

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADDRESSING	)	Ordinance No. 17-1397
STATE RULE REQUIREMENTS	)	
REGARDING THE AMOUNT OF URBAN	)	Introduced by Chief Operating Officer
RESERVES AND THE BALANCE OF	)	Martha Bennett in concurrence with
URBAN AND RURAL RESERVES IN THE	)	Council President Tom Hughes
METRO REGION	)	

WHEREAS, in 2007 the Oregon Legislative Assembly enacted SB 1011, authorizing Metro and the three counties in the Metro region to designate urban and rural reserves; and

WHEREAS, between 2008 and 2010 Metro and the three counties conducted an extensive public process bringing together citizens, stakeholders, local governments and state agencies to consider and apply the urban and rural reserve factors to land surrounding the Metro urban growth boundary (UGB); and

WHEREAS, in 2010 Metro and each of the three counties entered into intergovernmental agreements mapping the areas that were determined to be most appropriate as urban and rural reserves under the applicable factors; and

WHEREAS, in 2011 Metro and the three counties submitted ordinances and findings formally adopting the urban and rural reserve designations to LCDC for acknowledgement, and those designations were approved and acknowledged by LCDC in 2012; and

WHEREAS, in 2014 the LCDC acknowledgement order was remanded by the Oregon Court of Appeals, and the Oregon Legislative Assembly enacted HB 4078, which legislatively designated a revised map of urban and rural reserve areas in Washington County; and

WHEREAS, in 2015 LCDC issued an order remanding the remaining urban and rural reserve designations to Metro, Multnomah County, and Clackamas County for further review consistent with the Court of Appeals opinion; and

WHEREAS, in 2016 the Metro Council addressed the remand issues arising out of Clackamas County via Ordinance No. 16-1368, which adopted findings concluding that the urban reserve study areas identified as areas 4A, 4B, 4C, and 4D (generally referred to as “Stafford”) were correctly designated as urban reserve areas; and

WHEREAS, Metro now must adopt findings addressing two state rule requirements that apply to the designation of urban and rural reserves across the entire region, in light of (a) the Metro Council’s adoption of newer regional urban growth projections in the 2014 Urban Growth Report, and (b) the reduction of urban reserve acreage in Washington County via HB 4078; and

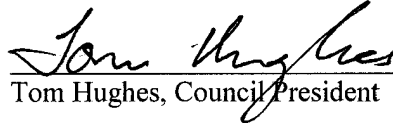
WHEREAS, Metro held public hearings on March 2, 2017 and March 16, 2017 at which the Metro Council accepted testimony regarding the urban and rural reserve designations in the Metro Region; and

WHEREAS, the Metro Council has reviewed the staff report, the testimony submitted by interested parties, and all other materials in the record, and now concludes that (a) the amount of existing urban reserves in the region is sufficient to accommodate urban growth in the region for 50 years after 2015, and (b) the balance in the designation of urban and rural reserves across the region best achieves the goals of creating livable communities while protecting farms, forests, and natural landscape features; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The Findings of Fact and Conclusions of Law in Exhibit A, attached and incorporated into this ordinance, explain how the urban and rural reserve designations adopted in 2011 by Metro Ordinance No. 11-1255, as modified by the 2014 Oregon legislature in House Bill 4078, are consistent with state law.
2. The prior record of proceedings before the Metro Council in Ordinance No. 16-1368 is hereby adopted and incorporated as part of the record in this proceeding.

ADOPTED by the Metro Council this 13<sup>th</sup> day of April 2017.

  
Tom Hughes, Council President



Attest:

Approved as to Form:

  
Nellie Papsdorf, Recording Secretary

  
Alison R. Kean, Metro Attorney

## **Exhibit A to Ordinance No. 17-1397**

The findings set forth below include the supplemental findings of the Metro Council arising out of this proceeding regarding the amount of urban reserves and region-wide balance of urban and rural reserves under applicable state rules. The findings below will replace Section V of the findings adopted by the Metro Council in Ordinance No. 16-1368.

### **V. SUPPLEMENTAL FINDINGS REGARDING SUPPLY OF URBAN RESERVES AND REGIONWIDE BALANCE**

The findings in this Section V supplement the findings adopted by the Metro Council in support of the original 2011 approval of urban and rural reserves via Metro Ordinance 11-1255. To the extent any of the findings in this section are inconsistent with other findings in this document that were previously adopted in 2011, the findings in this Section V shall govern. These findings address issues related to the regionwide supply of urban reserves and the overall balance of reserves in light of (a) the Metro Council's adoption of the current Urban Growth Report in 2015, and (b) the Oregon Legislature's enactment of House Bill 4078.

On April 21, 2011, Metro enacted Ordinance 11-1255 adopting the urban and rural reserve designations agreed upon by Metro and the three counties, and submitted that ordinance and accompanying findings to LCDC for acknowledgement. On August 19, 2011, LCDC voted to approve and acknowledge the reserve designations made by Metro and the counties, and LCDC issued Acknowledgment Order 12-ACK-001819 on August 14, 2012. Twenty-two parties filed appeals of the LCDC Order, and on February 20, 2014 the Oregon Court of Appeals issued its opinion in the *Barkers Five* case, affirming LCDC's decision regarding the majority of the 26 assignments of error raised by the opponents, and remanding the LCDC Order on three substantive issues.

First, the court concluded that LCDC incorrectly approved Washington County's application of the rural reserve factors pertaining to agricultural land, because the county relied on factors that were different from those required by statute for determining whether lands should be designated as rural reserve. The court held that the county's error required remand of all urban and rural reserves in Washington County for reconsideration.

Second, the court held that LCDC incorrectly concluded that Multnomah County had adequately considered the rural reserve factors pertaining to Area 9D. The court found that the county's findings were not sufficient to explain why its consideration of the applicable factors resulted in a designation of rural reserve for *all* of Area 9D, given the fact that property owners in that area had identified dissimilarities between the northern and southern portions of the study area.

Finally, the court held that LCDC did not correctly review Metro's urban reserve designation of the Stafford area for substantial evidence. The court concluded that Metro failed to adequately respond to evidence cited by opponents from Metro's 2035 Regional Transportation Plan (RTP)

indicating that traffic in the Stafford area was projected to exceed the capacity of certain roads by 2035.

Immediately after the Court of Appeals issued its opinion, work began on legislation designed to resolve issues regarding the remand of urban and rural reserves in Washington County. On March 7, 2014 the Oregon Legislature passed House Bill 4078, which legislatively approved Metro's 2011 UGB expansion, added an additional 1,178 acres of urban reserves to the UGB, and made other revisions to the reserves map in Washington County.

As described in Section IV of these findings, when Metro and the three counties adopted their maps of reserve areas, they agreed on a total of 28,256 acres of urban reserves, which reflected Metro's estimate of the acreage that would be required to provide a 50-year supply of urbanizable land as contemplated under ORS 195.145(4). The specific forecast described above in Section IV is for a range of between 484,800 and 531,600 new dwelling units over the 50-year period ending in 2060. Metro relied on the high point of that forecast range in estimating that the region would need a supply of urban reserves sufficient to provide for approximately 152,400 new dwelling units outside of the existing UGB through 2060.

After LCDC voted to approve Metro's findings and acknowledge the designation of 28,256 acres of urban reserves in August of 2011, Metro relied on those designations to expand the UGB onto approximately 2,015 acres of urban reserves in Washington County. However, that expansion was called into question by the Court of Appeals decision in *Barkers Five*, which reversed and remanded all of the urban and rural reserve designations in Washington County.

The compromise reflected in House Bill 4078 included legislative approval and state acknowledgement of the 2,015 acres of 2011 UGB expansions in order to provide certainty to the cities regarding their ability to urbanize those expansion areas. In addition to acknowledging the UGB expansion areas already approved by Metro, House Bill 4078 included the following changes to the reserves map in Washington County:

- Converted 2,449 acres of urban reserves to rural and undesignated
- Converted 417 acres from rural reserve to urban reserve
- Converted 883 acres of undesignated areas to rural reserve
- Added 1,178 acres of urban reserve to the UGB

In the final accounting, HB 4078 resulted in the net reduction of 3,210 acres of urban reserves below the amount remaining after Metro's 2011 UGB expansion. The remaining acreage of urban reserves in the Metro region is now 23,031.

The legislature's removal of 3,210 acres of urban reserves via HB 4078 potentially implicates two elements of state law governing reserves. First, ORS 195.145(4) requires the designation of a sufficient amount of urban reserve areas to provide the Metro region with a 40 to 50 year supply of urbanizable land. Second, OAR 660-027-0040(10) requires Metro and the counties to

adopt findings explaining why the reserve designations achieve the objective stated in OAR 660-027-0005(2) of a balance in urban and rural reserves that “best achieves” livable communities, viability and vitality of farm and forest industries, and protection of important natural landscape features.

Regarding the requirement for a 40 to 50 year supply of urban reserves, the applicable state rule requires Metro’s estimate of the projected long-range need for urban reserve acreage to be based on the analysis in Metro’s most recent Urban Growth Report (UGR). The projected need for urban reserves adopted by Metro and the counties in 2011 was based on the regional growth forecast set forth in Metro’s 2009 UGR. Since that time, in 2015 the Metro Council adopted the current 2014 UGR, which provides the current residential and employment growth projections for the region.

The findings below address the status of existing urban reserve acreage in light of the newer growth projections in the 2014 UGR, as well as the impact of HB 4078 on both the amount of urban reserves and the regionwide balance of urban and rural reserves under the “best achieves” standard.

#### **A. Amount of Land Designated Urban Reserve in the Metro Region**

The state rules governing the designation of urban and rural reserves require that the amount of land designated as urban reserves must be planned to accommodate estimated urban population and employment growth in the Metro region for between 20 and 30 years beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in its most recent Urban Growth Report. OAR 660-027-0040(2). The Metro Council adopted the current 2014 UGR via Ordinance No. 15-1361 on November 12, 2015.

In order to update the 50-year need analysis for urban reserves to 2065 by applying the most current growth projections, Metro planning staff prepared a memorandum dated February 22, 2017, which was attached to the staff report for Metro’s public hearing on March 2, 2017. That memorandum provides an updated assessment of potential long-term demand for urban reserves, and concludes that the existing amount of urban reserves, combined with buildable land already inside the UGB, can provide a sufficient amount of land to accommodate expected urban growth.

Specifically, the staff memorandum includes an analysis of projected long-term need for residential and employment land, and concludes that the existing 23,031 acres of urban reserves can reasonably be expected to accommodate projected household and employment growth over the next 40 to 50 years. The staff analysis forecasts a potential need for 24,827 acres of urban reserves by 2065. Only for demonstrative purposes of placing that acreage in perspective on a 50-year planning horizon, assuming that an equal amount of urban reserve acreage is converted annually over 50 years, the existing 23,031 acres of urban reserves would provide a 46-year supply of land for urban growth in the Metro region. However, for the reasons described above in Section IV of these findings regarding more efficient use of land, including the likelihood of

land developing at densities of higher than 10 dwelling units per net developable acre, the Metro Council finds that the existing 23,031 acres of urban reserves are intended to provide a supply of land for 50 years from the date of adoption of the 2014 UGR in 2015.

As explained in the staff memo, any prediction about how much land will be required for urban growth in the region over a 50-year planning horizon is necessarily a rough estimate. The nature of this exercise requires Metro to predict what growth and development trends might look like over the next 50 years, based on the available data. State law does not provide any particular formula or methodology for estimating the future need for urban reserves. As explained by LCDC in its 2012 order regarding Metro's compliance with the requirement to provide a 40 to 50-year supply of urban reserves, the statutes and rules provide Metro "a substantial degree of discretion concerning ... the methods and policy considerations that Metro uses to project future population and employment." (LCDC Compliance Acknowledgment Order 12-ACK-001819, page 26).

The 50-year regional growth estimate provided in the February 22, 2017 Metro staff memorandum is based on the analysis and projections in the 2014 UGR. The UGR forecast is then subjected to a series of predictions about what will happen in the future, based on multiple levels of assumptions regarding an array of factors that affect how much residential and employment growth might be expected in the region, such as capture rate, vacancy rate, and projected share of single-family and multifamily housing types. Minor changes in the underlying assumptions regarding these factors will necessarily change the results.

The Metro Council also notes that the intergovernmental agreements between Metro and each of the three counties regarding the designation of reserves provide for a review of existing urban reserves in each county 20 years after the date of adoption, or sooner if agreed to by Metro and all three counties. Therefore, the adequacy of the amount of land designated for future urbanization can and will be revisited, and additional lands may be added if necessary, much sooner than 2065.

Based on the analysis and projections provided in the Metro staff memorandum dated February 22, 2017, the Metro Council concludes that the existing 23,031 acres of urban reserves across the region, combined with buildable land already inside the UGB, will provide a sufficient amount of land for urban growth in the region until 2065.

#### **B. Balance in the Designation of Reserves that "Best Achieves" Certain Goals**

Included among the state rules governing urban and rural reserves is a requirement that Metro and the counties must explain how the urban and rural reserve designations achieve the following objective:

"The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and

vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents.” OAR 660-027-0005(2).

During the proceedings before LCDC regarding its adoption of the remand order in 2015, some parties argued that the reduction in urban reserve acreage in Washington County via House Bill 4078 created a shift in the balance of urban reserves that implicates the “best achieves” standard. The following two sections of these findings address the application of the best achieves standard in light of HB 4078.

First, in adopting HB 4078 the legislature enacted a new statute that acknowledged the new balance of urban and rural reserves across the region as being in compliance with state law, and therefore a new analysis by Metro and the counties is not required. Second, in the event such an analysis is required, that standard is still met.

### **1. The “best achieves” rule is satisfied through HB 4078**

The enactment of HB 4078 resulted in the legislative acknowledgement of the new amount of urban reserves and the new balance of urban and rural reserves as being in compliance with all aspects of state law. Therefore, in the absence of any changes to the existing mapped acreage of urban and rural reserves in Clackamas County and Multnomah County, the existing balance of reserves across the region meets all applicable state requirements and there is no need for Metro to revisit the standards related to the “best achieves” requirement as part of these findings.

In the *Barkers Five* opinion, the Court of Appeals remanded the designation of all urban and rural reserves in Washington County for reconsideration. As a result of this wholesale remand of the entire Washington County reserves package, the court also noted that “any new joint designation” of reserves by the county and Metro on remand would also require new findings addressing the “best achieves” standard in OAR 660-027-0005(2). *Barkers Five* at 333.

Thus, the court’s opinion provides that the best achieves standard would only be triggered in the event there are any *new* designations of reserve areas on remand that are different from what was approved in the original decision. That is because the stated purpose of the best achieves standard is to ensure that the overall “balance in the designation of urban and rural reserves” across the entire region “best achieves” liveable communities, vitality of farm and forest uses, and protection of natural features that define the region. Thus, any changes in the “balance” of those designations by Metro and the counties on remand would require a reassessment of whether and how those objectives are still met. But, in the absence of any changes to the reserve maps, no further assessment would be required.

This aspect of the Court of Appeals decision was overridden with respect to Washington County by the enactment of HB 4078, which legislatively established a new map of the locations of the UGB and urban and rural reserves in Washington County. This legislative action negated the

court’s directive requiring remand to Metro and Washington County for reconsideration of the reserve designations. The enactment of HB 4078 also negates any need to reconsider or reapply the best achieves standard, which is an administrative rule requirement that was necessarily preempted by the legislature as part of its decision to redesignate substantial portions of the Washington County reserve areas. As long as the remand proceedings regarding Clackamas County and Multnomah County do not result in changes to the reserves maps in those counties, there is no need to reconsider the best achieves standard to account for the HB 4078 revisions.

The Oregon legislature is presumed to be aware of existing law when it enacts new legislation. *Blanchana, LLC v. Bureau of Labor and Industries*, 354 Or 676, 691 (2014); *State v. Stark*, 354 Or 1, 10 (2013). This presumption also applies to administrative rules adopted by LCDC. *Beaver State Sand & Gravel v. Douglas County*, 187 Or App 241, 249-50 (2003). When the legislature adopted revisions to the Washington County reserves map as part of HB 4078, it is presumed to have been aware of LCDC’s administrative rule requiring that there be a balance in reserve designations that “best achieves” the stated goals. The adoption of HB 4078 created a statutory requirement regarding the location of reserves in Washington County that takes precedence over LCDC’s “best achieves” rule and does not require subsequent action by LCDC, Metro or the counties to explain why the statute satisfies an administrative rule requirement, because statutes necessarily control over administrative rules.

The express terms of HB 4078 also indicate a legislative intent to preempt existing land use law. Each section of HB 4078 that establishes new locations for reserve areas or the UGB begins with the phrase “*For purposes of land use planning in Oregon*, the Legislative Assembly designates the land in Washington County...” HB 4078, Sec 3(1), (2), (3) (2014). The legislature was aware that its actions in redrawing the UGB and reserve maps had the effect of acknowledging the new maps as being in compliance with state law, and thereby preempting other land use planning rules (including for example LCDC’s Goal 14 rules regarding UGB expansions). The legislature included this language to clearly state that its action in adopting the new maps constituted acknowledgment of compliance with state law, and that it need not demonstrate compliance with other existing land use statutes, goals or rules, including the “best achieves” rule and the statutory requirement to provide a 40 to 50 year supply of urban reserves.

For these reasons, so long as there are no revisions on remand to the reserve maps in Clackamas County or Multnomah County, the HB 4078 revisions to the reserve designations in Washington County do not create a need to reconsider compliance with the “best achieves” standard or the sufficiency of the supply of urban reserves.

## **2. The balance in the designation of reserves still achieves the stated goals**

The meaning and application of the “best achieves” rule was the subject of considerable debate in the appeals filed with LCDC in 2011 and with the Court of Appeals in 2012. Ultimately, in the *Barkers Five* opinion, the Court of Appeals agreed with the positions taken by LCDC and Metro



that the “best achieves” standard provides significant discretion to Metro and the counties, and is satisfied through their site-specific findings concerning the application of the urban and rural reserve factors. Specifically, the Court of Appeals identified and agreed with the following four legal premises regarding the application of the standard.

First, the best achieves standard is a qualitative standard, rather than a quantitative one. The court agreed with LCDC that the standard “is not a balance in terms of the quantitative *amount* of urban and rural reserve acreage, but a balance between encouraging further urban expansion versus land conservation.” The court explained that Metro and the counties are not required to justify a quantitative “balance” in the specific amount of acreage of urban reserves and rural reserves.

Second, the best achieves standard applies to Metro and the counties’ designation of reserves “in its entirety” and not to the designation of individual properties or areas as urban or rural reserves.

Third, the best achieves standard allows for a range of permissible designations, and not a single “best” outcome. The court agreed with LCDC and Metro that the standard does not require a ranking of alternative areas from worst to best. The court specifically rejected arguments presented by the cities of West Linn and Tualatin that the word “best” requires a comparative analysis that identifies a single highest-ranked designation.

Fourth, the court held that Metro and the counties must explain how the designation satisfies the best achieves standard through their findings concerning the application of the urban and rural reserve factors to specific areas. The court agreed with LCDC that there is a close relationship between the “factors” that Metro and the counties must consider for urban and rural reserve designations and the overall “best achieves” objective, and that the best achieves standard is satisfied through findings explaining why particular areas were chosen as urban or rural reserves.

Under the four legal premises stated by the Court of Appeals in *Barkers Five*, Metro and the counties have broad discretion in reaching a conclusion regarding whether the regionwide balance of urban and rural reserves achieves the identified objectives of creating livable communities while protecting farms, forest, and natural landscape features.

Some parties have argued that the reduction in urban reserve acreage in Washington County via House Bill 4078 inherently caused a shift in the “balance” of urban reserves that runs afoul of the best achieves standard. However, under the above-stated first premise of the Court of Appeals, that is incorrect. The court held that the best achieves standard does not require quantitative balancing of the specific amount of urban reserve acreage in one county or another. Thus, the reduction of urban reserves in Washington County by 3,210 acres does not inherently raise concerns under this standard.

Metro and the counties have adopted detailed findings regarding the consideration of all urban and rural reserve factors, explaining why particular areas were chosen as urban or rural reserves,

and explaining how the regional partners came to agree that the overall package of urban and rural reserves reflects a balance that best achieves the objectives of creating livable communities while protecting farms, forest, and natural landscape features. Those findings are consistent with the fourth premise identified by the Court of Appeals regarding compliance with the best achieves standard, and the findings continue to demonstrate that the objectives stated in the rule are being achieved through the selected designations.

Metro and the counties have also adopted detailed findings that explain why the urban and rural reserves adopted by the region satisfy the best achieves standard, which are set forth above in Section II of these findings. Those findings note that urban reserves, if and when added to the UGB, are likely to take some land from the farm and forest base. However, Metro and the counties also recognized that some of the same characteristics that make an area suitable for agriculture also make it suitable for livable communities under the best achieves standard, including mixed-use pedestrian and transit-supportive urban development, as well as industrial uses. For the reasons described below, the findings in Section II are still valid and are not impacted by the reduction of urban reserves in Washington County under House Bill 4078.

The designation by Metro and the counties of urban and rural reserves achieves the objectives required under the state rule, in part, by adopting 266,628 acres of rural reserves across the region that establish the long-term limits of urbanization in the Metro area. As described above, consistency with the “best achieves” standard does not require a quantitative balancing of the amount of rural and urban reserve acreage. However, the designation of a significant amount of rural reserve areas around the region, with the vast majority (248,796 acres) being foundation and important agricultural land, demonstrates the region’s commitment to achieving the objectives of ensuring viability and vitality of the agricultural and forest industries and corresponding protection of important natural landscape features. As described in the Court of Appeals opinion, LCDC’s intent when it created the best achieves standard was to provide another level of review specifically designed to protect foundation farmland in the region:

“[Commissioner Worrix] explained that the best achieves standard was seen as ‘the best solution’ for the agricultural industry that had expressed ‘a strong concern ... that there needed to be something that highlighted the importance of foundation land and gave them that little extra bit of scrutiny.’” *Barkers Five*, 261 Or App at 312.

Regarding important natural landscape features, the process associated with achieving a balance in the designation of urban and rural reserves also provided a significant amount of weight to the protection of natural features. Three of the urban reserve factors – (5), (7) and (8) – seek to direct urban development away from important natural landscape features, and away from farm and forest practices. This provides an example of the close relationship between the factors for urban and rural reserve designations and the “best achieves” objective (as described in the fourth premise adopted by the Court of Appeals), and demonstrates how the best achieves standard may

be satisfied through findings explaining why particular areas were chosen as urban or rural reserves. Similarly, the rules that apply to rural reserve designations include very specific directives regarding how natural landscape features must be reviewed and considered. OAR 660-027-0060(3). Section II of these findings includes a bullet-point list of areas where important natural landscape features are located that are protected with rural reserve designations.

Two of the three objectives that the best achieves standard requires to be balanced are primarily achieved through rural reserve designations: (a) protection of farm and forest and (b) protection of important natural resource features. The region's ability to achieve these two objectives through rural reserve designations is not impacted by the reduction of urban reserve acreage that occurred via House Bill 4078. In fact, that legislation enhanced the region's ability to achieve those two standards by adding approximately 2,780 acres of new rural reserves in Washington County, all of which is foundation agricultural land.

The third objective that must be balanced as part of the best achieves analysis is "livable communities." This objective is primarily achieved by designating areas across the region that will be the best locations to build "great communities" through application of the urban reserve factors. As discussed in Section II of these findings, great communities are those that offer residents a range of housing types and transportation modes from which to choose. To that end, urban reserve factors (1), (3), (4) and (6) are aimed at identifying lands that can be developed in a compact, mixed-use, walkable and transit-oriented pattern, supported by efficient and cost-effective services.

The reduction of urban reserves in Washington County by 3,210 acres does not impact the region's ability to build livable communities across the region over the next 40 to 50 years. The quantitative aspect of urban reserve planning is addressed by the rule discussed above that requires sufficient acreage for up to 50 years of urban growth. Meanwhile, the directive of the best achieves standard to provide livable communities is aimed at designating highest *quality* of locations that can provide a range of housing types and transportation modes, as well as efficient public services. As discussed above, the existing urban reserve acreage in the region still provides a sufficient amount of land for urban growth over the next 40 to 50 years. The fact that House Bill 4078 reduced the amount of urban reserves from 26,241 to 23,031 acres has no effect on the region's ability to plan and build livable communities on those 23,031 acres over the next several decades. Therefore, the balance in the designation of urban and rural reserves, in its entirety, still achieves the goals of providing livable communities, viability and vitality of farm and forest industries, and the protection of important natural landscape features that define the region.

In 2011, the region concluded, acting together, that the agreed-upon urban and rural reserve designations provide a balance that achieves the objectives of building livable communities while protecting farms, forests, and natural features. The findings adopted by Metro and the counties support a conclusion that the best achieves standard has been met, and that conclusion is

not impacted by the changes to urban and rural reserve acreage that occurred via House Bill 4078.

### **C. Responses to Issues Raised by Opponents**

During the proceedings leading up to the Metro Council's adoption of Ordinance No. 17-1397, several parties submitted testimony raising legal issues regarding the Metro staff analysis set forth in the February 22, 2017 memorandum to the Metro Council concerning the amount of urban reserves remaining in the region. Responses to these arguments are provided in the Metro staff memorandum dated March 23, 2017, which is included in the record and hereby incorporated as part of these findings.

A common theme in letters submitted by attorneys for the Maletis Brothers and Barkers Five, LLC arises out of Metro's reliance on the 2014 UGR for purposes of determining whether the amount of urban reserves is sufficient to provide a 40 to 50 year supply of urbanizable land. These parties contend that the 2014 UGR is flawed for various reasons and therefore does not provide an adequate basis to forecast the future need for residential and employment land between now and 2065.

A fundamental problem with arguments about the adequacy of the future growth projections in the 2014 UGR is that those projections were developed through a multi-year and extensively peer-reviewed process culminating in adoption of the 2014 UGR by the Metro Council via Ordinance No. 15-1361. That decision was not appealed by any party, and therefore the UGR is acknowledged by LCDC as providing a legally valid forecast that is in compliance with all state requirements. To the extent that opponents are attempting to challenge the adequacy of the assumptions and projections in the adopted and acknowledged 2014 UGR, those arguments are impermissible collateral attacks. The applicable rule establishing the requirement for a 40 to 50 year supply of urbanizable land does not require Metro to generate a new UGR for purposes of estimating the future need for urban reserves. Rather, it directs Metro to rely on the land supply analysis in the most recently adopted 2014 UGR, which is exactly what Metro has done.

Many of the staff responses in the memorandum dated March 23, 2017 to issues raised by counsel for the Maletis Brothers also apply to issues raised by counsel for Barkers Five, LLC in a letter dated March 23, 2017. Nearly all of the issues raised by Barkers Five are based on arguments regarding why they believe the 2014 UGR is not accurate. As addressed above, Metro is entitled to rely on the adopted and acknowledged 2014 UGR forecast and to apply that forecast to the urban reserve analysis. Responses to specific issues raised by counsel for Barkers Five, LLC are included in a separate memorandum from Metro staff dated April 6, 2017, which is included in the record and hereby incorporated as part of these findings.

