the courts have indicated "factors" are a type of "criteria" (this is important because the workgroup discussion revealed that many planners consider "criteria" to be something different than "factors," since typically a set of factors are "considered" and "weighed" in arriving at a decision).

[12] Much of the case law on factors discussed here is derived from Goal 14 prior to its amendment by LCDC in 2004. However, although the amended goal includes fewer factors than the original, the intent and operation of factors was not intended to change under the amended goal.

Second, a Court of Appeals interpretation of the term "factors" was paraphrased in LCDC's 2006 UGB Amendment rules, OAR 660-24-0060(3), which state that: "The boundary location factors of Goal 14 are not independent criteria. When the factors are applied to compare alternative boundary locations and to determine the UGB location, a local government must show that all the factors were considered and balanced." Because the intent of the rules proposed by the Metro Reserves workgroup is for "factors" to be interpreted in the same manner as UGB factors, this previous LCDC declaration about factors is important in applying the reserve factors.

Finally, some examples are provided below regarding prior legal interpretations concerning the "consideration of factors." Although these examples concern Goal 14 factors and the selection of land for a UGB, the factors in the proposed reserve rules also concern the selection of land and use the term "consideration of factors." As such, the following examples may further clarify the intent of the proposed rules regarding "factors":[13]

- Even if one of the factors is not fully satisfied, or is less determinative, that factor must still be considered and addressed. Rosemont II, 173 Or App at 328; Baker v. Marion County, 120 Or App 50, 54, 852 P2d 254, rev den 317 Or 485 (1993).
- "Locational" factors 3 through 7 of Goal 14 are not independent approval criteria. It is not required that a designated level of satisfaction for each factor be met in order to approve a UGB amendment. Rather, a local government must show that the factors were "considered" and balanced in determining whether a UGB amendment is justified. 1000 Friends of Oregon v. Metro, 174 Or App 406, 409-10 (2001)
- The goal of the consideration under factors 3 through 7 is to determine the "best" land to add to the UGB, after considering each factor. ARLU, slip op at 13. In carrying out such consideration, each factor must be addressed. That a potential UGB expansion site failed a "test" established by the local government for compliance with one locational factor is not a sufficient basis for excluding it from consideration under the other locational factors. 1000 Friends II, 174 Or App at 414-15.

It was indicated in the department's November 15, 2007, staff report that there was a consensus to strengthen the factors by modifying 0040 (10) to require findings and a statement of reasons that explain how the adopted reserves **BEST** achieve the objectives set forth in the purpose statement. Alternatively, it was proposed that the purpose statement itself be modified to explain how the designation of urban and rural reserves **BEST** ensure livable communities, the viability and vitality of the agricultural and forest industries and protection of the natural landscape features that define the region for its residents. While there was a strong workgroup consensus to add the word "best" in one of the two places listed above, there was no consensus as to WHICH of these two places should include that word. In the November hearing it was recommended that LCDC provide further direction to the workgroup regarding whether to add the term "best" to the findings requirements, as described above, and if so, where should the term be added in the rules. LCDC did not

[13] These examples are cited in a paper provided to LCDC's 2006 UGB workgroup titled: "Urban Growth Boundary Amendments and Goal 14 – A Legal Perspective", by Corinne C. Sherton, Johnson & Sherton PC.

direct the group regarding this term, but suggested that the workgroup continue with its deliberation and attempt to resolve this issue prior to the January hearing.

As discussed under the explanation of rules under 0050, above, the workgroup did eventually agree to add the term "best" to the purpose statement under OAR 660-027-0005(2). Also, subsequent to the Commission's November hearing on these proposed rules, the wording in (10) was amended; that proposed rule now requires that Metro and participating counties shall identify, consider, evaluate and designate proposed urban and rural reserves "concurrently and in coordination with one another," and adopt a single, joint set of "findings and statement of reasons" that demonstrates how they applied the factors. Finally, "the findings and statement of reasons shall explain why the local governments selected the areas designated as urban and rural reserves and how the designated reserves achieve the objective set forth in OAR 660-027-0005(2)."

