

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF EXPRESSING)	RESOLUTION NO. 88-987
COUNCIL INTENT TO AMEND METRO'S)	
URBAN GROWTH BOUNDARY FOR CON-)	Introduced by Rena Cusma,
TESTED CASE NO. 88-1: ZURCHER)	Executive Officer
PROPERTY)	

WHEREAS, Contested Case No. 88-1 is a petition from Glenn and Ava Zurcher and the city of Forest Grove to the Metropolitan Service District for an amendment of the regional Urban Growth Boundary to include approximately 46 acres as shown on Exhibit A; and

WHEREAS, A hearing on this petition was held before a Metropolitan Service District Hearings Officer on May 25, 1988; and

WHEREAS, The Hearings Officer has issued his report on this case, attached as Exhibit B, which finds that all applicable requirements have been met and recommends that the petition be approved; and

WHEREAS, The site is currently outside, but contiguous to, the Metropolitan Service District's boundary; and


WHEREAS, The Metropolitan Service District Code Section 3.01.070(c)(i) provides that action to approve a petition including land outside the District shall be by resolution expressing intent to amend the Urban Growth Boundary when the property is annexed to the Metropolitan Service District; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District expresses its intent to adopt an ordinance amending the Urban Growth Boundary as shown in Exhibit A within thirty (30) days of receiving

notification that the property has been annexed to the Metropolitan Service District, provided such ratification is received within six (6) months of the date on which this resolution is adopted.

ADOPTED by the Council of the Metropolitan Service District
this 22nd day of September, 1988

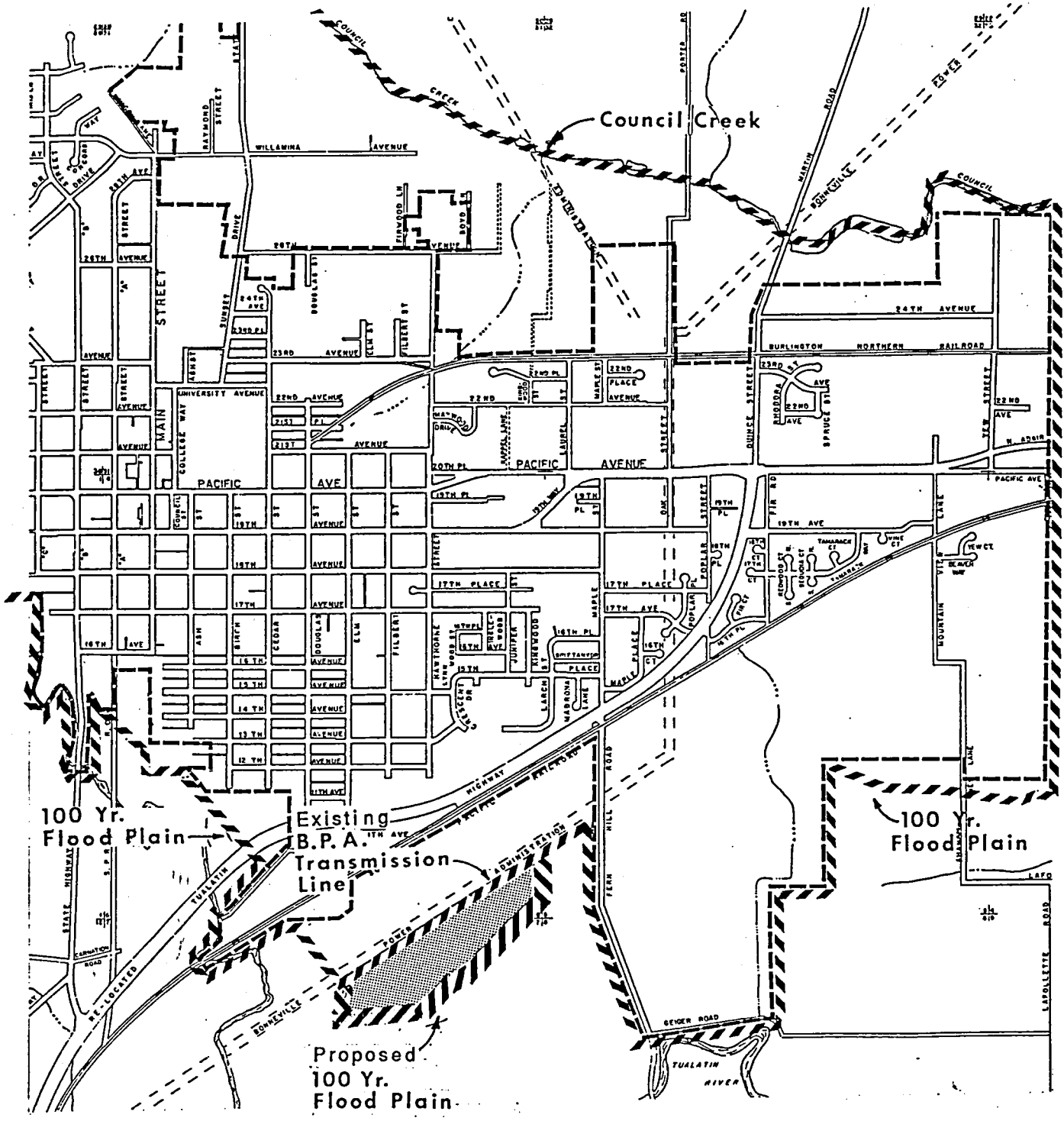


Mike Ragsdale, Presiding Officer

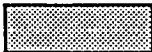



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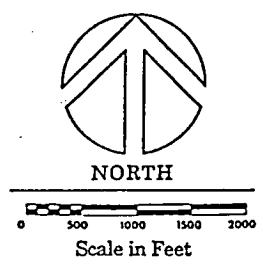
Urban Growth Boundary

Exhibit A



Legend

-  Site Location
-  Existing Urban Growth Boundary
-  Proposed Urban Growth Boundary
-  City Limit of Forest Grove



BEFORE THE METROPOLITAN SERVICE DISTRICT

In the Matter of the Petition)	
of THE CITY OF FOREST GROVE and)	CONTESTED CASE NO. 88-1
GLEN, THEODORE, and AVA ZURCHER)	
for an Amendment to the Urban)	REPORT AND RECOMMENDATION
Growth Boundary)	OF HEARINGS OFFICER
)	

I. SUMMARY

In this case, Petitioners seek to add 44 acres of agricultural land near the City of Forest Grove to the Urban Growth Boundary (UGB). They have demonstrated that there is a need for immediate or short term developable industrial land in Forest Grove in order to provide liveability for the residents of Forest Grove. They have shown that there are advantages to locating the needed industrial development at the proposed addition site. They have shown that other sites are not available inside the UGB to meet the need, and that no better sites are available outside the UGB. Based on these showings, the UGB amendment should be approved.

II. NATURE OF THE CASE

This is a request by the City of Forest Grove and the Zurcher family (Petitioners) for a major amendment, initially to add approximately 46 acres (the Site), to the area within the UGB. The Site is located south of the Tualatin Valley Highway Bypass between Maple and Elm Streets, south of Forest Grove in Washington County. During the hearing process, Petitioners determined to exclude approximately 2 acres in the southwest

corner of the Site, thus reducing the petition area to approximately 44 acres. The Zurchers are the owners of the Site.

A legal description of the Site is attached hereto as Exhibit "A".

Washington County has recommended approval of the petition.

For the reasons stated in this report, it is the recommendation of the Hearings Officer that the petition be granted. This Report and Recommendation constitutes the findings and conclusions of the Hearings Officer, as required by Metro.

III. PROCEEDINGS AND RECORD

On May 25, 1988, following publication and mailing of notice to property owners who were identified by Petitioners or the Hearings Officer as owning property within 250 feet of the Site, and following a personal visit to the Site, the Hearings Officer held a hearing on the Petition at the Power and Light Auditorium, 1818 B Street, Forest Grove, Oregon.

Mary Dorman, of Benkendorf Associates; J. Davis Walker, attorney for the Zurcher family; Clifford Clark, Mayor of Forest Grove; Bonnie Hays, Chairwoman of the Washington County Board of Commissioners; Gary Lucas, Superintendent of Forest Grove School District #15; Connie Fessler, City Manager of Forest Grove; Dick Bewersdorff, Planning Director of Forest Grove; Allen Stephens, of Bump & Green Realtors; Tim Schauermann, President of the Forest Grove-Cornelius Economic Development Council; David Easton, Owner of Ace Hardware; and Paul Phillips, President of the Tualatin Valley Economic Development Council testified in

favor of the Petition. Douglas A. Krahmer, of the Farm Bureau, testified against the Petition.

The hearing was continued until June 24, 1988, to allow the Petitioners to submit certain additional written materials; to allow time for interested persons and the Hearings Officer to tour possible alternate industrial sites in the Forest Grove area; and to allow comment on the additional written materials. In addition to other persons already identified, participants in the tour included Bob Alexander, of the Forest Grove Chamber of Commerce and the Forest Grove-Cornelius Economic Development Council; and Paul Ketcham, of 1000 Friends of Oregon. All of the named people and their organizations are deemed parties to this proceeding.

The hearing and record were closed on June 24, 1988.

The following documents either were introduced during the course of the hearing or appeared in Metro's public file in this matter. Together with the testimony at the hearing and during the tour, which is on tapes, they constitute the record upon which this Report and Recommendation is based.

EXHIBIT LIST

<u>Exhibit #</u>	<u>Description</u>
1	Major Urban Growth Boundary Amendment, Forest Grove-Zurcher Property, The Benkendorf Associates Corporation, dated April 1, 1988
2	City of Forest Grove, Comprehensive Plan Map
3	Site Map, Development & Construction Services
4	Site Map and Set of 6 Assessor's Maps

- 5 Notice of Public Hearing
- 6 Memorandum from Jill Hinckley, Metro Land Use
Coordinator, to Hearings Officer, May 5, 1988
- 7 Letter from James Ross, Department of Land
Conservation and Development, to Jill Hinckley,
May 10, 1988
- 8 Letter from Paul Ketcham, 1000 Friends of Oregon,
to Hearings Officer, May 25, 1988
- 9 Proponent's Testimony List, May 25, 1988
- 10 Testimony of Mayor Clifford Clark, May 25, 1988
- 11 1987-88 Per Capita Assessed Valuation, Cities in
Washington County
- 12 1987-88 Estimated Data for Oregon Unified School
Districts
- 13 Certificate, Forest Grove Development, Inc.
- 14 Letter from George Sturm, of Tektronix, Inc., to
Robert C. Alexander, March 8, 1988
- 15 Letterhead, Forest Grove-Cornelius Economic
Development Council
- 16 Map, Vacant Industrial Land
- 17 Letter from Bonnie Hays, of Washington County, to
Rena Cusma, May 17, 1988
- 18 Witness Cards
- 19 Memorandum from Hearings Officer to Parties, May
26, 1988
- 20 Letter from Mary Dorman, Benkendorf Associates, to
Hearings Officer, June 3, 1988
- 21 Letter from Richard H. Bewersdorff, Planning
Director, to Hearings Officer, June 8, 1988
- 22 Letter from Mary Dorman, Benkendorf Associates, to
Hearings Officer, June 8, 1988
- 23 Letter from Paul Ketcham, 1000 Friends of Oregon,
to Hearings Officer, June 24, 1988

IV. THE SITE AND THE SURROUNDING AREA

The Site and Surroundings

The Site is located in western Washington County, immediately north of the Tualatin River floodplain and south of the city limits of Forest Grove. It is part of the Zurcher farm, which altogether occupies 560 acres. It presently is designated for exclusive farm use. The southern boundary of the Site is the floodplain. The northern boundary is a Bonneville Power Administration power line. On the northern side of the power line is land owned by the Zurchers (approximately 63 of the 560 acres), with a Southern Pacific Railroad track and the TV Highway abutting to the northeast and mixed industrial/commercial/residential land to the northwest. The land to the northwest is planned for ultimate industrial/residential development and is bounded to the north by the TV Highway Bypass. The Zurcher land between the track and the BPA power line, though outside the city limit, is inside the UGB, which runs along the power line. Although this land presently is farmed, it is designated for industrial development when it eventually is converted to urban land. Thus the Petition ultimately would remove the 44 acre Site from agricultural use, increasing the Zurcher property designated for urban industrial development to 107 acres, with the northern boundary of the industrial property being the railroad track and TV Highway Bypass and the southern boundary being the floodplain.

Continuing north of the Site across TV Highway Bypass, uses are primarily residential, with commercial, industrial, public

institutional, and vacant land uses immediately abutting TV Highway. The comprehensive plan designates this area primarily as residential, with some public institutional use. Thus in large measure, the TV Highway Bypass is a dividing line between residential development to the north and industrial development to the south of the Highway.

Immediately east of the Site is uncultivated open land with some grazing land for cattle. Further to the east is Fern Hill Road. Across Fern Hill Road is a large sewage treatment facility and pond area. And even further is additional farmland, a Tektronix industrial park, and residential development. Except for the uncultivated grazing land immediately east of the Site, the land for some distance to the east (including the sewage treatment facilities and the Tektronix park) is designated in the Comprehensive Plan for industrial development. West and south of the Site is agricultural land, designated for exclusive farm use.

Forest Grove

The City of Forest Grove is a community of approximately 12,000 people located in the eastern portion of the Tualatin Valley about 20 miles west of Portland. The City is characterized by residential neighborhoods surrounding a commercial center. Pacific University's 50 acre campus, abutting the business center, is an integral part of the City. The Site is south of the city limits.

V. LEGAL FRAMEWORK

The Petitioners are seeking this UGB amendment as a "major amendment" to the UGB. The standards governing major amendments are identified in Metro Ordinance No. 85-189, as amended by Ordinance No. 86-204. Since the Site is less than 50 acres, Petitioners could have treated the amendment as a "locational adjustment," which would be governed by a different set of standards, set out in Metro Code Chapter 3.05. Petitioners chose, however, the "major amendment" procedure, which they are authorized to do.

The legal framework that governs major amendments to the UGB was described in detail in the Report and Recommendation of Hearings Officer, In the Matter of the Petition of Benjamin Franklin Development, Inc. and Co-Petitioners for an Amendment to the Urban Growth Boundary, Contested Case No. 87-5. The portion of that Report and Recommendation setting out the legal framework is attached hereto as Exhibit "B." Exhibit "B" described the Broad Historic Context for UGB establishment and amendment; the General Legislative and Regulatory Context governing UGB establishment and amendment; the Metro UGB Historic Context; and Prior Metro UGB Amendments.

In addition to the major amendment cases decided by Metro and described in Exhibit "B," Metro has decided the Benj Fran case. In that case, Metro denied a UGB amendment on the ground the petitioners failed to show a need for the amendment. Specifically, Benj Fran failed to show a "demonstrated need to

accommodate long-range urban population growth requirements" (LCDC Goal 14, Factor 1); or a "need for housing, employment opportunities, and liveability" (LCDC Goal 14, Factor 2). In relation to the particular proposal of Benj Fran, the evidence was "that industrial growth sufficient to provide employment opportunities and liveability is occurring and is expected to continue occurring and that existing land within the UGB is meeting and will continue to meet the needs for industrial growth." (Benj Fran Report and Recommendation at 79.)