## **Exhibit A to Ordinance No. 17-1397**

### **REASONS FOR DESIGNATION OF URBAN AND RURAL RESERVES IN CLACKAMAS COUNTY**

The Metro Council adopts these findings for the purpose of responding to the decision of the Oregon Court of Appeals in *Barkers Five LLC v. Land Conservation and Development Commission*, 261 Or App 259 (2014) and LCDC's Remand Order 14-ACK-001867 regarding certain urban reserve designations in Clackamas County. These findings include the original findings adopted by the Metro Council in 2011 providing the reasons for designating urban and rural reserves, as well as new and supplemental findings that address the issues identified by the Court of Appeals regarding designation of the Stafford area in Clackamas County as urban reserve. These findings also include supplemental findings regarding the supply of urban reserves in the entire region and the regionwide balance findings required under OAR 660-027-0040(10).

Metro's supplemental findings regarding the supply of urban reserves and the regionwide balance requirements are set forth below in Section V. Metro's supplemental findings regarding the Stafford urban reserve designation are set forth below in Section VIII. To the extent any of the new supplemental findings in Sections V and VIII are inconsistent with other findings in this document that were previously adopted in 2011, the supplemental findings shall govern.

Those portions of Metro's original 2011 findings providing reasons for designation of urban and rural reserves in Washington County have been removed from this document, because the Washington County reserve areas were established and acknowledged by the Oregon Legislature in 2014 via House Bill 4078. Portions of the 2011 findings providing reasons for designation of urban and rural reserves in Multnomah County have also been removed, because Multnomah County is undertaking its own process to address the Court of Appeals remand regarding rural reserve designations in that county.

#### **I. BACKGROUND**

The 2007 Oregon Legislature authorized Metro and Clackamas, Multnomah and Washington Counties ("partner governments") to designate urban reserves and rural reserves following the process set forth in ORS 195.137 – 195.145 (Senate Bill 1011) and implementing rules adopted by the Land Conservation and Development Commission (LCDC) (OAR 660 Division 27). The Legislature enacted the new authority in response to a call by local governments in the region to improve the methods available to them for managing growth. After the experience of adding over 20,000 acres to the regional urban growth boundary (UGB) following the soil-capability-based priority of lands in ORS 197.298, cities and the partner governments wanted to place more emphasis on the suitability of lands for sustainable urban development, longer-term security for agriculture and forestry outside the UGB, and respect for the natural landscape features that define the region.

The new statute and rules make agreements among the partner governments a prerequisite for designation of urban and rural reserves. The remarkable cooperation among the local governments of the region that led to passage of Senate Bill 1011 and adoption of LCDC rules

continued through the process of designation of urban reserves by Metro and rural reserves by Clackamas, Multnomah and Washington Counties. The partners' four ordinances are based upon the separate, formal intergovernmental agreements between Metro and each county that are part of our record, developed simultaneously following long study of potential reserves and thorough involvement by the public.

The four governments submitted their ordinances with designated reserves to LCDC in periodic review on June 23, 2010. On October 29, 2010, the Commission gave its oral approval to the reserves designated in Clackamas and Multnomah Counties and to the rural reserves and most of the urban reserves in Washington County. The Commission, however, rejected the designation of Urban Reserve 7I, north of Cornelius, and directed reconsideration of Urban Reserve 7B, north of Forest Grove. The Commission authorized Metro and Washington County to consider designating as urban reserve, or leaving undesignated, land the County had previously designated rural reserve or left undesignated. In order to provide flexibility, the Commission also returned the rural reserves in Washington County for further consideration.

Washington County and Metro responded to LCDC's oral decision by revising the intergovernmental agreement between them and adopting ordinances amending their respective comprehensive plan and regional framework plan maps (Washington County Ordinance No. 740; Metro Ordinance No. 11-1255). The ordinances made the following changes:

- The designation of Area 7I as urban reserve (623 acres) was removed
- 263 acres of Area 7I were designated rural reserves
- 360 acres of Area 7I were left undesignated
- The urban reserve designation of the 28-acre portion of Area 7B that lies east and north of Council Creek was removed; the portion was left undesignated
- 352 acres of undesignated land north of Highway 26, south of West Union Road, east of Groveland Road and west of Helvetia Road were designated urban reserve
- The rural reserve designation of 383 acres of Rural Reserve 6E south of Rosedale Road, west of 209th Avenue and north of Farmington Road was removed; the portion was left undesignated.

Metro Supp Rec. 798.

These revisions reduced the acres of urban reserves in Washington County by 299 acres, reduced the acres of rural reserves by 120 acres and increased the acres adjacent to the UGB left undesignated by 391 acres, all compared with the reserves submitted to LCDC in June, 2010. Overall, there are 13,525 acres of urban reserves and 151,209 acres of rural reserves in Washington County, in part reflecting refinements of boundaries as they relate to street rights-of-way, floodplains and improved tax lot alignments. Metro Supp Rec. 799.

## II. OVERALL CONCLUSIONS

With adoption of Metro Ordinance No. 11-1255, Metro has designated 28,256 gross acres as urban reserves, including urban reserves in each county. Metro Supp Rec. 799. These lands are now first priority for addition to the region's UGB when the region needs housing or employment capacity. As indicated in new policy in Metro's Regional Framework Plan in Exhibit A to Ordinance No. 10-1238A, the urban reserves are intended to accommodate population and employment growth for 50 years, to year 2060.

Clackamas County Ordinance No. ZDO-233 designates 68,713 acres as rural reserves in Clackamas County. Multnomah County Ordinance No. 2010-1161 designates 46,706 acres as rural reserves in Multnomah County. Washington County Ordinance No. 740, which revised the county's designation of rural reserves following LCDC's remand of urban and rural reserves in the county, designates 151,209 acres of rural reserves. Metro Supp Rec. 798. As indicated in new policies in the Regional Framework Plan and the counties' comprehensive plans, these rural reserves – 266,628 acres in total – are now protected from urbanization for 50 years. Metro Supp. Rec. 798. The governments of the region have struggled with the urban-farm/forest interface, always searching for a “hard edge” to give farmers and foresters some certainty to encourage investment in their businesses. No road, stream or floodplain under the old way of expanding the UGB offers the long-term certainty of the edge of a rural reserve with at least a 50-year lifespan. This certainty is among the reasons the four governments chose the longer, 50-year, reserves period.

The region's governments have also debated how best to protect important natural landscape features at the edges of the urban area. The partners' agreements and these ordinances now identify the features that will define the extent of outward urban expansion.

The region's urban and rural reserves are fully integrated into Metro's Regional Framework Plan and the Comprehensive Plans of Clackamas, Multnomah and Washington counties. Metro's plan includes a map that shows urban and rural reserves in all three counties. Each of the county plans includes a map that shows urban and rural reserves in the county. The reserves shown on each county map are identical to the reserves shown in that county on the Metro map. Each of the four plans contains new policies that ensure accomplishment of the goals for the reserves set by the four local governments and by state law. These new policies are consistent with, and carry out, the intergovernmental agreements between Metro and the three counties signed in February, 2010, and the supplemental agreement between Metro and Washington County signed on March 15, 2011. Metro Supp. Rec. 285.

Together, these reserves signal the region's long-term limits of urbanization, its commitment to stewardship of farmland and forests, and its respect for the natural landscape features that give the people of the region their sense of place. Urban reserves, if and when added to the UGB, will take some land from the farm and forest land base. But the partners understood from the beginning that some of the very same characteristics that make an area suitable for agriculture also make it suitable for industrial uses and compact, mixed-use, pedestrian and transit-supportive urban development. The most difficult decisions made by the four governments

involved Foundation Agricultural Land<sup>1</sup> near the existing UGB and the circumstances in which this land should be designated as urban reserve to accommodate growth in a compact form and provide opportunities for industrial development, difficult or impossible on steep slopes. Metro designated 15 areas composed predominantly of Foundation Land as urban reserve, totaling 11,551 acres.<sup>2</sup>

Some important numbers help explain why the partners came to agree that the adopted system, in its entirety, best achieves this balance. Of the total 28,256 acres designated urban reserves, approximately 13,624 acres are Foundation (11,551 acres) or Important (2,073 acres) Agricultural Land. This represents only four percent of the Foundation and Important Agricultural Land studied for possible urban or rural reserve designation. If all of this land is added to the UGB over the next 50 years, the region will have lost four percent of the farmland base in the three-county area. Metro Supp.Rec. 799; 804-05.

There is a second vantage point from which to assess the significance for agriculture of the designation of urban reserves in the three-county region: the percentage of land zoned for exclusive farm use in the three counties that is designated urban reserve. Land zoned EFU<sup>3</sup> has emerged over 35 years of statewide planning as the principal land base for agriculture in the counties, and is protected for that purpose by county zoning. The inventory of Foundation and Important Agricultural Lands includes land that is “exception land,” no longer protected for agriculture for farming. Of the 28,256 acres designated urban reserves, some 13,746 acres are zoned EFU. Even including the 3,532 acres of these EFU lands that are classified by ODA as “conflicted”, these 13,746 acres represent slightly more than five percent of all land zoned EFU (266,372 acres) in the three counties. If the “conflicted” acres are removed from consideration, the percentage drops to less than four percent. Metro Supp.Rec. 799; 804-05.

A third vantage point adds perspective. During an approximately 30-year period leading to establishment of the statewide planning program and continuing through the acknowledgement and early implementation of county comprehensive plans, the three counties lost more than 150,000 acres of farmland. Metro Supp. Rec. 799; 804-05. By contrast, if all the zoned farmland that is designated urban reserve is ultimately urbanized, the regional will have lost only 13,746 acres over 50 years.

If the region’s effort to contain urban development within the existing UGB and these urban reserves for the next 50 years is successful, the UGB will have accommodated an estimated 74 percent increase in population on an 11-percent increase in the area within the UGB. No other

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<sup>1</sup> Those lands mapped as Foundation Agricultural Land in the January, 2007, Oregon Department of Agriculture report to Metro entitled “Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands.”

<sup>2</sup> 1C (East of Gresham, portion); 1F (Boring); 5A (Sherwood North); 5B (Sherwood West); 6A (Hillsboro South, portion); 6B (Cooper Mt. Southwest); 6C (Roy Rogers West); 6D (Beef Bend South); 7B (Forest Grove North); 7C (Cornelius East); 7D (Cornelius South); 7E (Forest Grove South); 8A (Hillsboro North); 8B (Shute Road Interchange and new Area D); 8C (Bethany West)

<sup>3</sup> Includes all farm zones acknowledged to comply with statewide planning Goal 3, including Washington County’s AF-20 zone.



region in the nation can demonstrate this growth management success. Most of the borders of urban reserves are defined by a 50-year “hard edge” of 266,628 acres designated rural reserves, nearly all of which lies within five miles of the existing UGB. Of these rural reserves, approximately 248,796 acres are Foundation or Important Agricultural Land. Metro Supp. Rec. 799; 804-05.

Why did the region designate *any* Foundation Agricultural Land as urban reserve? The explanation lies in the geography and topography of the region, the growing cost of urban services and the declining sources of revenues to pay for them, and the fundamental relationships among geography and topography and the cost of services. The region aspires to build “great communities.” Great communities are those that offer residents a range of housing types and transportation modes from which to choose. Experience shows that compact, mixed-use communities with fully integrated street, pedestrian, bicycle and transit systems offer the best range of housing and transportation choices. *State of the Centers: Investing in Our Communities*, January, 2009. Metro Rec. 181-288. The urban reserves factors in the reserves rules derive from work done by the region to identify the characteristics of great communities. Urban reserve factors (1), (3), (4), and (6)<sup>4</sup> especially aim at lands that can be developed in a compact, mixed-use, walkable and transit-supportive pattern, supported by efficient and cost-effective services. Cost of services studies tell us that the best landscape, both natural and political, for compact, mixed-use communities is relatively flat, undeveloped land. *Core 4 Technical Team Preliminary Analysis Reports for Water, Sewer and Transportation*, Metro Rec. 1163-1187; *Regional Infrastructure Analysis*, Metro Rec. 440-481.

The region also aspires to provide family-wage jobs to its residents. Urban reserve factor (2) directs attention to capacity for a healthy economy.<sup>5</sup> Certain industries the region wants to attract prefer large parcels of flat land. Staff Report, June 9, 2010, Metro Rec. 172-178. Water, sewer and transportation costs rise as slope increases. *Core 4 Technical Team Preliminary Analysis Reports for Water, Sewer and Transportation*, Metro Rec. 1163-1187; *Regional Infrastructure Analysis*, Metro Rec. 440-481. Converting existing low-density rural residential development into compact, mixed-use communities through infill and re-development is not only very expensive, it is politically difficult. Metro Rec. 289-300.

Mapping of slopes, parcel sizes, and Foundation Agricultural Land revealed that most flat land in large parcels without a rural settlement pattern at the perimeter of the UGB lies in Washington County, immediately adjacent to Hillsboro, Cornelius, Forest Grove, Beaverton, and Sherwood. These same lands provide the most readily available supply of large lots for industrial development. *Business Coalition Constrained Land for Development and Employment Map*,

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<sup>4</sup> (1) Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments;  
(3) Can be efficiently and cost-effectively service with public schools and other urban-level public facilities and services by appropriate and financially capable providers;  
(4) Can be designed to be walkable and service with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate services providers;  
(6) Includes sufficient land suitable for a range of needed housing types.

<sup>5</sup> (2) Includes sufficient development capacity to support a healthy economy.

Metro Rec. 301; 1105-1110. Almost all of it is Foundation Agricultural Land. Metro Supp. Rec.799. Had the region been looking only for the best land to build great communities, nearly all the urban reserves would have been around these cities. It is no coincidence that these cities told the reserves partners that they want significant urban reserves available to them, while most other cities told the partners they want little or no urban reserves. *Washington County Cities' Pre-Qualified Concept Plans*, WashCo Rec. 3036-3578. These facts help explain why there is more Foundation Agricultural Land designated urban reserve in Washington County than in Clackamas or Multnomah counties. Had Metro not designated some Foundation Land as urban reserve in Washington County, it would not have been possible for the region to achieve the “livable communities” purpose of reserves in LCDC rules [OAR 660-027-0005(2)].

Several urban reserves factors focus on the efficient, cost-effective installation, operation and maintenance of public services to urban reserves once they are included within the UGB.<sup>6</sup> Urban reserve factor (6) calls for land suitable for needed housing types. The partners began the analysis by examining lands within five miles of the UGB. Most of these lands initially studied are beyond the affordable reach of urban services. As noted above, water, sewer and transportation costs rise as slope increases. *Core 4 Technical Team Preliminary Analysis Reports for Water, Sewer and Transportation*, Metro Rec. 1163-1187; *Regional Infrastructure Analysis*, Metro Rec. 440-481. Not only does most of the Important Agricultural Land and the Conflicted Agricultural Land within five miles of the UGB exhibit steeper slopes than the Foundation Land close to the UGB; these non-Foundation Lands also exhibit rural residential development patterns on smaller parcels (“exception lands”). Metro Supp. Rec.799; 807; WashCo Rec. 1891-1894; 2905. With one exception (small portion of Urban Reserve 1F), designated urban reserves lie within two miles of the UGB. Metro Supp. Rec.806.

Despite these geopolitical and cost-of-services realities, the reserves partners designated extensive urban reserves that are *not* Foundation Agricultural Lands in order to meet the farm and forest land objectives of reserves, knowing these lands will be more difficult and expensive to urbanize. The following urban reserves are principally Conflicted and Important Agricultural Land:

- Urban Reserve 1D east of Damascus and south of Gresham (2,716 acres), ClackCo Rec. 1723;
- Urban Reserve 2A south of Damascus (1,239 acres), ClackCo Rec. 1722;
- Urban Reserves 3B, C, D, F and G around Oregon City (2,232 acres), ClackCo Rec. 1718-1720;
- Urban reserves 4A, B and C in the Stafford area (4,699 acres), ClackCo Rec. 1716;
- Urban reserves 4D, E, F, G and H southeast of Tualatin and east of Wilsonville (3,589 acres), ClackCo Rec. 600;
- Urban Reserve 5F between Tualatin and Sherwood (572 acres); WashCo Rec. 3517; 2998;
- Urban Reserve 5G west of Wilsonville (203 acres) ClackCo Rec. 711-712; and
- Urban Reserve 5D south of Sherwood (447 acres), WashCo Rec. 3481; 2998.

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<sup>6</sup> Urban Reserve factors (1) (efficient use of public infrastructure); (3) (efficient and cost-effective public services); (4) (walkable, bikeable and transit-supportive).

These non-Foundation Lands designated urban reserve, which total approximately 15,700 acres, (55 percent of all lands designated urban reserve), are the most serviceable among the non-Foundation Lands within the initial study area. Metro Supp Rec.804-05; WashCo Re. 3006-3010; 3015.

Many areas of Important and Conflicted Agricultural Lands were not designated urban reserve in part because the presence of steep slopes, bluffs, floodplains, streams and habitat, limiting their suitability or appropriateness for urbanization:

- Rural Reserve 1B (West of Sandy River): the Sandy River Canyon and the county's scenic river overlay zone. MultCo Rec. 2961-2965; 2973-2985;
- Rural Reserve 2B (East Clackamas County): steep bluffs above the Clackamas River. ClackCo Rec. 560-563; 568-571;
- Rural Reserve 3E (East of Oregon City): steep slopes along Abernethy, Clear and Newell Creeks. ClackCo Rec. 748-755;
- Rural Reserve 3H (South of Oregon City): steep slopes drop to Beaver and Parrot Creeks. ClackCo. Rec. 557; 1718;
- Rural Reserve 4I (Pete's Mtn.): steep slopes. ClackCo Rec. 741-743;
- Rural Reserve 5C (East Chehalem Mtns): steep slopes and floodplain of Tualatin River; WashCo Rec. 2998-3027;
- Rural Reserve 5I (Ladd Hill): steep slopes and creek traverses. ClackCo. Rec. 592-595;
- Rural Reserve 6E (Central Chehalem Mtns.): steep slopes and floodplain of Tualatin River. WashCo Rec. 2998-3027;
- Rural Reserve 7G (West Chehalem Mtns.): steep slopes and floodplain of Tualatin River. WashCo Rec. 2997; 3006-3010; 3027;
- Rural Reserve 7H (West Fork of Dairy Creek); steep slopes on David Hill. WashCo. Rec. 3013; 3029; 3107;
- Rural Reserves 9A-9C (Powerlines/Germantown Road-South): steep slopes, many stream headwaters and courses. MultCo. Rec. 11; 329-330; 3004-3015;
- Rural Reserve 9D (West Hills South): steep slopes, many stream headwaters and courses. MultCo Rec. 2993-3033.

Metro Supp Rec. 806.

Urban reserve factors (5), (7) and (8)<sup>7</sup> seek to direct urban development away from important natural landscape features and other natural resources. Much of the Important and some Conflicted Agricultural Lands are separated from the UGB by, or include, important natural landscape features or rural reserves on Foundation or Important Agricultural Land:

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<sup>7</sup> (5) Can be designed to preserve and enhance natural ecological systems;  
(7) Can be developed in a way that preserves important natural landscape features included in urban reserves;  
(8) Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves.

- Rural Reserve 1B (West of Sandy River): the Sandy River Canyon (Wild and Scenic River). MultCo Rec. 2961-2965; 2973-2985;
- Rural Reserve 2B (East Clackamas County): Clackamas River and canyons of Deep, Clear and Newell Creeks. ClackCo. Rec. 1722;
- Rural Reserve 3E (East of Oregon City): Willamette River and canyons of Abernethy, Clear and Newell Creeks. ClackCo Rec. 560-563;
- Rural Reserve 3H (South of Oregon City): Willamette Narrows, Canemah Bluffs and canyons of Beaver and Parrot Creeks. ClackCo. Rec. 553-554;
- Rural Reserve 4I (Pete’s Mtn.): Willamette Narrows on eastern edge. ClackCo. Rec. 596;
- Rural Reserve 5C (East Chehalem Mtns): Chehalem Mtns., floodplain of Tualatin River and Tualatin River National Wildlife Refuge. WashCo Rec. 2988-3027; 9677-9679;
- Rural Reserve 5I (Ladd Hill): Parrett Mtn., Willamette River, Tonquin Geological Area. ClackCo. Rec. 592-595;
- Rural Reserve 6E (Central Chehalem Mtns.): Chehalem Mtns., floodplain of Tualatin River. WashCo Rec. 2998-3027;
- Rural Reserve 7G (West Chehalem Mtns.): Chehalem Mtns., floodplain of Tualatin River. WashCo Rec. 3029; 3095; 3103;
- Rural Reserves 9A-9C (Powerlines/Germantown Road-South): steep slopes (Tualatin Mountains), stream headwaters (Abbey Creek and Rock Creek) and courses. MultCo. Rec. 11; 329-330; 3004-3015; 3224-3225; 3250-3253; 9322-9323;
- Rural Reserve 9D (West Hills South): steep slopes, many stream headwaters (Abbey Creek and Rock Creek) and courses. MultCo Rec. 2993-3033.

Metro Supp. Rec. 800-01; 821.

Third, much of the Important and Conflicted Agricultural Lands rates lower against the urban reserves factors in comparison to areas designated urban reserve, or remain undesignated for possible designation as urban reserve if the region’s population forecast proves too low:<sup>8</sup>

- Clackamas Heights, ClackCo Rec. 1721;
- East Wilsonville, ClackCo Rec. 1715;
- West Wilsonville, ClackCo Rec. 1713;
- Southeast of Oregon City, ClackCo Rec. 1719;
- Southwest of Borland Road, ClackCo Rec. 740-747;
- Between Wilsonville and Sherwood, ClackCo;
- Powerline/Germantown Road-South, MultCo Rec. 2909-2910.

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<sup>8</sup> “Retaining the existing planning and zoning for rural lands (and not applying a rural or an urban reserves designation) is appropriate for lands that are unlikely to be needed over the next 40 years, or (conversely) that are not subject to a threat of urbanization.” Letter from nine state agencies to the Metro Regional Reserves Steering Committee, October 14, 2009, page 15.

Lastly, some of the Important and Conflicted Agricultural Lands lie adjacent to cities in the region that have their own UGBs and want their own opportunities to expand over time:

- Estacada
- Sandy

The partners also considered the rural reserve factors when considering whether to designate Foundation Agricultural Land as urban reserve. The first set of rural reserve factors focuses on the suitability and capability of land for agriculture and forestry. The factors in this set that address agricultural suitability and capability derive from the January, 2007, Oregon Department of Agriculture report to Metro entitled “Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands.” All of the Foundation Lands designated urban reserve are potentially subject to urbanization [rural factor (2)(a)] due to their proximity to the UGB and suitability for urbanization, as described above. See, e.g., WashCo Rec. 2984-2985; 2971-2972; 3013-3014. All of the Foundation Lands designated urban reserve are also capable of sustaining long-term agricultural or forest operations [factor (2)(b)]. WashCo rec. 2972-2973; 2985; 3015. Similarly, all of the Foundation Lands designated urban reserve have soils and access to water that render them suitable [factor (2)(c)] to sustain agriculture. See, e.g., WashCo Rec. 2972-2975; 2985; 2998; 3016-3018. These lands also lie in large blocks of agricultural land and have parcelization, tenure and ownership patterns and agricultural infrastructure that make them suitable for agriculture. WashCo Rec. 2975; 2985; 3019-3024; 3027. The identification of these lands as Foundation Agricultural Land by the Oregon Department of Agriculture is a reliable general source of information to support these findings. See also WashCo Rec. 2976-2983; 3019-3025.

Notwithstanding these traits that make these lands suitable for agriculture and forestry, some of the urban reserves on Foundation Land rate lower on the rural reserve factors than Foundation Land *not* designated urban reserve. WashCo Rec. 2978; 3025. Urban Reserves 6A (portion), 6B, 6C, 6D, 5A, 5B and 1F lie within Oregon Water Resources Department-designated Critical or Limited Groundwater Areas and have less ready access to water [factor (2)(c)]. WashCo Rec. 2294-2302; 2340; 2978-2979; 3019-3023; 3025; 3058-3061; 3288; 3489-3490. Metro Supp. Rec. 799-800; 809. Urban Reserves 8A, 8B (with new Area D, 6A (portion), 6B, 6D (portion), 5A, 5B, 1C and 1D are not within or served by an irrigation district. Metro Supp. Rec. 799; 808. WashCo Rec. 2340; 3019-3023; 3025 Urban Reserve 6A contains the Reserves Vineyards Golf Course. Metro Supp. Rec. 799.

The second set of rural reserve factors focuses on natural landscape features. All of the Foundation Lands designated urban reserve are potentially subject to urbanization [factor (3)(a)] due to their proximity to the UGB and their suitability for urbanization, as described above. The identification of these lands as Foundation Agricultural Land by the Oregon Department of Agriculture is a reliable general source of information to support this finding. Because urban reserves are intended for long-term urbanization, the partners were careful to exclude from urban reserves large tracts of land constrained by natural disasters or hazards incompatible with urban development. Metro Rec. 301; 1105-1110; WashCo Rec. 2986. Small portions of these urban reserves are vulnerable to hazards, but city land use regulations will limit urban development on

steep slopes, in floodplains and areas of landslides once the lands are added to the UGB. Metro Supp. Rec.821; WashCo Rec. 2986.

Little of these Foundation Lands are mapped as significant fish, plant or wildlife habitat [factor (3)(c)], the mapping of which is largely subsumed on the landscape features map. For the same reasons, little of these lands are riparian areas or wetlands. As with all lands, these lands are important for protection of water quality. But the lands are subject to local, regional, state and federal water quality regulations. See, e.g., WashCo Rec.2986-2987.

There are several inventoried natural landscape features [factor (3)(e)] within the Foundation Lands designated urban reserve. Rock Creek flows through a portion of Urban Reserve 8C (Bethany West). The IGA between Washington County and Metro included a provision to limit development on approximately 115 acres of constrained land within the portion of the watershed in 8C, through application of the county's Rural/Natural Resources Plan Policy 29 and Clean Water Services programs developed to comply with Title 13 (Nature in Neighborhoods) of Metro's Urban Growth Management Functional Plan. Metro Rec.821. Urban Reserve 6B includes portions of the slopes of Cooper Mountain. Metro's Cooper Mountain Nature Park lies within this area and protects much of the mountain's slopes. Metro Supp. Rec.821. Urban Reserve 6D includes a segment of Tualatin River floodplain. King City will apply its floodplains ordinance to limit development there. WashCo. Rec. 3462-3463; Metro Supp. Rec.821. There are such inventoried natural landscape features at the edges of Urban Reserves 6A (South Hillsboro, Tualatin River), 6C (Roy Rogers West, Tualatin River), 6D (Beef Bend, Tualatin River), 7C (Cornelius East, Dairy Creek), 7D (Cornelius South, Tualatin River), 7E (Forest Grove South, Tualatin River and Lower Gales Creek) and 8A (Hillsboro North, McKay Creek); Metro Supp. Rec.821. These features serve as edges to limit the long-term extent of urbanization and reduce conflicts with rural uses [factor (3)(f)] .

Urban Reserves 1F, 8A and 8B (new Area D) lessen the separation [factor (3)(g)] between the Metro urban area and the cities of Sandy and North Plains, respectively. But significant separation remains (Sandy: approximately 9,000 feet; North Plains: approximately 2,000 feet). Metro Supp. Rec.803; WashCo Rec. 2987. Finally, because private farms and woodlots comprise most of these Foundation Lands, they do not provide easy access to recreational opportunities as compared to Important and Conflicted Lands.