In a related matter, there was further discussion in the workgroup and at the November Commission hearing as to whether the proposed factors set a sufficiently "high bar" for determination of rural reserves with regard to protection of the most important agricultural land. Workgroup members, including members representing various agricultural land interests, ODA, the Oregon Association of Nurseries, the City of Portland, and 1000 Friends of Oregon, urged that the proposed rules should provide stronger assurance that the most important farmland will be designated as rural reserves. Several ideas to strengthen the factors were proposed, including adding additional factors, criteria, or other measures, as follows:

- Providing a "safe harbor" that deems Foundation Agricultural Land or Important Agricultural Land (mapped in the ODA report to Metro) as qualifying for designation as rural reserves under the factors without further explanation. (see discussion under 0060, below).
- Adding an additional factor that refers to the ODA mapped lands, especially the two categories Foundation Agricultural Land and Important Agricultural Land.
- Adding additional criteria that require counties to designate, as rural reserves, Foundation Agricultural Land, and possibly Important Agricultural Land also, unless the land is demonstrated to be needed for special mixed-use transit-connected development in the Metro area.
- Requiring that Metro cannot include Foundation Agricultural Land or Important Agricultural Land in urban reserves unless it demonstrates that it has first evaluated all other lands and demonstrate that these other lands are unable to serve particular purposes for urban reserves.

In all the proposals above, ODA suggested that the new criteria should refer to Foundation Agricultural Land and Important Agricultural Land within three miles of a UGB.

In discussing the above proposals, the workgroup initially agreed only to add the first bullet, the "safe harbor" (see section 0060(4)); this was provided in the November 8 draft. Subsequent to the LCDC public hearing on that draft, and in response to the testimony on this topic, the workgroup appointed a "subgroup" to propose wording for resolution of this

issue. In response, the subgroup proposed, and the workgroup agreed to, the following new section (11) under 0040:

(11) Because the January 2007 Oregon Department of Agriculture report entitled "*Identification and Assessment of the Long-Term Commercial viability of Metro Region Agricultural Lands*" indicates that Foundation Agricultural Land is the most important land for the viability and vitality of the agricultural industry, if Metro designates such land as urban reserves, the findings and statement of reasons shall explain, by reference to the factors in OAR 660-027-0050 and 660-027-0060(2), why Metro chose the Foundation Agricultural Land for designation as urban reserves rather than other land considered under this rule."

The workgroup chair, Commissioner Worrix, attended the subgroup meeting and may further discuss the intent of the above wording at the Commission's January meeting.

660-027-0050 Identification, Selection and Designation of Lands for Urban Reserves

While the rules under 0040 provide a set of general rules for designation of both urban and rural reserves, the rules under 0050 provide the factors for determining which land to designate as urban reserves. According to Metro, these factors are derived from the "great communities" factors developed as part of Metro's agriculture/urban study (that study is linked to DLCD's website on this rulemaking, at http://www.metro-region.org/index.cfm/go/by.web/id=25147.

Metro's "*ad hoc* group" that met in the summer of 2007 recommended some modifications to these factors, and the Commission's workgroup also agreed to some modifications. In general, these modifications are minor edits to statute factors and additional factors not in the statute, such as factors (g) and (h).

The term "walkable" was not defined by the statute; as noted above, the department has proposed a definition. Also, "a well-connected system of streets" is not defined currently by Goal 12 or related rules. A definition of this phrase has not been provided for these rules. Metro's *ad hoc* group suggested the language referring to "pedestrian and bicycle facilities," and suggested that it be phrased consistent with the Transportation Planning rule.

Again, SB 1011 provided that the factors for urban reserves listed in that bill were "not limited to" those listed. As discussed previously, the workgroup agreed that this provision should be interpreted to mean that LCDC may add additional factors, through this rule, but that this language does not authorize Metro to add factors to those listed in the rule.

660-027-0060 Identification, Selection and Designation of Lands for Rural Reserves

These proposed rules provide factors that would be applied to designate rural reserves in order to protect farm land, forest land, and natural landscape features. The statute (SB 1011) provided only one set of factors – for farm land. However, the statute is also clear that "rural reserve" means "land reserved to provide long-term protection for

agriculture, forestry or important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes and floodplains."

As such, the workgroup agreed to add additional factors for those rural reserves that are designated to protect forest land and natural landscape features. The factors proposed to determine whether rural reserves should be designated to protect natural features are significantly different than those in the statute for farm land, and therefore the rules provide these factors as a separate rule section (section 3). The factors for forest land are woven into the factors for farm land.

Because rural reserves are likely to be designated for all three of the purposes described above, section (1) indicates that metro shall specify which areas designated for rural reserves are intended for which purpose. This will determine which factors to apply. However, it is conceivable that some areas will be included in rural reserves for a combination of "purposes," rather than for farm, forest or natural features alone. We also note that the factors do not specifically describe how to treat land that is both farm and forest land. The workgroup had noted this, but did not provide further discussion or recommendation.