The following section of this Report and Recommendation identifies the criteria that govern major UGB amendments and how those criteria apply to the Forest Grove/Zurcher petition.

VI. EVALUATION OF FOREST GROVE/ZURCHER PROPOSAL

A. Goal 14, Factor 1: Demonstrated Need to Accommodate Long-Range Urban Population Growth Requirements Consistent with LCDC Goals

This factor allows a petitioner to demonstrate need for a UGB amendment by showing that projected population growth requires a UGB amendment, after consideration of applicable statewide goals.

The Forest Grove Comprehensive Plan, adopted in 1980 and acknowledged by LCDC in 1984, contains the following population projections:

1970	-	9,275	(Census)
1975	-	10,336	(Projection)
1980	-	11,499	(Census)
2000	-	20,272	(Projection)

Between 1980 and 1986, Forest Grove's population increased to only 11,930. Thus the rate of population increase has been

substantially below the projected rate. Nevertheless, Forest Grove now projects its year 2005 population as 21,700.

The record does not indicate that a significantly increased population projection creates a need to expand the UGB. Indeed, Petitioners are not attempting to assert that an increase in population growth projections has created a need for a UGB expansion. Instead, Petitioners assert that the UGB does not have within it sufficient industrial land to accommodate the needs of the present population. This will be discussed in the next section.

B. Goal 14, Factor 2: Need for Housing, Employment Opportunities, and Liveability

Petitioners assert that experience has shown that the UGB does not have within it sufficient industrial land to accommodate the needs of the present population.

In a 1986 Comprehensive Plan Update and Land Use Report, the Forest Grove planning staff concluded that there was a need for 309 acres of land to accommodate new industrial development to the year 2005. The Update identified the 309 acre number by projecting the amount of developed land in year 2005 and by assuming that 10% of developed land should be industrial.

The industrial land percentage of 10% is based on a desire that Forest Grove not be a bedroom community for the larger urban areas east of Forest Grove. Data on land use ratios for small and large U.S. cities indicate an average industrial land percentage of 8% for 22 small cities and an average industrial land percentage of 12% for the 50 largest U.S. cities. Forest

Grove's industrial land percentage was 3.6% in 1948 and 6.9% in 1985. At the historic rate of growth, this would lead to an industrially developed land percentage of 8.7% by year 2005. The City has concluded that it can avoid being a bedroom community and instead can sustain a more diverse identity if it can attain a 10% industrial land percentage.

Forest Grove presently has approximately 447 acres of vacant land designated for future industrial development. This is 45% more land than is needed to meet the goal of 10% of developed land to be industrial (309 acres) by 2005. Thus, assuming that 10% is a legitimate goal, the acreage designated for future industrial development appears, on the surface, to be sufficient to meet the goal.

Employment Opportunities. It is not clear, however, that the 10% goal is legitimate. It perhaps is proper to assume that the percentage of industrially developed land in small cities is a fair reflection of the amount of land "needed" to meet the need of those cities' residents for employment opportunities, if the cities are viewed in isolation. If that assumption is proper, which is not clear, then 8% would be a legitimate goal for cities similar in size to the small cities that were studied. The size of the small cities studied, however, is not known. They may have been larger than Forest Grove. Furthermore, Forest Grove presently is at 6.9% and, according to the historic trend, will pass the 8% number within the planning period. Forest Grove has not demonstrated that its current land designated for industrial

development will be inadequate for it to meet an 8% goal over the planning period. So far as a 10% goal is concerned, Forest Grove has not demonstrated that an increase above 8% is needed, even if 8% is assumed proper.

Furthermore, for purposes of determining whether there is sufficient land available for industrial development to meet the employment needs of the projected population, it is not proper to look only at Forest Grove. Forest Grove residents look to the metropolitan area from Forest Grove to Portland as the area within which to seek employment. Presently, 56% of Forest Grove's working residents are employed outside of Forest Grove. Thus in order to add industrial land to the UGB to satisfy the needs of Forest Grove residents for employment opportunities, Petitioners would have to show that there is not sufficient industrially developable land available between Forest Grove and downtown Portland, at the least, to meet the need for employment opportunities. Petitioners have not done this.

Liveability. For the reasons stated below, however, Petitioners have shown that there is a need for the immediate availability of developable industrial land to meet the present liveability needs of Forest Grove's residents.

Forest Grove has a very low assessed property value per capita compared to other Oregon cities. According to 1984-85 data, Forest Grove had the third from the lowest assessed value per capita of the 21 Portland metropolitan area cities.

According to 1987-88 data, it had the fourth lowest of the 11 Washington County cities. Samples of these data are as follows:

1984-85 Assessed Value Per Capita

Wilsonville	\$99,860
Lake Oswego	51,170
Portland	34,570
Hillsboro	28,900
Forest Grove	24,630
Troutdale	23,810

1987-88 Assessed Value Per Capita

Beaverton	\$46,975
Hillsboro	32,671
Forest Grove	25,859

Due to the low assessed value, Forest Grove's property tax rates must be high in order to pay the cost of city government and schools. Of the 31 Oregon school districts with an average daily attendance of 3,000 or more students, Forest Grove has the highest property tax rate of all. Yet, due to the low assessed values, the expenditures per student are only in the middle range (16th) of the 31 school districts. Forest Grove also has a high combined school and city government property tax rate. For example:

1987-88 Combined City/School Property Tax Rate
Per \$1000 Assessed Value

Tigard	\$14.39
Beaverton	18.75
Forest Grove	25.83

What particularly exacerbates this situation is that Forest Grove has one of the poorest populations in the metropolitan area. According to 1985 data, it had the second lowest per capita income of all cities in the metropolitan area. It has

proportionately more blue collar and lower paid white collar workers than the rest of the area. For example:

1985 Per Capita Income

Tigard	\$12,487
Beaverton	12,173
Forest Grove	8,507

These data demonstrate that Forest Grove residents, because of low assessed values in the City, must bear extremely high property tax rates. And yet, because of low incomes, they are among those in the metropolitan area least able to pay. And further, despite their heroic efforts to fund schools relative to their ability to pay, their funding per student, due to low assessed values, is only average.

In 1987, Forest Grove schools closed 13 days early due to inadequate funding. In June 1987, voters did approve a special levy outside the tax base.

Both property tax rates and school expenditures per student are elements of liveability. These data indicate that Forest Grove needs to do something to relieve the stress of high property tax rates and assure the continuation of an at least average rate of expenditure per student in the school district.

An expansion of Forest Grove's industrial base would relieve the stress on high property taxes in two ways. Primarily, it would raise the assessed value per capita of property in the City. This would allow a reduction in property tax rates, thus relieving the residents of the high rates they must pay. Secondly, it would provide Forest Grove residents with more

employment opportunities in the City. Over time, some of the 56% of the City's employed residents who now work outside Forest Grove would work inside Forest Grove. This should increase retail business in Forest Grove, since shopping patterns to some extent follow work patterns. This is particularly true of shopping for "comparison" items such as televisions, furniture, and clothing, which consume more disposable income than "convenience" items such as food, which ordinarily are bought at residential neighborhood stores. The increase in consumer expenditures in Forest Grove should increase the assessed value of commercial property, further relieving the property tax burden on residents.

Although it is impossible to quantify the extent of reductions in the residential property tax burden that can be achieved due to increases in industrial property assessed values and secondary increases in commercial property assessed values, it is clear that Forest Grove needs to accomplish these reductions as quickly as possible in order to meet the liveability needs of its residents. Thus, there is a demonstrated need for the immediate availability of developable industrial land in Forest Grove. Whether land presently within the UGB is sufficient is addressed in Section I, below.

C. Goal 14, Factor 3: Orderly and Economic Provision of Public Facilities and Services

Under this Factor, there are two things Metro must consider. First, Metro must consider whether public facilities can be

provided to the Site in an orderly and economic manner. Metro described this consideration in the Kaiser case as follows:

"[T]he accommodation of future development [by public facilities and services] may be satisfied on an incremental basis, increasing in specificity as the land use process advances to later stages....Thus, specific solutions for the provision of public facilities and services are not necessary or feasible at this stage of the proceedings. Rather, it need only be established that there are measures which can reasonably accommodate future development on the site."

Second, Metro must consider whether urban development of the Site will cause the disorderly or uneconomic development of public facilities or services elsewhere within the UGB. This must receive consideration because it is possible that a UGB amendment would draw development away from the area within the current UGB. To the extent an amendment either causes existing developers to move their facilities, leaving behind unused land, or causes new developers to locate on the newly added UGB property, rather than infilling, the amendment will be causing a less compact development pattern. A less compact pattern may make the provision of public facilities and services less orderly and less economic, though this is not a necessary result. Whether there will be less orderly and economic public facilities and services elsewhere within the UGB is a matter that should be given consideration. The following analysis provides this consideration.

(1) Transportation Facilities and Services

The main traffic route used by Site-generated traffic will be the Tualatin Valley Highway Bypass, a designated arterial.

The design capacity of the Bypass is 18,000 vehicles per day. The 1985 volume was 5,500 vehicles per day. Projected year 2000 traffic is 15,600 per day. Thus current and projected traffic volumes on the Bypass are well below capacity. Traffic from the Site will reach the Bypass from one of two collector streets, Fern Hill Road on the east and Elm Street on the west. If the Site is developed, one or both of these streets will have to be improved. These improvements could be provided at a reasonable cost, if the Site (44 acres) and the industrially designated Zurcher land already within the UGB (51 developable acres) were developed together. Industrial development would not have a significant impact on residential areas. Thus transportation facilities and services can be provided to the Site in an orderly and economic manner.

Since the Bypass currently and in the future is expected to carry traffic volumes well below capacity, development of the Site will increase the efficiency of the Bypass.

As stated in part B above, Forest Grove has at least enough industrial land to meet its population's long term needs through the year 2005 (as distinguished from present and short term needs). It therefore is appropriate to assume that addition of the Site to the urban area would result in another site not being developed. There is no evidence, however, to indicate that this would make the provision of transportation facilities and services to currently designated urban areas less orderly or

economic. A good portion of the undeveloped industrial areas within the Forest Grove UGB area do not have transportation facilities and services. In all likelihood, addition of the Site simply would result in transportation facilities and services not being made available to the most marginal of these present urban industrial areas.

(2) Water Facilities and Services

Forest Grove's water system has the capacity to provide 8 million gallons per day and a current peak water usage of 4 mgd. There is a 10 inch water line parallel to the Tualatin Valley Highway Bypass and 6 inch line that ends at the northwest corner of the Site. The necessary water line connections could be provided at a reasonable cost, if the Site and the industrially designated Zurcher land were developed together. Thus water facilities and services can be provided to the Site in an orderly and economic fashion. Indeed, development of the Site, by adding use to nearby facilities, would make them more efficient.

There is no evidence that addition of the Site would make the provision of water facilities and services to currently designated urban areas less orderly or economic. Rather, addition of the Site probably would result in water facilities and services not being made available to marginal urban land.

(3) Sewer Facilities and Services

Across Fern Hill Road to the east of the Site is a waste water treatment plant. Adjacent to the plant is a 30 inch sewer line. This line probably would be extended to serve the Site.

In addition, there is a 16 inch sewer line near the northeast corner of the Site. Service to the Site would require construction of a pump station. The sewer treatment plant is adequate to serve Forest Grove sanitary sewer needs to the year 2005, including the needs at the Site, if developed. The necessary water line connections could be provided at a reasonable cost, if the Site and the industrially designated Zurcher land were developed together. Thus sewer facilities and services can be provided to the Site in an orderly and economic fashion, Indeed, development of the Site, by adding use to nearby facilities, would make them more efficient.

There is no evidence that addition of the Site would make the provision of sewer facilities and services to currently designated urban areas less orderly or economic. Rather, addition of the Site probably would result in sewer facilities and services not being made available to marginal urban land.

(4) Storm Drainage Facilities and Services

There presently are no major storm drainage facilities serving the Site. On development, it will be necessary to construct drainage facilities to carry storm water to an existing natural drainageway to the south of the Zurcher property. The necessary facilities can be provided at a reasonable cost, if the Site and the industrially designated Zurcher land are developed together. Thus storm drainage facilities and services can be provided to the Site in an orderly and economic manner.

There is no evidence that addition of the Site would make the provision of storm drainage facilities and services to currently designated urban areas less orderly or economic.

(5) Fire Facilities and Services

The Forest Grove City and Rural Fire District presently serves the Site. The response time to the Site is approximately three minutes. In addition to extension of waterlines to the Site, it would be necessary to construct fire hydrants. The Site can be served by fire facilities and services in an orderly and economic manner.

There is no evidence that addition of the Site would make the provision of fire facilities and services to currently designated urban areas less orderly or economic.

(6) Police Facilities and Services

The Washington County Sheriff's Office presently provides police protection services to the Site. On development, the Forest Grove Police Department would have jurisdiction of the Site. The Police Department response time to the Site would be approximately three minutes. In addition, the Oregon State Police patrols the Tualatin Valley Highway Bypass. Police facilities and services can be provided to the Site in an orderly and economic fashion.

There is no evidence that addition of the Site would make the provision of police facilities and services to currently designated urban areas less orderly or economic.

(7) School Facilities and Services

The Site is within the boundaries of Forest Grove School District #15. The District has 7 elementary schools, 2 middle schools, and 1 high school. As stated previously, the per capita assessed valuation in Forest Grove is low, per capita income is low, and school tax rates are very high simply to maintain an average level of expenditure per student. In 1987, schools closed for 13 days due to inadequate funding. In June 1987, however, voters did approve a special levy outside the tax base. Development of the Site would provide new revenues to the School District from increased valuation of the Site, allowing a reduction of property tax rates. This in turn would increase the likelihood of gaining additional revenues for schools, through voter approval, in order to avoid repeats of the 1987 school closing.

The School District has sufficient capacity to serve any new students that would be brought to the District because of additional employment opportunities at the Site.

It thus appears that the impact of addition of the Site would be strictly beneficial to school facilities and services.

(8) Other Facilities and Services

The Forest Grove Power and Light Department would provide electric power to the Site, on development. The Department purchases power from the Grant County PUD and from Bonneville Power Administration.

Northwest Natural Gas would provide gas service. There are gas mains close to the Site. The mains might have to be upgraded on development of the Site.

General Telephone Company of the Northwest would provide telephone service to the Site.

Private solid waste carriers would serve the Site, with the waste eventually ending up at the Riverbend Sanitary Landfill in Yamhill County.

It appears that these facilities and services could be provided to the Site in an orderly and economic manner. There is no indication that addition of the Site would make the provision of these facilities and services to currently designated urban areas less orderly or economic.

(9) Conclusion: Goal 14, Factor 3

Overall, it appears likely that the proposed UGB addition would make the provision of public facilities and services in Forest Grove more orderly and economic.

D. Goal 14, Factor 4: Maximum Efficiency of Land Uses Within and On the Fringe of Existing Urban Area

The addition of the Site to the UGB would enable the joint development of the Site and the other Zurcher land that already is within the UGB. This would make the development, of approximately 95 acres (12 acres of the Zurcher land inside the UGB are in the floodplain), more efficient than if the land already within the UGB were developed alone.