As indicated above and in county findings in sections VI through VIII, these 15 urban reserves on Foundation Agricultural Land rate highly for urban reserves and rural reserves. In order to achieve a balance among the objectives of reserves, Metro chose these lands as urban reserves rather than rural reserves. The characteristics described above make them the best lands for industrial use and for compact, mixed-use, pedestrian-friendly and transit-supportive communities. Designation of these areas as urban reserve will have little adverse impact on inventoried natural landscape features. Notwithstanding the loss of these lands over time, urbanization of these lands will leave the agricultural and forest industries vital and viable in the region.

The record of this two and one-half-year effort shows that not every partner agreed with all urban reserves in each county. But each partner agrees that this adopted system of urban and rural reserves, in its entirety, achieves the region's long-range goals and a balance among the

objectives of reserves: to accommodate growth in population and employment in sustainable and prosperous communities and neighborhoods, to preserve the vitality of the farms and forests of the region, and to protect defining natural landscape features. The partners are confident that this system of reserves will allow the continuation of vibrant and mutually-reinforcing farm, forest and urban economies for the next 50 years. And the partners agree this system is the best system the region could reach by mutual agreement.

### **III. OVERALL PROCESS OF ANALYSIS AND PUBLIC INVOLVEMENT**

#### **A. Analysis and Decision-Making**

The three counties and Metro began reserves work as soon as LCDC adopted the new rules on reserves (OAR Division 27). The four governments formed committees and began public involvement to raise awareness about reserves and help people learn how to engage in the process. Each of the four governments selected one of its elected officials to serve on the “Core 4”, established to guide the designation process and formulate recommendations to the county boards and the Metro Council. The four governments also established a “Reserves Steering Committee” (RSC) to advise the Core 4 on reserves designation. The RSC represented interests across the region - from business, agriculture, social conservation advocacy, cities, service districts and state agencies (52 members and alternates).

The four governments established an overall Project Management Team (PMT) composed of planners and other professions from their planning departments. Each county established an advisory committee to provide guidance and advice to its county board, staffed by the county’s planning department.

As part of technical analysis, staff gathered providers of water, sewer, transportation, education and other urban services to consider viability of future service provision to lands within the study area. The parks and open space staff at Metro provided guidance on how best to consider natural features using data that had been deeply researched, broadly vetted and tested for social and political acceptance among Willamette Valley stakeholders (Oregon Wildlife Conservation Strategy, Pacific Northwest Research Consortium, Willamette Valley Futures, The Nature Conservancy’s Ecoregional Assessment). Business leaders, farm bureaus and other representative groups were consulted on an ongoing basis.

The first major task of the Core 4 was to recommend a reserves study area to the county boards and the Metro Council. With advice from the RSC, the county advisory committees and public comment gathered open houses across the region, the Core 4 recommended for further analysis some 400,000 acres around the existing urban area, extending generally five miles from the UGB. The four governments endorsed the study area in the fall of 2008. Then the task of applying the urban and rural reserve factors to specific areas began in earnest.

The county advisory committees reviewed information presented by the staff and advised the staff and county boards on how each “candidate area” rated under each reserves factor. The county staffs brought this work to the RSC for discussion. After a year’s worth of work at regular meetings, the RSC made its recommendations to the Core 4 in October, 2009.

Later in the fall, each elected body held hearings to hear directly from their constituents on proposed urban and rural reserves. Public involvement included six open houses, three Metro Council hearings around the region and a virtual open house on the Metro web site, all providing the same maps, materials and survey questions.

Following this public involvement, the Core 4 submitted its final recommendations to the four governments on February 8, 2010. The recommendation included a map of proposed urban and rural reserves, showing reserves upon which there was full agreement (the large majority of proposed reserves) and reserves upon which disagreements were not resolved. The Core 4 proposed that these differences be settled in bilateral discussions between each county and Metro, the parties to the intergovernmental agreements (IGAs) required by ORS 195.141. Over the next two weeks, the Metro Council reached agreement on reserves with each county. By February 25, 2010, Metro had signed an IGA with Clackamas, Multnomah and Washington counties. Metro Rec.302; 312; 404.

The IGAs required each government to amend its plan to designate urban (Metro) or rural (counties) reserves and protect them for their intended purposes with plan policies. The IGAs also set times for final public hearings on the IGA recommendations and adoption of ordinances with these plan policies in May and June. The four governments understood that the IGAs and map of urban and rural reserves were not final decisions and, therefore, provided for final adjustments to the map to respond to public comment at the hearings. By June 15, 2010, the four governments had adopted their reserves ordinances, including minor revisions to the reserves map.

## **B. Public Involvement**

From its inception, the reserves designation process was designed to provide stakeholders and the public with a variety of ways to help shape the process and the final outcome. Most significantly, the decision process required 22 elected officials representing two levels of government and 400,000 acres of territory to craft maps and agreements that a majority of them could support. These commissioners and councilors represent constituents who hold a broad range of philosophical perspectives and physical ties to the land. Thus, the structure of the reserves decision process provided motivation for officials to seek a final compromise that met a wide array of public interests.

In the last phase of the reserve process – adoption of ordinances that designate urban and rural reserves – each government followed its established procedure for adoption of ordinances: notice to citizens; public hearings before its planning commission (in Metro’s case, recommendations from the Metro Planning Advisory Committee) and public hearings before its governing body. But in the more-than-two years leading to this final phase, there were additional advisory bodies established.

The RSC began its work in early 2008. RSC members were expected to represent social and economic interests to the committee and officials and to serve as conduits of communication back to their respective communities. In addition, RSC meetings were open to the public and provided an additional avenue for citizens to voice their concerns—either by asking that a



steering committee member represent their concern to the committee or by making use of the public testimony period at the beginning of each meeting.

Once the three county advisory committees got underway, they, like the RSC, invited citizens were to bring concerns to committee members or make statements at the beginning of each meeting.

Fulfilling the requirements of DLCD's administrative rules on reserves and the reserves work program, the three counties and Metro developed a Coordinated Public Involvement Plan in early 2008 that provided guidance on the types of public involvement activities, messages and communications methods that would be used for each phase of the reserves program. The plan incorporated the requirements of Oregon law and administrative rules governing citizen involvement and reflects comments and feedback received from the Metro Council, Core 4 members, each jurisdiction's citizen involvement committee, other county-level advisory committees and the RSC. The Citizen Involvement Advisory Committee of the Oregon Land Conservation and Development Commission (LCDC) reviewed and endorsed the Public Involvement Plan.

The four governments formed a public involvement team, composed of public involvement staff from each county and Metro, to implement the Public Involvement Plan. The team cooperated in all regional efforts: 20 open houses, two "virtual open houses" on the Metro web site, additional online surveys, presentations, printed materials and analysis and summaries of comments. The team members also undertook separate county and Metro-specific public engagement activities and shared methodologies, materials and results.

Elected officials made presentations to community planning organizations, hamlets, villages, city councils, advocacy organizations, civic groups, chambers of commerce, conferences, watershed councils, public affairs forums, art and architecture forums, and many other venues. Staff and elected officials appeared on television, on radio news broadcasts and talk shows, cable video broadcasts and was covered in countless news articles in metro outlets, gaining publicity that encouraged public engagement. Booths at farmers' markets and other public events, counter displays at retail outlets in rural areas, library displays and articles in organization newsletters further publicized the opportunities for comment. Materials were translated into Spanish and distributed throughout all three counties. Advocacy organizations rallied supporters to engage in letter email campaigns and to attend public meetings. Throughout the reserves planning process the web sites of each county and Metro provided information and avenues for feedback. While there have been formal public comment periods at key points in the decision process, the reserves project team invited the public to provide comment freely throughout the process. In all, the four governments made extraordinary efforts to engage citizens of the region in the process of designating urban and rural reserves. The public involvement plan provided the public with more than 180 discrete opportunities to inform decision makers of their views urban and rural reserves. A fuller account of the public involvement process the activities associated with each stage may be found at Staff Report, June 9, 2010, Metro Rec. 123-155; Metro Supp. Rec.47.

Following remand of Urban Reserves 7B and 7I in Washington County by LCDC on October 29, 2010, Metro and Washington County signed a supplemental IGA to re-designate urban and rural reserves in the county. Metro Supp. Rec. 285. Each local government held public hearings prior to adoption of the supplemental IGA and prior to adoption of their respective ordinances amending their maps of urban and rural reserves. Metro Supp. Rec. 328; 604.

#### **IV. AMOUNT OF URBAN RESERVES**

##### **A. Forecast**

Metro developed a 50-year “range” forecast for population and employment that was coordinated with the 20-year forecast done for Metro’s UGB capacity analysis, completed in December, 2009. The forecast is based on national economic and demographic information and is adjusted to account for regional growth factors. The partner governments used the upper and lower ends of the 50-year range forecast as one parameter for the amount of land needed to accommodate households and employment. Instead of aiming to accommodate a particular number of households or jobs within that range, the partners selected urban reserves from approximately 400,000 acres studied that best achieve the purposes established by the Land Conservation and Development Commission (set forth in OAR 660-027-0005(2)) and the objectives of the partner governments.

##### **B. Demand and Capacity**

Estimating land demand over the next 50 years is difficult as a practical matter and involves much uncertainty. The Land Conservation and Development Commission (LCDC) recognizes the challenge of estimating long-term need even for the 20-year UGB planning period. In the section of OAR Division 24 (Urban Growth Boundaries) on “Land Need”, the Commission says:

“The 20-year need determinations are estimates which, although based on the best available information and methodologies, should not be held to an unreasonably high level of precision.”

OAR 660-024-0040(1). The uncertainties loom much larger for a 40 to 50-year estimate. Nonetheless, Metro’s estimate of need for a supply of urban reserves sufficient to accommodate housing and employment to the year 2060 is soundly based in fact, experience and reasonable assumptions about long-range trends.

The urban reserves estimate begins with Metro’s UGB estimate of need for the next 20 years in its *Urban Growth Report 2009-2030*, January, 2010 (adopted December 17, 2009). Metro Rec. 646-648; 715. Metro relied upon the assumptions and trends underlying the 20-year estimate and modified them where appropriate for the longer-term reserves estimate, and reached the determinations described below.

The 50-year forecast makes the same assumption on the number of households and jobs needed to accommodate the population and employment coming to the UGB from the seven-county metropolitan statistical area (MSA) as in the *Urban Growth Report*: approximately 62 percent of the MSA residential growth and 70 percent of the MSA employment growth will come to the

metro area UGB. *COO Recommendation, Urban Rural Reserves, Appendix 3E-C, Metro Rec. 599; Appendix 3E-D, Metro Rec. 606-607.*

Metro estimates the demand for new dwelling units within the UGB over the next 50 years to be between 485,000 and 532,000 units. *COO Recommendation, Urban Rural Reserves, Appendix 3E-C, Metro Rec. 599.* Metro estimates between 624,300 and 834,100 jobs will locate within the UGB by 2060. *COO Recommendation, Urban Rural Reserves, Appendix 3E-D, Table D-3, Metro Rec. 607. Staff Report, June 9, 2010, Metro Rec. 121-122.*

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

Consistent with residential capacity analysis in the *Urban Growth Report*, vacant land in the existing UGB can accommodate 166,600 dwelling units under current zoning over the next 50 years. Infill and re-development over this period, with enhanced levels of investment, will accommodate another 212,600 units. This would leave approximately 152,400 dwelling units to be accommodated on urban reserves through 2060. *COO Recommendation, Urban Rural Reserves, Appendix 3E-C, pp. 5-6, Metro Rec. 602-603.*

Based upon the employment capacity analysis in the *Urban Growth Report*, the existing UGB has sufficient capacity – on vacant land and through re-development over the 50-year reserves period – for overall employment growth in the reserves period. However, this supply of land does not account for the preference of some industrial employers for larger parcels. To accommodate this preference, the analysis of the supply of larger parcels was extrapolated from the *Urban Growth Report*. This leads to the conclusion that urban reserves should include approximately 3,000 acres of net buildable land that is suitable for larger-parcel industrial users. *COO Recommendation, Urban Rural Reserves, Appendix 3E-D, Metro Rec. 609-610; Staff Report, June 9, 2010, Metro Rec. 122.*

Metro assumed residential development in urban reserves, when they are added to the UGB over time, would develop at higher densities than has been the experience in the past, for several reasons. First, the region is committed to ensuring new development at the edges of the region contributes to the emergence of “great communities”, either new communities or as additions to existing communities inside the UGB. Second, because many urban reserves are “greenfields”, they can be developed more efficiently than re-developing areas already inside the UGB. Third, demographic trends, noted in the *Urban Growth Report* that is the starting point for Metro's

2010 capacity analysis, indicate increasing demand for smaller housing units. This reasoning leads to the assumption that residential development will occur in reserves, when added to the UGB, at 15 units per net buildable acre overall, recognizing that some areas (centers, for example) would settle at densities higher than 15 units/acre and others (with steep slopes, for example) would settle at densities lower than 15 units/acre. *COO Recommendation, Urban Rural Reserves, Appendix 3E-C, pp. 6-7*; Staff Report, June 9, 2010, Metro Rec. 121-122.

Metro also assumed greater efficiencies in use of employment lands over the next 50 years. The emerging shift of industrial activity from production to research and development will continue, meaning more industrial jobs will be accommodated in high- floor-to-area-ratio (FAR) offices rather than low-FAR general industrial space. This will reduce the need for general industrial and warehouse building types by 10 percent, and increase the need for office space. Office space, however, will be used more efficiently between 2030 and 2060, reducing that need by five percent. Finally, the analysis assumes a 20-percent increase in FARs for new development in centers and corridors, but no such increase in FARs in industrial areas. *COO Recommendation, Urban Rural Reserves, Appendix 3E-C*, Metro Rec. 603-604; Staff Report, June 9, 2010, Metro Rec.121-122.

These assumptions lead to the conclusion that 28,256 acres of urban reserves are needed to accommodate 371,860 people and employment land targets over the 50-year reserves planning period to 2060. *COO Recommendation, Urban Rural Reserves, Appendix 3E-C*, Metro Rec. 601-603; *Appendix 3E-D*, Metro Rec.607-610; Staff Report, June 9, 2010, Metro Rec.121-122. The nine state agencies that served on the Reserves Steering Committee said the following about the amount of urban land the region will need over the long-term:

“The state agencies support the amount of urban reserves recommended by the Metro COO. That recommendation is for a range of between 15,000 and 29,000 acres. We believe that Metro and the counties can develop findings that, with this amount of land, the region can accommodate estimated urban population and employment growth for at least 40 years, and that the amount includes sufficient development capacity to support a healthy economy and to provide a range of needed housing types.” *Letter to Metro Regional Steering Committee, October 14, 2009*, Metro Rec. 1373.

Based upon the assumptions described above about efficient use of land, the four governments believe the region can accommodate 50 years worth of growth, not just 40 years of growth.

## **V. SUPPLEMENTAL FINDINGS REGARDING 50-YEAR SUPPLY OF URBAN RESERVES AND REGIONWIDE BALANCE**

The findings in this Section V supplement the findings adopted by the Metro Council in support of the original 2011 approval of urban and rural reserves via Metro Ordinance 11-1255. To the extent any of the findings in this section are inconsistent with other findings in this document that were previously adopted in 2011, the findings in this Section V shall govern. These findings address issues related to the regionwide supply of urban reserves and the overall balance of reserves in light of (a) the Metro Council’s adoption of the current Urban Growth Report in 2015, and (b) the Oregon Legislature’s enactment of House Bill 4078.

On April 21, 2011, Metro enacted Ordinance 11-1255 adopting the urban and rural reserve designations agreed upon by Metro and the three counties, and submitted that ordinance and accompanying findings to LCDC for acknowledgement. On August 19, 2011, LCDC voted to approve and acknowledge the reserve designations made by Metro and the counties, and LCDC issued Acknowledgment Order 12-ACK-001819 on August 14, 2012. Twenty-two parties filed appeals of the LCDC Order, and on February 20, 2014 the Oregon Court of Appeals issued its opinion in the *Barkers Five* case, affirming LCDC's decision regarding the majority of the 26 assignments of error raised by the opponents, and remanding the LCDC Order on three substantive issues.

First, the court concluded that LCDC incorrectly approved Washington County's application of the rural reserve factors pertaining to agricultural land, because the county relied on factors that were different from those required by statute for determining whether lands should be designated as rural reserve. The court held that the county's error required remand of all urban and rural reserves in Washington County for reconsideration.

Second, the court held that LCDC incorrectly concluded that Multnomah County had adequately considered the rural reserve factors pertaining to Area 9D. The court found that the county's findings were not sufficient to explain why its consideration of the applicable factors resulted in a designation of rural reserve for *all* of Area 9D, given the fact that property owners in that area had identified dissimilarities between the northern and southern portions of the study area. Finally, the court held that LCDC did not correctly review Metro's urban reserve designation of the Stafford area for substantial evidence. The court concluded that Metro failed to adequately respond to evidence cited by opponents from Metro's 2035 Regional Transportation Plan (RTP) indicating that traffic in the Stafford area was projected to exceed the capacity of certain roads by 2035.

Immediately after the Court of Appeals issued its opinion, work began on legislation designed to resolve issues regarding the remand of urban and rural reserves in Washington County. On March 7, 2014 the Oregon Legislature passed House Bill 4078, which legislatively approved Metro's 2011 UGB expansion, added an additional 1,178 acres of urban reserves to the UGB, and made other revisions to the reserves map in Washington County.

As described in Section IV of these findings, when Metro and the three counties adopted their maps of reserve areas, they agreed on a total of 28,256 acres of urban reserves, which reflected Metro's estimate of the acreage that would be required to provide a 50-year supply of urbanizable land as contemplated under ORS 195.145(4). The specific forecast described above in Section IV is for a range of between 484,800 and 531,600 new dwelling units over the 50-year period ending in 2060. Metro relied on the high point of that forecast range in estimating that the region would need a supply of urban reserves sufficient to provide for approximately 152,400 new dwelling units outside of the existing UGB through 2060.

After LCDC voted to approve Metro's findings and acknowledge the designation of 28,256 acres of urban reserves in August of 2011, Metro relied on those designations to expand the UGB onto approximately 2,015 acres of urban reserves in Washington County. However, that expansion

was called into question by the Court of Appeals decision in *Barkers Five*, which reversed and remanded all of the urban and rural reserve designations in Washington County.

The compromise reflected in House Bill 4078 included legislative approval and state acknowledgement of the 2,015 acres of 2011 UGB expansions in order to provide certainty to the cities regarding their ability to urbanize those expansion areas. In addition to acknowledging the UGB expansion areas already approved by Metro, House Bill 4078 included the following changes to the reserves map in Washington County:

- Converted 2,449 acres of urban reserves to rural and undesignated
- Converted 417 acres from rural reserve to urban reserve
- Converted 883 acres of undesignated areas to rural reserve
- Added 1,178 acres of urban reserve to the UGB

In the final accounting, HB 4078 resulted in the net reduction of 3,210 acres of urban reserves below the amount remaining after Metro's 2011 UGB expansion. The remaining acreage of urban reserves in the Metro region is now 23,031.

The legislature's removal of 3,210 acres of urban reserves via HB 4078 potentially implicates two elements of state law governing reserves. First, ORS 195.145(4) requires the designation of a sufficient amount of urban reserve areas to provide the Metro region with a 40 to 50 year supply of urbanizable land. Second, OAR 660-027-0040(10) requires Metro and the counties to adopt findings explaining why the reserve designations achieve the objective stated in OAR 660-027-0005(2) of a balance in urban and rural reserves that "best achieves" livable communities, viability and vitality of farm and forest industries, and protection of important natural landscape features.

Regarding the requirement for a 40 to 50 year supply of urban reserves, the applicable state rule requires Metro's estimate of the projected long-range need for urban reserve acreage to be based on the analysis in Metro's most recent Urban Growth Report (UGR). The projected need for urban reserves adopted by Metro and the counties in 2011 was based on the regional growth forecast set forth in Metro's 2009 UGR. Since that time, in 2015 the Metro Council adopted the current 2014 UGR, which provides the current residential and employment growth projections for the region.

The findings below address the status of existing urban reserve acreage in light of the newer growth projections in the 2014 UGR, as well as the impact of HB 4078 on both the amount of urban reserves and the regionwide balance of urban and rural reserves under the "best achieves" standard.

#### **A. Amount of Land Designated Urban Reserve in the Metro Region**

The state rules governing the designation of urban and rural reserves require that the amount of land designated as urban reserves must be planned to accommodate estimated urban population and employment growth in the Metro region for between 20 and 30 years beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in its most

recent Urban Growth Report. OAR 660-027-0040(2). The Metro Council adopted the current 2014 UGR via Ordinance No. 15-1361 on November 12, 2015.

In order to update the 50-year need analysis for urban reserves to 2065 by applying the most current growth projections, Metro planning staff prepared a memorandum dated February 22, 2017, which was attached to the staff report for Metro's public hearing on March 2, 2017. That memorandum provides an updated assessment of potential long-term demand for urban reserves, and concludes that the existing amount of urban reserves, combined with buildable land already inside the UGB, can provide a sufficient amount of land to accommodate expected urban growth.

Specifically, the staff memorandum includes an analysis of projected long-term need for residential and employment land, and concludes that the existing 23,031 acres of urban reserves can reasonably be expected to accommodate projected household and employment growth over the next 40 to 50 years. The staff analysis forecasts a potential need for 24,827 acres of urban reserves by 2065. Only for demonstrative purposes of placing that acreage in perspective on a 50-year planning horizon, assuming that an equal amount of urban reserve acreage is converted annually over 50 years, the existing 23,031 acres of urban reserves would provide a 46-year supply of land for urban growth in the Metro region. However, for the reasons described above in Section IV of these findings regarding more efficient use of land, including the likelihood of land developing at densities of higher than 10 dwelling units per net developable acre, the Metro Council finds that the existing 23,031 acres of urban reserves are intended to provide a supply of land for 50 years from the date of adoption of the 2014 UGR in 2015.

As explained in the staff memo, any prediction about how much land will be required for urban growth in the region over a 50-year planning horizon is necessarily a rough estimate. The nature of this exercise requires Metro to predict what growth and development trends might look like over the next 50 years, based on the available data. State law does not provide any particular formula or methodology for estimating the future need for urban reserves. As explained by LCDC in its 2012 order regarding Metro's compliance with the requirement to provide a 40 to 50-year supply of urban reserves, the statutes and rules provide Metro "a substantial degree of discretion concerning ... the methods and policy considerations that Metro uses to project future population and employment." (LCDC Compliance Acknowledgment Order 12-ACK-001819, page 26).

The 50-year regional growth estimate provided in the February 22, 2017 Metro staff memorandum is based on the analysis and projections in the 2014 UGR. The UGR forecast is then subjected to a series of predictions about what will happen in the future, based on multiple levels of assumptions regarding an array of factors that affect how much residential and employment growth might be expected in the region, such as capture rate, vacancy rate, and projected share of single-family and multifamily housing types. Minor changes in the underlying assumptions regarding these factors will necessarily change the results.

The Metro Council also notes that the intergovernmental agreements between Metro and each of the three counties regarding the designation of reserves provide for a review of existing urban reserves in each county 20 years after the date of adoption, or sooner if agreed to by Metro and all three counties. Therefore, the adequacy of the amount of land designated for future

urbanization can and will be revisited, and additional lands may be added if necessary, much sooner than 2065.

Based on the analysis and projections provided in the Metro staff memorandum dated February 22, 2017, the Metro Council concludes that the existing 23,031 acres of urban reserves across the region, combined with buildable land already inside the UGB, will provide a sufficient amount of land for urban growth in the region until 2065.

## **B. Balance in the Designation of Reserves that “Best Achieves” Certain Goals**

Included among the state rules governing urban and rural reserves is a requirement that Metro and the counties must explain how the urban and rural reserve designations achieve the following objective:

“The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents.” OAR 660-027-0005(2).

During the proceedings before LCDC regarding its adoption of the remand order in 2015, some parties argued that the reduction in urban reserve acreage in Washington County via House Bill 4078 created a shift in the balance of urban reserves that implicates the “best achieves” standard. The following two sections of these findings address the application of the best achieves standard in light of HB 4078.

First, in adopting HB 4078 the legislature enacted a new statute that acknowledged the new balance of urban and rural reserves across the region as being in compliance with state law, and therefore a new analysis by Metro and the counties is not required. Second, in the event such an analysis is required, that standard is still met.

### **1. The “best achieves” rule is satisfied through HB 4078**

The enactment of HB 4078 resulted in the legislative acknowledgement of the new amount of urban reserves and the new balance of urban and rural reserves as being in compliance with all aspects of state law. Therefore, in the absence of any changes to the existing mapped acreage of urban and rural reserves in Clackamas County and Multnomah County, the existing balance of reserves across the region meets all applicable state requirements and there is no need for Metro to revisit the standards related to the “best achieves” requirement as part of these findings. In the *Barkers Five* opinion, the Court of Appeals remanded the designation of all urban and rural reserves in Washington County for reconsideration. As a result of this wholesale remand of the entire Washington County reserves package, the court also noted that “any new joint designation” of reserves by the county and Metro on remand would also require new findings addressing the “best achieves” standard in OAR 660-027-0005(2). *Barkers Five* at 333.



Thus, the court’s opinion provides that the best achieves standard would only be triggered in the event there are any *new* designations of reserve areas on remand that are different from what was approved in the original decision. That is because the stated purpose of the best achieves standard is to ensure that the overall “balance in the designation of urban and rural reserves” across the entire region “best achieves” liveable communities, vitality of farm and forest uses, and protection of natural features that define the region. Thus, any changes in the “balance” of those designations by Metro and the counties on remand would require a reassessment of whether and how those objectives are still met. But, in the absence of any changes to the reserve maps, no further assessment would be required.

This aspect of the Court of Appeals decision was overridden with respect to Washington County by the enactment of HB 4078, which legislatively established a new map of the locations of the UGB and urban and rural reserves in Washington County. This legislative action negated the court’s directive requiring remand to Metro and Washington County for reconsideration of the reserve designations. The enactment of HB 4078 also negates any need to reconsider or reapply the best achieves standard, which is an administrative rule requirement that was necessarily preempted by the legislature as part of its decision to redesignate substantial portions of the Washington County reserve areas. As long as the remand proceedings regarding Clackamas County and Multnomah County do not result in changes to the reserves maps in those counties, there is no need to reconsider the best achieves standard to account for the HB 4078 revisions.

The Oregon legislature is presumed to be aware of existing law when it enacts new legislation. *Blanchana, LLC v. Bureau of Labor and Industries*, 354 Or 676, 691 (2014); *State v. Stark*, 354 Or 1, 10 (2013). This presumption also applies to administrative rules adopted by LCDC. *Beaver State Sand & Gravel v. Douglas County*, 187 Or App 241, 249-50 (2003). When the legislature adopted revisions to the Washington County reserves map as part of HB 4078, it is presumed to have been aware of LCDC’s administrative rule requiring that there be a balance in reserve designations that “best achieves” the stated goals. The adoption of HB 4078 created a statutory requirement regarding the location of reserves in Washington County that takes precedence over LCDC’s “best achieves” rule and does not require subsequent action by LCDC, Metro or the counties to explain why the statute satisfies an administrative rule requirement, because statutes necessarily control over administrative rules.

The express terms of HB 4078 also indicate a legislative intent to preempt existing land use law. Each section of HB 4078 that establishes new locations for reserve areas or the UGB begins with the phrase “*For purposes of land use planning in Oregon, the Legislative Assembly designates the land in Washington County....*” HB 4078, Sec 3(1), (2), (3) (2014). The legislature was aware that its actions in redrawing the UGB and reserve maps had the effect of acknowledging the new maps as being in compliance with state law, and thereby preempting other land use planning rules (including for example LCDC’s Goal 14 rules regarding UGB expansions). The legislature included this language to clearly state that its action in adopting the new maps constituted acknowledgment of compliance with state law, and that it need not demonstrate compliance with other existing land use statutes, goals or rules, including the “best achieves” rule and the statutory requirement to provide a 40 to 50 year supply of urban reserves.