As was noted in the November report, subsection (2)(a) changes the word "and" in the statute to "or". The workgroup believes the intent of this requirement in the statute is to consider proximity to a UGB or proximity to land with fair market values that significantly exceed agricultural values – but it is not necessary that a particular property must be considered with regard to both.

Finally, subsequent to LCDC's November hearing on the proposed rules, the workgroup agreed to modify 0060(3) as follows:

(3) When identifying and selecting land for designation as rural reserves intended to protect important natural landscape features, a county must **consider those areas identified in Metro's February 2007 "*Natural Landscape Features Inventory*," and other pertinent information, and shall** base its decision on … [the factors for natural landcape features]."

This wording was added in recognition that, similar to agricultural lands discussed above, Metro had also mapped natural landscape features, and the rules should reference those maps to ensure attention to this mapping. The department also notes that the Department of Forestry has completed mapping of significant forest lands. However, this mapping was not provided to the workgroup until its final meeting, and the Department of Forestry did not suggest that the rules reference the mapping.

660-027-0070 Planning of Urban and Rural Reserves

This set of rules begins by describing one of the most significant planning ramifications in designating urban reserves: such areas are the highest priority for inclusion in the urban

growth boundary when the boundary is expanded, as specified in Goal 14, OAR 660, division 24, and ORS 197.298. That fact is not mentioned in SB 1011, but was certainly well-understood by the various interests that drafted the legislation. It should be noted that urban reserves calculated to provide a 20-30 year supply of land in the Metro area are likely to include farmland, forest land, exception areas, and other features. There are no rules or statutes that require Metro to indicate **which** land in urban reserves might be the first or highest priority land considered when the UGB is expanded. However, ORS 197.298 may bear on this question.

The second section of the 0070 rules ensures that land in urban reserves is maintained in larger parcel sizes (unless it was previously parcelized), so as to preserve opportunities for orderly and efficient development of urban uses and provision of urban services when urban reserves are added to the UGB.

The proposed rules also direct counties to maintain the zoning for uses on rural reserves allowed at the time they were designated, and to not allow smaller lots or parcels on land designated as rural reserves. This provision was recommended by Metro's *ad hoc* group that met in the Summer of 2007 prior to LCDC's workgroup meetings, but was embraced by the workgroup. It provides a powerful protection for rural reserves that is in addition to other protection already provided in statute and in 660-027-0040 (4) and (5). These provisions together carry out the primary directive of SB 1011, that rural reserves are intended to "provide long-term protection for agriculture, forestry or important natural landscape features." (Emphasis added).

Finally, the proposed urban reserve "planning" rules provide that "counties, cities and Metro may adopt conceptual plans for the eventual urbanization of urban reserves designated under this division, including plans for eventual provision of public facilities and services for these lands, and may enter into urban service agreements among cities, counties and special districts serving or projected to serve the designated urban reserve area." Part of this provision was recommended by Metro's ad hoc group, but was embraced by the workgroup, and augmented by the department, to include some of the provisions currently in rules for urban reserves under OAR 660, division 21, that clarify the ability to plan for services in urban reserves.

660-027-0080 Adoption and LCDC Review of Urban and Rural Reserves

While these proposed rules repeat statutory requirements for LCDC review of reserves, it is important to note that those requirements have been augmented. Furthermore, this section has been further amended since the Commission's November hearing, at the recommendation of the workgroup and on advice of legal counsel (Section (4) is the additional language added since the November 8 draft).

Section (1) makes it clear that plan amendments and other land use actions to implement the designation of urban reserves must be in accordance with current laws for plan amendments (ORS 197.610 to 197.650). This assures public notice requirements, among other things, and makes sure that statewide planning goals apply.

Section (3) was suggested by DOJ rather than the workgroup. This provision anticipates that the submittal to LCDC will very likely be large and complex, and will be subject to multiple comments based on LCDC's previous experience with UGB decisions in the Metro area. Furthermore, while appeals may not necessarily occur, they are a possibility, and section (3) will facilitate the department's required "records" work in responding to an appeal.

The new section (4) is intended to specify the Commission's scope and standard of review, specifically referencing the rule's purpose statement and designation standards.

Suggested Amendments to Current Rules in Other Divisions under OAR 660

The department has proposed "conforming amendments" and other "housekeeping amendments" to other LCDC rules related to urban reserves, including the repeal of some existing rules. The proposed amendments are Attachment B to this report.