Addition of the Site should have no impact on the

development of the residential/commercial/institutional area that is across the Tualatin Valley Highway Bypass from the Site.

The exclusion of two acres from the Site, as is proposed by Petitioners, would leave two acres of land that is above the 100-year floodplain outside the UGB. This land will be the site for farm buildings to serve the Zurcher farm. This would assure efficient use of the agricultural area abutting the UGB.

The addition of the Site to the UGB would not affect other agricultural land on the fringe of the UGB in the vicinity of the Site.

Since the UGB contains more industrial land than Forest Grove needs over the longterm, addition of the Site to the UGB should result in other industrially designated land within the UGB not being developed. As indicated by the analysis under Factor 3, the undeveloped land is likely to be marginal, and its non-development will not diminish the orderly and efficient provision of public facilities and services within the UGB.

E. Goal 14, Factor 5: Environmental, Energy, Economic, and Social Consequences

This factor requires the consideration of potential adverse impacts from a proposed UGB amendment. In the Kaiser case, Metro ruled that:

"[A]t this juncture of the land use process, it is neither necessary nor feasible for the applicant to provide specific solutions to development impacts. Thus, in evaluating the accommodation of...impacts, it is only necessary...to find that reasonable solutions for potential adverse impacts exist.

(1) Environmental Consequences

Forest Grove lies in the middle of the Tualatin River Basin. Both the Tualatin River and Gales Creek are subject to periodic flooding in the Forest Grove area. The southern boundary of the Site separates the higher land of the Site from lower land that is within the 100-year floodplain. Forest Grove has a floodplain ordinance that essentially prevents development within the floodplain.

Vegetation on the Site consists principally of a variety of grains grown as agricultural crops. The western corner of the Site has farm dwellings and outbuildings that have access to the Tualatin Valley Highway Bypass over a private road. The dwelling and outbuildings are shaded by large fir trees.

The Site is relatively flat, with 0 to 3 percent slopes. Soils on the Site primarily are Agricultural Capability Class II Quatama loams. Thus the Site is excellent agricultural land.

The Site can be developed so as to avoid adverse impacts from storm water runoff. There would be a reduction in open field habitat and associated wildlife, but the impact of this would be insubstantial, as the Site is not a significant wildlife habitat.

The eastern portion of the Zurcher land that already is within the UGB has approximately 12 acres within the floodplain. This has been designated by Forest Grove as a Wildlife Conservation Area. It will be protected in case of development of the Site.

Development of the site will increase noise levels, human activity, and traffic at the Site and on the Tualatin Valley Highway Bypass. There is no evidence that these will create any significant adverse environmental consequences. There is no evidence of any significant air quality adverse impacts.

In conclusion, there should not be any adverse environmental consequences from addition of the Site to the UGB.

(2) Energy Consequences

There is no evidence of any adverse energy consequences from addition of the Site to the UGB. Indeed, it seems likely that some Forest Grove residents who presently travel east from Forest Grove to their places of work will relocate their employment, over time, to the Site, once it is developed. This actually should reduce energy consumed in commuting.

(3) Economic Consequences

On development, the Site will be taken out of agricultural production. This will have a nominal effect on the agricultural economy. Industrial development of the site will result in construction impacts in terms of providing employment and materials purchases. Development will lead to permanent employment impacts. These in turn will impact the local economy. Most significantly, development will expand the real property tax base, with the benefits to Forest Grove discussed above.

Overall, industrial development of the Site should have a significant positive economic impact.

(4) Social Consequences

As described above, Forest Grove needs industrial development over the short term in order to improve liveability for its residents. The liveability improvements would come in terms of reduced property tax rates and the ability to generate additional funds for public services, particularly education. Thus the main reason for approving the proposed UGB addition is to accomplish a positive economic/social consequence for the present residents.

There is no evidence of any adverse social consequences from addition of the Site to the UGB. The Site is separated by the Tualatin Valley Highway Bypass from significant residential areas. Site development should not adversely affect the liveability of those areas.

(5) Conclusion: Goal 14, Factor 5

Overall, the proposed UGB amendment will have significant positive economic and social consequences; some positive energy consequences; and no negative environmental consequences.

D. Goal 14, Factor 6: Retention of Agricultural Land

The Site is prime agricultural land, being primarily Class II soils. This factor requires consideration of retention of agricultural land, with Class I being the highest priority for retention and Class VI the lowest. Similarly, Goal 3 requires consideration of the retention of Class I-IV soils in farm use.

Unlike most of the Zurcher farm, which is in the 100 year floodplain, the Site is above the floodplain. Some crops can be

grown above the floodplain that cannot be grown in the floodplain: longterm berries, vineyards, orchards.

If the originally petitioned for 46 acres were industrially developed, the balance of the Zurcher farm would be entirely within the 100 year floodplain. With no higher area to build farm buildings, farming would become more difficult, although farm equipment could be brought to the farm from elsewhere. In order to address this problem, Petitioners have proposed to exclude from the Site approximately 2 acres in the southwest corner of the Site where the existing farm buildings are located. This exclusion is appropriate and will assure the continued viability of the remainder of the Zurcher farm.

In summary, approval of the Petition will result in the loss of 44 acres of prime agricultural land. This is virtually the only negative impact that would result from approval.

G. Goal 14, Factor 7: Compatibility of the Proposed Urban Uses with Nearby Agricultural Activities

If the 2 acre outbuilding area is excluded from the Site, so that it can continue to serve the remainder of the Zurcher farm, there should be no adverse impacts from proposed industrial development on nearby agricultural activities.

H. Goal 2, Standard 1: Reasons Justify Why the State Policy Embodied in the Applicable Goals Should Not Apply. (This Factor Can Be Satisfied by Compliance with the Seven Factors of Goal 14.)

After consideration of all of the Factors of Goal 14, it is apparent that there is a substantial "liveability" need to add the proposed 44-acre addition area to the UGB; the addition would

make the provision of public facilities and services in Forest Grove more orderly and economic; the addition will allow the maximum efficiency of land uses within and on the fringe of the existing urban area; the addition will have positive social, economic, and energy consequences and no adverse environmental consequences; and the addition will have no adverse consequences on nearby agricultural activities. On the other side of the scale, the addition would mean the loss of 44 acres of prime agricultural land. On balance, however, the benefits of the addition would outweigh the cost, by a substantial margin. Thus substantial reasons justify why the agricultural policy of Goal 3 should not apply.

I. Goal 2, Standard 2: Areas Which Do Not Require a New Exception Cannot Reasonably Accommodate the Use.

Given that Forest Grove has substantially more land presently within the UGB than is needed to accommodate longterm needs for industrial development, a careful review is required of why the available land cannot accommodate the demonstrated present and short term need.

In determining whether there are alternative sites available, state regulations give guidance. They state:

"This alternative areas standard can be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government...need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government...unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is

thus not required unless such sites are specifically described with facts to support the assertion that the sites are more reasonable by another party during the local...proceeding." OAR 660-04-020.

Petitioners have documented quite clearly that there are not other sites available for present and short term industrial development.

(1) Land Within the UGB Designated for Industrial Development

There are seven areas within the UGB that are designated for industrial development and that have vacant land. Generally speaking, very little of the vacant land is available for present or short term development because of one or more of the following problems: parcelization; small size of parcels; landlocked condition; drainage problems; lack of public facilities and services, and inordinate expense to obtain them given parcel size; property owner disinterest in selling or developing; need to annex; public resistance to financing the needed infrastructure; residential development; and floodplain constraints. Indeed, a review of these areas indicates that Forest Grove probably made a mistake when it designated these areas for future industrial development when the UGB was established.

Forest Grove business people have tried hard, in areas of vacant industrial land, to assemble from multiple owners a single contiguous, viable 100 acre parcel. They also have studied development of a smaller parcel. They were not able economically to assemble a large parcel, and smaller parcels are not large

enough to justify the public infrastructure capital expenses that would be required for their development.

Industries, both large and small, have come to Forest Grove looking for industrial sites. They have not been able to find sites large enough to absorb the necessary public infrastructure capital expenditures. Thus there is an existing demand by industry for locations in Forest Grove, but Forest Grove has not been able to provide usable land within a reasonable short-term time frame.

A description of the areas designated for industrial development and their main problems follows:

Area 1, Downtown Industrial Area: This area has only 1.7 acres of vacant land.

Area 2, Southwest Industrial Area: This area has 9.8 acres of vacant land, some of which is constrained by the Gales Creek floodplain. Only 2 acres may be buildable.

Area 3, South Industrial Area: This area consists mainly of the Zurcher land that is inside the UGB, of which 51 acres are developable. The area, by itself, is not large enough to economically support the capital investment that would be required to make it usable. Development would require relatively short street, water, and sewer extensions and construction of a sewer pump station. With the addition of 44 acres from the proposed UGB addition, the required improvements would be economic. With the addition, given a single ownership and the

nearby public facilities, development of this area could occur quite rapidly.

Area 4, North Central Industrial Area: This area has 5.1 acres of vacant land, of which 1.6 acres are being held for expansion of existing firms at an unspecified time and 3.5 acres are available for development.

Area 5, Northeast Industrial Area: One portion of this area is an industrial park that has 42 vacant acres. Of these, 17 acres are being held for expansion by existing firms at an unspecified time. Twentyfive acres, in scattered parcels, are available for development.

The remainder of this area consists of 200 acres of unincorporated land designated for future industrial development. One hundred fifty-two of these acres are buildable. The area has 38 homes, of which 20 are clustered along two streets and 18 are scattered. The area is parcelized and has fragmented ownerships. There are only 2 parcels over 20 acres; 4 over 10 acres; 10 over 5 acres; and most in the 1/2 to 5 acre range. Assembly is difficult and uneconomic. The fragmentation makes the extension of public facilities into the area difficult. Furthermore, sewer service to the area would require construction of a major sewer trunk line along Council Creek and there would have to be major transportation improvements. Although the provision of these public facilities is under review, there is no timetable set for providing them.

Area 6, Tektronix: Tektronix owns 72 acres of vacant land zoned for light industrial development. Tektronix is holding this for its own use and has no timetable for its development.

Area 7, Northern Industrial Area: This area has 33 vacant acres that were changed in the 1987 Comprehensive Plan update from designation for residential development to light industrial. This area has public facilities adjacent or close to the area, but it abuts residential development. In fact, it has a Planned Development Overlay to ensure a campus-type light industrial development that is compatible with the abutting residential development. The area is not available for general industrial development.

Conclusion: In conclusion, there is not enough general industrial land available to accommodate the immediate and short-term needs of Forest Grove for significant industrial development.

(2) Land Within the UGB Not Designated for Industrial Development

There also are other areas inside the UGB that are vacant but are not presently designated for industrial development. Forest Grove has demonstrated that these areas are not suitable for industrial development.

Northwest of Forest Grove are three contiguous areas. These areas are designated for residential development. They either have an existing residential character, or are approved for housing, or are in hills with an emerging residential character. Two of the areas, at the base of the hills, have soil drainage

problems. Two of the areas lack public facilities and lack the access that industries would need to major highway and rail transit. The hill area has slope limitations. Furthermore, there is no evidence that these areas are not needed for residential development.

A smaller north-central area has extensive parcelization and a strong residential character. A small southeast area has a mobile home development. A small southwest area has slope and floodplain problems.

In summary, there is not other land within the UGB that properly should be designated for industrial industrial development in lieu of the proposed UGB amendment.

(3) Land Outside the UGB

The Forest Grove UGB is surrounded to the south, west, and north by agricultural land. Cornelius is to the east. There is only one small area to the north, north of Council Creek, that is committed to non-farm use. This area is parcelized and has residential development on it. The Zurcher Site is the only area outside the Forest Grove UGB that lies above the 100 year floodplain.

(4) Conclusion

In conclusion, Petitioners have demonstrated that there are no areas available that do not require the use of designated agricultural land and that could reasonably meet the need for immediate or short term availability for industrial development.

J. Goal 2, Standard 3: The Long-Term Environmental, Social, and Energy Consequences Resulting from the Use at the Proposed Site with Measures Designed to Reduce Adverse Impacts Are Not Significantly More Adverse Than Would Typically Result from the Same Proposal Being Located in Areas Requiring a Goal Exception Other Than the Proposed Site

The earlier analysis of Goal 14, Factor 5 indicated that the proposed UGB amendment will have significant positive economic and social consequences, some positive energy consequences, and no negative environmental consequences. Since there are no adverse impacts, another site requiring a goal exception would not be better than the proposed site.

K. Goal 2, Standard 4: The Proposed Uses are Compatible With Other Adjacent Uses or Will Be So Rendered Through Measures Designed to Reduce Adverse Impacts.

The proposed industrial use of the Site would be compatible with the industrial use of the Zurcher land already designated for industrial development, to the north, and with the agricultural use of land to the south, east, and west.

CONCLUSION

After full consideration of the Factors of Goal 14 and the standards of Goal 2, Petitioners have demonstrated that their petition for a UGB amendment should be allowed. They have demonstrated a need for immediately or short-term developable industrial land in order to provide liveability for the residents of Forest Grove. They have shown that there are advantages to locating the needed industrial development at the Site. They have shown that other sites are not available inside the UGB to meet the need for immediate or short term industrial development.

They have shown that location of the needed development at the Site is at least as beneficial as location at any other site outside the UGB. The amendment should be approved.

Dated: August 11, 1988

Respectfully submitted,



Christopher P. Thomas
Hearings Officer

EXHIBIT "A"

LEGAL DESCRIPTION FOR ZURCHER BROTHERS PORTION OF TAX LOT #100 MAP 1S3-6

A portion of that certain tract in the Southwest 1/4 of Section 5, the Southeast 1/4 of Section 6 and the north half of Section 7, Township 1 South, Range 3 West, W.M., Washington County, Oregon described in that certain deed to Ted P. Zurcher and Ava M. Zurcher recorded in Book 251, page 645, deed records of said county, said portion being more particularly described as follows:

Beginning at a point on the centerline of the Bonneville Power Administration (B.P.A.) Right-of-Way, which point bears South 00 degrees 03' 33" West 1,592.53 feet and South 56 degrees 44' 55" West 1,232.82 feet from the Northwest corner of the Yates D.L.C. #44, and running thence South 56 degrees 44' 55" West, along said centerline 2,707.03 feet; thence South 54 degrees 40' 25" East 176.73 feet; thence South 08 degrees 42' 44" East 598.02 feet; thence North 77 degrees 02' 52" East 558.67 feet; thence North 56 degrees 07' 30" East 711.89 feet; thence North 33 degrees 18' 32" East 553.27 feet; thence North 77 degrees 44' 14" East 301.78 feet; thence North 26 degrees 38' 20" East 912.20 feet; thence North 20 degrees 00' 00" West 333.90 feet to the point of beginning.

Containing 46.18 acres gross.