For these reasons, so long as there are no revisions on remand to the reserve maps in Clackamas County or Multnomah County, the HB 4078 revisions to the reserve designations in Washington County do not create a need to reconsider compliance with the “best achieves” standard or the sufficiency of the supply of urban reserves.

## **2. The balance in the designation of reserves still achieves the stated goals**

The meaning and application of the “best achieves” rule was the subject of considerable debate in the appeals filed with LCDC in 2011 and with the Court of Appeals in 2012. Ultimately, in the *Barkers Five* opinion, the Court of Appeals agreed with the positions taken by LCDC and Metro that the “best achieves” standard provides significant discretion to Metro and the counties, and is satisfied through their site-specific findings concerning the application of the urban and rural reserve factors. Specifically, the Court of Appeals identified and agreed with the following four legal premises regarding the application of the standard.

First, the best achieves standard is a qualitative standard, rather than a quantitative one. The court agreed with LCDC that the standard “is not a balance in terms of the quantitative *amount* of urban and rural reserve acreage, but a balance between encouraging further urban expansion versus land conservation.” The court explained that Metro and the counties are not required to justify a quantitative “balance” in the specific amount of acreage of urban reserves and rural reserves.

Second, the best achieves standard applies to Metro and the counties’ designation of reserves “in its entirety” and not to the designation of individual properties or areas as urban or rural reserves.

Third, the best achieves standard allows for a range of permissible designations, and not a single “best” outcome. The court agreed with LCDC and Metro that the standard does not require a ranking of alternative areas from worst to best. The court specifically rejected arguments presented by the cities of West Linn and Tualatin that the word “best” requires a comparative analysis that identifies a single highest-ranked designation.

Fourth, the court held that Metro and the counties must explain how the designation satisfies the best achieves standard through their findings concerning the application of the urban and rural reserve factors to specific areas. The court agreed with LCDC that there is a close relationship between the “factors” that Metro and the counties must consider for urban and rural reserve designations and the overall “best achieves” objective, and that the best achieves standard is satisfied through findings explaining why particular areas were chosen as urban or rural reserves. Under the four legal premises stated by the Court of Appeals in *Barkers Five*, Metro and the counties have broad discretion in reaching a conclusion regarding whether the regionwide balance of urban and rural reserves achieves the identified objectives of creating livable communities while protecting farms, forest, and natural landscape features.

Some parties have argued that the reduction in urban reserve acreage in Washington County via House Bill 4078 inherently caused a shift in the “balance” of urban reserves that runs afoul of the best achieves standard. However, under the above-stated first premise of the Court of Appeals, that is incorrect. The court held that the best achieves standard does not require quantitative

balancing of the specific amount of urban reserve acreage in one county or another. Thus, the reduction of urban reserves in Washington County by 3,210 acres does not inherently raise concerns under this standard.

Metro and the counties have adopted detailed findings regarding the consideration of all urban and rural reserve factors, explaining why particular areas were chosen as urban or rural reserves, and explaining how the regional partners came to agree that the overall package of urban and rural reserves reflects a balance that best achieves the objectives of creating livable communities while protecting farms, forest, and natural landscape features. Those findings are consistent with the fourth premise identified by the Court of Appeals regarding compliance with the best achieves standard, and the findings continue to demonstrate that the objectives stated in the rule are being achieved through the selected designations.

Metro and the counties have also adopted detailed findings that explain why the urban and rural reserves adopted by the region satisfy the best achieves standard, which are set forth above in Section II of these findings. Those findings note that urban reserves, if and when added to the UGB, are likely to take some land from the farm and forest base. However, Metro and the counties also recognized that some of the same characteristics that make an area suitable for agriculture also make it suitable for livable communities under the best achieves standard, including mixed-use pedestrian and transit-supportive urban development, as well as industrial uses. For the reasons described below, the findings in Section II are still valid and are not impacted by the reduction of urban reserves in Washington County under House Bill 4078.

The designation by Metro and the counties of urban and rural reserves achieves the objectives required under the state rule, in part, by adopting 266,628 acres of rural reserves across the region that establish the long-term limits of urbanization in the Metro area. As described above, consistency with the “best achieves” standard does not require a quantitative balancing of the amount of rural and urban reserve acreage. However, the designation of a significant amount of rural reserve areas around the region, with the vast majority (248,796 acres) being foundation and important agricultural land, demonstrates the region’s commitment to achieving the objectives of ensuring viability and vitality of the agricultural and forest industries and corresponding protection of important natural landscape features. As described in the Court of Appeals opinion, LCDC’s intent when it created the best achieves standard was to provide another level of review specifically designed to protect foundation farmland in the region:

“[Commissioner Worrix] explained that the best achieves standard was seen as ‘the best solution’ for the agricultural industry that had expressed ‘a strong concern . . . that there needed to be something that highlighted the importance of foundation land and gave them that little extra bit of scrutiny.’” *Barkers Five*, 261 Or App at 312.

Regarding important natural landscape features, the process associated with achieving a balance in the designation of urban and rural reserves also provided a significant amount of weight to the protection of natural features. Three of the urban reserve factors – (5), (7) and (8) – seek to direct urban development away from important natural landscape features, and away from farm and forest practices. This provides an example of the close relationship between the factors for urban

and rural reserve designations and the “best achieves” objective (as described in the fourth premise adopted by the Court of Appeals), and demonstrates how the best achieves standard may be satisfied through findings explaining why particular areas were chosen as urban or rural reserves. Similarly, the rules that apply to rural reserve designations include very specific directives regarding how natural landscape features must be reviewed and considered. OAR 660-027-0060(3). Section II of these findings includes a bullet-point list of areas where important natural landscape features are located that are protected with rural reserve designations.

Two of the three objectives that the best achieves standard requires to be balanced are primarily achieved through rural reserve designations: (a) protection of farm and forest and (b) protection of important natural resource features. The region’s ability to achieve these two objectives through rural reserve designations is not impacted by the reduction of urban reserve acreage that occurred via House Bill 4078. In fact, that legislation enhanced the region’s ability to achieve those two standards by adding approximately 2,780 acres of new rural reserves in Washington County, all of which is foundation agricultural land.

The third objective that must be balanced as part of the best achieves analysis is “livable communities.” This objective is primarily achieved by designating areas across the region that will be the best locations to build “great communities” through application of the urban reserve factors. As discussed in Section II of these findings, great communities are those that offer residents a range of housing types and transportation modes from which to choose. To that end, urban reserve factors (1), (3), (4) and (6) are aimed at identifying lands that can be developed in a compact, mixed-use, walkable and transit-oriented pattern, supported by efficient and cost-effective services.

The reduction of urban reserves in Washington County by 3,210 acres does not impact the region’s ability to build livable communities across the region over the next 40 to 50 years. The quantitative aspect of urban reserve planning is addressed by the rule discussed above that requires sufficient acreage for up to 50 years of urban growth. Meanwhile, the directive of the best achieves standard to provide livable communities is aimed at designating highest *quality* of locations that can provide a range of housing types and transportation modes, as well as efficient public services. As discussed above, the existing urban reserve acreage in the region still provides a sufficient amount of land for urban growth over the next 40 to 50 years. The fact that House Bill 4078 reduced the amount of urban reserves from 26,241 to 23,031 acres has no effect on the region’s ability to plan and build livable communities on those 23,031 acres over the next several decades. Therefore, the balance in the designation of urban and rural reserves, in its entirety, still achieves the goals of providing livable communities, viability and vitality of farm and forest industries, and the protection of important natural landscape features that define the region.

In 2011, the region concluded, acting together, that the agreed-upon urban and rural reserve designations provide a balance that achieves the objectives of building livable communities while protecting farms, forests, and natural features. The findings adopted by Metro and the counties support a conclusion that the best achieves standard has been met, and that conclusion is not impacted by the changes to urban and rural reserve acreage that occurred via House Bill 4078.

### **C. Responses to Issues Raised by Opponents**

During the proceedings leading up to the Metro Council's adoption of Ordinance No. 17-1397, several parties submitted testimony raising legal issues regarding the Metro staff analysis set forth in the February 22, 2017 memorandum to the Metro Council concerning the amount of urban reserves remaining in the region. Responses to these arguments are provided in the Metro staff memorandum dated March 23, 2017, which is included in the record and hereby incorporated as part of these findings.

A common theme in letters submitted by attorneys for the Maletis Brothers and Barkers Five, LLC arises out of Metro's reliance on the 2014 UGR for purposes of determining whether the amount of urban reserves is sufficient to provide a 40 to 50 year supply of urbanizable land. These parties contend that the 2014 UGR is flawed for various reasons and therefore does not provide an adequate basis to forecast the future need for residential and employment land between now and 2065.

A fundamental problem with arguments about the adequacy of the future growth projections in the 2014 UGR is that those projections were developed through a multi-year and extensively peer-reviewed process culminating in adoption of the 2014 UGR by the Metro Council via Ordinance No. 15-1361. That decision was not appealed by any party, and therefore the UGR is acknowledged by LCDC as providing a legally valid forecast that is in compliance with all state requirements. To the extent that opponents are attempting to challenge the adequacy of the assumptions and projections in the adopted and acknowledged 2014 UGR, those arguments are impermissible collateral attacks. The applicable rule establishing the requirement for a 40 to 50 year supply of urbanizable land does not require Metro to generate a new UGR for purposes of estimating the future need for urban reserves. Rather, it directs Metro to rely on the land supply analysis in the most recently adopted 2014 UGR, which is exactly what Metro has done.

Many of the staff responses in the memorandum dated March 23, 2017 to issues raised by counsel for the Maletis Brothers also apply to issues raised by counsel for Barkers Five, LLC in a letter dated March 23, 2017. Nearly all of the issues raised by Barkers Five are based on arguments regarding why they believe the 2014 UGR is not accurate. As addressed above, Metro is entitled to rely on the adopted and acknowledged 2014 UGR forecast and to apply that forecast to the urban reserve analysis. Responses to specific issues raised by counsel for Barkers Five, LLC are included in a separate memorandum from Metro staff dated April 6, 2017, which is included in the record and hereby incorporated as part of these findings.

### **VI. IMPLEMENTING URBAN RESERVES**

To ensure that urban reserves ultimately urbanize in a manner consistent with the Regional Framework Plan, Ordinance No. 10-1238A amended Title 11 (Planning for New Urban Areas) (Exhibit D) of Metro's Urban Growth Management Functional Plan to require planning of areas of urban reserve prior to inclusion into the UGB. Title 11 now requires a "concept plan" for an urban reserve area prior to UGB expansion. A concept plan must show how development would achieve specified outcomes. The outcomes derive from the urban reserve factors in OAR 660-

027-0050, themselves based in part on the characteristics of “great communities” identified by local governments of the region as part of Metro’s “Making the Greatest Place” initiative. Title 11 sets forth the elements of a concept plan, including:

- the general locations of types of uses
- the general locations of the urban services (including transportation systems) needed to support the uses
- estimates of the cost of the services to determine the feasibility of urbanization and to allow comparisons of urban reserves
- the locations of natural resources that will be subject to Title 3 and 13 of the UGMFP
- agreement among local governments and other service providers on provision of services to the area
- agreement among the local governments on annexation of the area to a city or cities and responsibility for planning and zoning.

Title 11 continues to limit development in areas added to the UGB to protect the opportunity for efficient urbanization during the time needed to adopt new local government plan provisions and land use regulations. Title 11, together with the comprehensive plans of the receiving local governments and Metro’s Regional Framework Plan (including the 2035 Regional Transportation Plan), will ensure land use and transportation policies and designations will allow mixed-use and pedestrian, bicycle and transit-supportive development once urban reserve areas are added to the UGB. Staff Report, June 9, 2010, Metro Rec.8-13.

## **VII. REASONS FOR URBAN AND RURAL RESERVES IN CLACKAMAS COUNTY**

### **A. Introduction**

#### **Brief Outline of Clackamas County Process.**

Working in conjunction with Metro Staff, and staff from the other two Metro counties, Clackamas County staff initially identified a study area large enough to provide choices for urban reserves, along with areas threatened by urbanization for consideration as rural reserves. (ClackCo Rec. 26) The initial study area was over 400,000 acres. (ClackCo Rec. 251-256.)

The county then convened a Policy Advisory Committee (PAC) made up of 21 members representing cities, citizen organizations and other stakeholders. Clackamas County Record 18-20. The PAC met 22 times over a year and a half before forwarding its recommendations to the Board of County Commissioners. The record of materials before the PAC included close to a thousand pages of information addressing each of the reserves factors. (ClackCo Rec. 1 to 995). At its second meeting, the PAC was informed that the standards in OAR Division 27 were to be applied as factors, rather than as individual criteria. (ClackCo Rec. 27.)

The PAC adopted an initial screen of rural reserve areas in January, 2009.(ClackCo Rec. 354 to 356.) In May and June of 2009, the PAC and staff further evaluated the rural reserve candidate areas and forwarded a more detailed recommendation to the BCC. (ClackCo Rec. 529-676).

The PAC began its more detailed evaluation of Urban Reserves through the summer of 2009, specifically evaluating each urban reserve candidate area considering each of the urban reserve factors. (ClackCo Rec. 677 to 851).

In the summer of 2009, the Clackamas County Planning Commission held three meetings to discuss and make recommendations on both Urban and Rural Reserves. (ClackCo Rec. 1835 to 1960).

The PAC and Planning Commission recommendations were forwarded to the Board of County Commissioners in September, 2009. The board evaluated all of the potential reserves areas, and forwarded its own recommendation to Metro's Reserves Steering Committee (RSC). (ClackCo Rec. 1589-1729).

Between September 2009 and February, 2010, the recommendations were refined and discussed both regionally and within the county. (ClackCo Rec.1729 -1807). See timeline of "milestones" at Clackamas County Record 1807. On February 25, the county authorized its chair to sign an Intergovernmental Agreement with Metro agreeing to specific reserves designations in Clackamas County. (ClackCo Rec. 1817-1833) ("Reserves IGA").

After the Reserves IGA was signed, the county and Metro further refined the reserves map, ultimately adopting the reserves designations that were submitted to DLCD in June.

## **B. Clackamas County: Urban Reserves**

The factors for designation of urban reserves are set forth at OAR 660-027-0050:

*Urban Reserve Factors: When identifying and selecting lands for designation as urban reserves under this division, Metro shall base its decision on consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB:*

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

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

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

It is important to note that the reserves factors are not criteria to be met individually. Rather, the factors are considerations to be weighed and balanced in light of the overall purpose of the reserves decision, and the regional context. There are a number of areas which might be designated as either urban reserve or rural reserves, and the designations are interdependent, in the sense that land designated as a rural reserve is no longer among the options available for rural reserves.

### Urban Reserves 1D and 1F: Boring

*General Description:* This Urban Reserve comprises approximately 4,200 acres, bordered by the cities of Gresham on the north and Damascus on the west. The eastern-most boundary of this Urban Reserve is located approximately two miles from the City of Sandy's Urban Reserve. The community of Boring, which is identified as a Rural Community in the County Comprehensive Plan, is located in the southern part of this area, and its boundary is the southern edge of this Urban Reserve. Highway 26 forms the northern boundary of this Urban Reserve.

Development in this area is focused in the community of Boring, which has several commercial and employment uses and a small residential community. There is also an area of non-conforming commercial uses located at the eastern edge of this Urban Reserve, along the north side of St. Hwy. 212. Rural residential homesites mixed with smaller farms characterize the area west of 282<sup>nd</sup> Avenue. The area east of 282<sup>nd</sup> Ave., north of Boring, has several larger, flat parcels that are being farmed.

There are two significant buttes located in the northwest part of this Urban Reserve. These buttes have been identified as important natural landscape features in Metro's February 2007 "Natural Landscape Features Inventory". These buttes are wooded. Existing rural homesites are scattered on the slopes. There is minimal development potential on these buttes.

The area west of SE 282<sup>nd</sup> Ave., outside Boring, is identified as Conflicted Agricultural Land. The area east of SE 282<sup>nd</sup> Ave, (Area1F) is identified as Foundation Agricultural Land. This is the only Foundation Agricultural Land in Clackamas County included in an Urban Reserve.

*Conclusions and Analysis:* Designation of the Boring Area as an Urban Reserve is consistent with OAR 660-027. The Boring Urban Reserve provides one of Clackamas County's few identified employment land opportunities. The larger, flat parcels in Area 1F are suitable as employment land. This area is served by St. Hwy. 26 and St. Hwy 212, transportation facilities that have been identified by ODOT as having additional capacity. Development of this area for employment uses also would be a logical complement to the Springwater employment area in Gresham.



Portions of this Urban Reserve also satisfy some of the factors for designation as a Rural Reserve. Area 1F is comprised of Foundation Agricultural Land. Two buttes located in the northwest corner of this Urban Reserve are included in Metro's February 2007 "Natural Landscape Features Inventory". The City of Sandy has requested a Rural Reserve designation for Area 1F, to maintain separation between the Portland Metro Urban Growth Boundary and the City's urban area.

On balance, designation as an Urban Reserve is the appropriate choice. As explained below, designation as an Urban Reserve meets the factors for designation provided in OAR 660-027-0050. Area 1F is the only Urban Reserve in Clackamas County containing Foundation Agricultural Land. While this area does contain commercial farms, it also is impacted by a group of non-conforming commercial uses located near the intersection of the two state highways. The area west of SE 282<sup>nd</sup> is identified as Conflicted Agricultural Land. The two state highways and the rural community of Boring provide logical boundaries for this area.

The Boring Urban Reserve and the Urban Reserve that includes the Borland Area (Area 4C) are the only areas containing a significant amount of larger, flatter parcels suitable for employment uses. The Principles for concept planning recognize the need to provide jobs in this part of the region, and also recognize that the Boring Urban Reserve is identified principally to meet this need. There are no other areas with land of similar character in the eastern part of the region. Designation of Areas 1D and 1F as an Urban Reserve is necessary to provide the opportunity for development of employment capacity in this part of the region. These facts justify including this small area of Foundation Farmland in the Urban Reserve, in accord with OAR 660-027-0040(11).

The two buttes have little or no potential for development. While they could be designated as a Rural Reserve, such a designation would leave a small Rural Reserve located between the existing Urban Growth Boundary and the remainder of the Boring Urban Reserve. The buttes can be protected by the city which will govern this area when it is added to the Urban Growth Boundary. The Principles also recognize the need to account for these important natural landscape features during development of concept plans for this area.

The City of Sandy has objected to the designation of Area 1F as an Urban Reserve. ClackCo Rec.3286-3288. The City points to a 1998 Intergovernmental Agreement among Metro, Sandy, Clackamas County and, the Oregon Department of Transportation.<sup>9</sup> Among other things this IGA states a purpose to "designate areas of rural land to separate and buffer Metro's Urban Growth Boundary and Urban Reserve areas from the City's Urban Growth Boundary and Urban Reserve areas. The IGA also recognizes the desire to protect a view corridor along Hwy 26. The parties are negotiating an update to this agreement.

The Principles require concept planning for the Boring Urban Reserve to "recognize the need to provide and protect a view corridor considering, among other things, landscaping, signage and building orientation...." The two miles between the Boring Urban Reserve and the City of Sandy's Urban Reserve area is being designated as a Rural Reserve, assuring separation of these two urban areas.

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<sup>9</sup> The agreement was never signed by the Oregon Department of Transportation.

Designation of the Boring Urban Reserve is consistent with the factors for designation provided in OAR 660-027-0050.

- 1) The Boring Urban Reserve can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments. Metro’s Urban Study Area Analysis (Map A) demonstrates the relatively large amount of land suitable for development in this urban Reserve, particularly in Area 1F and the eastern half of Area 1D. The existing community of Boring also provides a focal point for commercial and residential development in this Urban Reserve. The buttes in the northwestern corner of this area, adjacent to Damascus and Gresham, have very little potential for additional urban-level development, but most of the rest of this Urban Reserve, comprised of larger lots with moderate or flat terrain, can be developed at urban densities.
- 2) The Boring Urban Reserve includes sufficient development capacity to support a healthy economy. This is one of the few areas in Clackamas County, adjacent to the Urban Growth Boundary, with access to a state highway, and possessing larger parcels and flat terrain conducive to development of employment uses. The area also is proximate to the Springwater employment area in Gresham. The existing community of Boring provides the opportunity for redevelopment providing the commercial uses supportive of a complete community.
- 3) The Boring Urban Reserve can be efficiently and cost-effectively provided with public facilities necessary to support urban development. While substantial investment will be necessary to provide facilities, compared to other areas in the region, the Boring Urban Reserve Area has a high or medium suitability rating (see Sewer Serviceability Ratings Map and Water Serviceability Map). ODOT has indicated that this area is “moderately suitable” for urbanization, which is one of the higher ratings received in the region. While the buttes and steeper terrain on the west will be difficult to develop with a road network, the rest of the Urban Reserve is relatively flat and unencumbered.
- 4) Most of the Boring Urban Reserve can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers. The buttes and associated steep slopes would be difficult to develop. The rest of the Urban Reserve has few limitations to development of multi-modal, urban neighborhoods.
- 5) The Boring Urban Reserve can be planned so that natural ecological systems and important natural landscape features can be preserved and enhanced. The buttes and associated steep terrain are the most significant features in this Urban Reserve. Parcelization and existing development, in addition to the physical characteristics of these areas make development potential extremely limited. The Principles note the need to recognize these important natural landscape features when a concept plans are developed.
- 6) The Boring Urban Reserve includes sufficient land suitable to provide for a range of housing types. This Urban Reserve has more land suitable for development than other

Urban Reserves in Clackamas County. There is an existing community that will provide a focal point for the eventual urbanization of the Boring Urban Reserve.

- 7) Concept planning for the Boring Urban Reserve can be designed to avoid or minimize adverse effects on important farm and forest practices and on important natural landscape features on nearby land. The area along the western half of this Urban Reserve is identified as Conflicted Agricultural Land and is adjacent to the cities of Gresham and Damascus. The northern boundary is clearly delineated by Hwy 26. Most of the southern boundary is formed by the existing developed community of Boring. Hwy 212 provides a clear demarcation from the rest of the area south of this Urban Reserve. The size of this area also will allow planning to design the urban form to minimize effects on the agricultural areas to the north and east.

#### Urban Reserve 2A: Damascus South

*General Description:* The Damascus South Urban Reserve is approximately 1,240 acres. This Urban Reserve is adjacent to the southern boundary of the City of Damascus. Approximately 500 acres is located within the City of Damascus, although outside the Urban Growth Boundary. The southern and western boundaries of the Urban Reserve are clearly demarked by the steep terrain characterizing the Clackamas Bluffs, which are identified as an important natural landscape feature in Metro's February 2007 "Natural Landscape Features Inventory." The eastern boundary of the Urban Reserve is established by the Deep Creek Canyon, which also is identified as an important natural landscape feature.

This urban reserve is comprised of moderately rolling terrain, with a mix of farms and scattered rural residential uses on smaller parcels. There are several larger ownerships located east of SE 282<sup>nd</sup> Avenue. The entire area is identified as Conflicted Agricultural Land.

*Analysis and Conclusions:* Designation of the Damascus South Urban Reserve area is a logical extension of the City of Damascus, providing additional opportunity for housing and employment uses. Portions of this area are already located in the City of Damascus. Additional areas were identified as important developable urban land in the Damascus Concept Plan. The boundaries of the Damascus South Urban Reserve are formed by important natural landscape features.

This area was considered for designation as a Rural Reserve, but does not satisfy the factors stated in OAR 660-027-0060. The entire area is designated as Conflicted Agricultural Land. Some of the land is located within the City of Damascus. The southern boundary of the Urban Reserve is established to exclude the Clackamas Bluffs, which are identified in Metro's February 2007 "Natural Landscape Features Inventory". The eastern boundary excludes the Noyer and Deep Creek canyons, which also were included in this inventory.

As explained in the following paragraphs, designation as an Urban Reserve is consistent with the factors for designation set forth in OAR 660-027-0050.

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- 1) The Damascus South Urban Reserve can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments. A large part of this area already is located within the City of Damascus. Parts of the Urban Reserve were planned for urban development in the Damascus Concept Plan. While there are several older subdivisions scattered throughout the area that may be difficult to redevelop, most of this area is comprised of larger parcels suitable for development at urban densities, with mixed use and employment uses. The terrain for most of the area is gently rolling, and there are no floodplains, steep slopes, or landslide topography that would limit development potential.
- 2) There is sufficient development capacity to assist in supporting a healthy economy. The eastern part of this area, in particular, is characterized by larger parcels, with few development limitations, that are suitable for development of employment uses.
- 3) The Damascus South Urban Reserve can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers. There have been no comments from local school districts indicating any specific concerns regarding provision of schools to this area, although funding for schools is an issue throughout the region. Technical assessments rate this area as having “high suitability” for the provision of sewer. Addition of the eastern part of this Urban Reserve will facilitate the provision of sewer to the existing urban area within the City of Damascus. ClackCo Rec. 795- 796. This area is rated as having “high and medium suitability” for the provision of water. The ability to provide transportation facilities is rated as “medium” for this area, which has few physical limitations. ClackCo Rec. 797-798.
- 4) The Damascus South Urban Reserve can be developed with a walkable, connected system of streets, bikeways, recreation trails and public transit, provided by appropriate service providers. As previously explained, the physical characteristics of this area will be able to support urban densities and intensities necessary to create a multi-modal transportation system. Previous planning efforts, including the Damascus Concept Plan, demonstrate this potential.
- 5) Development of the Damascus South Urban Reserve can preserve and enhance natural ecological systems. The boundaries of this Urban Reserve avoid the steeper terrain of the Clackamas Bluffs and the Deep Creek Canyon. The area is large enough to provide the opportunity for flexibility in the regulatory measures that create the balance between protection of important natural systems and development.
- 6) The Damascus South Urban Reserve includes sufficient land suitable for a range of needed housing types. As previously explained, there are few physical impediments to development in this Urban Reserve. This area also is adjacent to the developing urban area of Damascus, which also will be providing housing for this area.

- 7) There are no important natural landscape features identified Metro's 2007 "Natural Landscape Features Inventory" located in the Damascus south Urban Reserve. The boundaries of this Urban Reserve are designed to exclude such features from the Urban Reserve.
- 8) Development of this Urban Reserve can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves. This area is identified as Conflicted Agricultural Land, primarily because it is physically isolated from other nearby agricultural land. The Deep Creek and Noyer Creek canyons provide a physical boundary from nearby agricultural areas to the east. Similarly, these areas, and the Clackamas Bluffs, are not identified as areas where significant forest operations are occurring.

Urban Reserves 3B, 3C, 3D, 3F and 3G: Holcomb, Holly Lane, Maple Lane, Henrici, Beaver Creek Bluffs in Oregon City Area.

*General Description:* These five areas comprise approximately 2150 acres, located adjacent to the City of Oregon City. The Holcomb area is approximately 380 acres, along SE Holcomb Rd., adjacent to Oregon City on the east. Terrain is varied, with several flat parcels that could be developed in conjunction with the Park Place area, which was recently included in the Urban Growth Boundary. This area is developed with rural residences. The area is comprised of Conflicted Agricultural Land.