Amendments to OAR 660, division 4

Only some sections of rules under OAR 660-004-0040 are proposed for amendment. These are rules adopted by LCDC in 2000 in response to the 1986 Supreme Court decision regarding 1000 Friends of Oregon v. LCDC et al. 301 Or. 447 (1986). Those rules established minimum lot sizes in rural areas that ensured rural lands did not authorize "urban uses" outside UGBs.

First, the version of the rules currently on file with the Secretary of State italicizes the words "minimum lot size" under section (7)(e)(F). This may emphasize these words, but there appears to be no reason to emphasize these words, and as such, this is probably a formatting error in the filing of a previous amendment of this rule. The amended rule would eliminate the italics.

The proposed amendment to Section (8)(b)(B) is also non-substantive; it is suggested that the word "reserve" be preceded by the word "urban", since the intent here is to refer to an urban reserve. A correction to sentence structure (adding the word "or") at the end of that paragraph is for grammatical purposes and for clarity.

Proposed amendments to subsection (8)(d) and (e) are both for clarity and substance. First, Metro's legal counsel suggested that "Metro" should be substituted for "the Portland metropolitan service district" because "Metro is a term that is defined and is more widely understood in the region." Substantively, this subsection should be amended to also reference the new division 27 urban reserve process, in addition to the division 21 process. Also, section (d) refers to a Metro "urban reserve ordinance." Metro's regional framework plan (RFP) does not apply outside the UGB, so this section should instead refer to county comprehensive plan and zoning provisions adopted to implement the reserves. The remaining proposed amendments to that subsection are for clarity and to recognize the new

statutory term "urban reserve" rather than "urban reserve area".

Proposed amendments to subsection (7)(f) are at the suggestion of Metro's legal counsel, Dick Benner, who indicated to the department that "there is no such thing as 'the Metro 2040 Plan' – there is a '2040 Growth Concept' which is not regulatory. It recommends densities for specific land use designations, but they have no legal effect. I recommend that the rule say **10 units per net developable acre** because Metro's code says that is the lowest density that can be assigned to any land inside the UGB zoned to allow residential use. It is a good minimum criterion for determining whether an area is suitable for urbanization."

Finally, amendments to paragraph (G) of subsection (7)(g) would ensure that, on land designated as urban reserve under the new division 27 rules, new parcels less than the minimums established by these rules cannot by created without a goal exception. As noted above in describing the purpose for urban reserves, parcelization of these lands would impede efficient provision of urban services and urban scale development.

Amendments to OAR 660, division 11

The department is recommending changes to rules under OAR 660-011-0060, specifically paragraph (C) of subsection (4)(b). These amendments are non-substantive and pertain to conditions under which sewer systems may be provided outside UGBs without an exception, for health hazard areas. This rule currently references urban reserves under division 21 – the proposed amendment would reference urban reserves established under the new rules in division 27 as well. The proposed amendments also intend to clarify what is meant by the current provision of that rule in limiting the "capacity" of a sewer system designed for a health hazard area. The clarifying language does not change the current intent; it clarifies that in urban reserve areas, the capacity of a sewer system could be designed to provide for the projected future level of service planned for an area within the boundaries of an urban reserve.

Amendments to OAR 660, division 21

These amendments conform division 21 urban reserve rules to the statutes for urban reserves (ORS 195,) amended by SB 1011, including:

- An amended definition to conform to the amended statutory definition
- Authorization for Metro to designate urban reserves for the Portland Metropolitan area urban growth boundary under OAR 660, division 027.
- Removal of the word "area" after "urban reserve" throughout the division.
- Correction of the word "rule" in 0020(1): this should refer to the "division" rather than the "rule."
- Elimination of "applicability provisions" that refer to previous urban reserve designations by Metro which were remanded by the courts and were not re-adopted by Metro.

Finally, as described at the beginning of this report, urban reserve rules under division 21

initially mandated that certain jurisdictions adopt urban reserves. These cities long ago completed this requirement. As such, it is suggested that the Commission repeal rules under OAR 660-021-0090 and OAR 660-021-0100 that establish specific urban reserve requirements and deadlines for these local governments to follow in meeting this mandate.

Amendments to OAR 660, division 25

The proposed amendments to the rules under OAR 660-025-0040 are in recognition of the Commission's exclusive authority to review urban reserves designated under OAR 660, division 27, in addition to reserves designated under OAR 660, division 21.