V. LEGAL FRAMEWORK

In order to make this Urban Growth Boundary decision, it is necessary to understand the purpose of UGBs in general and the philosophy behind the setting of the Metro UGB in particular. This is necessary because the UGB amendment process, as applied to the Metro UGB, is part of an intricate web of historic understandings, commitments, and decisions. These understandings, commitments, and decisions give content and meaning to the specific language that is used in describing the criteria Metro must apply in making UGB amendment decisions.

Broad Historic Context

In response to a request from the Hearings Officer, Arnold Cogan, for BenjFran, submitted a paper entitled "Portland Regional Urban Growth Boundary, A Discussion of Philosophy and Expectations." A portion of the paper, set out below, describes the broad historic context in which the UGB concept was developed.

"1. The Oregon Ethic

"Since 1843, when settlers in the Willamette Valley formed a provisional government to promote the security of their land claims, the land and its proper uses has been a subject of debate and of controversy among Oregonians. In 1911, Governor Oswald West said, "It is most vital to the future prosperity of this state and

of its people that its natural resources be conserved to the fullest extent in order so that they may be utilized and developed for the benefit not only of this, but of future generations." For Governor West and his fellow citizens in those times and on into today, land in Oregon is considered not just a commodity but a resource to be protected and utilized.

"Another characteristic of the Oregon ethic in regard to land is the importance given to local priorities in the land use planning process. In 1919, the Oregon legislature first passed statutes enabling cities to establish planning commissions and regulate land use. During the Great Depression, state planning took prominence over local efforts, but with the advent of World War II the role of local units of government once again was at the forefront. Except for a brief period in the late 1960's, when Governor McCall placed planning in his executive office, state planning in Oregon has never been a high priority. In fact, at present, Oregon is one of the few states in the country without a state planning office.

"2. Heyday of State Legislative Efforts: 1960's - 1970's

"During the decades of the 1960's and 70's most of the important state laws that protect Oregon's environmental quality and land use were enacted. These include a number of precedent-setting acts such as the Clean Water Act, requiring prior state approval before discharging waste into a state waterway; the Beach Bill, setting aside most of the Oregon shore for public use; the Bottle Bill, banning non-returnable bottles and pull-tab cans; the Willamette Greenway protection program; and the Land Conservation and Development Act.

"These statutes represented a response to an anticipated wave of growth in the state, as well as a concern that it was important to guard against adverse impacts and misuse of resources. Governor Tom McCall is justly credited for his leadership in passing these laws, but support throughout the state was widespread and pervasive.

"3. Conservation and Development

"It was no accident that the law that promulgated Oregon's definite regulation of land use was entitled the Land Conservation and Development Act. It was intended even at the onset that both were crucial to the state's growth. The challenge, particularly to local communities as they formulate and implement their

comprehensive land use plans, is to coordinate and balance one with the other.

"As Roger M. Williams observed in a November 16, 1974 article in the Saturday Review, "Oregon -- the Fight for Survival," 'it is typical of Oregon that the first important action regarding land use was taken not by academics or professional environmentalists, but by maverick politicians.

"Certainly one of those mavericks was Governor Tom McCall, but he was joined by key legislators and citizen activists who supported, first Senate Bill 10 in 1969 which required cities and counties to develop comprehensive land use plans in compliance with statewide standards, and later, in 1973, Senate Bill 100, which created the Land Conservation and Development Commission (LCDC) and Department.

"The basic purpose of LCDC was to coordinate and promote comprehensive planning and to provide for orderly growth and development while conserving the state's resources. Not only were conservation and development equal considerations, but the responsibility for action was placed at the city and county levels, with the agency given the role of regulator in accordance with statewide goals and guidelines.

"Oregon's land use program could not have been created in the first place nor survived several challenges in the courts and various initiative elections if it was not supported by a broad coalition of diverse interests -- environmental, farming, home building, lumber and others. In fact, the writing of Senate Bill 10 in 1969 and Senate Bill 100 in 1973 came about from cooperative efforts by all of these interests. Some may believe that primary support came only from those who favored resource protection, but this is not true. 1000 Friends of Oregon was an important early player identifying itself as an organization which favored approaches for managing growth, not preventing or opposing it. Following passage of Senate Bill 100, thousands of Oregonians participated initially in developing the LCDC goals and they support the program to this day.

"Governor McCall expressed the philosophy of the state in 1974 in an interview with Charles Little of the Conservation Foundation published in The New Oregon Trail, 'So now we are at the point where we can look at some tremendously good firms and maybe we can let a

limited number into the state --- we are in a position to pick. We can go down to Los Angeles and say 'If you want to become a member of our club we'd like to have you, but we don't like rattle and bang and smoke and dirt and if you abide by our rules you can be a member of our club.' That's our whole philosophy.'

"Now in the eighties, when Oregon suffered through a recession and is in the throes of what Governor Neil Goldschmidt calls the Oregon Comeback, Oregonians are still respectful of our need to protect and preserve land resources within the context of sound growth and development. The Urban Growth Boundary (UGB) is a key element in this program. The UGB is each community's best effort to decide where urban growth logically will occur and to mark it off from non-urban uses. But just as local comprehensive land use plans are dynamic documents, subject to reinterpretation and change as new situations warrant, so the UGB is not fixed. The very allowance in the goals and rules for amendments and changes indicates the state's intent that the UGB be sensitive to new and emerging situations and possible of being expanded. Each community's scrutiny must consider, on one hand, the value of the natural resource qualities and on the other, the need to nurture and encourage economic and entrepreneurial viability.

"With concerns about a new recession beginning to surface, Oregon officials are once again trying to protect the state from a repeat of the economic devastation which occurred only a few years ago. It is appropriate that we look at our land use planning process in a light which can anticipate and try to minimize the severe burdens and human suffering which such recessions produce. However, we have always looked on our local comprehensive plans and urban growth boundaries in that light. They were never intended to be inflexible and immune to change. On the contrary, they are expected to aid, not hinder, orderly and appropriate growth.

"4. Conclusions

"This is the underlying philosophy on which the establishment of the UGB was based:

- * Since the early settlers, the use of land in Oregon has been devoted to the dual purpose of conservation and development.

- * The state's role is to regulate the land use planning process under broad guidelines.
- * Local communities have the responsibility to decide how specific parcels or land within their jurisdictions is used.
- * A wide spectrum of environmental and economic interests support Oregon's land use program, recognizing it always has been intended to satisfy the needs of both.
- * Neither local comprehensive plans nor the UGB are immune from change. They are expected to aid, not hinder, orderly and appropriate growth."

General Legislative and Regulatory Context

It is within this broad historic context that the Oregon Legislature and the Land Conservation and Development Commission and Department have established the specific legislative and administrative regulations that governed the initial establishment of Urban Growth Boundaries in Oregon and that now govern amendments to UGBs.

ORS 197.225 requires the Department of Land Conservation and Development (DLCD) to prepare and the Commission (LCDC) to adopt goals and guidelines for use by local governments in preparing, adopting, amending, and implementing comprehensive plans. ORS 197.175 requires cities and counties to prepare, adopt, amend, revise, and implement comprehensive plans and to exercise planning and zoning responsibilities in accordance with the goals. ORS 197.190 and 268.380 to 268.390 make Metro the coordinating body for land use planning within Clackamas, Multnomah, and Washington Counties. ORS 268.390(3) specifically requires Metro to adopt a UGB for the Metro district in

compliance with the applicable statewide goals. ORS 197.175 and 197.251 establish procedures for obtaining LCDC acknowledgement that comprehensive plans and other land use regulations (including those establishing urban growth boundaries) comply with the statewide goals. ORS 197.175 also establishes regulations governing land use decisions pending acknowledgement of compliance. ORS 197.640 establishes procedures for periodic review of previously acknowledged plans and regulations, including UGBs.

Pursuant to ORS 197.225, DLCD prepared and LCDC adopted statewide goals and guidelines. Goal 14, devoted to the question of Urbanization, required the establishment and amendment of urban growth boundaries. In pertinent part, Goal 14 provides:

"14. URBANIZATION

"GOAL: To provide for an orderly and efficient transition from rural to urban land use.

"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 consideration of the following 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.

"The results of the above considerations shall be included in the comprehensive plan. In the case of a change of a boundary, a governing body proposing such change in the boundary separating urbanizable land from rural land, shall follow the procedures and requirements as set forth in the Land Use Planning Goal (Goal 2) for goal exceptions.

"....

"Land within [the UGB] shall be considered available over time for urban uses. Conversion of urbanizable land to urban uses shall be based on consideration of:

- "(1) Orderly, economic provision for public facilities and services;
- "(2) Availability of sufficient land for the various uses to insure choices in the market place;
- "(3) LCDC goals; and,
- (4) Encouragement of development within urban areas before conversion of urbanizable areas."

There are several key aspects of Goal 14.

First, the purpose of the Goal is to provide for an "orderly" and "efficient" transition from rural to urban land use.

Second, there is to be a separation between rural land and urban or urbanizable land, to be marked by urban growth boundaries.

Third there are seven factors to be considered in establishing UGBs. Factors (1) and (2) are "need" factors: Need to accommodate urban population growth requirements to the year

2000, and need for housing, employment, and livability. Factors (3) through (7) are "locational" factors: Making sure urban development is appropriately located with an emphasis, among other things, on protecting agricultural land and activities.

Fourth, even the development of land that is within UGBs, but not yet developed, must be regulated based on several considerations. One consideration, which also is UGB Factor (3), is orderly, economic provision of public facilities and services. Another consideration is encouragement of development within the already urbanized areas before development of land that is within the UGB but not yet urbanized. Together, these considerations reflect an emphasis on compactness of development as distinguished from "leapfrogging" and urban sprawl. Another consideration is the maintenance of enough land available for development to provide choice to the market place. The idea here is to not be so restrictive in making land that is within the UGB available for development as to depress the supply of land in relation to demand, since over-restriction can artificially increase land prices and prevent developers from purchasing land suited to their needs.

Fifth, there is, within the seven UGB factors as well as within the urbanization regulation considerations, a built in conflict between the "need" or "development" pressures and the "locational" or "conservation" pressures. The building in of this conflict is intentional. The essential nature of the statutory and regulatory scheme is to refuse to choose either

"side" of this conflict and to establish, instead, a means for a management and resolution of the conflict on a case-by-case basis.

Sixth, the Goal anticipates periodic proposals to change the UGB.

To summarize, Goal 14 takes a "concentric circle" approach to setting Urban Growth Boundaries and managing the urbanization process. The central circle is the already urbanized area. As much as reasonably possible, this area is to be fully developed before new areas are developed. The second circle is additional land that is within the UGB but that is not yet developed. As the central circle approaches full development, new development can proceed into this circle, building outward from the central circle so as to maintain compactness rather than creating leapfrog development and sprawl. Outside the UGB, there can be no urban development. Under appropriate circumstances, however, the UGB can be amended.

Goal 2, Land Use Planning, contains "Exceptions" requirements, which are the requirements that Goal 14 specifies must be met for UGB amendments. In 1983, however, the Oregon Legislature adopted ORS 197.732, which itself establishes "exceptions" requirements. Since then, LCDC has incorporated these requirements in OAR 660-04-010(1)(c)(B). That regulation states in pertinent part:

"Revised findings and reasons in support of an amendment to an established urban growth boundary shall demonstrate compliance with the seven factors of Goal 14 and demonstrate that the following standards are met:

"(i) Reasons justify why the state policy embodied in the applicable goals should not apply (This factor can be satisfied by compliance with the seven factors of Goal 14);

"(ii) Areas which do not require a new exception cannot reasonably accommodate the use;

"(iii) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

"(iv) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts."

Here, rather than balancing factors against each other as under Goal 14, all four standards must be met.

Standard (i), the "reasons" standard, requires that there be a "need" for urban development. Standard (ii), the "alternatives" standard, requires that there be a "need" to amend the UGB in order to accommodate a "need" for development, and that there not be alternative sites within the UGB that can meet the "need" for urban development. Standard (iii), the "consequences" standard, requires that the consequences of urban development be better at the proposed site than at some other site outside the UGB. Standard (iv), the "compatibility" standard, requires that the adverse impact of urban development on adjacent uses be subject to mitigation.

One key observation is important here. Standard (i) incorporates the seven factors of Goal 14, including factors (1) and (2), the "need" factors. Thus, under standard (i), a UGB amendment proponent must demonstrate, among other things, that

additional urban land is needed either to accommodate long-range urban population growth requirements or to accommodate a need for housing, employment opportunities, or livability. In order to do this, the proponent must demonstrate that the existing UGB does not include enough land to meet these needs.

A second observation also is important. Standard (i) states that "reasons" must justify why state policy embodied in applicable goals should not apply. This standard can be met by compliance with the seven Goal 14 factors. Goal 14, Factor (1) requires consideration of need to accommodate population growth requirements "consistent with LCDC goals." Thus other LCDC goals can come into play in evaluating UGB amendment proposals. Two other goals are of particular interest here: Goal 3, Agricultural Lands; and Goal 9, Economy of the State.

Goal 3, Agricultural Lands, provides in pertinent part:

"3. Agricultural Lands

"GOAL: To preserve and maintain agricultural lands.

"Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space. These lands shall be inventoried and preserved by adopting exclusive farm use zones pursuant to ORS Chapter 215....

"Conversion of rural agricultural land to urbanizable land shall be based upon consideration of the following factors: (1) environmental, energy, social and economic consequences; (2) demonstrated need consistent with LCDC goals; (3) unavailability of an alternative suitable location for the requested use; (4) compatibility of the proposed use with related agricultural land; and (5) the retention of Class I, II, III and IV soils in farm use. A governing body proposing to convert rural agricultural land to urbanizable land shall follow the procedures and requirements set forth in the Land Use Planning goal (Goal 2) for goal exceptions."

As is apparent, the requirements for converting rural agricultural land to urbanizable land are the mirror image of the requirements for amending a UGB. If a UGB amendment that would convert rural agricultural land to urbanizable land meets the Goal 14 and Goal 2 requirements, it also will meet the Goal 3 requirements.

Goal 9, Economy of the State, provides in pertinent part:

"9. Economy of the State

"GOAL: To diversify and improve the economy of the state.

"Both state and federal economic plans and policies shall be coordinated by the state with local and regional needs. Plans and policies shall contribute to a stable and healthy economy in all regions of the state. Plans shall be based on inventories of areas suitable for increased economic growth and activity after taking into consideration the health of the current economic base; materials and energy availability; labor market factors; transportation; current market forces; availability of renewable and non-renewable resources; availability of land; and pollution control requirements.

"Economic growth and activity in accordance with such plans shall be encouraged in areas that have underutilized human and natural resource capabilities and want increased growth and activity. Alternative sites suitable for economic growth and expansion shall be designated in such plans."

In 1983, during the period of economic recession referred to above under the heading "Broad Historic Context," the Legislature adopted ORS 197.707 and 197.712, apparently out of a concern that the "development" side of the "development/conservation" conflict might not have enough force in the dynamic process of resolving land use planning conflicts. Those sections provide, in pertinent part:

"197.707 It was the intent of the Legislative Assembly in enacting [Oregon's land use laws] not to prohibit, deter, delay or increase the cost of appropriate development, but to enhance economic development and opportunity for the benefit of all citizens.