The Holly Lane area is approximately 700 acres, and includes the flatter parcels along SE Holly Lane, Hwy. 213, and the steep canyon bordering Newell Creek, which is identified as an important natural landscape feature in Metro's February 2007 "Natural Landscape Features Inventory". There are landslide areas identified along the Newell Creek canyon (see Metro Urban and Rural Reserve Study Areas Landslide Hazard Map). Development in this area is sparse, except for rural residences developed along SE Holly Lane. This area is identified as Conflicted Agricultural Land.

The Maple Lane area is approximately 480 acres, located east of Oregon City. Terrain is characterized as gently rolling, with a few larger flat parcels located adjacent to Oregon City. The area is developed with rural residences, with a few small farms. The area is identified as Conflicted Agricultural Land.

The Henrici area is approximately 360 acres, located along both sides of Henrici Road., immediately south of Oregon City. Terrain for this area is moderate, and most of the area is developed with residences on smaller rural lots. There are a few larger parcels suitable for redevelopment. This area contains Conflicted Agricultural Land.

The 220 acre Beaver Creek Bluffs area is comprised of three separate benches located immediately adjacent to the City of Oregon City. The boundaries of this area generally are designed to include only tax lots on the plateau that drops down to Beaver Creek. Development in this area consists of rural residences and small farms. The area is identified as Important Agricultural Land.

*Conclusions and Analysis:* Designation of the Oregon City Urban Reserves is consistent with OAR 660-027. These five smaller areas have been identified in coordination with the City of Oregon City, and are designed to complete or augment urban development in the City. The areas designated take advantage of existing services inside the Urban Growth Boundary. In most cases, the boundaries of the reserves are formed by steep slopes (Henrici Road being the exception). While terrain poses some limitations on development, each area has sufficient developable land to make service delivery feasible.

None of the identified areas meet the factors of OAR 660-027-0060, for designation as Rural Reserves. With the exception of the Beaver Creek Bluffs, the Oregon City Urban reserve is Conflicted Farmland. The Beaver Creek Bluffs area, which is identified as having Important Agricultural Land, includes only those tax lots with land located on the plateau above the flatter area south of Oregon City. The important natural landscape features in the area (Newell Creek, Abernethy Creek and Beaver Creek) generally are excluded from the Urban Reserve.

The most significant issue for debate is whether or not to include the Newell Creek Canyon in the Urban Reserve. There is little or no development potential in this area, because of steep terrain and landslide hazard. The Principles recognize that concept planning for this area will have to recognize the environmental and topographic constraints posed by the Newell Creek Canyon. It also makes governance more sensible, allowing the City of Oregon City to regulate this area, instead of leaving an island subject to County authority.

Designation of the Oregon City Reserves is consistent with OAR 660-027-0050.

- 1) The Oregon City Urban Reserves can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments. All of the Urban Reserve area is adjacent to the City of Oregon City. Oregon City has indicated both a willingness and capability to provide service to these areas. Each area is appropriate to complement or complete neighborhoods planned or existing within Oregon City. In the case of the Holly Lane area, much of the Urban Reserve has little potential for development. The area along SE Holly Lane, however, does have flatter topography where urban development can occur, and Holly Lane has been identified by the City as an important transportation facility.
- 2) The Oregon City Urban Reserves, when considered in conjunction with the existing urban area, includes sufficient development capacity to support a healthy economy. The Henrici area has some potential for additional employment uses. The remaining areas are smaller additions to the existing urban form of the City of Oregon City and will complete existing neighborhoods.
- 3) The Oregon City Urban Reserve can be efficiently and cost-effectively provided with public facilities necessary to support urban development. This Urban Reserve Area is considered to have a “high” suitability rating for sewer and water facilities. Oregon City has indicated an ability to provide these services, and the areas have been designed to include the most-easily served land that generally is an extension of existing development with the Urban Growth Boundary. Transportation is more difficult, as there is no additional capacity on I-205, and improvements would be costly. As previously noted,

this is the case for most of the region. While topography may present some difficulty for developing a complete transportation network, this Urban Reserve area has been designed to take advantage of existing transportation facilities within Oregon City.

- 4) Most of the Oregon City Urban Reserve can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and transit. In most cases, development of this area will be an extension of urban development within the existing neighborhoods of Oregon City, which will allow completion of the described urban form. Newell Creek Canyon will remain largely undeveloped, so such facilities will not need to be provided in this area.
- 5) The Oregon City Urban Reserve can be planned so that natural ecological systems and important natural landscape features can be preserved and enhanced. Abernethy Creek and Beaver Creek and the steep slopes around these two creeks have been excluded from designation as an Urban Reserve. As previously explained, the Newell Creek Canyon has been included in the Urban Reserve. The Principles will assure that concept planning accounts for this important natural landscape feature, the area is recognized as having very limited development potential, and Oregon City is the logical governing authority to provide protective regulations.
- 6) Designation of these five areas as an Urban Reserve will assist Oregon City in providing a range of housing types. In most cases, development of this Urban Reserve will add additional housing.
- 7) Concept planning for the Oregon City Urban Reserve can be designed to avoid or minimize adverse effects on important farm and forest practices and on important natural landscape features on nearby land. The Beaver Creek Bluffs area is separated from the farmland to the south by a steep hillside sloping down to Beaver Creek. The other areas are adjacent to Conflicted Agricultural land. There are scattered small woodlots to the east, identified as “mixed Agricultural/Forest Land on ODF’s Forestland Development Zone Map, but these are generally separated by distance and topography from the Holly Lane, Maple Lane, and Holcomb areas. Important landscape features and natural areas in the vicinity generally form boundaries for the Urban Reserves. Concept planning can assure that development within the Urban Growth Boundary protects these features.

#### Urban Reserves 4A, 4B and 4C: Stafford, Rosemont and Borland

*General Description:* These three areas comprise approximately 4,700 acres. Area 4A (Stafford) is located north of the Tualatin River, south of Lake Oswego, and west of West Linn. Area 4B (Rosemont) is a 162 acre area located adjacent to West Linn’s recently urbanized Tanner Basin neighborhood. Area 4C (Borland) is located south of the Tualatin River, on both sides of I-205. Area 4C is adjacent to the cities of Tualatin and Lake Oswego on the west and West Linn on the east. As a whole, this area is bounded by existing cities and urban development on three sides. The southern boundary generally is framed by the steeper terrain of Pete’s Mountain. East of Stafford Road, the adjacent area is not designated as either an Urban or Rural Reserve. West of Stafford Road, the adjacent area is designated as an Urban Reserve (Area 4D, Norwood).

Much of this area is developed with rural residences on large parcels. The Borland area also includes several churches and schools. The terrain of this area is varied. Most of area 4B is gently rolling, while the rest of the area east of Wilson Creek has steeper terrain. The area south of Lake Oswego, along Stafford Rd and Johnson Rd., generally has more moderate slopes. The Borland area, south of the Tualatin River, also is characterized by moderate slopes.

Wilson Creek and the Tualatin River are important natural landscape features located in this area. These two features and their associated riparian areas and floodplains are included in Metro's February 2007 "Natural Landscape Features Inventory".

This entire area is identified as Conflicted Agricultural Land, even though approximately 1100 acres near Rosemont Road are zoned Exclusive Farm Use. Commercial agricultural activity in this area is limited and mixed; wineries, hay production, horse raising and boarding, and nurseries are among the farm uses found in the Stafford, Rosemont and Borland areas. The Oregon Department of Forestry Development Zone Map does not identify any Mixed Forest/Agriculture or Wildland Forest located with this Urban Reserve.

*Conclusions and Analysis:* After weighing the factors, we find that the designation of these three areas as an Urban Reserve is consistent with OAR 660-027-0050. The specific factors for designation stated in OAR 660-027-0050 are addressed in following parts of this analysis.

No area in Clackamas County engendered as much public comment and diversity of opinion as this Urban Reserve. The Stafford and Rosemont areas were of particular concern to property owners, neighborhood groups, cities and the Stafford Hamlet citizens group. Interested parties provided arguments for designation of some or all of the area north of the Tualatin River as either an Urban or Rural Reserve, or requested that this area remain undesignated. The cities of West Linn, Tualatin and Lake Oswego consistently expressed opposition to designation of any of this area as an Urban Reserve. This Urban Reserve does have several limitations on development, including areas with steep slopes and floodplains.

After weighing the factors, designation as an Urban Reserve is the most appropriate decision. In evaluating this area, it is important to keep in mind the context and purpose of the urban and rural reserves designations. Because urban reserves are intended to provide a land supply over a 50-year time horizon, it is important to evaluate areas based on their physical characteristics rather than the current desires of various jurisdictions. It is also important to evaluate areas in light of the overall regional context. Designation of this 4,700 acre area as an Urban Reserve avoids designation of other areas containing Foundation or Important Agricultural Land. It would be difficult to justify urban reserve designations on additional Foundation Agricultural Land in the region, if this area, which is comprised entirely of Conflicted Agricultural Land, were not designated as an Urban Reserve (see OAR 660-027-0040(11)).

In fact, the three counties have applied the rural reserve factors and designated significant portions of the three-county area as rural reserve. Those areas do not provide viable alternatives to Stafford.

While acknowledging that there are impediments to development in this area, much of the area also is suitable for urban-level development. There have been development concepts presented for various parts of this area. ClackCo Rec. 3312. An early study of this area assessed its



potential for development of a “great community” and specifically pointed to the Borland area as an area suitable for a major center. ClackCo Rec. 371. Buildable land maps for this area provided by Metro also demonstrate the suitability for urban development of parts of this Urban Reserve See, “Metro Urban Study Area Analysis, Map C”. The County was provided with proposed development plans for portions of the Stafford area. For example, most of the property owners in the Borland have committed their property to development as a “town center community.” ClackCoRec. 3357-3361. Another property owner completed an “Urban Feasibility Study” showing the urban development potential of his 55-acre property. ClackCo Rec. 3123-3148. Those plans provide examples of the ability to create urban-level development in the Stafford areas.

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

Designation of this area as a Rural Reserve has been advocated by interested parties, including the City of West Linn. Application of the factors for designation (OAR 660-027-0060) leads to a conclusion that this area should not be designated as a Rural Reserve. The entire area is comprised of Conflicted Agricultural Land, and is not suitable to sustain long-term agricultural and forestry operations, given land use patterns, the lack of agricultural infrastructure and the adjacent land use pattern. OAR 660-027-0060(b)-(d).

There are important natural landscape features in this area (Tualatin River and Wilson Creek). Protection of these areas is a significant issue, but can be accomplished by application of regulatory programs of the cities that will govern when areas are added to the Urban Growth Boundary, as contemplated by OAR 660-027-0050(7). The Principles specifically require recognition of the development limitations imposed by these natural features, in the required development of concept plans.

Designation of the Stafford, Rosemont and Borland areas as an Urban Reserve is based upon application of the factors stated in OAR 660-027-0050.

- 1) This Urban Reserve can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments in conjunction with land inside the urban growth boundary. Physically, this area is similar to the cities of West Linn and Lake Oswego, which are developing at urban densities. The area abuts existing urban development on much of the perimeter, facilitating logical extensions of that development. We recognize that the development potential of portions of this Urban Reserve is constrained by steep slopes and by the Tualatin River and Wilson Creek riparian areas. However, there are sufficient developable areas to create an urban community. The Borland Area has been identified as a suitable site for more intense urban development, including a town center. The Rosemont Area complements existing

development in the Tanner Basin neighborhood in the City of West Linn. The Stafford Area has sufficient capacity to develop housing and other uses supportive of the more intense development in the Borland Area. As previously noted, potential development concepts have been submitted demonstrating the potential to develop this area at urban densities sufficient to make efficient use of infrastructure investments.

- 2) This 4700-acre Urban Reserve contains sufficient development capacity to support a healthy economy. The Borland Area has been identified as being suitable for a mixed-use, employment center. ClackCo Rec. 371. There are a number of larger parcels in the area which may have potential for mixed use development. While densities would not be uniform across the landscape of this 4700 acre area, together, Stafford and Borland provide the opportunity to create a mix of uses, housing types and densities where the natural features play a role as amenities.

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

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

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

- 3) This Urban Reserve can be efficiently and cost-effectively served with public schools and other urban- level public facilities and services by appropriate and financially capable service providers over a 50-year horizon. As with all of the region’s urban reserves, additional infrastructure will need to be developed in order to provide for urbanization. It is clear that development of new public infrastructure to accommodate 50 years of growth will not be “cheap” anywhere. Relative to other areas under consideration for

designation, however, this Urban Reserve area is suitable. Technical assessments rated this area as highly suitable for sewer and water. ClackCo Rec. 795-796; Metro Rec. 1163, 1168-1180. The July 8, 2009, technical memo prepared by Clackamas County also demonstrates the suitability of this area for various public facilities. ClackCo Rec. 704. This area can be served by the cities of Tualatin, West Linn and Lake Oswego. These cities have objected to designation of this area as an Urban Reserve, but have not stated that they object because they would not be able to be an urban service provider for some part of the area.

The cities of Tualatin and West Linn argue that the area should not be designated as an Urban Reserve, citing the cost of providing transportation infrastructure. It is true that transportation infrastructure will be the most significant challenge. This is the case for most of the region. ODOT noted that most area state highway transportation corridors have either low or medium potential to accommodate growth. (*Clackamas County Record* 800 – 801). An April 6, 2009 letter from six state agencies to the Metro Reserves Steering Committee notes that most transportation corridors have severe transportation issues. ClackCo Rec. 843. Moreover, we make this decision after consideration of regional consideration of relative transportation costs. See, *Regional Infrastructure Analysis 2008, Metro Record, starting on page 440; Memo and Maps regarding Preliminary Analysis of Providing Urban Level Transportation Service within Reserves Study Area, Metro Rec., starting on page 1181; ODOT Urban Reserve Study Area Analysis, Metro Rec., page 1262.*

This Urban Reserve has physical characteristics – steep terrain, the need to provide stream crossings – that will increase the relative cost of transportation infrastructure. I-205 and I-5 in this area will need substantial improvements with consequent “huge” costs. ClackCo Rec. 850. However, considering those costs, and in light of reserves designations elsewhere in the region, urban reserves designation of Stafford is still appropriate. Most other comparable areas are either urban or rural reserves, and don’t provide viable alternatives to Stafford.

Cities argue that the 2035 Regional Transportation Plan (“RTP”) indicates that much of the transportation infrastructure in the area will be at Level of Service “F” by 2035, and that therefore the Stafford area cannot be served at all. The RTP is a prediction of and plan to address traffic flows for a 25-year period. Conversely, the Reserves Designations are intended to address a 50-year time frame, rather than a 25-year time frame. Metro Rec. 1918. The record reflects that the transportation system will necessarily change in 25 years. In that vein, the “Regional High Capacity Transit System” map identifies a new light rail line in the vicinity of I-205 as a “next phase” regional priority. See ClackCo Rec. 734; 822-833.

Similarly, Metro’s panel of sewer experts rated the entire Stafford area as having a “high” suitability for sewer service. See, e.g., Metro Rec. 1174. We find this analysis more probative for comparisons across areas than the analysis submitted by cities. Moreover, since the analysis of urban reserves addresses a 50-year time frame, we do not find that the current desire of neighboring cities to serve the area influences the question whether the area “can be served.”

- 4) This Urban Reserve can be planned to be walkable, and served with a well-connected system of streets, bikeways, recreation trails and public transit, *particularly in conjunction with adjacent areas inside the urban growth boundary* as contemplated by the administrative rule. The Borland Area is suitable for intense, mixed-use development. Other areas suitable for development also can be developed as neighborhoods with the above-described infrastructure. The neighborhoods themselves can be walkable, connected to each other, and just as important, connected to existing development in the adjacent cities. Stafford abuts existing urban level development on three sides, much of it subdivisions. See *West Linn Candidate Rural Reserve Map*, indexed at Metro Record 2284, and submitted by the city with its objection. There are few areas in the region which have the potential to create the same level and type of connections to existing development. There is adequate land to create street, bicycle and pedestrian connections within and across the area with appropriate concept planning. In making this finding, we are aware of the natural features found within the area. However, those features do not create impassable barriers to connectivity.
- 5) This Urban Reserve can be planned to preserve and enhance natural ecological systems and preserve important natural landscape features. The significance of the Tualatin River and Wilson Creek systems has been recognized. The Principles specifically identify the need to plan for these features, and recognize that housing and employment capacity expectations will need to be reduced to protect important natural features. Urbanization will occur in a city, which is obligated by state and regional rules to protect upland habitat, floodplains, steep slopes and riparian areas, as contemplated by OAR 660-027-0050(7). However, we find that, even with those protections, there is sufficient development capacity in this 4700-acre area to warrant inclusion in the urban reserve.
- 6) This Urban Reserve in conjunction with the Urban Reserve to the south (Area 4D, Norwood), includes sufficient land to provide for a variety of housing types. In addition to the developable areas within the Stafford, Rosemont and Borland areas, this Urban Reserve is situated adjacent to three cities, and will augment the potential for housing in these existing cities.
- 7) This Urban Reserve can be developed in a way that avoids or minimizes adverse effects on farm and forest practices and adverse effects on important natural landscape features, on nearby land. Viewed in the regional context, this factor militates strongly in favor of the inclusion of Stafford as an Urban Reserve. This Urban Reserve is situated adjacent to three cities, and along I-205. It is identified as Conflicted Agricultural Land, and is adjacent on the south to another Urban Reserve and an undesignated area that is comprised of Conflicted Agricultural Land. The Stafford area is separated from areas of foundation and important farmland by significant distances, a freeway and other natural and man-made barriers. The eventual urbanization of Stafford will avoid the urbanization of much higher-value farmland elsewhere. Adverse impacts on the important natural landscape features within Stafford may be avoided or minimized through the application of the provisions of Metro Titles 3 and 13.

This separation from significant agricultural or forest areas minimizes any potential effect on farm or forest practices. The Urban Reserve also is separated from other important natural landscape features identified on Metro's February 2007 "Natural Landscape Features Inventory". The ability to plan for protection of the Tualatin River and Wilson Creek has been discussed.

#### Urban Reserves 5G, 5H, 4H and 4D: Grahams Ferry, SW Wilsonville, Advance and Norwood

*General Description:* This Urban Reserve is comprised of three smaller areas adjacent to the City of Wilsonville (Grahams Ferry, SW Wilsonville and Advance), and a larger area located along SW Stafford Rd., north of Wilsonville and southeast of Tualatin (Norwood Area). The Norwood area is adjacent to an Urban Reserve in Washington County (I-5 East Washington County, Areas 4E, 4F and 4G). Area 5G is approximately 120 acres, relatively flat, adjacent to services in Wilsonville, and defined by the Tonquin Geologic Feature, which forms a natural boundary for this area. It is identified as Conflicted Agricultural Land.

Area 5H is a small (63 acre) site that is adjacent to services provided by the City of Wilsonville. Corral Creek and its associated riparian area provide a natural boundary for this area. It is identified as Important Farmland. Area 4H comprises approximately 450 acres, and is located adjacent to the City of Wilsonville. This part of the Urban Reserve has moderate terrain, and a mix of larger parcels and rural residences. This area is identified as Important Agricultural Land.

Area 4D comprises approximately 2,600 acres, and is adjacent to a slightly smaller Urban Reserve in Washington County. This area is parcelized, generally developed with a mix of single family homes and smaller farms, and has moderately rolling terrain. All of this area is identified as Conflicted Agricultural Land.

*Conclusions and Analysis:* Designation of these four areas as Urban Reserve is consistent with OAR 660-027. The three smaller areas are adjacent to the City of Wilsonville, and have been identified by the City as appropriate areas for future urbanization. ClackCo Rec.1174. The boundaries of these three areas generally are formed by natural features. No Foundation Agricultural Land is included in any of the four areas. While Area 4D has limitations that reduce its development potential, inclusion as an Urban Reserve is appropriate to avoid adding land that is identified as Foundation Agricultural Land.

Area 5G does not satisfy the factors for designation as a Rural Reserve. The boundary of this area reflects the boundary of Tonquin Geologic Area, which is an important natural landscape feature identified as a Rural Reserve. Area 5H does meet the factors for designation as a Rural Reserve, but its proximity to existing services in Wilsonville and the natural boundary formed by Corral Creek, separating these 63 acres from the larger Rural Reserve to the west, support a choice to designate this area as an Urban Reserve.

Similarly, parts of Area 4H could meet the factors for designation as a Rural Reserve. Again, the area also is suitable for designation as an Urban Reserve, because of its proximity to Wilsonville, which has indicated this as an area appropriate for urbanization. The eastern limits of this area have been discussed in some detail, based on testimony received from property owners in the area. The northeastern boundary (the Anderson property) is based on a significant creek. South of Advance Rd., the decision is to leave four tax lots west of this creek undesignated (the Bruck

property), as these lots comprise over 70 acres of land designated as Important Agricultural Land. The part of this Urban Reserve south of Advance Road contains smaller lots, generally developed with rural residences.

Area 4D does not meet the factors for designation as a Rural Reserve. The entire area is comprised of Conflicted Agricultural Land, and has no important natural landscape features identified in Metro's February 2007 "Natural Landscape Features Inventory."

This Urban Reserve does meet the factors for designation stated in OAR 660-027-0050.

- 1) The Wilsonville Urban Reserve (total of the Grahams Ferry, SW Wilsonville, Advance Rd. and Norwood Areas) can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments. The three smaller areas adjacent to the City of Wilsonville all will take advantage of existing infrastructure. The City of Wilsonville has demonstrated an ability to provide necessary services and govern these three areas. The information provided by the City and Metro's Urban Study Area Analysis (Map C1) show that these three areas have physical characteristics that will support urban density. These three areas also will complement existing development in the City of Wilsonville.
- 2) The larger Norwood area, which has rolling terrain, and a mixture of smaller residential parcels and farms, will be more difficult to urbanize. This area is adjacent to Urban Reserves on the west, north and south. The Borland Road area, adjacent on the north is expected to develop as a center, with potential for employment and mixed-use development. The Norwood area can be urbanized to provide residential and other uses supportive of development in the Borland and I-5 East Washington County Urban Reserve areas.
- 3) The Wilsonville Urban Reserve contains land that generally will provide development capacity supportive of the cities of Wilsonville and Tualatin, and the Borland and I-5 East Washington County Urban Reserve areas. Viewed individually, these four areas do not have physical size and characteristics to provide employment land. As has been explained, and as supported by comments from the City of Wilsonville, development of these areas will complement the urban form of the City of Wilsonville, which historically has had sufficient land for employment. The 2004 decision added to the Urban Growth Boundary between the cities of Wilsonville and Tualatin, land which was contemplated to provide additional employment capacity. The Wilsonville Urban Reserve, and in particular the Norwood area, will provide land that can provide housing and other uses supportive of this employment area.
- 4) The Wilsonville Urban Reserve can be efficiently and cost-effectively provided with public facilities necessary to support urban development. The comments from the City of Wilsonville and the Sewer Serviceability and Water Serviceability Maps demonstrate the high suitability of the three smaller areas adjacent to Wilsonville. The Norwood area (Area 4D) is rated as having medium suitability. Transportation facilities will be relatively easy to provide to the three areas adjacent to the City of Wilsonville. The steeper terrain and location of the Norwood area will make development of a network of

streets more difficult, and ODOT has identified the I-5 and I-205 network as having little or no additional capacity, with improvement costs rated as “huge”. The decision to include this area as an Urban Reserve is based, like the Stafford area, on the need to avoid adding additional Foundation Agricultural Land. There are other areas in the region that would be less expensive to serve with public facilities, especially the necessary transportation facilities, but these areas are comprised of Foundation Agricultural Land.

- 5) The Wilsonville Urban Reserve areas can be planned to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit. As has been discussed, the three smaller areas adjacent to the City of Wilsonville can be developed to complete or complement existing and planned urban development in Wilsonville. The Norwood area will be somewhat more difficult to develop, but the terrain and parcelization are not so limiting that the desired urban form could not be achieved. Like Stafford, this part of the Wilsonville Urban Reserve will be more difficult to develop with the desired urban form, but is being added to avoid adding additional foundation Agricultural Land.
- 6) The Wilsonville Urban Reserve can be planned so that natural ecological systems and important natural landscape features can be preserved and enhanced. The boundaries of the areas comprising the Wilsonville Urban Reserve have been designed with these features providing the edges. The three areas adjacent to the City of Wilsonville will take advantage of existing plans for protection of natural ecological systems.
- 7) The Wilsonville Urban Reserve, in conjunction with land within adjacent cities, includes sufficient land suitable to provide for a range of housing types. The SW Wilsonville and Advance Road areas are particularly suited to provide additional housing, as they are located adjacent to neighborhoods planned in Wilsonville. As has been previously discussed the Norwood area has physical limitations, but these should not restrict as substantially the potential for housing.
- 8) Concept planning for the Wilsonville Urban Reserve can avoid or minimize adverse effects on important farm and forest practices and on important natural landscape features on nearby land. The boundaries of this Urban Reserve have been designed to use natural features to provide separation from adjoining Rural Reserves that contain resource uses.

The Sherwood School District requested an Urban Reserve designation be applied to an area just south of the County line and the City of Sherwood. ClackCo Rec. 2504. Clackamas County and Metro agree to leave this area undesignated. This decision leaves the possibility for addition of this land to the Urban Growth boundary if the School District has a need for school property in the future and is able to demonstrate compliance with the standards for adjustments to the Urban Growth boundary.

## **C. Clackamas County: Rural Reserves**

### **Rural Reserve 5I: Ladd Hill**

*General Description:* This Rural Reserve Area is located west and south of Wilsonville, and adjacent to the French Prairie Rural Reserve (Area 4J). There is also a small part of this Rural Reserve located north of Wilsonville, extending to the County line, recognizing the Tonquin Geologic Area. The northern boundary of Area 5J is located along the boundary between the delineations of Conflicted and Important Agricultural Land. All of this Rural Reserve is located within three miles of the Portland Metro Urban Growth Boundary.

The area west of Ladd Hill Road contains the steeper slopes of Parrett Mountain, which is identified as an important natural landscape feature in Metro's February 2007 "Natural Landscape Features Inventory". The remainder of the area has moderately sloping terrain. The entire area is traversed by several creeks (Mill Creek, Corral Creek, Tapman Creek), which flow into the Willamette River, which also is identified as an important natural landscape feature. FEMA floodplains are located along the Willamette River. Landslide hazards are identified along Corral Creek.

With the exception of the Tonquin Geologic Area, all of Rural Reserve Area 5I is comprised of Important or Foundation Agricultural Land. The part of this area lying south of the Willamette River contains the Foundation Agricultural Land. The area contains a mixture of hay, nursery, viticulture, orchards, horse farms, and small woodlots. The Oregon Department of Forestry Development Zone Map identifies scattered areas of mixed forest and agriculture, and wildland forest (particularly on the slopes of Parrett Mountain).

*Conclusions and Analysis:* Designation of the Ladd Hill area as a Rural Reserve is consistent with OAR 660, Division 27. Except for the Tonquin Geologic Area, all of Rural Reserve Area 5I contains Important or Foundation Agricultural Land, and is located within three miles of an urban growth boundary. Pursuant to OAR 660-027-0060(4), no further explanation is necessary to justify designation as a Rural Reserve, with the exception of the Tonquin Geologic Area, which is identified as Conflicted Agricultural Land.