Required LCDC Rulemaking Criteria and Procedures

The Commission's procedures for rulemaking derive from ORS Chapter 183 and are specified in LCDC's procedural rules at OAR 660-001-0000. In general, prior to adoption of a rule, the Commission must hold a public hearing and provide an opportunity for interested parties to testify on the proposed rule. The Commission must deliberate in public and, if the commission makes a decision to adopt any or all of the proposals, a majority of the commission must affirm the motion to adopt.

The Commission is also guided by ORS 197.040, as follows:

> ***"197.040 Duties of commission; rules.***
> *(1) The Land Conservation and Development Commission shall:*
>
> ....
>
> *(b) In accordance with the provisions of ORS 183.310 to 183.550, adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197. Except as provided in subsection (3) of this section, in designing its administrative requirements, the commission shall:*
>
> *(A) Allow for the diverse administrative and planning capabilities of local governments;*
> *(B) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;*
> *(C) Assess the likely degree of economic impact on identified property and economic interests; and*
> *(D) Assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.*
>
> *(c)(A) Adopt by rule in accordance with ORS 183.310 to 183.550 or by goal under ORS chapters 195, 196 and 197 any statewide land use policies that it considers necessary to carry out ORS chapters 195, 196 and 19, [and]*
> *(B) Adopt by rule in accordance with ORS 183.310 to 183.550 any procedures necessary to carry out ORS 215.402 (4)(b) and 227.160 (2)(b). . .*
>
> ...

(3) The requirements of subsection (1)(b) of this section shall not be interpreted as requiring an assessment for each lot or parcel that could be affected by the proposed rule."

The department issued formal rulemaking notice for publication in the November 2007 Secretary of State's Bulletin, and again in the January 2008 Secretary of State's Bulletin and has mailed notices to interested parties, including legislators (See Attachment G).

The Commission has also adopted "Citizen Involvement Guidelines for Policy Development" (the "CIG") in order *"... to provide and promote clear procedures for public involvement in the development of Commission policy on land use," which LCDC has committed to follow "to the extent practicable in the development of new or amended statewide planning goals and related administrative rules."* CIAC member Ann Glaze was appointed as a member of the Metro Reserves workgroup.

The CIG recommends that the Commission *"consult with the CIAC on the scope of the proposed process or procedure to be followed in the development of any new or amended goal, rule or policy."* On October 11, 2007, workgroup member Ann Glaze gave the CIAC a general overview of the process and progress of, and handed out a paragraph of the draft rule that spoke to citizen involvement. According to the minutes of that meeting, "CIAC was pleased with the inclusion of 'citizen involvement' requirements in the rules."

The CIG recommends that, as part of a rulemaking process, the department *"shall, to the extent practicable:*

- *Prepare a schedule that clearly indicates opportunities for citizen involvement and comment, including tentative dates of meetings, public hearings and other time-related information;*
- *Post the schedule, and any subsequent meeting or notice announcements of public participation opportunities on the Department's website, and provide copies via paper mail upon request; and*
- *Send notice of the website posting via an e-mail list of interested or potentially affected parties and media outlets statewide, and via paper mail upon request;*
- *Provide background information on the policy issues under discussion via posting on the Department's website and, upon request, via paper mail. Such information may, as appropriate, include staff reports, an issue summary, statutory references, administrative rules, case law, or articles of interest relevant to the policy issue."*

The department has followed these guidelines with regard to this rulemaking. The workgroup determined its schedule at its first meeting, and announced revisions to the schedule, and the department established a website and a list of interested parties to receive notices of this workgroup, in the manner outlined by the CIG. The website includes agendas and minutes for each workgroup meeting, background information, draft rules under consideration by the workgroup, and copies of formal notices. The department has sent notice of meetings to the public and interested parties, including notice of the LCDC hearings, by electronic and regular mail.

Conclusion and Recommendation

The department recommends that the Commission receive public testimony on the proposed new and amended rules. Following testimony, the department recommends that the commission close the public hearing, consider the testimony and other information provided, and adopt the proposed new and amended rules.

Attachments

A. Proposed new rules for Urban and Rural Reserves
B. Proposed conforming amendments to other existing LCDC rules
    - OAR 660, division 4
    - OAR 660, division 11
    - OAR 660, division 21
    - OAR 660, division 25
C. Senate Bill 1011, including legislative history
D. Appointed rulemaking advisory workgroup
E. The "Shape of the Region" summary report
F. Urban Reserve Rules under OAR 660, division 21
G. Rulemaking notices
H. Written Comments received by DLCD prior to mailing of this report