"197.712 (1) In addition to the [other Oregon land use] findings and policies..., the Legislative Assembly finds and declares that, in carrying out state-wide comprehensive land use planning, the provision of adequate opportunities for a variety of economic activities throughout the state is vital to the health, welfare and prosperity of all people of the state.

"(2) By the adoption of new goals or rules, or the application, interpretation or amendment of existing goals or rules, the [LCDC] shall implement all of the following:

"....

"(c) Comprehensive plans and land use regulations shall provide for at least an adequate supply of sites of suitable sizes, types, locations and service levels for industrial and commercial uses consistent with plan policies.

"....

"(g) Local governments shall provide:

"....

"(B) Reasonable opportunities for urban residential, commercial and industrial needs over time through changes to urban growth boundaries."

In applying these sections, it is important to realize that they do not tip the scales completely on the side of "development." Through using phrases such as "appropriate development," "adequate opportunities," "an adequate supply of sites," and "reasonable opportunities," the sections continue to recognize the legitimate conflict in land use planning between "development" and "conservation." The gist of the sections is that "development" must have enough weight, in the conflict resolution process, to insure enough development opportunities,

in variety and in number, to meet the health, welfare, and prosperity needs of all the people of the state.

Metro UGB Historic Context

It is in the broad historic context and in the general legislative and regulatory context described above that Metro adopted and gained LCDC acknowledgement of its Urban Growth Boundary. An understanding of the specific history of the Metro UGB process, within this larger context, is essential to proper current consideration of UGB amendment proposals.

A good starting point for gaining an understanding of the Metro UGB is the Land Use Framework Element of the CRAG Regional Plan. This document sets out some of the underlying policies that guided, among other things, the process of setting the UGB.

The most significant of these policies were:

- "a. Adopted regional growth and development goals being achievable by a cooperative regional management effort, resort to no-growth or fixed population philosophies is unnecessary and is rejected.
- "b. Because future population projections cannot be estimated with certainty, use of such projections must initially be limited to a best effort evaluation of whether the areas identified for further urban development are necessary. To ensure that these areas are sufficient, a constant monitoring process will be established which measures and compares the demand for urban residential land and the development capacity of land in urban areas over time.
- "c.
- "d. New urban development in the unincorporated areas within Urban Growth Boundaries should be contiguous to existing communities to encourage "filling in" of buildable lands within urbanizing areas and to reduce "leapfrog" or "sprawl" development. Such new urban development should:

- "(1) be cost-effective in terms of required services such as streets and utilities;
- "(2) enhance the efficiency of existing transportation resources and the feasibility of public transit; and
- "(3) promote conservation and preservation of agricultural and forest lands."

Land use Framework Element at pages 1-2.

These policies contain several significant features.

First, in policy (a), CRAG rejected both "no growth" and "fixed population" approaches to land use planning. The approach chosen was to manage population changes rather than attempting to control population levels. It is important to note that the policy is population neutral. It does not encourage population growth and it does not discourage growth. Rather, it seeks to manage projected growth.

Second, in policy (b), CRAG recognized that the areas identified for urban development in regional plans were based on uncertain population projections. The policy appears to acknowledge that the urban area might be too large or too small. The policy contemplates future monitoring to track whether the area designated for urban development is needed and is sufficient based on actual demand over time.

Together, these two policies appear to contemplate that the UGB might expand or contract over the 20 year planning period, depending on actual occurrences as compared to projected occurrences.

Third, policy (d), addressing the question of how development should occur in areas that are inside the UGB but that initially are undeveloped, adopts a "compact development" approach. The policy expresses an intention to reduce "leapfrog," "urban sprawl" development. Thus, development should fill in gaps in already developing areas before moving into undeveloped areas within the UGB.

Following CRAG submission of the proposed UGB to LCDC for acknowledgement, LCDC asked Metro to respond to several questions as part of LCDC's review process. (This was occurring during the period in which CRAG's functions were being absorbed by Metro.) Metro, in Resolution No. 79-83, adopted August 23, 1979, adopted responses to the LCDC questions. (The responses subsequently were amended, in a manner not pertinent here, by Metro Resolution No. 79-102, dated November 8, 1979.) At page 10 of the responses, Metro set out its proposed policy about future amendments to the UGB:

- "1. The Urban Growth Boundary is assumed to be a long-term instrument that will stabilize future land-use policies.
- "2. The efficiency of land-use, preservation of prime agricultural lands for agricultural use and improved efficiency of public facilities and services comprise the objectives of the Urban Growth Boundary.

"In keeping with these policies, MSD expects to make only small changes to the Boundary in respect to petitions from government agencies and individuals."

As was discussed subsequently in a prolonged dialogue between Metro, DLCD, and LCDC, this policy statement illustrates a specific policy approach that Metro argued for in seeking

acknowledgement of its UGB. Metro's proposal was to draw a broad UGB that would require only minor changes over the planning period, rather than drawing a narrow UGB that would require major changes. Metro proposed the broad UGB in order to incorporate into its UGB policy what was called a "market factor" approach. Under this approach, put simply, more land should be included within the UGB than actually would be used during the planning period in order to assure potential developers of a reasonable and economical supply of developable land throughout the planning period. Initially, Metro sought a market factor such that the amount of vacant land in the UGB at year 2000 would be 25% of the developed land (20% of the total land).

In a September 5, 1979 report, DLCD staff recommend rejection of the market factor approach, though noting at page 12 that with a market factor approach Metro would have an "expectation that only small changes will be made in the UGB in response to petitions...."

On September 28, 1979, LCDC issued an order continuing the UGB acknowledgment process proceeding. In the order, LCDC set out its understanding of the UGB requirements:

"The first two Factors [of Goal 14] require consideration of the amount of land 'needed' for 'long-range' growth. Guideline 14(A)(6) interprets the term 'long-range' to mean the year 2000. The initial long-range land 'need' is to be calculated in a two-step process. First, the planning jurisdiction must estimate its long-range population. Then, based on this estimate, it must calculate the amount of urban land needed to accommodate this population. Urban land needs include housing, employment, public land, and other needs identified in Goal 14 and other Goals." (Pages 6-7.)

"Goal 14 contemplates establishment and maintenance of a compact urban growth form, not only because such a form encroaches less on farm and forest lands, but also because such a form furthers other goal values, including energy conservation, affordable housing, and economic provision of public services." (Page 7.)

"An urban growth boundary has two functions: to encourage maximum urban utilization of the lands within [the UGB] to assure orderly, economic, energy-efficient growth; and to preserve rural lands outside the boundary by containing urban development and by chilling speculative development pressures which otherwise would operate upon them....To accomplish the second function, urban containment, the Goals provide for preservation of rural lands in substantial undeveloped condition. Moreover, they contemplate that the urban growth boundary will be relatively static for substantial periods...."

"Fn.3... a properly enacted urban growth boundary should to some extent cause escalation of vacant land prices within the boundary. By its very nature, a properly enacted Goal 14 boundary limits the supply of urbanizable land....This is a normal, expected effect of a properly enacted boundary." (Pages 7-8.)

"This vacant urban land supply is to be maintained periodically so as to promote the values of Goal 14 and other goals by expanding the boundary, after application of the same Goal 14 Factors used in its initial establishment. It has always been this Commission's view that the drafters of Goal 14 thought this initial 20 year vacant land supply sufficient to accomplish all urban land requirements of the Goals - one of which is to avoid economically disruptive, artificial land scarcities and adverse escalation in urban and urbanizable land prices." (Page 9.)

The continuance order thus appears to reject at least a strong reliance on the market factor approach to UGB establishment. This is made particularly apparent by footnote 3, where LCDC expressly acknowledges that a properly enacted UGB will cause an escalation of vacant land prices within the UGB. In its analysis of the role of future UGB amendments, the order is somewhat contradictory, stating on page 8 that a UGB should be "relatively static for substantial periods," on page 9 that the

urban land supply should be "maintained periodically... by expanding the boundary," and also on page 9 that an initial 20 year supply of vacant urbanizable land should be "sufficient to accomplish all urban land requirements of the Goals." Probably the best view of the order's analysis of the role of future UGB amendments is that the analysis was not yet finished, with the order demonstrating the unfinished nature of the analysis.

The continuance order did recognize on page 12, however, that under Metro's proposed market factor approach, "the Boundary under review is intended to remain substantially intact to the year 2000."

Following LCDC issuance of the continuance order in September 1979, Metro prepared Urban Growth Boundary Findings. Metro continued to argue for the market factor approach, though indicating a reduction in the requested market factor to 15.3% of year 2000 developed land (13% of all year 2000 UGB land.) (The reduction from 25% to 15.3% was due to a decision that Metro's UGB jurisdiction was limited to the Metro district. The 25% market factor included land around cities that were outside Metro's jurisdiction. The 15.3% factor did not. The reduction thus did not indicate an overall reduction in the tri-county market factor but rather that the market factor was greater outside the Metro district than inside.) Metro's rationale for a market factor is described in several places in the Findings:

"a. The UGB is assumed to be a long-term, instrument that will stabilize future land-use policies. It is not designed to stop population or employment growth.

"b. The efficiency of land-use, preservation of prime agricultural lands for agricultural use and improved efficiency of public facilities and services comprise the objectives of the UGB." (Part I, page vi.)

"Current Oregon land-use laws tend to support society's increased valuation of land by setting policies to curb 'excessive' urbanization of land." (Part I, page vi.)

Metro has...included additional findings to support a long-term Boundary with [15.3%] surplus lands to satisfy market imperfections and to obviate the need to expand the UGB over the next 20 years." (Part II, page 4.)

"[The use of a market factor of 15.3% assumes the following land use management policies:]

"1. no large adjustments will be made to the UGB for long periods, e.g., the UGB fixes the quantity of urban land for a fixed period; and

"2. zoning restricts the use of non-urban land to very few, if any, non-farm uses.

"These assumptions will be carried out by the UGB management policies...and by the Land Use Framework Element (Lufe) that restricts urban uses in non-UGB areas." (Part II, page 7.)

"[An alternative approach would be to establish] a smaller initial Boundary that would be periodically expanded, if necessary, over its 20-year planned life....Boundary expansion, whether arising from an initial tight Boundary or a less constrained Boundary, will presumably occur prior to the development of the last parcel." (Part II, page 9.)

"Metro assumes that the total cost of Boundary expansions is directly related to the number of occasions that the UGB is evaluated for change. Metro further assumes, and perhaps more importantly, that citizen confidence in the planning process is inversely related to the number of UGB expansions....Metro assumes that infrequent negotiations involving relatively large land areas will be less costly than more frequent considerations involving smaller land areas. Further, Metro assumes that private land use planning and development is facilitated by longer run public planning." (Part II, page 9.)

Metro thus continued to argue that a market factor, now 15.3%, would allow for long-term stability in the UGB, though with some

need for expansion prior to the development of the last parcel within the UGB.

The Findings also demonstrate Metro's intention about the nature of future development, including industrial development:

"Metro assumes increasing [industrial land] densities. There is a contrary school of thought, however, which argues that densities will decrease and which results in several thousand more acres needed than if densities were held constant or increasing over the 20-year planning period." (Part II, page 10.)

If projected industrial growth is to be accommodated by existing sites, employment densities must rise for existing industrial sites....The UGB assumption that all existing manufacturers will increase their land-use efficiencies from current to proposed densities is at least a heroic one. However, if existing industries do not increase densities then 8,723 additional acres will be required by 2000." (Part II, page 29.)

The Findings further demonstrate that Metro believed the 15.3%-market factor in fact might not turn out to be excess land and that Metro understood that in all likelihood all of the vacant land in Washington County would be used:

"...recent growth patterns suggest that vacant land in the year 2000 may amount to a figure far less than 15 percent of total developed land." (Part II, page 14.)

"Recent growth patterns suggest that in the year 2000 no vacant land will exist inside of the Washington County UGB as proposed by Metro." (Part II, page 36. See also Page II, page 13, recognizing that Washington County's vacant urbanizable land might be depleted between 1993 and 1997.)

Finally, the Findings reiterated Metro's general commitment to avoiding "leapfrog" or "urban sprawl" development within the UGB:

"Policy Guideline No. 1: New urban development within the Urban Growth Boundary shall be contiguous to areas of existing development to encourage 'filling in' of buildable lands and to reduce 'leapfrog' or 'sprawl' development.

Contiguous means, in this instance, surrounded by development on at least three sides or adjacent to developed parcels. However, new development may be non-contiguous to existing development if the development is compatible with the efficient provision of public facilities and services." (Part III, pages 38-39.)

There are two important conclusions to be drawn from Metro's Findings. First, Metro was proposing that in exchange for LCDC acknowledgment of a broad UGB that encompassed a 15.3% market factor, Metro would take a conservative position regarding future UGB amendments and would adopt policies requiring that urbanization within the UGB be compact rather than sprawling. Second, Metro was aware that urbanizable land in Washington County probably would be consumed by year 2000. Metro apparently saw its willingness to accept this as a trade off for getting a district-wide 15.3% market factor.

On December 10, 1979, the DLCD staff issued a report that described the staff's perception of the Metro position:

"[At meetings] the Commission accepted the principle that, given the complexity of the Metropolitan region and pre-goal commitments, Metro could legitimately draw an initial boundary which 'circumscribed existing sprawl' and contained surplus lands, so long as that boundary remained essentially static for many years to come." (Page 3.)

"Metro has drawn a boundary with 28,000 acres of surplus land with the understanding that this boundary would not be substantially enlarged for twenty years...Metro has agreed with the Commission that a market factor will not be used to justify future boundary amendments." (Page 22.)

This report is part of a continuing process of clarification. In exchange for Metro being allowed to include surplus lands within the UGB, DLCD staff understood that Metro was agreeing not to substantially enlarge the UGB for 20 years. Furthermore, Metro

also was agreeing not to argue for future UGB expansion on the ground the expansion was needed in order to create a market factor. This presumably was on the basis that the UGB already included surplus land.

On December 13, 1979, the DLCD staff issued a further report in which staff supported Metro's approach, though not the "market factor" language. DLCD staff recommended:

"Acceptance of Metro's growth management approach (i.e., a long term UGB which does not require substantial amendment during the planning period), without sanctioning the use of a 'market factor' in the establishment or amendment of the Metro boundary." (Page 3).

On December 14, 1979, Metro responded to the staff reports:

"...The UGB is not planned to be enlarged except for minor changes over the next 15 to 20 years." (Page 1.)

"...given Metro's management policies, a 15.3 percent market factor is necessary and perhaps too small to accommodate 20 years of growth." (Page 3.)

"...testimony...indicates a potential shortage of industrial land especially for industries that require large parcels with freeway access and rail service. We have also found...that land in one part of the region cannot be specifically substituted for land in another part." (Page 10.)

These statements further establish that Metro, in order to obtain a "market factor" or "surplus" or whatever else it might be called, was proposing to adopt a policy of allowing only minor UGB changes over the next 15 to 20 years even though this might mean a shortage of large parcels and the absorption of all developable land in some parts of the district.

On January 16, 1980, LCDC acknowledged compliance of the

Metro UGB with Goal 14. The acknowledgment order incorporated the Metro UGB history described above.