Designation of the Tonquin Geologic Area as a Rural Reserve is consistent with the Rural Reserve Factors stated in OAR 660-027-0060(3). This area has not been identified as an area suitable or necessary for designation as an Urban Reserve. The boundaries of the Rural Reserve have been established to recognize parcels that have physical characteristics of the Tonquin Geologic Area, based on testimony received from various property owners in the area, and the City of Wilsonville. ClackCo Rec. 2608. For these stated reasons and those enunciated below, designation of this part of the Tonquin Geologic Area as a Rural Reserve is consistent with the factors provided in OAR 660-027-0060(3).

### **Rural Reserve 4J: French Prairie**

*General Description:* This Rural Reserve Area is located south of the Willamette River and the City of Wilsonville, and west of the City of Canby. It is bordered on the west by I-5. This area is generally comprised of large farms. The area is generally flat. The Molalla and Pudding Rivers are located in the eastern part of this area. The Willamette, Molalla and Pudding Rivers



and their floodplains are identified as important natural landscape features in Metro’s February 2007 Natural Landscape Features Inventory.”

All of this Rural Reserve is classified as Foundation Agricultural Land (identified in the ODA Report as part of the Clackamas Prairies and French Prairie areas). This area contains prime agricultural soils, and is characterized as one of the most important agricultural areas in the State.

*Conclusions and Analysis:* Designation of Area 4J as a Rural Reserve is consistent with OAR 660, Division 27. This entire area is comprised of Foundation Agricultural Land located within three miles of an urban growth boundary. Pursuant to OAR 660-027-0060(4), no further explanation is necessary to justify designation of this area as a Rural Reserve.

However, county staff and the PAC also evaluated the French Prairie area under the other rural reserves factors, and found that it rated “high” under all of the factors related to long-term protection for the agriculture and forest industries. ClackCo Rec. 590-592. The analysis is set forth as follows:

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

The French Prairie area is adjacent to the Portland Metropolitan Urban Growth Boundary, and has access to Interstate 5 and Highway 99E, and has a high potential for urbanization, as evidenced by the submittals of proponents of designating the area as an urban reserve.

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

The French Prairie area is identified as Foundation agricultural land, and is part of a large agricultural region.

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

The area is predominantly Class II soils, and much of the area has water rights for irrigation.

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

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

The French Prairie area is a large block of agricultural land with large parcels. There is some localized conflict with nonfarm uses.

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

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

The Willamette River provides an effective edge for much of the area, and much of the area is in large lots.

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

The French Prairie area is close to the agricultural centers of Canby, Hubbard and St. Paul, and has excellent access to transportation infrastructure. There are some issues with movement of farm machinery on heavily used routes.

Therefore, on balance, we would designate Area 4J as a rural reserve even in the absence of OAR 660-027-0060(4).

#### Rural Reserves 3E and 3H: Oregon City

*General Description:* This area lies east and south of the City of Oregon City. This area is bounded by the Willamette River on the west. The southern boundary generally is a line located three miles from the Portland Metro Area Urban Growth Boundary. A substantial part of Area 3H also is located within three miles of the City of Canby's Urban Growth Boundary.

Area 3E, located east of Oregon City, is characterized by a mix of rural residential homesites, small farms, and small woodlots. Most of the area has a moderately rolling terrain. The area includes portions of the Clear Creek Canyon, and Newell and Abernethy Creeks, all of which are identified as important natural landscape features in Metro's February 2007 "Natural Landscape Features Inventory". Part of Area 3E also is identified by the Oregon Department of Forestry as a mixed forest/agricultural development zone. Most of Area 3E is identified as Conflicted Agricultural Land. There is an area identified as Important Agricultural Land, in the southeast corner of Area 3E.

Area 3H, located south of Oregon City, is characterized by larger rural residential homesites, particularly in the western part of this area, and farms. Beaver Creek and Parrot Creek traverse this area in an east-west direction. The Willamette Narrows and Canemah Bluff are identified as important natural landscape features in the Metro's February 2007 "Natural Landscape Features Inventory" and form the western boundary of Area 3H. The Oregon Department of Forestry designates the Willamette Narrows as wildland forest. All of this area is classified as Important Agricultural Land, except for the area immediately east of the City of Canby, which is designated as Foundation Agricultural Land.

*Conclusions and Analysis:* The designation of Areas 3E and 3H as a Rural Reserve is consistent with OAR 660-027, Division 27. All of Area 3H is Important or Foundation Farmland, located within three miles of an urban growth boundary. Pursuant to OAR 660-027-0060(4), no further explanation is necessary to justify designation of Area 3H as a Rural Reserve.

The designation of Area 3E is appropriate to protect the Important Farm Land in the southeast corner of this area, and the area identified as mixed forest/agricultural land by ODF. Designation as a Rural Reserve also is justified to protect Abernethy Creek, Newell Creek and Beaver Creek and their associated riparian features, which are identified as important natural landscape features. Designation as a Rural Reserve of the portions of Area 3E not identified as Foundation or Important Agricultural Land, is consistent with the Rural Reserve Factors stated in OAR 660-027-0060(3), for the following reasons:

- 1) Abernethy Creek and Newell Creek and their associated riparian areas are identified as important natural landscape features in Metro's February 2007 "Natural Landscape Features Inventory". A portion of Beaver Creek also is located in this area; Beaver Creek was added to this inventory in a 2008 update.
- 2) This area is potentially subject to urbanization during the period described in OAR 660-027-0040(2), because it is located adjacent to and within three miles of the City of Oregon City.
- 3) Most of this area has gently rolling terrain, but there also are several steeply-sloped areas. There are several landslide hazard areas located within Rural Reserve Area 3E (see 1/25/09 Metro Landslide Hazard Map).
- 4) The designated Rural Reserve area comprises the drainage area for Abernethy and Newell Creeks which provide important fish and wildlife habitat for this area.

#### Rural Reserves 3H (parts) 4J, 2C and 3I: Canby, Estacada and Molalla

*General Description:* Rural Reserves have been designated adjacent to the cities of Canby (parts of Areas 3H and 4J) Estacada and Molalla. These Rural Reserves were designated after coordinating with all three cities, and the cities do not object to the current designations.

Rural Reserve Area 2C is located adjacent to the western boundary of the City of Estacada. This area includes the Clackamas River and McIver State Park. It is identified as Important Agricultural Land. Most of this Rural Reserve also is identified as wildland forest on the ODF Forestland Development Zone Map. All of this Rural Reserve is located within three miles of Estacada's Urban Growth Boundary.

Rural Reserves are located on the south, west and eastern boundaries of the City of Canby. All of this area is identified as Foundation Agricultural Land. The area north of the City, to the Willamette River, has been left undesignated, although this area also is identified as Foundation Agricultural Land. This area was left undesignated at the request of the City of Canby, in order to provide for possible future expansion of its Urban Growth Boundary. The Oregon Department of Agriculture preferred leaving the area north of the City undesignated, instead of an area east of the City, which also was considered. All of the designated Rural Reserves are within three miles of the City of Canby.

Area 3I is located north and east of the City of Molalla. This area is located within 3 miles of Molalla's Urban Growth Boundary. All of the designated Rural Reserve is identified as Foundation Agricultural Land.

*Conclusions and Analysis:* Designation of the Rural Reserves around Canby and Estacada is consistent with OAR 660, Division 27. In the Case of Canby, the entire area is identified as Foundation Agricultural Land, and is located within three miles of Canby’s Urban Growth Boundary. In the case of Estacada, the entire Rural Reserve area is identified as Important Agricultural Land, and is located within three miles of Estacada’s Urban Growth Boundary. Rural Reserve 3I, near Molalla, is located within three miles of the urban growth boundary and also is identified as Foundation Agricultural Land. Pursuant to OAR 660-027-0060(4), no further explanation is necessary to justify the Rural Reserve designation of these areas.

Rural Reserve 4I: Pete’s Mountain/Peach Cove, North of the Willamette River

*General Description:* This Rural Reserve is bounded by the Willamette River on the east and south. On the north, Area 4I is adjacent to areas that were not designated as an Urban or Rural Reserve. There are two primary geographic features in this area. The upper hillsides of Pete’s Mountain comprise the eastern part of this area, while the western half and the Peach Cove area generally are characterized by flatter land. The Pete’s Mountain area contains a mix of rural residences, small farms and wooded hillsides. The flat areas contain larger farms and scattered rural residences. All of Area 4I is located within three miles of the Portland Metro Urban Growth Boundary.

All of Rural Reserve 4I is identified as Important Agricultural Land (the “east Wilsonville area”), except for a very small area located at the intersection of S. Shaffer Road and S. Mountain Rd... The Willamette Narrows, an important natural landscape feature identified in Metro’s February 2007 “Natural Landscape Features Inventory”, is located along the eastern edge of Area 4I.

*Conclusions and Analysis:* Designation of this area as a Rural Reserve is consistent with OAR 660-027, Division 27. With the exception of a small area at the intersection of S. Shaffer Rd. and S. Mountain Rd., all of this area is identified as Important Agricultural Land and is located within three miles of an urban growth boundary. Pursuant to OAR 660-027-0060(4), the area identified as Important Agricultural Land requires no further explanation to justify designation as a Rural Reserve. The few parcels classified as Conflicted Agricultural Land are included to create a boundary along the existing public road.

East Clackamas County Rural Reserve (Area 1E and Area 2B)

*General Description:* This area lies south of the boundary separating Clackamas and Multnomah Counties. This area generally is comprised of a mix of farms, woodlots and scattered rural residential homesites. Several large nurseries are located in the area near Boring. The area south of the community of Boring and the City of Damascus contains a mix of nurseries, woodlots, Christmas tree farms, and a variety of other agricultural uses.

Most of the area is identified as Foundation or Important Agricultural Land. The only lands not identified as Foundation or Important Agricultural Land are the steeper bluffs south of the City of Damascus. Much of this steeper area is identified by the Oregon Department of Forestry as mixed farm and forest.

There are several rivers and streams located in this area. The Clackamas River, Deep Creek, Clear Creek and Noyer Creek, and the steeper areas adjacent to these streams, are identified as

important natural landscape features in Metro’s February 2007 “Natural Landscape Features Inventory”.

All of this Rural Reserve is located within three miles of the Portland Metro Area Urban Growth Boundary, except for a small area in the eastern part of the Rural Reserve. This small area is located within three miles of the City of Sandy’s Urban Growth Boundary.

*Conclusions and Analysis:* The designation of this area as a Rural Reserve is consistent with OAR 660-027, Division 27. Except for the steep bluffs located adjacent to the Clackamas River, all of this area is identified as Foundation or Important Agricultural Land and is located within three miles of an urban growth boundary. Pursuant to OAR 660-27-0060(4), no further explanation is necessary to justify designation as a Rural Reserve all of this area except for the aforementioned bluffs.

Designation as a Rural Reserve of the steep bluffs, not identified as Foundation or Important Agricultural Land, is consistent with the Rural Reserve Factors stated in OAR 660-027-0060(3).

- 1) This area is included in Metro’s February 2007 “Natural Landscape Features Inventory”.
- 2) This area is potentially subject to urbanization during the period described in OAR 660-027-0040(2), because it is located proximate or adjacent to the cities of Damascus, Happy Valley, and Oregon City, and the unincorporated urban area within Clackamas County.
- 3) Portions of this area are located within the 100 year floodplain of the Clackamas River. Most of the area has slopes exceeding 10%, with much of the area exceeding 20%. Portions of the area along Deep Creek are subject to landslides.
- 4) This hillside area drains directly into the Clackamas River, which is the source of potable water for several cities in the region. The Rural Reserve designation will assist protection of water quality.
- 5) These bluffs provide an important sense of place for Clackamas County, particularly for the nearby cities and unincorporated urban area. Development is sparse. Most of the hillside is forested.
- 6) This area serves as a natural boundary establishing the limits of urbanization for the aforementioned cities and unincorporated urban area and the Damascus Urban Reserve Area (Area 2A).

#### **D. Clackamas County: Statewide Planning Goals**

##### Goal 1- Citizen Involvement

In addition to participation in Metro’s process, Clackamas County managed its own process to develop reserves recommendations:

## Policy Advisory Committee

The county appointed a 21-member Policy Advisory Committee (PAC) made up of 7 CPO/Hamlet representatives, 7 city representatives, and 7 stakeholder representatives. The PAC held 22 meetings in 2008 and 2009. The PAC made a mid-process recommendation identifying reserve areas for further analysis, and ultimately recommended specific urban and rural reserve designations. The PAC itself received significant verbal and written input from the public.

## Public Hearings

In addition to the meetings of the PAC, the county held a number of public hearings as it developed the ultimate decision on reserves:

### 2009

- Aug. 10: Planning Commission hearing on initial recommendations.
- Sept. 8: Board of County Commissioners (“BCC”) hearing on initial recommendations
- Feb. 25: BCC Hearing on Intergovernmental Agreement

### 2010

- March 8, 2010: Planning Commission hearing on plan and map amendments.
- April 21, 2010: BCC hearing on plan and map amendments
- May 27, 2010: BCC reading and adoption of plan and map amendments, and approval of revised IGA.

Through the PAC, Planning Commission and BCC process, the county received and reviewed thousands of pages of public comment and testimony.

## Goal 2 – Coordination

“Goal 2 requires, in part, that comprehensive plans be ‘coordinated’ with the plans of affected governmental units. Comprehensive plans are “coordinated” when the needs of all levels of government have been considered and accommodated as much as possible.’ ORS 197.015(5); *Brown v. Coos County*, 31 Or LUBA 142, 145 (1996).

As noted in the findings related to Goal 1, Clackamas County undertook continuous and substantial outreach to state and local governments, including formation of the Technical Advisory Committee. For the most part, commenting state agencies and local governments were supportive of the urban and rural reserve designations in Clackamas County. Where applicable, the specific concerns of other governments are addressed in the findings related to specific urban and rural reserves, below.

## Goal 3 - Agricultural Lands

The reserves designations do not change the county’s Plan policies or implementing regulations for agricultural lands. However, the designation of rural reserves constrains what types of

planning and zoning amendments can occur in certain areas, and therefore provide greater certainty for farmers and long-term preservation of agricultural lands.

#### Goal 4 - Forest Lands

The text amendment does not propose to change the county's Plan policies or implementing regulations for forest lands. However, the text does establish rural reserves, which constrain what types of planning and zoning amendments can occur in certain areas, for the purpose of providing greater certainty for commercial foresters and long-term preservation of forestry lands.

#### Goal 5 - Open Spaces, Scenic and Historic Areas, and Natural Resources

The text amendment does not propose to change the county's Plan policies or implementing regulations for natural resource lands. However, the text does establish rural reserves, which constrain what types of planning and zoning amendments can occur in certain areas, for the purpose of providing for long-term preservation of certain of the region's most important, identified natural features. The county has determined that other natural features may be better protected through an urban reserve designation, and the eventual incorporation of those areas into cities. In certain areas, for example Newell Creek Canyon, the protection of Goal 5 resources is enhanced by the adoption of planning principles in an Intergovernmental Agreement between the County and Metro.

#### Goal 9 - Economy of the State

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

#### Goal 10 - Housing

The proposed text amendment is consistent with Goal 10 because it, in itself, does not propose to alter the supply of land designated for housing. However, the text does establish urban reserves, which include lands suitable for both employment and housing. One of the urban reserve factors addressed providing sufficient land suitable for a range of housing types. In Clackamas County, there is an area identified as appropriate for a mixed use center including high intensity, mixed use housing (Borland area of Stafford) and many other areas suitable for other types of housing.

#### Goal 14 - Urbanization

The proposed text amendment is consistent with Goal 14. The program for identifying urban and rural reserves was designed to identify areas consistent with the requirements of OAR Chapter 660, Division 27. The text amendment does not propose to move the urban growth boundary or to change the county's Plan or implementing regulations regarding unincorporated communities. However, the amendment does adopt a map that shapes future urban growth boundary amendments by either Metro or the cities of Canby, Molalla, Estacada or Sandy.

## **VIII. SUPPLEMENTAL FINDINGS REGARDING THE DESIGNATION OF URBAN RESERVES IN CLACKAMAS COUNTY**

The findings in this Section VIII supplement the findings adopted by the Metro Council in Section VII.B regarding Clackamas County urban reserve areas 4A, 4B, 4C, and 4D (collectively referred to as “Stafford”). To the extent any of the findings in this section are inconsistent with other findings in this document that were previously adopted in 2011, the findings in this Section VIII shall govern.

### **A. Senate Bill 1011 and the Discretionary Urban Reserve Factors**

In 2007 the Oregon Legislature enacted Senate Bill 1011, authorizing Metro and the three counties to designate urban and rural reserves. Senate Bill 1011 was proposed by agreement among a broad coalition of stakeholders in response to widespread frustration regarding the existing process for Metro-area UGB expansions. In particular, the statutory requirements for UGB decisions often fostered inefficient and inflexible decision-making, because the hierarchy of lands listed in ORS 197.298 requires Metro to first expand the UGB onto the lowest quality agricultural lands regardless of whether those lands could be cost-effectively developed. Senate Bill 1011 addressed these problems by allowing Metro and the counties significant discretion to identify urban and rural reserves outside of the existing UGB as the areas where future UGB expansion will or will not occur over the next 50 years.

A primary goal of Senate Bill 1011 was to provide more flexibility to allow UGB expansions into areas that would be the most appropriate for urbanization. To accomplish that goal, the legislature authorized Metro and the counties to designate urban and rural reserve areas based on discretionary “consideration” of several nonexclusive “factors” designed to help determine whether particular areas are appropriate for development or for long-term protection. The legislature purposely did *not* create a list of mandatory approval criteria requiring findings that each standard must be satisfied. Rather, the reserve statute and rules allow Metro and the counties to consider and weigh each factor in order to reach an overall conclusion regarding whether a reserve designation is appropriate. All factors must be considered, but no single factor is determinative.

The factors that must be considered regarding the designation of urban reserves are described in the state rule as follows:

“When identifying and selecting lands for designation as urban reserves under this division, Metro shall base its decision on consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB:

- (1) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments;
- (2) Includes sufficient development capacity to support a healthy economy;



- (3) Can be served by public schools and other urban-level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers;
- (4) Can be designed to be walkable and served by a well-connected system of streets by appropriate service providers;
- (5) Can be designed to preserve and enhance natural ecological systems; and
- (6) Includes sufficient land suitable for a range of housing types;
- (7) Can be developed in a way that preserves important natural resource features included in urban reserves; and
- (8) Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves.”

After LCDC adopted rules implementing SB 1011 in January of 2008, Metro and the three counties began a two-year public process that included an extensive outreach effort bringing together citizens, stakeholders, local governments and agencies throughout the region. That process involved the application of the urban and rural reserve factors to land within approximately five miles of the UGB, and resulted in three IGAs being signed by Metro and each county in 2010 mapping the areas that were determined to be most appropriate as urban and rural reserves under the statutory factors. Clackamas County and Metro agreed that, under the factors, Stafford is an appropriate area for future urbanization.

### **B. Application of the Urban Reserve Factors Under *Barkers Five***

LCDC reviewed the reserve designations adopted by Metro and the counties and issued an acknowledgement order approving all reserves in August of 2012. Twenty-two parties filed appeals of LCDC’s order with the Oregon Court of Appeals, including the City of West Linn and the City of Tualatin (the “cities”). The cities argued that Stafford should not have been designated as urban reserve because it cannot be efficiently and cost-effectively served by transportation facilities and other public services. In support of that argument the cities pointed to projected future traffic conditions in the Stafford area as estimated by Metro’s 2035 Regional Transportation Plan (RTP).

The Court of Appeals issued the *Barkers Five* opinion in February of 2014, affirming LCDC’s decision on the majority of the 26 assignments of error raised by the opponents, and remanding on three issues. Regarding Stafford, the court rejected the cities’ argument that the eight urban reserve factors are mandatory criteria that must each be independently satisfied for each study area. Rather, the court held that the legislature’s intent was not to create approval standards, but rather “factors” to be considered, weighed and balanced in reaching a final decision.

However, the court agreed with the cities’ argument that Metro and LCDC failed to adequately respond to evidence cited by the cities in the 2035 RTP that traffic in the Stafford area was projected to exceed the capacity of certain roads by 2035. The court found that the cities had

presented “weighty countervailing evidence” that transportation facilities in the Stafford area could not support urbanization, and that LCDC and Metro failed to provide any “meaningful explanation” regarding why, in light of the cities’ conflicting evidence, the urban reserve designation was still appropriate for Stafford.

In addition to their argument regarding transportation facilities, the cities also argued that they had submitted evidence to Metro and LCDC showing that sewer and water services could not be cost-effectively extended to Stafford, and that Metro and LCDC also failed to adequately respond to that evidence. The Court of Appeals did not directly address this argument, because the court’s ruling regarding the transportation issues also requires consideration on remand of the cities’ evidence and argument regarding water and sewer services.

Significantly for purposes of these findings, the Court of Appeals upheld LCDC’s interpretation of the phrase “consideration of factors” in the statute and the urban reserve rules as being intended to apply in the same manner as the factors that apply to a decision regarding the location of a UGB expansion under Goal 14. The court agreed with LCDC that there are three key principles involved in the correct application of the urban reserve factors: (1) Metro must “apply and evaluate” each factor, (2) the factors must be “weighed and balanced as a whole,” with no single factor being determinative, and (3) based on the evaluation of each factor, and the weighing and balancing of all factors, Metro must “meaningfully explain” why an urban reserve designation is appropriate. *Barkers Five* at 300-301.

As correctly explained by LCDC and affirmed by the Court of Appeals, the statute and rules governing the designation of urban reserves provide significantly more discretion to Metro regarding the “consideration of factors” than the cities choose to believe. In their submittal to the Metro Council, the cities admit that the urban reserve factors are not approval criteria but assert that the factors do not call for “discretionary” decisions. Given the clear description of the decision-making process by the Court of Appeals it is difficult to understand why the cities do not believe that Metro is afforded discretion regarding its consideration of the factors.

As explained by the court, Metro’s obligation under the factors is to provide a written evaluation of each factor as it applies to an area, weigh and balance all factors as a whole, and then provide a meaningful explanation regarding its ultimate decision for designating the area. Under this methodology, Metro is not required to conclude that a particular area has a high ranking under each factor in order to find that an urban reserve designation is appropriate, so long as each factor is evaluated, all factors are balanced, and the conclusion is explained. In fact, Metro could conceivably conclude that Stafford completely fails under one or more of the factors, so long as Metro provides a meaningful explanation regarding why an urban reserve designation is nonetheless appropriate after all of the factors are “weighed and balanced” together. The very nature of a process that directs Metro to “weigh and balance” a list of factors against each other inherently involves the exercise of considerable discretion. Thus, Metro disagrees with the cities’ suggestion that Metro does not have significant discretion regarding its consideration of the urban reserve factors.

The following Section C of these findings describes the reasons why Metro again concludes that the Stafford area was correctly designated as an urban reserve area in 2011, utilizing the

direction provided by the Court of Appeals regarding the correct methodology for considering the urban reserve factors.

### **C. Reasons for Stafford Urban Reserve Designation**

The designation of Stafford as an urban reserve area was the culmination of a lengthy and collaborative regional process from early 2008 through 2010. Metro and the three counties formed committees, began a public involvement process, and established a Reserves Steering Committee to advise the Core 4 regarding reserves designations. The steering committee included 52 members and alternates representing interests across the region – business, agriculture, conservation groups, cities, service districts, and state agencies. Technical analysis regarding the application of the urban reserve factors to particular study areas was provided by specialized expert groups, including providers of water, sewer, transportation, education, and other urban services.

The four study areas that comprise what is collectively referred to as “Stafford” are shown on the map attached to this staff report as Attachment 1. More specifically, the four areas are known as Stafford (Area 4A), Rosemont (Area 4B), Borland (Area 4C) and Norwood (Area 4D). As shown on the map, Areas 4A, 4B, and 4C together comprise the “triangle” area that is adjacent to the cities of West Linn, Lake Oswego, and Tualatin. Those three study areas consist of approximately 4,700 acres and were considered together as Area U-4 by Clackamas County in their urban reserve analysis. Area 4D contains approximately 1,530 acres and is located to the south and east of the “triangle,” adjacent to the City of Tualatin on the north and the Washington County border on the west. There are three other acknowledged Washington County urban reserve areas (Areas 4E, 4F, and 4G) that are located between Area 4D and the City of Tualatin.

In considering the designation of Stafford as an urban reserve area, it is important to remember the context and purpose of the urban and rural reserves designations. Because urban reserves are intended to provide a land supply over a 50-year time horizon, the designation of urban reserve areas must be based on their physical characteristics, including development capacity and future serviceability, rather than the current desires of nearby jurisdictions or current infrastructure conditions. Although there are some impediments to development in parts of these four study areas due to slopes and natural features – as there are in most areas of our region – most of the land is suitable for urban-level development, and development concept plans have been prepared for the Stafford area describing potential development scenarios.

Physically, the Stafford area is very similar to the cities of West Linn and Lake Oswego, which are successfully developing at urban densities. The Stafford area is immediately adjacent to existing urban development in three cities, facilitating logical extensions of infrastructure. Stafford is bisected by Interstate 205 and is within three miles of Interstate 5. Unlike any other urban reserve study area in the region, the 4,700 acres in the “triangle” that comprise study areas 4A, 4B and 4C are actually surrounded on three sides by existing cities and attendant urban infrastructure. While development levels would not be uniform across all four urban reserve areas, due in part to topography and natural resource areas, the opportunity exists to create a mix of uses, housing types and densities where the natural features play a role as amenities, while complementing existing development in the adjacent neighborhoods.

It is also important to consider the designation of these areas in light of the overall regional context. The reserve statute and rules require Metro to designate an amount of urban reserves sufficient to provide a 50-year supply of land for urban growth across the entire Metro region. All four Stafford study areas are identified by the Oregon Department of Agriculture (ODA) as “conflicted” agricultural land that is not suitable to sustain long-term agricultural operations. Designation of the Stafford area as urban reserve helps to avoid urban designation of other areas in the region, particularly in Washington County, that contain more important or “foundation” agricultural land. There are no other areas in the region that provide a similar amount of non-foundation farmland that are also surrounded on three sides by existing urban development and rank as highly as Stafford under the urban reserve factors.

It is true that the Stafford area’s status as conflicted agricultural land is not itself directly relevant to Metro’s application of the urban reserve factors, in that the factors do not consider soil type or the presence of agricultural uses. However, it is also true that many of the reasons that resulted in ODA’s designation of Stafford as conflicted agricultural land are the same reasons that Stafford ranks highly as an urban reserve area under the applicable factors, such as: proximity to existing urban development, high land values that support urban development, the presence of existing commercial, residential and institutional uses in the area, and high potential for future residential development. The ODA Report describes the Stafford area as follows:

“The integrity of the agricultural lands located within this subregion is seriously compromised. The few existing commercial operations located in the area are compromised by surrounding area development, parcelization and the potential for future residential development within the exception areas located in the subregion and at the edges along the UGB. Land values reflect the current nonresource zoning and/or the speculative land market that exists in the area due to its location. The core agricultural block is relatively small, providing little opportunity for the island to stand-alone.

“South of the Tualatin River the few remaining agricultural operations are located on lands zoned for rural residential use, in an area containing several nonfarm uses that are generally not considered to be compatible with commercial agricultural practices. Such uses include churches, schools and retail commercial. High-density residential development also exists along the river. This area also shares an edge with the City of Tualatin. Along this edge, inside the UGB, exist high-density single-family and multifamily residential development. Finally, the entire area south of the river is a recognized exception area that provides no protection for farm use.” ODA Report, page 35.