One aspect of the acknowledgment order was that it required application of Goal 3, Agricultural Lands, to certain portions of Washington County that were within the UGB, pending LCDC acknowledgment of compliance of the Washington County comprehensive plan and certain city comprehensive plans.

(Compliance Acknowledgment Order page 4.) On August 26, 1982, Metro adopted Resolution No. 82-348, in which Metro asked LCDC to waive this requirement in certain cases involving proposed industrial uses. On September 20, 1982, DLCD staff issued a staff report recommending waiver of the requirement "in instances when an industrial use requiring 30 or more acres is proposed to the County for permit and no lot smaller than 30 acres will result from any land use action taken in connection with that proposal."

(Page 1.) In justifying this recommendation, DLCD staff described the situation regarding the availability of large industrial sites within the Metro UGB:

"only 16 out of 50 industrial zoned parcels over 50 acres in size within the Metro UGB (totally 1144 acres) are not constrained from new development possibility by floodplains, sewer and/or transportation deficiencies or current owner commitment to development. [Three of the 16 parcels are under the Goal 3 restriction.]" (Page 2.)

"The supply of large industrial sites in the Metro area is between 2 and 30 percent of supply in comparable metropolitan areas (depending on the data sources)." (Page 3.)

"From the above it is concluded that the Metro area is not competitive for this particular class of industrial use." (Page 3.)

"[Regarding Goal 14,] 'Availability of sufficient land' for industrial development 'to insure choice in the market place' is met by the amendment in that choice of large lot industrial land is now extremely limited in the Metro region and this amendment will readily permit a 23 percent increase in the number of parcels and a 31 percent increase in the number of acres. Yet even with this increase the Metro area would remain considerably below, hence non-competitive with, comparable metropolitan areas." (Page 3.)

"The data already cited reveals a severe lack of land in the urban area suitable for immediate development of large acreage industrial activity." (Page 3.)

"This amendment is a constructive way to help meet a documented shortage in the Metro area of large-sized industrial acreage that is serviced and free from natural restraints requiring costly improvements. It is widely accepted that large scale industrial development is important to economic recovery and growth in the Portland metropolitan area and the State of Oregon. Providing adequate land for this industrial use is therefore an acceptable basis for the requested action.

"...

"Lands potentially affected by this amendment are within an acknowledged urban growth boundary. The proposed use is consistent with the urban environment planned for the area. The economic impact of not leaving [sic] the use restriction on this land could be a loss to the region of new jobs, capital and taxes. Industrial growth in the areas' potential use would complete existing developed areas by locating jobs proximate to residential areas and creating or expanding commercial centers." (Page 4.)

On October 11, 1982, LCDC granted Metro's request to modify the Goal 3 requirement, adopting the DLCD staff report as findings.

This piece of acknowledgment history, regarding waiver of the Goal 3 requirement, is included here for several reasons. It shows, as of late 1982, that Metro, DLCD, and LCDC all were aware of a Washington County shortage of large industrial parcels. It shows an evolution of attitude between late 1979 and late 1982, as the economy moved into a recessionary period. In the earlier

period, the tone of the discussions is more "conservation" oriented. In the later period, it is more "development" oriented. It is important to note, however, that the 1982 discussions related only to lands already within the UGB.

Following the LCDC acknowledgment of compliance in early 1980, 1000 Friends of Oregon filed a lawsuit challenging the acknowledgment of a UGB that included surplus land. On July 12, 1985, the Marion County Circuit Court ruled on 1000 Friends' challenge. In general, the Court upheld the acknowledgement. The Court described the rationale for a broad UGB as follows:

"Traditionally, LCDC apparently has followed the procedure of establishing a tight or compact UGB anticipating more than infrequent changes in the UGB as conditions change...In this case, LCDC apparently followed an...approach, setting a boundary that admittedly includes 'surplus land', but included strict controls inside the UGB on non-urban land. This 'alternate approach' substitutes a longer term UGB (less change) and a growth management strategy for the more commonly used short term UGB with periodic expansion." (Interlocutory Order, 1000 Friends of Oregon vs. LCDC and MSD, Marion County Circuit Court No. 118213, July 12, 1985, page 9.)

As to three particular areas, however, the Court found that LCDC's acknowledgment findings were inadequate.

In November 1985, in response to the Court ruling, Metro adopted Ordinance No. 85-192, which adopted revised UGB findings to justify inclusion within the UGB of the three areas singled out by the Marion County Circuit Court. The findings addressed the current status of developable land within the UGB. The findings concluded that the 15.3% of year 2000 developed land (13% of all year 2000 UGB land), that earlier was seen as a surplus, in fact now turned out not to be a surplus but rather to

be unbuildable land. The findings, using the 13% number, discussed the situation as follows:

"This 13 percent vacancy allowance is shown to be a legitimate estimate of unbuildable land that could not be precisely quantified when the UGB was adopted." (Page 1.)

"The issue is whether under Goal 14 Metro can appropriately adopt a UGB that, at the outset, includes land that all parties agree will have to be included at some time prior to the year 2000, rather than gradually include it later through a series of major UGB amendments." (Page 2.)

"[Goal 14 states two main objectives: orderly development and efficient development.] To provide for orderly development, UGBs should include enough land to insure that future growth needs have been effectively anticipated and can be accurately planned for. But to assure efficient development, UGBs should include only as much land as is demonstrated to be needed to accommodate that growth. This provides more compact, and thus more efficient, development." (Page 3.)

"One approach to Goal 14 compliance is to begin by ~~estimating long-term (i.e., 20-year) growth needs (and so to identify the total amount of land to be included in a UGB)~~ and then to apply the locational factors to determine the particular lands to be included to meet that need. To maintain an adequate supply of land within the boundary during the 20-year period, growth needs would be periodically recalculated for the succeeding 20 years, and additional lands included to meet these new need estimates.

"This approach was both undesirable and impractical for the Metro area for a number of reasons....

"...

"As a result of these complexities, the Metro area's UGB was developed following a different strategy. CRAG began with the locational considerations of Goal 14, and in coordination with local jurisdictions, special districts, and affected property owners, it worked to identify all lands that should appropriately be planned for urban use by the year 2000, considering such things as the best use of existing and planned public facilities and services, and the most efficient land use pattern possible. The UGB developed on this basis was then checked against estimates of long-term growth needs to insure that it contained enough land to avoid the need for frequent major expansions--yet not more

than was likely to be needed to accommodate long-term growth.

"The Metro area's UGB meets both these tests. Because of the unique challenges of planning in the Metro region, it was necessary to include at the outset as much ultimately-urban land as could be justified under Goal 14 in order to provide a more stable basis for local coordination and facilities planning. But no more land has been included than may be justified as needed to effectively accommodate long-term growth without frequent major amendments." (Page 4.)

"[Although originally, the UGB included a 13% market factor, this now has turned out to be] a legitimate estimate of lands unbuildable for other reasons than those previously identified as 'constrained.'" (Page 5.)

These "other reasons" that made land unbuildable included local hazard and natural resource regulations; land that already was committed to particular development and therefore could not be available for development within the 20 year planning period, ~~such as parking lots and land being held by owners for post-year~~ 2000 development; landlocked land; land that could not reasonably be sewered by year 2000 and that could not use septic tanks; and land that had only a single appropriate use (residential, commercial, or industrial) that would not be needed until post-year 2000. (Pages 6-7.)

In the findings, Metro stated its intention that future UGB amendments would not be justifiable based on some land within the UGB being unbuildable; (the UGB already had been drawn to take this into account); that there would not be frequent UGB amendments; and that policies would cause compact development:

"Nor will Metro use an estimate of unbuildable lands to justify future UGB expansions...Goal 14 recognizes that more latitude should be given in UGB establishment than in UGB amendment." (Page 8.)

"Compact development is development at higher densities, and with more infilling, than is typical of the leapfrog pattern of low density suburban development. The benefits of compact development are: 1) lower housing and public facility costs (factors 4 and 5 of Goal 14); 2) less fuel consumption for both space heating and transportation, and so better energy conservation and less air pollution (factor 5); and 3) preservation of as much prime agricultural farm land as possible (factors 6 and 7)." (Page 9.)

"[Metro's UGB Findings assumed] (1) that infill will occur on virtually all developable lands, passing over only the 13 percent estimated to be genuinely unsuitable or unavailable for development, and (2) that the average net density of lands that are developed will be significantly higher than has occurred in the past." (Page 11.)

"The resulting UGB represents a reasonable estimate of the amount of land needed to accommodate growth through the year 2000 without frequent major UGB expansion." (Page 12.)

In the findings, Metro also stated that the Metro UGB met the "economic development" considerations specified in ORS

197.712(2)(c). (This was the legislation passed by the

Legislature in 1983 to lend weight to the "development" side of the "development/conservation" conflict, mentioned above in the section on General Legislative and Regulatory Context.)

Specifically, the findings state, referring to the statute:

"Size, type and location are three elements of suitability taken into account in Metro's estimate of buildable land to meet year 2000 needs." (Page 15, footnote 13.)

Thus as of late 1985, Metro was arguing that notwithstanding that 13% of the land within the UGB was unbuildable within the year 2000 planning period, there nevertheless was sufficient buildable land to meet all year 2000 residential, commercial, and industrial needs. (It is important to note that the 13% unbuildable land was in addition to other permanently unbuildable

land.) Furthermore, Metro took the position that there was sufficient buildable land not only in total acreage but also in size, type, and location.

On January 16, 1986, DLCD issued a staff report that incorporated the Metro revised findings. Among other things, DLCD staff agreed that the UGB included all needed land:

"The Metro record shows that the projected need for urbanizable land has been satisfied by the amount of land in the UGB." (Page 8.)

On February 6, 1986, LCDC issued an order acknowledging compliance of the Metro UGB with the Goal 14 requirements. The acknowledgment order, however, excepted one of the three questionable areas, the Bethany area of Washington County.

On May 5, 1986, in response to this exception, Metro adopted Ordinance No. 86-202, which included findings intended to justify inclusion of the Bethany area within the UGB. In the findings, Metro stated that it expected that from 1983 to 2005, development in Washington County was going to add 119,349 new jobs. The Bethany area was needed to provide residential development to serve the additional employees that would be brought into the County. Subsequently, on August 7, 1986, LCDC agreed that Metro was correct and issued a final acknowledgment of compliance order that included the Bethany area within the UGB.

This action is significant in that Metro, as recently as mid-1986, was confident that Washington County was going to attract development that would create nearly 120,000 new jobs

over 20 years. Otherwise, there would have been no justification for including the Bethany area for residential development.

Two other Metro actions will complete the setting of the Metro UGB Historic Context.

First, Metro has established procedures for making "locational adjustments" in the UGB. These are adjustments that involve additions, deletions, or trades of 50 or less net acres. They are governed by Metro Code Chapter 3.05. Metro considers these to be what they are called: "adjustments." They are not treated as significant additions or deletions, except that as the size of a net addition ranges upward from 10 acres to 50 acres, the justification required for the addition becomes greater.

Second, Metro has adopted Ordinance No. 85-189, amended by ~~Ordinance No. 86-204~~, which establishes procedures for major amendments to the UGB. Section 3 of the procedure states that the standard for review of a major amendment shall be the applicable statewide goals.

The significance of these two Metro actions is they demonstrate that Metro was not certain that the UGB would be absolutely unchanging through the entire 20 year planning period, either as to locational adjustments or as to major amendments. At the very least, Metro obligated itself to consider applications for change.

Prior Metro UGB Major Amendments

Within this context, Metro over the years has considered

five applications for major UGB amendments, of which Metro approved four.

The first major amendment involved the addition of land in Clackamas County. Metro approved this amendment on April 24, 1980, in Ordinance No. 80-89. This amendment was under discussion during the early LCDC acknowledgment process and probably should be viewed as part of the original UGB rather than as a true amendment. Metro approved the amendment in response to population projections:

"There is a need for more land in Clackamas County to accommodate projected population growth for the unincorporated urban area." (Exhibit B, page 1.)

"...there is a need for additional urban land to accommodate approximately 9,000 people." (Exhibit B, page 12.)

The second major amendment involved the addition of ~~748~~ acres of land on Hayden Island. Metro approved the amendment in response to projected demand for marine terminal facilities:

"...There will be a year-2000 need for additional marine terminal facilities in the region, and...alternative sites elsewhere on the Willamette or Columbia rivers do not exist..." [Exhibit B, page 5.]

"Significant increases of cargo for many commodity types are anticipated by the year 2000." (Page 19.)

"[There will be] a demand in the lower Columbia region for 27 berths, 22,750 lineal feet of waterfront land and [a minimum of] 770 acres of marine industrial land by the year 2000." (Page 20.)

"The Portland harbor is expected to require between 19-22 berths, 16,750-19,000 lineal feet of waterfront land and 610-650 acres of marine industrial land by the year 2000." (Page 20.)

"Based on historical trends, it is expected that private demand for marine industrial land in the Portland harbor will be 260 acres by the year 2000." (Page 21.)

"[For the Port of Portland] as many as 10 additional berths may...be required." (Page 23.)

Altogether, Metro found a total demand by year 2000 for 990 to 1030 acres of additional waterfront land. (Page 24.)

The third major amendment involved the addition of 88 acres in the Sunset Corridor, the so-called Riviera addition. Metro approved this addition in June 1986, in Resolution No. 86-651. The fourth involved the addition of 450 acres in the Sunset Corridor, the so-called Kaiser addition. Metro approved this in June 1986, in Resolution No. 86-650. Metro approved these amendments in response to an existing and projected unmet demand for large acreage industrial parcels within the Sunset Corridor. In the Kaiser case, Metro found that there was a need "to satisfy demand for large acreage industrial parcels" (Exhibit B, page 3); that there was a "demand of high-tech users for land in the Sunset Corridor" (Page 11); that [In] the Sunset Corridor...there exists a material demand for high-technology industrial sites" (Page 23); and that "[In the Sunset Corridor] there is a localized shortage of land as a result of recent market activity...The Sunset Corridor has established [a] critical mass and has reached the point of second and third generation spinoffs." (Page 69.) Metro cited examples of the demand for such land in the Sunset Corridor over the last 25 years; identified a current demand of as much as 437 acres per year; found that only 694 acres in large acreage industrial parcels were available for development; and found that other large

parcels either were not for sale or had features that made them unsuitable for large users (Pages 15-19.) In the Riviera case, Metro found that "over the last several years...a large number of high-technology industries have consumed large tracts of land for production, research and development facilities" (Exhibit B, page 11); and that "The prospect for continued expansion in the high tech field from 1984 through 1995 is projected to be very strong." (Page 14.)

In the Kaiser case, in response to questions about the lack of specific plans for public facilities and services to the acreage and the lack of specific solutions to potential development impacts, Metro concluded:

"[T]he accommodation of future development may be satisfied on an incremental basis, increasing in specificity as the land use process advances to later stages.... Thus, specific solutions for the provision of public facilities and services are not necessary or feasible at this stage of the proceedings. Rather, it need only be established that there are measures which can reasonably accommodate future development on the site." (Exhibit B, page 29.)

"[A]t this juncture of the land use process, it is neither necessary nor feasible for the applicant to provide specific solutions to potential development impacts. Thus, in evaluating the accommodation of...impacts, it is only necessary...to find that reasonable solutions for potential adverse...impacts exist." (Exhibit B, page 39.)

The fifth major amendment case involved the site that is the subject of the present application. BenjFran in that case sought to justify a UGB addition on the ground that there is a need for support industries for high-tech development and that this need could not be met within the UGB. On August 28, 1986, Metro denied the proposed amendment, in Order No. 86-12. Metro found

"there is a need for [high tech] support industries, however the petitioner has not demonstrated that a need exists to amend the UGB to accommodate this use." (Exhibit B, page 6.)

Two common elements of the four approved major UGB amendments were (1) there was a "need" to develop land based on either projected population growth or on an existing or projected demand for industrial land; and (2) the "need" could not be met within the UGB, so that there was a "need" for a UGB addition. In addition, in each case the proposed addition area was the best available location outside the UGB. Thus, each addition met the various "need" factors as well as the "locational" factors. In the disapproved amendment, the proposal met the one "need" factor, i.e., there was a need to develop land based on an existing and projected demand for industrial land. However, there was not a "need" for a UGB amendment, since the "need" to develop land could be met by land already within the UGB.

VI. EVALUATION OF BENJFRAN PROPOSAL

A. Goal 14, Factor 1: Demonstrated Need to Accommodate Long-Range Urban Population Growth Requirements Consistent with LCDC Goals

This factor allows a petitioner to demonstrate need by showing that projected population growth requires a UGB amendment, after consideration of applicable statewide goals. Here, the evidence submitted on "long-range urban population growth requirements," to the extent there was any at all, left much to be desired. In evaluating the relationship between this factor and a proposed UGB expansion one ordinarily would

Rec'd 9/6/88
4:55 PM

1000 FRIENDS OF OREGON

September 6, 1988

Daniel Cooper, General Counsel
Metro
2000 SW First Ave.
Portland, OR 97201-5398

Dear Mr. Cooper,

1000 Friends of Oregon has reviewed the August 11, 1988 Hearings Officer Report on Contested Case No. 88-1, the proposed 44 acre addition to the Forest Grove urban growth boundary. We take exception to that report as provided in Metro Code Section 2.05.035.

The Hearings Officer's Report concludes that there is a need for short-term developable industrial land in Forest Grove in order to provide for the livability for the residents of Forest Grove. Further, the Hearings Officer concludes that other sites within the UGB are not available to meet this need, and that there are advantages to locating industrial development on the subject 44 acre site.

It is our view that the Hearings Officer misconstrues the applicable law governing UGB expansions, and that Metro has no basis upon which to approve the petition. The justification for the UGB amendment rests upon compliance with Factor 1 of Goal 14: that is, if there is no population growth, there is no need. A UGB amendment may not be granted solely because livability may be enhanced, as the Hearings Officer suggests.

1. Goal 14 Factor 1: Need To Accommodate Long-Term Population Growth

The question that Metro must answer is whether the proposed amendment to the Forest Grove UGB complies with Goal 14 (Urbanization) and Goal 2 (Land Use Planning). To comply with Goal 14, Forest Grove must determine whether there is any need for urbanization, and second, how much land is required to accommodate present and future growth. These assessments rest upon a demonstrated need to accommodate long-range population growth. The Hearings Officer concludes: "The record does not indicate that a significantly increased population projection creates a need to expand the UGB" (p. 9). Therefore, Factor 1 of Goal 14 has not been met.

As the record indicates, Forest Grove has a 45% surplus of land over the amount needed to accommodate long-term industrial growth. According to Goal 14, if projected population growth is accommodated by land within the UGB, there is no "need" to expand the boundary. Haviland v. LCDC 45 Or App 761, 609 P2d 423 (1980). Evidence in the record indicates that the present UGB is larger than it needs to be to accommodate growth ("...the rate of population increase has been substantially below the projected rate." Report, p. 8).

The Hearings Officer also finds that the present UGB is large enough to accommodate industrial land needs to the year 2005. The City's Plan Update (completed in 1986) assumes that 10% of developed land within the UGB should be industrial. The Hearing's Officer questions the validity of the 10% figure, and concludes:

"Forest Grove has not demonstrated that its current land designated for industrial development will be inadequate for it to meet an 8% goal over the planning period. So far as a 10% goal is concerned, Forest Grove has not demonstrated that an increase above 8% is needed, even if 8% is assumed proper." (Report, pp. 10-11).

This same finding is repeated elsewhere in the Report:

"Since the UGB contains more industrial land than Forest Grove needs over the longterm, addition of the Site to the UGB should result in other industrially designated land within the UGB not being developed." (Report, p. 22).

These findings indicate that the UGB petition should be denied by Metro. Since projected population growth is accommodated by land within the Forest Grove UGB, there is no "need" to expand the boundary. Haviland v. LCDC, supra. The needs analysis ends if Factor 1 of Goal 14 is not met, i.e., the issues under Factor 2--need for housing, employment opportunities, and livability--are never reached. See Collins v. LCDC, 75 Or App 517, 525-528, 707 P2d 599 (1985).

Expansion of the UGB for a short-term versus long-term need is not consistent with Goal 14. As DLCD pointed out in its May 10 letter to Metro:

"The City would normally be expected to remove through effective policies and programs the constraints which inhibit the short-term development of the industrially zoned land. Or, if the constraints are such that the land cannot be made suitable for industrial use, then replanning and

rezoning to eliminate the land from the industrial inventory would be undertaken."

2. Goal 14 Factor 2: Need For Housing, Employment Opportunities, and Livability

With regard to Factor 2, the Hearings Officer finds that the current UGB is providing for the employment needs of the projected population (Report, pp. 10-11). According to the facts in the record, Forest Grove has a higher percentage of its population working in manufacturing than the remainder of the Portland SMSA. In addition, growth of employment in this category outdid the remainder of the Portland SMSA and Washington County between the years 1970-1980, and data for the years 1982-1985 indicates that this trend toward increased manufacturing employment opportunities in Forest Grove is continuing (ECO Study).

With regard to livability, the Hearings Officer finds that adding another 44 acres to the UGB which already has a 45% surplus of industrial lands will meet the present livability needs of Forest Grove residents (Report, p. 11). Even if this were the case, a UGB amendment cannot be approved solely on a subset of one factor under Goal 14. As explained above, the UGB petition either fails or succeeds based on compliance with Factor 1 of Goal 14.

Even if the Hearings Officer is correct as a matter of law (that the UGB petition may be approved under Factor 2 of Goal 14), there is nothing in the record to show how livability of Forest Grove residents will be improved by the addition of 44 acres to the UGB. All the Hearings Officer can assert is that "expansion of Forest Grove's industrial base would relieve the stress on high property taxes" and that such expansion "would provide Forest Grove residents with more employment opportunities in the City" (Report pp. 13-14). When it comes down to the facts to support these assertions, there are none in the record. As the Hearings Officer concludes:

"Although it is impossible to quantify the extent of reductions in the residential property tax burden that can be achieved due to increases in industrial property assessed values and secondary increases in commercial property assessed values, it is clear that Forest Grove needs to accomplish these reductions as quickly as possible in order to meet the livability needs of its residents."
(Report, p. 14).

These assertions do not demonstrate compliance with Goal 14.

3. Goal 14 Factors 3-7--The Locational Factors

We take issue with the findings of the Hearings Officer under these factors. First, the Hearings Officer asserts under Factor 3, that transportation facilities and services, sewer, water and storm drainage facilities and services

"could be provided at a reasonable cost, if the Site (44 acres) and the industrially designated Zurcher land already within the UGB (51 developable acres) were developed together."
(Report, pp. 16-19).

There are no facts in the record which indicate that the 51 acres of developable industrial land already within the UGB and owned by the Zurchers cannot be served in an orderly and economic fashion. The Hearings Officer finds only that urban services can be provided at a "reasonable cost" if the two Zurcher properties are developed together. These findings do not satisfy Goal 14 factor 3.

4. Goal 2--Exceptions

Goal 2 addresses the need for a particular use of a parcel proposed for inclusion within a UGB. Roth v. LCDC, 57 Or App 611, 618-619, 646 P2d 85 (1982). We disagree with the Hearings Officer Report conclusions that the standards under Goal 2 are met by the proposed amendment.

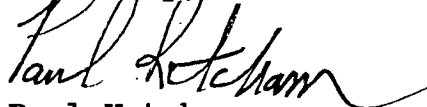
The petitioner presents no industrial needs assessment which describes the type of industry or industries it is attempting to attract, the land needs of these industries, and why a 95 acre parcel is needed to accommodate these industries as opposed to the 51 acres already within the UGB.

5. Conclusion

For the above listed reasons, 1000 Friends objects to the conclusions of the Hearings Officer Report. Further explanation of our objections are contained in our May 25 and June 24 letters to the Hearings Officer.

Thank you for your consideration of our objections.

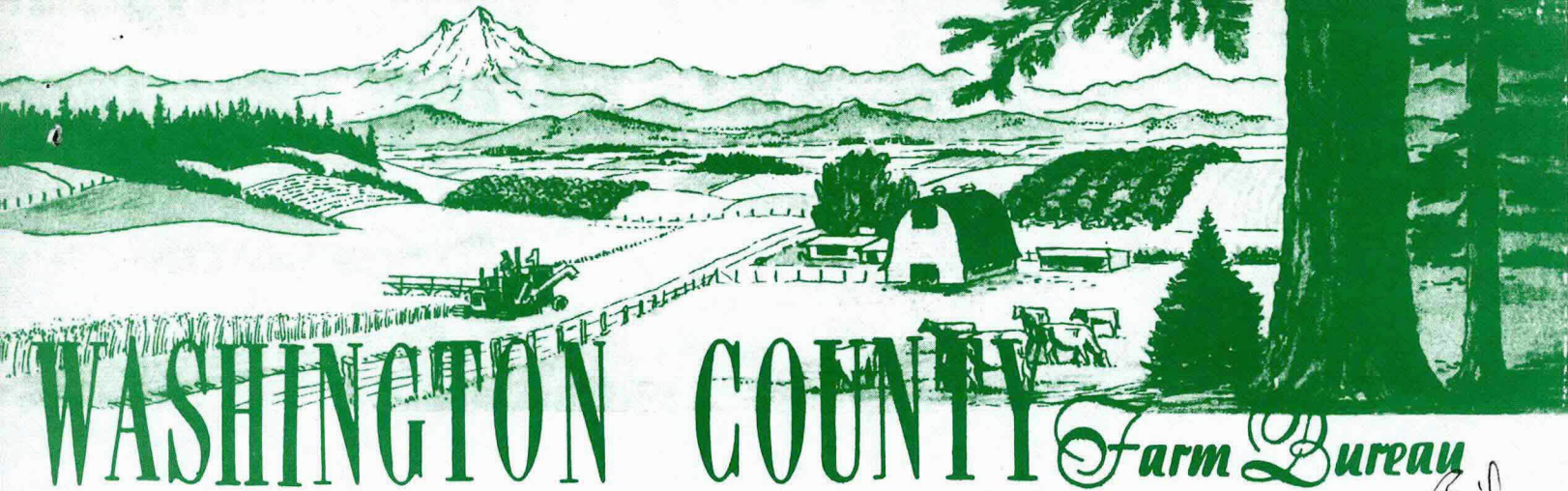
Sincerely,



Paul Ketcham
Senior Planner

Daniel Cooper, General Counsel
September 6, 1988
Page 5

cc: DLCD
Forest Grove
Washington County



WASHINGTON COUNTY Farm Bureau
885 S.W. Baseline Hillsboro, Oregon 97123 648-0609

*Rec'd
9/6/88
4:55 pm*

MEMORANDUM

September 6, 1988

TO: Daniel B. Cooper, General Counsel for Metro
FROM: Doug A. Krahmer, President, Washington County Farm Bureau
RE: Forest Grove Urban Growth Boundary Amendment (Contested Case No. 88-1)

On behalf of the Washington County Farm Bureau, I would like to submit the following objections to the August 11, 1988 Hearings Officer Report on the petition from City of Forest Grove and the Zurchers to include 44 acres of prime farmland within the regional UGB near Forest Grove.

1. Population Projections, pp. 8-11.

The Hearings Officer points out that the rate of population growth is substantially below the projected rate. If this is the case, how can there be a need to enlarge the Forest Grove UGB? The comprehensive plan was updated in 1986. The City concluded then that it had a 45% surplus of industrial land. What conditions have changed since then to necessitate any amendment to the UGB, especially since prime farm land would be lost?

In addition, it is my understanding that Forest Grove is part of the regional UGB. Aren't land needs to be calculated on a regional basis. The recent BenjFran case established that there is ample land in the regional UGB to meet general industrial needs to the year 2000 and beyond.

The land in question is prime farmland. It is out of the 100 year floodplain and is able to support more intensive crops than the remainder of the property which is in the floodplain. The Washington County Farm Bureau wants to be on record supporting protection of the subject 44 acres for farm use.

2. Amount of land designated industrial pp. 10-11, 22.

The Hearings Officer contradicts himself in several places in the report. He finds that the amendment is needed to provide for livability (whatever that means), and yet, at the same time,

he finds that there is ample land designated for industrial uses in the UGB. For example, he states: "Forest Grove has not demonstrated that its current land designated for industrial development will be inadequate..." also "Since the UGB contains more industrial land than Forest Grove needs over the longterm, addition of the Site to the UGB should result in other industrially designated land within the UGB not being developed" (see pages 10, 22).

Bringing in more land the the Forest Grove UGB when there is already an oversupply does not seem to consistent with Goal 14. It is my understanding that Goal 14 is supposed to encourage compact and efficient growth. How is this achieved by bringing prime farmland into the boundary when it is not needed? The Hearings Officer admits that bringing in the 43 acres will impede efficient growth--"It therefore is appropriate to assume that addition of the Site to the urban area would result in another site not being developed" (p. 16).

I have been farming a 43 acre piece of ground which is zoned industrial by the City of Cornelius. It has all of the services needed by an industrialist--pump station, sewer and water. There has not been a nibble on that piece of industrial land all the time I've been farming it (for the past 10 years). Right now I am growing grain crops on the 43 acre piece. Why do we need yet another piece of industrial land when there's plenty both in Forest Grove, Cornelius, the Sunset Corridor, and the rest of Portland to meet growth needs?

3. Assessed Value Per Capita Figures (p. 12)

The Hearings Officer believes that the low assessed value per capita for Forest Grove is a reason to bring more industrial land into the UGB in help provide for "livability". We think this is faulty reasoning. Won't the assessed values for Forest Grove increase as development moves westward from the Portland core? Look at what happened to the Sunset Corridor. Didn't assessed values increase there as development moved westward?

Forest Grove, along with Troutdale, are are on the edge of the regional UGB. They don't have the industrial and commercial land base compared to Portland and Beaverton. Is the Hearings Officer saying that they should?

4. Issue of Schools

What we have here is a classic "chicken and egg theory." What comes first--an industrial land base or schools? We are able to educate our children in the rural areas without an industrial land base. The question is how much are the residents of Forest Grove willing to pay to educate their children. Apparently they are willing to pay the \$25.83 combined city/school property tax rate per \$1000 assessed value. The voters approved a special levy outside the tax base in June

of 1987.