The conclusions of the ODA Report provide support for Metro’s conclusion that the existing characteristics of Stafford make it an area that has high potential for future urban development, which is the entire purpose behind Metro’s application of the urban reserve factors – identifying those locations across the region where future urbanization makes the most sense.

The following subsections of these findings provide the Metro Council’s evaluation of each factor as it relates to Stafford. The Metro Council adopts and incorporates the findings in Section VIII.B above regarding the evaluation of each factor as applied to Areas 4A, 4B, 4C, and 4D. To the extent any of those findings may conflict with the findings set forth in this section, the findings in this section shall apply.

**1. Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments.**

The Metro Council finds that the primary focus of this factor is whether there is urbanizable land in the study area within sufficient proximity to existing urban infrastructure to allow for efficient use of that infrastructure. In other words, does the area include developable land that is located in such a way that future development may utilize existing roads, water and sewer services? Regarding Stafford, the answer to this question is a resounding yes. As described elsewhere in these findings, Stafford is the only urban reserve study area that is physically surrounded on three sides by existing city boundaries, dense urban development, and available public infrastructure. It is also bisected by Interstate 205 and located within three miles of Interstate 5. Stafford is an anomalous rural area that is surrounded by urban development, and its unique location between and adjacent to the cities of West Linn, Tualatin, and Lake Oswego facilitates the logical and efficient extension of future development and related infrastructure, which is the focus of factor #1.

There is no legitimate question regarding the future developability of the Stafford area, particularly given the proliferation of urban development on identical adjacent terrain. It is true that there are hills and slopes in the northern portion of Area 4A – however none of the slopes present development challenges that are any different from existing development on the other side of those same hills in the cities of West Linn and Lake Oswego. The topography of Area 4A is essentially identical to that of adjacent urbanized portions of those two cities. Further, existing residential development in the Atherton Heights subdivision in the northern portion of the Stafford Basin is successfully located on a tall hillside that is significantly steeper than any of the slopes in Area 4A. Development in many other parts of the Metro region, including Forest Heights in the City of Portland, has been successful on steeper hillsides that present more challenges to development than the comparatively gentle and rolling hills of Stafford. Arguments from the cities that the hills of Stafford are too steep to be developed are easily refuted by simply looking at existing development in other parts of the region, or at development on the other side of the same hills in West Linn and Lake Oswego.

It is true that any future development in the Stafford area would need to be varied in density across the basin due to slopes and other natural features including riparian habitat areas that must be protected. However, there are sufficient developable areas to create a vibrant and diverse urban area, as depicted in the conceptual development plan submitted by OTAK entitled “Clackamas County’s Next Great Neighborhood.” As shown in those materials, the topography of Stafford and the location of easily developed land in the Borland area (Area 4C) create the possibility of a development pattern that includes a mix of existing smaller acreage home sites, lower density neighborhoods, medium density neighborhoods, and mixed use commercial and office areas. Higher density residential, mixed use and employment areas could be located in the relatively flat Borland area, closer to Interstate 205. As depicted in OTAK’s conceptual plan,

medium-density walkable neighborhoods could be developed along the east side of Stafford Road, while existing low density neighborhoods and natural areas further to the north and east could remain. The Rosemont area (Area 4B) could provide residential development that complements existing similar development in the adjacent Tanner Basin neighborhood in West Linn.

The Metro Council finds that the focus of factor #1 is primarily on the potential location of future urban development in relation to existing infrastructure, while factor #3 considers whether urban facilities and services may be provided cost-effectively. However, because the two factors have been addressed concurrently in prior proceedings, the findings below regarding factor #3 are also expressly adopted here for purposes of factor #1.

## **2. Includes sufficient development capacity to support a healthy economy.**

Areas 4A, 4B, and 4C contain approximately 4,700 acres and Area 4D contains approximately 1,530 acres. Together these areas are approximately 6,230 acres, and would provide the region with a significant amount of development capacity through the end of the urban reserve planning horizon in 2060. Metro and the three counties adopted a total of 28,256 acres of urban reserves, which is an amount deemed sufficient to provide the Metro region with a 50-year supply of urbanizable land. Almost half of that amount, 13,874 acres, was located in Clackamas County, and the 6,230 acres located in the Stafford area therefore comprise almost half of the county's total urban reserves. Since the enactment of House Bill 4078, which adopted Metro's 2011 addition of 1,986 acres to the UGB and further reduced the amount of urban reserves in Washington County by about 3,200 acres, the 6,230 acres in Stafford now comprise approximately 27% of the total urban reserve area for the entire Metro region. Thus, based solely on the math, the fact that the Stafford area provides a significant percentage of the 50-year supply of urban reserves for the entire region supports a conclusion that Stafford provides future development capacity sufficient to support a healthy economy under factor #2.

The Metro Council also relies upon its findings set forth immediately above under factor #1 regarding the developability of the Stafford area, as well as the OTAK conceptual development plan discussed in that section, and the findings above in Section VII.B in support of a conclusion that Stafford can be developed at sufficient capacity to support a healthy urban economy. The Metro Council finds that factor #2 calls for an inherently discretionary finding regarding what amount of capacity might "support a healthy economy." The Metro Council further finds that this factor does not establish any particular threshold amount of development that is required to "support" a healthy economy; arguably, any amount of additional development capacity in Stafford could meet that very generally stated goal. However, as described above in the findings regarding factor #1 and in the OTAK conceptual plans, the Stafford area has the potential to provide significant future development capacity that would be sufficient to "support a healthy economy" as contemplated under factor #2.

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

The primary dispute regarding Stafford's designation as an urban reserve arises under factor #3. Although addressed in tandem with factor #1 by the cities, in the LCDC acknowledgment order, and on appeal to the Court of Appeals, the cities' arguments regarding future provision of facilities and services are focused on costs of roads and the cities' financial ability to provide water and sewer services under this factor. As described above, the Metro Council finds that factor #1 regarding "efficient use" of existing and future infrastructure is primarily focused on the location of future urban development in relation to existing and planned infrastructure, while factor #3 expressly considers the "cost-effective" provision of urban facilities and services. The cities' arguments related to costs of providing transportation, water and sewer services are more appropriately considered under factor #3.<sup>10</sup> However, the findings above regarding factor #1 are also expressly adopted for purposes of factor #3.

In its review of the Stafford urban reserve designations, the Court of Appeals held that Metro and LCDC failed to adequately respond to evidence submitted by the cities regarding future traffic conditions in the Stafford area as projected in Metro's 2035 RTP. Although the court did not rule on the cities' arguments regarding the feasibility of providing water and sewer, those issues are also considered as part of these findings. The remainder of this section responds to the evidence submitted by the cities regarding the future provision of (a) transportation facilities, and (b) water and sewer services.

**a. Transportation Facilities**

During the Metro and LCDC proceedings in 2011 the cities contended that Stafford should not be designated as an urban reserve because traffic projections in Metro's 2035 RTP (adopted in 2010) indicate that four principal roads in the Stafford area will be "failing" under Metro's mobility policies in the RTP. The four facilities at issue are Stafford Road, Borland Road, Highway 43, and portions of Interstate 205. The cities cited the 2035 RTP as evidence that Stafford did not comply with urban reserve factors #1 and #3 regarding the provision of urban services.

Specifically, the cities argued that because the RTP forecasted the roads at issue to be above capacity in 2035, future urban development in Stafford could not be efficiently or cost-effectively served by transportation infrastructure because there is no current funding to fix the problems. Therefore the cities argued: (a) Stafford could not "comply" with the factors, and (b) the Metro and LCDC decisions were not supported by substantial evidence in the record. The Court of Appeals rejected the cities' first contention, holding that the urban reserve factors are not approval criteria and therefore "compliance" with each of the factors is not required. However, the court went on to agree with the cities that the evidence they cited regarding

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<sup>10</sup> Although factor #1 and factor #3 are similar, they should not be construed to have an identical meaning, because doing so would render one of them superfluous. When different language is used in similar statutory provisions, it is presumed to have different intended meanings. *Lindsey v. Farmers Ins. Co.*, 170 Or App 458 (2000).

transportation system forecasts in the 2035 RTP had not been adequately addressed by Metro. Therefore, the court concluded that LCDC failed to correctly review Metro's decision for evidentiary support.

The primary flaw in the cities' argument regarding this factor is that the 2035 RTP traffic forecasts and related mobility policy maps are not directly relevant to the question posed by the urban reserve factors, which is whether Stafford can be efficiently and cost-effectively served with transportation facilities within a 50-year horizon. The RTP traffic forecasts are constantly evolving projections that provide a snapshot in time of the current estimates of future traffic congestion in the next 25 years. Those estimates are based on funding for system improvement projects that are *currently* listed in the RTP, and are subject to significant change over the next 25 to 50 years. New improvement projects for roads and highways are added to the RTP project list on a regular basis (sometimes even between each four-year RTP update cycle, as occurred in 2013 via Metro Resolutions 13-4420, 13-4421, 13-4422, 13-4423, and 13-4424), and funding for those projects is adjusted and prioritized based on need given existing and planned levels of development. When new proposed improvement projects are added to the RTP project list, the effects of those future improvements are then applied to the 25-year traffic congestion forecast for the region as shown on the mobility policy maps in the RTP. When new road improvement projects are added, there is a corresponding decrease in projected congestion for areas that are served by those roads.

The cities argued that the 2035 RTP demonstrates that there are no currently identified funds to fix the problems associated with traffic forecasts on the roads they identified. But this argument ignores how the planning process actually works for transportation projects, and the fact that new improvement projects are added to the RTP list on a regular basis. It is true that in 2010, when the snapshot was taken in the 2035 RTP of funding for the project lists and corresponding traffic forecasts, there was no identified funding for transportation projects designed to serve an urbanized Stafford. But when an area such as Stafford that is outside of the UGB is identified as a potential location for new urban development, the planning process that is required for urbanization will include identification of new and necessary transportation system improvements to serve future urban development in that area, and those improvements will then be included on the RTP project list. Adding those improvements to the RTP project list will then reduce the amount of congestion forecasted on the RTP mobility policy maps for that area.

Thus, there is a "chicken/egg" problem with the cities' reliance on the traffic forecasts in the 2035 RTP as evidence that Stafford cannot be served by roads and highways in the area due to a lack of funding. When the 2035 RTP was adopted in 2010, the Stafford area was simply another rural residential area outside of the UGB, and had not been specifically designated as an area for future urban development. Therefore, the 2035 RTP did not prioritize funding for improvement projects in the Stafford area that would be necessary for new urban development arising out of a UGB expansion. In the absence of an existing plan for urbanization of Stafford in 2010, there is no reason why the region would prioritize funding in the 2035 RTP for improving roads to accommodate new urban development in that area.

In 2010 Metro adopted amendments to Title 11 of the Urban Growth Management Functional Plan specifically designed to ensure that areas proposed for urbanization through a UGB



expansion can and will be served with public facilities such as roads. Title 11 now requires that local governments must adopt concept plans for an urban reserve area prior to any such area being added to the UGB by Metro. Concept plans must include detailed descriptions and proposed locations of all public facilities, including transportation facilities, with estimates of cost and proposed methods of financing. Concept plans must be jointly prepared by the county, the city likely to annex the area, and appropriate service districts.

The Title 11 concept planning requirements will apply to Stafford if and when that area is proposed for inclusion in the UGB by a city, and will require detailed planning regarding how transportation services will be provided to the area, including a description of methods for financing those services. That urban planning process will require adding specific transportation improvement projects to the RTP project lists for purposes of ensuring there can be adequate capacity to serve the Stafford area. At that point, once urban development in Stafford takes some planning steps towards potential reality, the region could decide to add and prioritize improvement projects on the RTP project lists that would be necessary to facilitate new urban development in that area. But in 2010, because Stafford was not in the UGB and not even an urban reserve area, there was no reason to include or prioritize projects in the 2035 RTP to facilitate its development.

The RTP is a constantly evolving document that merely provides a periodic snapshot forecast of regional traffic congestion based on current funding priorities for improvement projects on the RTP project list. The RTP project list is amended and revised on a regular basis. If at some point in the future, a portion of Stafford is proposed to be added to the UGB, concept planning under Title 11 must occur and necessary transportation system improvement projects would be added to the RTP project lists at that time. The Metro Council finds that the 2035 RTP does not constitute compelling evidence that the Stafford area cannot be efficiently served by transportation facilities over a 50-year horizon.

Further, the more recently adopted 2014 RTP includes updated mobility policy maps that reveal the fallacy of the cities' arguments. The 2014 RTP shows that the 2035 RTP mobility policy maps relied upon by the cities are already outdated and do not constitute substantial evidence to support a conclusion that it is not possible for Stafford to be served by roads on a 50-year planning horizon. On July 17, 2014, the Metro Council adopted amendments to the 2035 RTP via Metro Ordinance No. 14-1340, and also changed the name of the RTP to "2014 RTP." The mobility policy maps in the 2014 RTP show significant improvement in forecasted traffic congestion on principal roads in the Stafford area for the new RTP planning horizon that ends in 2040, as compared to the mobility policy maps relied upon by the cities from the 2035 RTP. Copies of the three most relevant 2014 maps are included in the record as Exhibit B to the September 30, 2015 staff report (these are close-up versions of the maps focused on the Stafford area and do not show the entire region).

The maps relied upon by the cities from the 2035 RTP are included in the record as Exhibit C to the September 30, 2015 staff report. Sections of roads that are shown in red are locations that in 2010 were projected to exceed acceptable volume-to-capacity ratios in 2035, based on three different funding scenarios for improvements identified on the RTP project lists. The first scenario is the "no build" map (Figure 5.5), shown on Exhibit C-1, which essentially shows the

worst case scenario in that it assumes all of the usual projected increases in population, jobs and new housing units for the region, but assumes that *none* of the improvements projects listed in the 2035 RTP will actually be built by 2035. Therefore, this is the map with the most red lines. The second scenario is the “2035 Federal Policies” map (Figure 5.7), shown on Exhibit C-2, which assumes that all improvement projects identified on the RTP “financially constrained” list are built (*i.e.*, projects using funds from existing identifiable revenue sources). This map shows decreases in projected congestion compared to the “no build” map. The third scenario is the “2035 Investment Strategy” map (Figure 5.9), shown on Exhibit C-3, which assumes availability of additional funding for improvement projects that are listed on the RTP project list and are not “financially constrained” by existing revenue sources, but could be constructed assuming that other potential funding sources become available.

Comparing the 2014 RTP mobility policy maps to the 2035 RTP maps reveals significant improvements in projected traffic congestion levels in the Stafford area. The 2035 Investment Strategy map shows all of Interstate 205, all of Highway 23, and most of Borland Road and Stafford Road in red, meaning that they are projected to exceed Metro’s mobility policy standard of 0.99 v/c in 2035. Exhibit C-3 to September 30, 2015 staff report. However, the corresponding 2040 Investment Strategy map from the 2014 RTP shows no portion of Interstate 205 or Borland Road in red, and much smaller portions of Highway 43 and Stafford Road in red. Exhibit B-3 to September 30, 2015 staff report. Therefore, to borrow the imprecise language employed by the cities, these facilities are no longer projected to be “failing” as the cities previously claimed. The dramatic change regarding the forecast for Interstate 205 in this area is due in part to new project assumptions for the I-205 and I-5 system that had not been included in the 2035 RTP. One of the specific investment strategies included in the 2014 RTP is to “address congestion bottleneck along I-205.” (2014 RTP Appendix 3.1, page 302).

The significant improvements in projected traffic congestion in the Stafford area in just four years between Metro’s adoption of the 2035 RTP and the 2014 RTP provide evidence that refutes the cities’ arguments and supports a conclusion that Stafford could be efficiently and cost-effectively served by transportation facilities under the relevant urban reserve factors. This evidence provides the “meaningful response” to the evidence cited by the cities from the 2035 RTP that the court of appeals found was lacking. At the same time, this evidence illuminates the fundamental problem with the cities’ arguments that were based on the 2035 RTP mobility policy maps. As explained above, the 25-year RTP mobility policy maps reflect a constantly changing set of projects and related funding assumptions that do not constitute substantial evidence for purposes of determining whether Stafford may be efficiently and cost effectively served by transportation facilities on a 50-year planning horizon.

## **b. Water and Sewer Services**

At the Court of Appeals, the cities also challenged the evidentiary support for Metro’s findings regarding the provision of water and sewer service to Stafford under urban reserve factors #1 and #3. The court did not specifically review these arguments, but instead remanded the entire Stafford reserve designation based on its ruling regarding transportation issues.

The evidentiary record supporting Metro’s consideration of each urban reserve factor is extensive. Regarding provision of water and sewer to Stafford under urban reserve factors #1 and

#3, Metro adopted detailed findings citing specific evidence supporting an urban reserve designation under the factors, set forth above in Section VII.B. Those findings note that technical assessments provided to the Core 4 Reserves Steering Committee by working groups consisting of experts and actual service providers rated the Stafford area as being “highly suitable” for both water and sewer service.

A summary of the analysis regarding water service suitability is included in the record as Exhibit E to the September 30, 2015 staff report, which is a memorandum from the Core 4 Technical Team to the Core 4 Reserves Steering Committee dated February 9, 2009. The water service analysis was coordinated by the Regional Water Providers Consortium, and involved review of specific reserve study areas by a large group of water service providers, who applied specific criteria to each area including: (a) proximity to a current service provider; (b) topography; (c) use of existing resources; and (d) source of water. Each area was analyzed by the group of experts, ranked as high, medium, or low suitability for providing water services, and mapped. The results of the group’s analysis were presented at a meeting of the technical committee of the Regional Water Providers Consortium and the proposed map was provided to all members of the committee for review and comment. As shown on the map attached to the Core 4 memo, the Stafford area was ranked as being “highly suitable” for water service.

A summary of the analysis regarding sewer service suitability is included in the record as Exhibit F to the September 30, 2015 staff report, which is also a memorandum from the Core 4 Technical Team dated February 9, 2009. The sewer service analysis was the result of work done by a “sanitary sewers expert group” of engineers and key staff from potentially impacted service providers, who applied their professional expertise and knowledge of nearby areas and facilities. The expert group applied a set of criteria to each reserve study area, including (a) topography; (b) proximity to a current waste water treatment plant; (c) existing capacity of that plant; and (d) the ability to expand the treatment plant. Each area was analyzed by the group of experts, ranked as high, medium, or low suitability for providing sewer services, and mapped. The results of the group’s analysis were digitized and sent to all participating service providers for comment. As shown on the map attached to the Core 4 memo, the Stafford area was ranked by the expert group as being “highly suitable” for sewer service.

Further analysis regarding water and sewer services in urban reserve areas was undertaken by Clackamas County and provided in a technical memorandum dated July 8, 2009, included in the record as Exhibit G to the September 30, 2015 staff report. That memorandum provides a detailed analysis of each reserve study area under the urban reserve factors and makes recommendations for each study area. Regarding Stafford, the county analysis recommends designating Stafford as urban reserve, based in part on the fact that it ranks “high” for both water and sewer serviceability. As concluded by the county, the area can be relatively easily served because of proximity to existing conveyance systems and pump stations.

The City of Tualatin submitted evidence challenging the Clackamas County analysis regarding water and sewer based on a report prepared by engineering firm CH2M Hill, which was forwarded to the Core 4 Reserves Steering Committee on October 13, 2009. In that letter, the city expresses disagreement with many of the county’s conclusions regarding the suitability

rankings, and provided its own cost estimates regarding future provision of water and sewer services.

Metro staff reviewed the analysis in the City of Tualatin's letter and the CH2M Hill materials and prepared a responsive memorandum dated September 17, 2015, attached as Exhibit I to the September 30, 2015 staff report. As described in that memo, the fundamental flaw in the city's argument is that the city's analysis and cost estimates do not consider the same geographic area that was studied by Clackamas County and Metro, and therefore the comparisons provided by the city are not accurate. The map attached to Exhibit I illustrates the significant differences between the two study areas. The county's analysis was for its urban reserve study area U-4, which consisted primarily of the area that became areas 4A and 4B – land between the existing UGB and Interstate 205 – plus the portion of area 4C located north of I-205. However, the city's analysis considers only the area proximate to the City of Tualatin, bounded by the Tualatin River to the north and Stafford Road to the east, thereby excluding all of areas 4A and 4B, which comprised the vast majority of the land analyzed by the county in its analysis. The flaws resulting from this approach regarding application of the urban reserve factors are described in the staff memorandum dated September 17, 2015.

**4. Can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers.**

The Metro Council finds that there are no impediments to the design of future development in the Stafford area that would prevent it from being served with a well-connected system of streets, bikeways, walkable pedestrian paths and recreation trails, or public transit. The Stafford area is already relatively developed, compared with many other urban reserve areas, and is currently served with a well-connected system of streets. Designing a new urban area to be walkable and bikeable is no more complicated than designing road improvements that include sidewalks and bike lanes as portions of the new urban area develop. There is a sufficient amount of undeveloped land in the Stafford area to design street, bicycle and pedestrian connections within and across the area as part of future concept planning.

As noted in the findings above in Section VII.B, the location of Stafford immediately adjacent to three existing cities and urban development on three sides makes it considerably easier to design new urban areas that provide transportation connections to existing infrastructure. Any portions of Stafford that are first proposed for inclusion inside the UGB will necessarily be adjacent to the existing UGB and related transportation facilities. The Metro Council finds that there are few, if any, other areas in the region that have the potential to create the same level and type of pedestrian connections within and across the area.

As described elsewhere in these findings, any future proposals to include some portion of Stafford within the UGB will require that area to first be concept planned under Title 11 of Metro's Urban Growth Management Functional Plan (UGMFP). Title 11 requires concept plans for an area to include detailed descriptions and proposed locations of all public facilities, including transportation facilities and connections of any new transportation facilities to existing systems. Concept planning will require provision for bikeways, pedestrian pathways and, where appropriate, recreational trails. The existing IGA between Metro and Clackamas County

regarding the designation of Stafford as an urban reserve area provides that any future concept plans for the area will include the Borland Road area as being planned and developed as a town center area serving the other parts of Stafford to the north (Area 4A) and south (Area 4D). The IGA also specifically requires that future concept planning will ensure that areas suitable for a mix of urban uses “will include designs for a walkable, transit-supportive development pattern.”

A very preliminary conceptual development plan for Stafford was submitted by OTAK, entitled “Clackamas County’s Next Great Neighborhood.” As shown in those materials, and as provided in the IGA between Metro and the county, future planning for development across Stafford could include a relatively dense and pedestrian friendly mixed use town center and office district in the Borland area (Area 4C), as well as medium density walkable neighborhoods in the same area and further to the north along Stafford and Johnson Roads. The OTAK plan also depicts conceptual street design that includes the sidewalks and bike lanes that would be required as part of a concept plan proposal under Title 11 for future urbanization of any portion of the Stafford area. The OTAK proposal supports Metro’s finding that Stafford can be designed to be walkable and served with streets and other alternative transportation options.

The cities assert that Stafford could never be walkable and connected due to existing parcelization and because they believe that some larger parcels are “unlikely to redevelop.” The Metro Council finds that the cities’ opinion regarding whether or not particular parcels in the Stafford area are likely to redevelop does not affect the Council’s evaluation under urban reserve factor #4, which asks the question of whether the area “can be designed” to be walkable and served with streets, bikeways, trails and public transit. The question is not whether or when particular parts of Stafford may or may not be developed, the question is whether, assuming that urbanization will occur at some point in the future, the area “can be designed” in a way to accommodate future transportation needs, including alternative transportation and recreation. The Metro Council finds that there is no reason the Stafford area cannot be designed in such a manner, as evidenced by the OTAK conceptual plan.

#### **5. Can be designed to preserve and enhance natural ecological systems.**

Similar to urban reserve factor #4, the relevant question to be considered under this factor is whether proposed future urban development in the Stafford area “can be designed” to preserve and enhance natural ecological systems. The Metro Council finds that there are no significant challenges to designing future development in the Stafford area in a manner that will preserve and enhance natural ecological systems in the area. In fact, the existing IGA between Metro and the county specifically requires that any future concept planning for Stafford “shall recognize environmental and topographic constraints and habitat areas,” including the riparian areas along creeks in the North Stafford Area, “recognizing that these areas include important natural features, and sensitive areas that may not be appropriate for urban development.” Thus, the intent behind urban reserve factor #5 has been embedded in the requirements for planning any future development in the Stafford area and those development plans can (and must) be designed to protect and enhance natural ecological systems. Also, as noted in the findings above in Section VII.B, any future development will be subject to state and Metro rules that are specifically designed to protect upland habitat, floodplains, steep slopes and riparian areas.

The cities do not attempt to argue that future development in Stafford cannot be designed to protect natural ecological systems. The cities instead contend that doing so will reduce the amount of developable land and make connectivity, walkability and development of the remaining lands “much more difficult and expensive.” However, the question posed by urban reserve factor #5 is not whether protecting ecological systems will make it more difficult or expensive to develop other areas. The question is whether future development “can be designed” to preserve and enhance ecological systems. The Metro Council finds that the answer to that question is very clearly yes.

Metro’s findings and the IGA with Clackamas County acknowledge the existence of some environmentally constrained lands and the fact that those areas will reduce the total amount of developable acreage in Stafford. However, that fact does not impact the overall analysis under the factors, weighed and balanced as a whole, regarding whether or not the entire 6,230-acre Stafford area should be designated as an urban reserve. As concluded elsewhere in these findings, even when environmental protections are taken into account Stafford provides sufficient development capacity to support a healthy economy under factor #2 and includes sufficient land suitable for a range of needed housing types under factor #6.

**6. Includes sufficient land suitable for a range of needed housing types.**

The four areas that constitute the Stafford area contain approximately 6,230 acres. The topography is varied, from the rolling hills in the north to the comparatively flat areas to the south in Borland and Norwood. The variations in topography and existing development patterns enhance the ability of Stafford to provide a diverse range of needed housing types across the area. As depicted in the conceptual plan submitted by OTAK, and as provided in the IGA between Metro and Clackamas County, the Borland area provides a potential mixed use town center area, including higher density housing in the form of apartments or condominiums. The area south of Luscher Farm along Stafford and Johnson Roads includes generally larger lots that could be developed as medium-density neighborhoods that still focus jobs and housing closer to the vicinity of Interstate 205. The OTAK proposal also identifies the northern portion of Area 4A as being a potential location for somewhat lower density single-family neighborhoods. Types and density of future development in Stafford would not be proposed until a concept plan is prepared by one of the adjacent cities for some portion of the Stafford area, and Metro determines there is a need to expand the UGB into that particular area. The Metro Council finds there is sufficient land in the Stafford area to provide the full range of needed housing types.

**7. Can be developed in a way that preserves important natural landscape features included in urban reserves.**

The Metro Council finds that the Stafford area can be developed in a way that preserves important natural landscape features. The two important natural landscape features that have been identified to date are the Wilson Creek and Tualatin River systems. For the same reasons described above regarding factor #5, which requires evaluation of the ability to preserve Wilson Creek and other riparian areas, these riparian areas may also be preserved as important natural landscape features. Any future plans for development in Stafford will need to be made in compliance with applicable state and Metro regulations that are specifically designed to protect upland habitat, floodplains, steep slopes and riparian areas. There are no significant challenges to

designing future development in the Stafford area in a manner that will preserve natural landscape features. The Metro Council expressly adopts the findings above regarding factor #5 regarding this factor.