Is it the industrialists who want this UGB amendment or the residents of Forest Grove? Perhaps the residents are saying that they are willing to pay the property tax because they like Forest Grove as it is--not as an industrialized urban area. Over half of the residents of Forest Grove are employed elsewhere. Perhaps they enjoy the City as it is.

Another question I have is when would the alleged tax benefits (from the proposed UGB amendment) kick in to the local economy? Ten years from now, 15 years? There's nothing in the record to show what this land is going to be used for and who is going to use it. Look at all the industrial land already idle.

The industrial park in the northeastern part of the city was begun in the late 60's and is still being developed. If it takes 25 years to develop land with industrial land, are we really talking about a short-term solution by adding another 44 acres to the UGB?

5. Storm Drainage p. 23

How does the proposed amendment and development of the Site as industrial address the Tualatin River cleanup efforts? Presently designated areas for development are already causing water quality problems in the Tualatin River. DEQ standards are already being exceeded by existing development. How is the proposed amendment going to assure water quality of the Tualatin River? In addition, 12 acres of the Zurcher property already within the UGB are wetlands. We need to protect every acre of wetlands for a variety of reasons. How does the proposal assure this protection?

Thank you for listening to our concerns.

STAFF REPORT

Agenda Item No. 7.1

Meeting Date Sept. 22, 1988

CONSIDERATION OF RESOLUTION NO. 88-987 FOR THE
PURPOSE OF EXPRESSING COUNCIL INTENT TO AMEND
METRO'S URBAN GROWTH BOUNDARY FOR CONTESTED CASE
NO. 88-1: ZURCHER PROPERTY

Date: September 7, 1988

Presented by: Daniel B. Cooper

FACTUAL BACKGROUND AND ANALYSIS

Contested Case No. 88-1 is a petition from Glenn, Theodore and Ava Zurcher and the city of Forest Grove for a major amendment of Metro's Urban Growth Boundary (UGB) in Washington County. The property proposed for inclusion within the UGB is a 46-acre parcel located south of Forest Grove, as shown on Exhibit A. Washington County has taken a position in support of the proposed amendment.

Metro Hearings Officer Christopher Thomas held a hearing on this matter on May 25, 1988. Testimony was received both in support and in opposition to the petition. The Hearings Officer's Report and Recommendation, attached as Exhibit B, concludes that the petition meets all applicable standards and should be approved. Exceptions to his Report have been received from the Farm Bureau and 1000 Friends of Oregon.

Following oral argument on exceptions, the Council may adopt Resolution No. 88-987 as proposed, or remand the findings to the Hearings Officer or to staff for revisions as requested by exceptions or as otherwise specified. If the resolution is approved, petitioners will need to partition the property to follow the UGB requested and annex that land to Metro before an ordinance amending the UGB may be approved.

JH/sm
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09/12/88

NOTE: Due to the length of the document, Exhibit B, "Report and Recommendation of Hearings Officer," was not printed in this packet. The Council has received copies of the exhibit. Other parties may contact the Council Clerk to arrange for a copy of the document (Marie Nelson, 221-1646).

Councilor Waker asked if the Brennt property were included in the Lake Oswego School District. Mr. Thomas responded the property was included in the District and the record for this case concerning school issues was the same as the Blazer Homes case record.

Presiding Officer Ragsdale asked Counsel to comment on Mr. Buford's testimony. Mr. Cooper explained the Hearings Officer's findings had not relied on Mr. Buford's testimony. In response to Councilor Collier's question, Mr. Cooper said the Council could only consider Mr. Buford's testimony as it related to the record. Councilor Collier and the Presiding Officer expressed concern that a process needed to be established to monitor testimony before the Council concerning UGB contested cases.

Discussion followed on what evidence the Council could consider in determining the impact of the application on schools. Presiding Officer Ragsdale suggested that if the Council were to evaluate the Brennt case according to the Blazer Homes case record, the Council would have to adopt a motion to direct General Counsel to prepare findings to support that request. Councilor Knowles thought that action unnecessary.

There was no further discussion and the Presiding Officer announced the second reading of the ordinance was scheduled for October 13, 1988.

The Council recessed from 7:25 p.m. to 7:40 p.m.

7. RESOLUTIONS

7.1 Consideration of Resolution No. 88-987, for the Purpose of Expressing Council Intent to Amend Metro's Urban Growth Boundary for Contested Case No. 88-1: Zurcher Property

Dan Cooper, General Counsel, explained the Zurcher Property case was a request for a major amendment to the Urban Growth Boundary (UGB). As such, the Council would determine the case based on state land use criteria. He also noted the Council would hear arguments on exceptions at this meeting.

Hearings Officer's Report and Recommendation

Chris Thomas, Hearings Officer for the case, reviewed the "Report and Recommendation of the Hearings Officer" document included in the meeting agenda packet. He reported the applicants -- the City of Forest Grove and Glenn, Theodore and Eva Zurcher -- had to determine that the amendment was needed. The applicants had successfully demonstrated the land was needed to attract business to the Forest Grove area that to correct a situation of low assessed property

value, low per capita income and high property tax rates. He had also concluded the applicant had successfully demonstrated there was no other land available within the UGB to meet the applicant's needs. In conclusion, he explained that central to the applicant's argument was the liveability of the Forest Grove area and he recommended the application be approved in order to improve liveability.

In response to Councilor Waker's and Van Bergen's questions, Mr. Thomas explained that land outside of the Forest Grove area had been determined unsuitable for the applicant's purposes. A central issue was that the amendment was needed to improve the liveability of the Forest Grove area, he said. Mr. Thomas compared the Zurcher case with the recent BenjFran application which had been denied by the Council. He said that BenjFran had been unable to demonstrate their land parcel had to be in a specific area.

Councilor Van Bergen asked if the Hearings Officer had considered whether voter approval of special measures could solve Forest Grove's problems. Mr. Thomas said he had considered that but due to low per capita income, low assessed value, and high tax rates that solution would not enhance the liveability of the area.

Councilor Kirkpatrick questioned how the Hearings Officer could isolate the Forest Grove area from the rest of the UGB. She pointed out that the City of Oregon City could make the same claim as Forest Grove concerning low per capita income, low assessed values and high tax rates.

Councilor Knowles asked if there were previous UGB cases where a need had been demonstrated for land in a specific location. Mr. Thomas said the Kaiser case had demonstrated need for a large land parcel in the Sunset Corridor. A case had also been made for land to be added for a mobile home park in Clackamas County although Mr. Thomas did not think the Clackamas County case represented a good precedent.

Councilor Van Bergen questioned how "liveability" could be used as a measurement for need.

Applicant's Testimony

Al Benkendorf, representing the Zurcher family and Forest Grove, first pointed out the Forest Grove City Council ruled against its policy of neutrality on UGB matters in recognition of the importance of this decision. He then introduced Clifford Clerk, Forest Grove Mayor.

Mayor Clark discussed the history of economic problems in the Forest Grove area that had occurred in spite of new reports about economic

growth in Washington County. He referred to the Forest Grove area as the "other Washington County." He thought it very important that Forest Grove seek economic diversification. The Zurcher property would help provide that diversity, he said, without being insensitive to the needs of the farming community. The land would also help Forest Grove help itself and give the area a chance to compete economically.

Dick Bewvrsdorff, Forest Grove Planning Director, testified that the Zurcher property was suitable for the City's needs because it was available. Other parcels had been determined unsuitable because of reluctant owners or because they were too far removed from urban service access.

Bob Alexander, Executive Director of the Forest Grove/Cornelius Economic Development Council, pointed out the Zurcher land was needed in order to break the stagnant economic cycle in the area and to help create a better tax base for small industry.

Gary Lucas, Superintendent of Schools, Forest Grove School District, pointed out the District was currently caught in the State "safety net" program because of past school levy failures. The tax rate must be lowered, he said, or else Forest Grove's children would be short changed.

Opponents' Testimony

Paul Ketchum, Senior Planner with 1000 Friends of Oregon, reviewed points raised in his letter dated September 6, 1988, to Dan Cooper, Metro General Counsel. He explained Metro's role was to administer the Urban Growth Boundary: it was not Metro's role to decide whether tax levels and assessed values were adequate. Mr. Ketchum did not think the applicant had demonstrated need for the amendment and he pointed out the Boundary could not be amended to accomodate a short-term need.

Mr. Ketchum then reviewed in detail the points discussed in his letter to Mr. Cooper: 1) expansion of the UGB for a short-term versus long-term need was not consistent with Goal 14; 2) even if the application could be approved based on short-term need, there was nothing in the record to show how liveability of Forest Grove residents would be improved by the addition of 44 acres to the UGB; 3) there were no facts in the record to indicate that the 51 acres of developable industrial land already within the UGB and owned by the Zurchers could not be served in an orderly and economic fashion; and 4) the petitioners had not supplied an industrial needs assessment describing the type of industries they were attempting to attract, the land needs of those industries, and why a 95 acre parcel was needed to accomodate those industries as opposed to the

51 acres already within the UGB. Mr. Ketchum recommended the Council deny the request.

Doug Krahrmer, President of the Washington County Farm Bureau, 885 S.W. Baseline, Hillsboro, discussed his memorandum to Dan Cooper, Metro General Counsel, dated September 6, 1988. He noted the following objections to the Hearings Officer's report: 1) more urban land should not be added to the UGB because the City of Forest Grove had concluded (as part of its comprehensive plan update) it had a 45 percent surplus of industrial land and because the Zurcher property was currently prime farm land; 2) it would not be consistent with Goal 14 to incorporate prime farmland into the UGB when more urban land was not needed; 3) contrary to the Hearings Officer's conclusions, the assessed value of Forest Grove would probably increase as development moved westward from the Portland core; 4) perhaps Forest Grove residents were willing to pay higher property taxes for schools because they liked the area the way it is -- not as an industrialized urban area; and 5) additional development could have a negative impact on efforts to clean up the Tualatin River and would be counter to protecting wetland areas.

Councilor Waker asked Mr. Krahrmer if there was a shortage of farm land in Oregon. Mr. Krahrmer explained the Washington County Farm Bureau's goal was to protect existing Oregon farm lands.

Councilor Knowles then questioned Mr. Ketchum on the 1000 Friends of Oregon's position against the amendment. The Councilor asked Mr. Ketchum if, under state land use Goal 14 criteria, need had to be defined on an area-wide basis. Mr. Ketchum responded that need had to be based from a regional perspective but could also be site specific. He did not think the applicants had met the criteria of Goal 14 because the only argument advanced was for short-term need. He explained this case was different from the Kaiser and Riviera amendments: those amendments were granted because the applicants had successfully demonstrated the need to attract hi tech industry to a specific area. In the Forest Grove case, he said, there was no evidence land did not already exist that was suitable for the applicant's short-term needs. He added the Council had no legal basis on which to approve the Zurcher application.

Petitioners' Rebuttal

Mary Dorman, an attorney representing the applicants, pointed out the City of Forest Grove and the Zurcher family had satisfied the state land use Goal 14 requirement and had focused its application on the specific needs of Forest Grove. She also discussed the history of the UGB, saying Forest Grove had taken a conservative posture at the time the Boundary was created, believing Metro's promise the Boundary could be changed as needed. She thought the

application was responsive to state land use goals. She further explained it would be impossible to expand the UGB in any other direction because of the 100 year flood plain designation. Finally, Ms. Dorman said the applicant had not conducted a sophisticated needs analysis because its needs were simple and easy to identify.

Presiding Officer Ragsdale, after questioning Ms. Dorman and Mr. Thomas, requested he be allowed to review administrative rules to evaluate the Hearings Officer's findings relating to short-term need. Mr. Cooper, General Counsel, then advised the Presiding Officer on the options available to the Council if it chose not to adopt the Hearings Officer's findings.

Motion: Councilor Waker moved, seconded by Councilor DeJardin, to adopt Resolution No. 88-987, a resolution expressing Council intent to amend Metro's Urban Growth Boundary for Contested Case No. 88-1: Zurcher Property.

Councilor Waker said he did not think approval of the amendment would jeopardize farm land. Rather, the UGB allowed farm land an opportunity to compete at the economic table, he explained.

Councilor Kirkpatrick disagreed, stating the UGB was created to protect farm land against urban sprawl. She also thought the boundary had been created to serve the needs of the entire metropolitan region, not just the Forest Grove area. She pointed out the amendment would not resolve school funding issues and the City of Oregon City could make the same claims made by Forest Grove about high taxes and low per capita income. Councilor Kirkpatrick said she was prepared to work with the 1000 Friends of Oregon and Mr. Cooper to prepare findings to support denial of the Petitioner's request.

Councilor Hansen supported adoption of the resolution. He thought the Council should respond to help balance economic inequities throughout the region. He said in order to start an "Oregon Come-back," the State would have to evaluate the way it did business.

Councilor Gardner thought Forest Grove's argument concerning economic issues was compelling but he was also influenced by the argument that the UGB was created to protect farm land against urban sprawl. He was concerned about the potential loss of 44 acres of prime agricultural land and possibly opening a "Pandora's box" to applications based on sub-regional need. He cautioned that the Council had to be consistent in evaluating UGB cases based on environmental factors. Fair evaluation would become difficult, he explained, if the "liveability" criterion were defined in terms of tax bases and economic factors.

In response to Councilor Knowles' question, Mr. Thomas explained the applicant had demonstrated all seven factors of Goal 14 had been considered. He questioned whether the case would be upheld in a higher court if the Council determined the application should not be granted because certain factors had not been considered. Councilor Knowles said he was uncomfortable granting the application when it seemed the only need criteria that had been met was that of "liveability."

Councilor Van Bergen supported the Hearings Officer's findings explaining that once all the tests had been met, he could interject a degree of compassion concerning the area's economic situation.

Councilor Kelley said she was convinced that Forest Grove needed the land for economic development because of its unique economic circumstances.

Councilor Knowles supported the resolution explaining the situation was unique, the community was economically isolated, the proposal had strong community support, and he did not believe the decision would diminish the integrity of the UGB.

Vote: A vote on the motion to adopt the resolution resulted in:

Ayes: Councilors DeJardin, Hansen, Kelley, Knowles, Van Bergen, Waker and Ragsdale

Nays: Councilors Coleman, Collier, Gardner and Kirkpatrick

Absent: Councilor Cooper

The motion carried and Resolution No. 88-987 was adopted.

The Presiding Officer called a recess at 10:20 p.m. and the Council reconvened at 10:35 p.m.

7.2 Consideration of Resolution No. 88-975, for the Purpose of Acting on the Executive Officer's Request for Review of Metropolitan Exposition-Recreation Commission Resolution No. 8 Concerning Personnel Policies

Motion: Councilor Waker moved, seconded by Councilor Kirkpatrick, to adopt the resolution.

Presiding Officer Ragsdale reported that per provisions of Metro Code Section 6.01.080, Executive Officer Cusma requested a review of the Commission's Resolution No. 8 which established Personnel Rules. The Presiding Officer had appointed a task force comprised