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

Stafford is an ideal candidate for urban reserve under this factor because of its location. Areas 4A and 4B are surrounded on three sides by existing urban development, and future development of those areas would have no potential adverse effects on farm or forest practices, or on any land designated as rural reserve. Similarly, Area 4C is adjacent on the east and west sides to urban development in the cities of Tualatin and West Linn, and its southern boundary is adjacent to an undesignated area that consists of conflicted agricultural land. Area 4D is adjacent to the City of Tualatin and to other large urban reserve areas (Areas 4E, 4F, and 4G) that are located between Area 4D and the cities of Tualatin and Wilsonville. Most of the eastern boundary of Area 4D is adjacent to an undesignated area, with a small portion adjacent to a rural reserve area that consists of conflicted agricultural land. To the extent that any future development in the Stafford area could have potential adverse effects on farm and forest practices, which appears very unlikely based on its location, the Metro Council finds that future planning of development in Stafford can be designed to avoid or minimize adverse effects on farm and forest practices on nearby land.

**9. Weighing and Balancing of the Factors and Explanation of Why an Urban Reserve Designation is Appropriate for Stafford.**

As explained by the Court of Appeals, Metro’s role is first to apply and evaluate each factor; next, the factors must be “weighed and balanced as a whole.” As noted by the court, no single factor is determinative, nor are the individual factors necessarily thresholds that must be met. *Barkers Five* at 300. Accordingly, even if Stafford entirely failed under one or more of the factors as part of the evaluation, Metro could still conclude that an urban reserve designation is appropriate after all of the factors are weighed and balanced together, so long as a “meaningful explanation” is provided for that conclusion.

Based on the foregoing evaluation of each of the urban reserve factors, the Metro Council concludes that the Stafford area earns a very high ranking under seven of the eight factors, and an average ranking on factor #3 regarding cost-effective provision of urban services. There is no dispute that extending services to the Stafford area will be expensive; however, there are significant costs and challenges associated with providing new urban services to any part of the region where new urban development is being proposed. The Metro Council disagrees with the cities’ position that in order to be designated as an urban reserve, funding sources must be identified for all future infrastructure needs and improvements necessary for the urbanization of Stafford. That position is not consistent with the statutory purpose of urban reserves, which is to designate a 50-year supply of potential urban land for the region. The level of detail the cities desire at this stage will be correctly considered at the time a particular area is proposed for addition to the UGB, which may or may not occur for the entire Stafford area over the next 50 years.

The process of future urban development of Stafford is likely to occur over the course of many decades. The first step in any potential addition of a portion of Stafford into the UGB will require one of the cities to propose a concept plan for a particular expansion area, as required by Title 11 of the UGMFP. Under Title 11, that plan must include detailed descriptions and proposed locations of all public facilities, including transportation facilities, with estimates of cost and proposed methods of financing. In other words, the details regarding exactly how any portion of Stafford will be served with infrastructure, and how that infrastructure will be paid for, must be worked out at the time an area is considered for inclusion in the UGB so that a decision can be made regarding whether actual urbanization is possible and appropriate.

The 50-year growth forecast indicates that the Metro region will need to be able to accommodate between 1.7 and 1.9 million new residents by 2060. September 15, 2009 COO Recommendation, App. 3E-C, Table C-2. The purpose of designating urban reserve areas is to identify locations across the region that would provide the best opportunities for providing homes and jobs for those new residents within the 50 year horizon. Urban reserve designations should not, and do not, require the identification of all future sources of funding for infrastructure within the urban reserve areas today.

Based on the analysis set forth above, and the weighing and balancing of all urban reserve factors as a whole, the Metro Council concludes that Stafford is appropriately designated as an urban reserve area under the applicable statutes and rules. Given the unique location of Stafford, its proximity to existing cities, its size and ability to provide a significant amount of development capacity in the form of a wide range of needed housing types as well as mixed-use and employment land, its location in an area that consists of conflicted agricultural land where adverse impacts on farm use can be avoided, and its high ranking under nearly all of the urban reserve factors, Stafford is one of the most obvious candidates for an urban reserve designation in the entire region.

## **IX. CONSISTENCY WITH REGIONAL AND STATE POLICIES**

### **A. Regional Framework Plan**

#### Policy 1.1: Urban Form (1.1.1(a); 2.3)

The determination of the amount of urban reserves needed to accommodate growth to the year 2060 was based upon the current focus of the 2040 Growth Concept on compact, mixed-use, pedestrian-friendly and transit-supportive communities and a new strategy of investment to use land more efficiently. The reserves decision assumes that residential and commercial development will occur in development patterns more compact than the current overall settlement pattern in the UGB. In addition, amendments made by the reserves decisions to Title 11 (Planning for New Urban Areas) of the Urban Growth Management Functional Plan place greater emphasis than the previous version of Title 11 on “great communities” that achieve levels of intensity that will support transit and other public facilities and services.



#### Policy 1.4: Economic Opportunity (1.4.1)

The four governments selected urban reserves with factor OAR 660-027-0050(2) (healthy economy) in mind. Rating potential urban reserves for suitability for industrial development, using staff maps and the *Business Coalition Constrained Land for Development and Employment Map* produced by Group McKenzie, resulted in designation of thousands of acres suitable for industrial and other employment uses as urban reserves. These reserves are distributed around the region to provide opportunities in all parts of the region.

#### Policy 1.6: Growth Management (1.6.1(a))

See finding for Policy 1.1.

#### Policy 1.7: Urban/Rural Transition

The four governments inventoried important natural landscape features outside the UGB and used those features to help make a clear transitions from urban to rural lands. The findings above explain how the governments applied the landscape features factors in OAR 660-027-0060(3) in designation of urban and rural reserves and demonstrate the use of natural and built features to define the extent of urban reserves.

#### Policy 1.11: Neighbor Cities

The four governments reached out to the non-Metro cities within the three counties and to Columbia, Yamhill and Marion counties and their cities to hear their concerns about designation of reserves near their boundaries. All expressed an interest in maintenance of separation between the metro urban area and their own communities. The four governments were careful not to designate urban reserves too close to any of these communities. As the findings above indicate, the counties consulted with “neighbor cities” within their borders about which lands near them should be left un designated so they have room to grow, and which lands to designate rural reserve to preserve separation. The city of Sandy asked Metro and Clackamas County to revise the three governments’ agreement to protect a green corridor along Hwy 26 between Gresham and Sandy. At the time of adoption of these decisions, the three governments agreed upon a set of principles to guide revision to the agreement to use reserves to protect the corridor.

#### Policy 1.12: Protection of Agriculture and Forest Resource Lands (1.12.1; 1.12.3; 1.12.4)

See section II of the findings for explanation of the designation of farmland as urban or rural reserves. Metro’s Ordinance No. 10-1238A revises Policy 1.12 to conform to the new approach to urban and rural reserves.

#### Policy 1.13 Participation of Citizens

See sections III and IX (Goal 1) of the findings for full discussion of the public involvement process. The findings for each county (sections VI, VII and VIII) discuss the individual efforts of the counties to involve the public in decision-making.

## Policy 2.8: The Natural Environment

The four governments inventoried important natural landscape features outside the UGB and used the information to identify natural resources that should be protected from urbanization. The findings above explain how the governments applied the landscape features factors in OAR 660-027-0060(3) in designation of rural reserves for long-term protection of natural resources.

### **B. Statewide Planning Goals**

#### Goal 1 - Citizen Involvement

The four governments developed an overall public involvement program and, pursuant to the Reserve Rule [OAR 660-027-0030(2)], submitted the program to the State Citizen Involvement Advisory Committee (CIAC) for review. The CIAC endorsed the program. The four governments implemented the program over the next two and a half years. Each county and Metro adapted the program to fit its own public involvement policies and practices, described above. In all, the four governments carried out an extraordinary process of involvement that involved workshops, open houses, public hearings, advisory committee meeting open to the public and opportunities to comment at the governments' websites. These efforts fulfill the governments' responsibilities under Goal 1.

#### Goal 2 - Land Use Planning

There are two principal requirements in Goal 2: providing an adequate factual base for planning decisions and ensuring coordination with those affected by the planning decisions. The record submitted to LCDC contains an enormous body of information, some prepared by the four governments, some prepared by their advisory committees and some prepared by citizens and organizations that participated in the many opportunities for comment. These findings make reference to some of the materials. The information in the record provides an ample basis for the urban and rural reserve designated by the four governments.

The four governments coordinated their planning efforts with all affected general and limited purpose governments and districts and many profit and non-profit organizations in the region (and some beyond the region, such as Marion, Yamhill and Polk Counties and state agencies) and, as a result, received a great amount of comment from these governments. The governments responded in writing to these comments at several stages in the two and one-half year effort, contained in the record submitted to LCDC. See Attachment 2 to June 3, 2010, Staff Report, Metro Rec. \_\_\_. These findings make an additional effort to respond to comments from partner governments (cities, districts, agencies) on particular areas. These efforts to notify, receive comment, accommodate and respond to comment fulfill the governments' responsibilities under Goal 2.

#### Goal 3 - Agricultural Lands

The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations for lands subject to Goal 3. Designation of agricultural land as rural reserve protects the land from inclusion within an urban growth boundary and from re-

designation as urban reserve for 50 years. Designation of agricultural land as urban reserve means the land may be added to a UGB over the next 50 years. Goal 3 will apply to the addition of urban reserves to a UGB. The designation of these urban and rural reserves is consistent with Goal 3.

#### Goal 4 - Forest Lands

The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations for lands subject to Goal 4. Designation of forest land as rural reserve protects the land from inclusion within an urban growth boundary and from re-designation as urban reserve for 50 years. Designation of forest land as urban reserve means the land may be added to a UGB over the next 50 years. Goal 4 will apply to the addition of urban reserves to a UGB. The designation of reserves is consistent with Goal 4.

#### Goal 5 - Natural Resources, Scenic and Historic Areas and Open Spaces

The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations for lands inventoried and protected as Goal 5 resource lands. Designation of Goal 5 resources as rural reserve protects the land from inclusion within an urban growth boundary and from re-designation as urban reserve for 50 years. Designation of Goal 5 resources as urban reserve means the land may be added to a UGB over the next 50 years. Goal 5 will apply to the addition of urban reserves to a UGB. The designation of reserves is consistent with Goal 5.

#### Goal 6 - Air, Water and Land Resources Quality

The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations intended to protect air, water or land resources quality. Nor does designation of reserves invoke state or federal air or water quality regulations. The designation of reserves is consistent with Goal 6.

#### Goal 7 - Areas Subject to Natural Hazards

The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations intended to protect people or property from natural hazards. Nonetheless, the four governments consulted existing inventories of areas subject to flooding, landslides and earthquakes for purposes of determining their suitability for urbanization or for designation as rural reserve as important natural landscape features. This information guided the reserves designations, as indicated in the findings for particular reserves, and supported designation of some areas as rural reserves. Goal 7 will apply to future decisions to include any urban reserves in the UGB. The designation of reserves is consistent with Goal 7.

#### Goal 8 - Recreational Needs

The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations intended to satisfy recreational needs. The designation of reserves is consistent with Goal 8.

### Goal 9 - Economic Development

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

### Goal 10 - Housing

All urban and rural reserves lie outside the UGB. No land planned and zoned to provide needed housing was designated urban or rural reserve. The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations and does not remove or limit opportunities for housing. The designation of reserves is consistent with Goal 10.

### Goal 11 - Public Facilities and Services

The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations and does not place any limitations on the provision of rural facilities and services. The four governments assessed the feasibility of providing urban facilities and services to lands under consideration for designation as urban reserve. This assessment guided the designations and increases the likelihood that urban reserves added to the UGB can be provided with urban facilities and services efficiently and cost-effectively. The designation of reserves is consistent with Goal 11.

### Goal 12 - Transportation

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

### Goal 13 - Energy Conservation

The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations and has no effect on energy conservation. The designation of reserves is consistent with Goal 13.

### Goal 14 - Urbanization

The designation of urban and rural reserves directly influences future expansion of UGBs, but does not add any land to a UGB or urbanize any land. Goal 14 will apply to future decisions to

add urban reserves to the regional UGB. The designation of urban and rural reserves is consistent with Goal 14.

Goal 15 - Willamette River Greenway

No land subject to county regulations to protect the Willamette River Greenway was designated urban reserve. The designation of urban and rural reserves is consistent with Goal 15.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADDRESSING	)	Ordinance No. 17-1397
STATE RULE REQUIREMENTS	)	
REGARDING THE AMOUNT OF URBAN	)	Introduced by Chief Operating Officer
RESERVES AND THE BALANCE OF	)	Martha Bennett in concurrence with
URBAN AND RURAL RESERVES IN THE	)	Council President Tom Hughes
METRO REGION	)	

WHEREAS, in 2007 the Oregon Legislative Assembly enacted SB 1011, authorizing Metro and the three counties in the Metro region to designate urban and rural reserves; and

WHEREAS, between 2008 and 2010 Metro and the three counties conducted an extensive public process bringing together citizens, stakeholders, local governments and state agencies to consider and apply the urban and rural reserve factors to land surrounding the Metro urban growth boundary (UGB); and

WHEREAS, in 2010 Metro and each of the three counties entered into intergovernmental agreements mapping the areas that were determined to be most appropriate as urban and rural reserves under the applicable factors; and

WHEREAS, in 2011 Metro and the three counties submitted ordinances and findings formally adopting the urban and rural reserve designations to LCDC for acknowledgement, and those designations were approved and acknowledged by LCDC in 2012; and

WHEREAS, in 2014 the LCDC acknowledgement order was remanded by the Oregon Court of Appeals, and the Oregon Legislative Assembly enacted HB 4078, which legislatively designated a revised map of urban and rural reserve areas in Washington County; and

WHEREAS, in 2015 LCDC issued an order remanding the remaining urban and rural reserve designations to Metro, Multnomah County, and Clackamas County for further review consistent with the Court of Appeals opinion; and

WHEREAS, in 2016 the Metro Council addressed the remand issues arising out of Clackamas County via Ordinance No. 16-1368, which adopted findings concluding that the urban reserve study areas identified as areas 4A, 4B, 4C, and 4D (generally referred to as “Stafford”) were correctly designated as urban reserve areas; and

WHEREAS, Metro now must adopt findings addressing two state rule requirements that apply to the designation of urban and rural reserves across the entire region, in light of (a) the Metro Council’s adoption of newer regional urban growth projections in the 2014 Urban Growth Report, and (b) the reduction of urban reserve acreage in Washington County via HB 4078; and

WHEREAS, Metro held public hearings on March 2, 2017 and March 16, 2017 at which the Metro Council accepted testimony regarding the urban and rural reserve designations in the Metro Region; and

WHEREAS, the Metro Council has reviewed the staff report, the testimony submitted by interested parties, and all other materials in the record, and now concludes that (a) the amount of existing urban reserves in the region is sufficient to accommodate urban growth in the region for ~~between 40 and~~ 50 years after 2015, and (b) the balance in the designation of urban and rural reserves across the region best achieves the goals of creating livable communities while protecting farms, forests, and natural landscape features; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

- 1. The Findings of Fact and Conclusions of Law in Exhibit A, attached and incorporated into this ordinance, explain how the urban and rural reserve designations adopted in 2011 by Metro Ordinance No. 11-1255, as modified by the 2014 Oregon legislature in House Bill 4078, are consistent with state law.
- 2. The prior record of proceedings before the Metro Council in Ordinance No. 16-1368 is hereby adopted and incorporated as part of the record in this proceeding.

ADOPTED by the Metro Council this 13<sup>th</sup> day of April 2017.

\_\_\_\_\_  
Tom Hughes, Council President

Attest:

Approved as to Form:

\_\_\_\_\_  
Nellie Papsdorf, Recording Secretary

\_\_\_\_\_  
Alison R. Kean, Metro Attorney

## **Exhibit A to Ordinance No. 17-1397**

The findings set forth below include the supplemental findings of the Metro Council arising out of this proceeding regarding the amount of urban reserves and region-wide balance of urban and rural reserves under applicable state rules. The findings below will replace Section V of the findings adopted by the Metro Council in Ordinance No. 16-1368.

### **V. SUPPLEMENTAL FINDINGS REGARDING SUPPLY OF URBAN RESERVES AND REGIONWIDE BALANCE**

The findings in this Section V supplement the findings adopted by the Metro Council in support of the original 2011 approval of urban and rural reserves via Metro Ordinance 11-1255. To the extent any of the findings in this section are inconsistent with other findings in this document that were previously adopted in 2011, the findings in this Section V shall govern. These findings address issues related to the regionwide supply of urban reserves and the overall balance of reserves in light of (a) the Metro Council's adoption of the current Urban Growth Report in 2015, and (b) the Oregon Legislature's enactment of House Bill 4078.

On April 21, 2011, Metro enacted Ordinance 11-1255 adopting the urban and rural reserve designations agreed upon by Metro and the three counties, and submitted that ordinance and accompanying findings to LCDC for acknowledgement. On August 19, 2011, LCDC voted to approve and acknowledge the reserve designations made by Metro and the counties, and LCDC issued Acknowledgment Order 12-ACK-001819 on August 14, 2012. Twenty-two parties filed appeals of the LCDC Order, and on February 20, 2014 the Oregon Court of Appeals issued its opinion in the *Barkers Five* case, affirming LCDC's decision regarding the majority of the 26 assignments of error raised by the opponents, and remanding the LCDC Order on three substantive issues.

First, the court concluded that LCDC incorrectly approved Washington County's application of the rural reserve factors pertaining to agricultural land, because the county relied on factors that were different from those required by statute for determining whether lands should be designated as rural reserve. The court held that the county's error required remand of all urban and rural reserves in Washington County for reconsideration.

Second, the court held that LCDC incorrectly concluded that Multnomah County had adequately considered the rural reserve factors pertaining to Area 9D. The court found that the county's findings were not sufficient to explain why its consideration of the applicable factors resulted in a designation of rural reserve for *all* of Area 9D, given the fact that property owners in that area had identified dissimilarities between the northern and southern portions of the study area.

Finally, the court held that LCDC did not correctly review Metro's urban reserve designation of the Stafford area for substantial evidence. The court concluded that Metro failed to adequately respond to evidence cited by opponents from Metro's 2035 Regional Transportation Plan (RTP)



indicating that traffic in the Stafford area was projected to exceed the capacity of certain roads by 2035.

Immediately after the Court of Appeals issued its opinion, work began on legislation designed to resolve issues regarding the remand of urban and rural reserves in Washington County. On March 7, 2014 the Oregon Legislature passed House Bill 4078, which legislatively approved Metro's 2011 UGB expansion, added an additional 1,178 acres of urban reserves to the UGB, and made other revisions to the reserves map in Washington County.

As described in Section IV of these findings, when Metro and the three counties adopted their maps of reserve areas, they agreed on a total of 28,256 acres of urban reserves, which reflected Metro's estimate of the acreage that would be required to provide a 50-year supply of urbanizable land as contemplated under ORS 195.145(4). The specific forecast described above in Section IV is for a range of between 484,800 and 531,600 new dwelling units over the 50-year period ending in 2060. Metro relied on the high point of that forecast range in estimating that the region would need a supply of urban reserves sufficient to provide for approximately 152,400 new dwelling units outside of the existing UGB through 2060.

After LCDC voted to approve Metro's findings and acknowledge the designation of 28,256 acres of urban reserves in August of 2011, Metro relied on those designations to expand the UGB onto approximately 2,015 acres of urban reserves in Washington County. However, that expansion was called into question by the Court of Appeals decision in *Barkers Five*, which reversed and remanded all of the urban and rural reserve designations in Washington County.

The compromise reflected in House Bill 4078 included legislative approval and state acknowledgement of the 2,015 acres of 2011 UGB expansions in order to provide certainty to the cities regarding their ability to urbanize those expansion areas. In addition to acknowledging the UGB expansion areas already approved by Metro, House Bill 4078 included the following changes to the reserves map in Washington County:

- Converted 2,449 acres of urban reserves to rural and undesignated
- Converted 417 acres from rural reserve to urban reserve
- Converted 883 acres of undesignated areas to rural reserve
- Added 1,178 acres of urban reserve to the UGB

In the final accounting, HB 4078 resulted in the net reduction of 3,210 acres of urban reserves below the amount remaining after Metro's 2011 UGB expansion. The remaining acreage of urban reserves in the Metro region is now 23,031.

The legislature's removal of 3,210 acres of urban reserves via HB 4078 potentially implicates two elements of state law governing reserves. First, ORS 195.145(4) requires the designation of a sufficient amount of urban reserve areas to provide the Metro region with a 40 to 50 year supply of urbanizable land. Second, OAR 660-027-0040(10) requires Metro and the counties to

adopt findings explaining why the reserve designations achieve the objective stated in OAR 660-027-0005(2) of a balance in urban and rural reserves that “best achieves” livable communities, viability and vitality of farm and forest industries, and protection of important natural landscape features.

Regarding the requirement for a 40 to 50 year supply of urban reserves, the applicable state rule requires Metro’s estimate of the projected long-range need for urban reserve acreage to be based on the analysis in Metro’s most recent Urban Growth Report (UGR). The projected need for urban reserves adopted by Metro and the counties in 2011 was based on the regional growth forecast set forth in Metro’s 2009 UGR. Since that time, in 2015 the Metro Council adopted the current 2014 UGR, which provides the current residential and employment growth projections for the region.

The findings below address the status of existing urban reserve acreage in light of the newer growth projections in the 2014 UGR, as well as the impact of HB 4078 on both the amount of urban reserves and the regionwide balance of urban and rural reserves under the “best achieves” standard.

#### **A. Amount of Land Designated Urban Reserve in the Metro Region**

The state rules governing the designation of urban and rural reserves require that the amount of land designated as urban reserves must be planned to accommodate estimated urban population and employment growth in the Metro region for between 20 and 30 years beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in its most recent Urban Growth Report. OAR 660-027-0040(2). The Metro Council adopted the current 2014 UGR via Ordinance No. 15-1361 on November 12, 2015.

In order to update the 50-year need analysis for urban reserves to 2065 by applying the most current growth projections, Metro planning staff prepared a memorandum dated February 22, 2017, which was attached to the staff report for Metro’s public hearing on March 2, 2017. That memorandum provides an updated assessment of potential long-term demand for urban reserves, and concludes that the existing amount of urban reserves, combined with buildable land already inside the UGB, can provide a sufficient amount of land to accommodate expected urban growth.

Specifically, the staff memorandum includes an analysis of projected long-term need for residential and employment land, and concludes that the existing 23,031 acres of urban reserves can reasonably be expected to accommodate projected household and employment growth over the next 40 to 50 years. The staff analysis forecasts a potential need for 24,827 acres of urban reserves by 2065. Only for demonstrative purposes of placing that acreage in perspective on a 50-year planning horizon, assuming that an equal amount of urban reserve acreage is converted annually over 50 years, the existing 23,031 acres of urban reserves would provide a 46-year supply of land for urban growth in the Metro region. However, for the reasons described above in Section IV of these findings regarding more efficient use of land, including the likelihood of

land developing at densities of higher than 10 dwelling units per net developable acre, the Metro Council finds that the existing 23,031 acres of urban reserves are intended to provide a supply of land for 50 years from the date of adoption of the 2014 UGR in 2015.

As explained in the staff memo, any prediction about how much land will be required for urban growth in the region over a 50-year planning horizon is necessarily a rough estimate. The nature of this exercise requires Metro to predict what growth and development trends might look like over the next 50 years, based on the available data. State law does not provide any particular formula or methodology for estimating the future need for urban reserves. As explained by LCDC in its 2012 order regarding Metro's compliance with the requirement to provide a 40 to 50-year supply of urban reserves, the statutes and rules provide Metro "a substantial degree of discretion concerning ... the methods and policy considerations that Metro uses to project future population and employment." (LCDC Compliance Acknowledgment Order 12-ACK-001819, page 26).

The 50-year regional growth estimate provided in the February 22, 2017 Metro staff memorandum is based on the analysis and projections in the 2014 UGR. The UGR forecast is then subjected to a series of predictions about what will happen in the future, based on multiple levels of assumptions regarding an array of factors that affect how much residential and employment growth might be expected in the region, such as capture rate, vacancy rate, and projected share of single-family and multifamily housing types. Minor changes in the underlying assumptions regarding these factors will necessarily change the results.

The Metro Council also notes that the intergovernmental agreements between Metro and each of the three counties regarding the designation of reserves provide for a review of existing urban reserves in each county 20 years after the date of adoption, or sooner if agreed to by Metro and all three counties. Therefore, the adequacy of the amount of land designated for future urbanization can and will be revisited, and additional lands may be added if necessary, much sooner than 2065.

Based on the analysis and projections provided in the Metro staff memorandum dated February 22, 2017, the Metro Council concludes that the existing 23,031 acres of urban reserves across the region, combined with buildable land already inside the UGB, will provide a sufficient amount of land for urban growth in the region until 2065.

#### **B. Balance in the Designation of Reserves that "Best Achieves" Certain Goals**

Included among the state rules governing urban and rural reserves is a requirement that Metro and the counties must explain how the urban and rural reserve designations achieve the following objective:

"The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and

vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents.” OAR 660-027-0005(2).

During the proceedings before LCDC regarding its adoption of the remand order in 2015, some parties argued that the reduction in urban reserve acreage in Washington County via House Bill 4078 created a shift in the balance of urban reserves that implicates the “best achieves” standard. The following two sections of these findings address the application of the best achieves standard in light of HB 4078.

First, in adopting HB 4078 the legislature enacted a new statute that acknowledged the new balance of urban and rural reserves across the region as being in compliance with state law, and therefore a new analysis by Metro and the counties is not required. Second, in the event such an analysis is required, that standard is still met.

### **1. The “best achieves” rule is satisfied through HB 4078**

The enactment of HB 4078 resulted in the legislative acknowledgement of the new amount of urban reserves and the new balance of urban and rural reserves as being in compliance with all aspects of state law. Therefore, in the absence of any changes to the existing mapped acreage of urban and rural reserves in Clackamas County and Multnomah County, the existing balance of reserves across the region meets all applicable state requirements and there is no need for Metro to revisit the standards related to the “best achieves” requirement as part of these findings.

In the *Barkers Five* opinion, the Court of Appeals remanded the designation of all urban and rural reserves in Washington County for reconsideration. As a result of this wholesale remand of the entire Washington County reserves package, the court also noted that “any new joint designation” of reserves by the county and Metro on remand would also require new findings addressing the “best achieves” standard in OAR 660-027-0005(2). *Barkers Five* at 333.

Thus, the court’s opinion provides that the best achieves standard would only be triggered in the event there are any *new* designations of reserve areas on remand that are different from what was approved in the original decision. That is because the stated purpose of the best achieves standard is to ensure that the overall “balance in the designation of urban and rural reserves” across the entire region “best achieves” liveable communities, vitality of farm and forest uses, and protection of natural features that define the region. Thus, any changes in the “balance” of those designations by Metro and the counties on remand would require a reassessment of whether and how those objectives are still met. But, in the absence of any changes to the reserve maps, no further assessment would be required.

This aspect of the Court of Appeals decision was overridden with respect to Washington County by the enactment of HB 4078, which legislatively established a new map of the locations of the UGB and urban and rural reserves in Washington County. This legislative action negated the

court's directive requiring remand to Metro and Washington County for reconsideration of the reserve designations. The enactment of HB 4078 also negates any need to reconsider or reapply the best achieves standard, which is an administrative rule requirement that was necessarily preempted by the legislature as part of its decision to redesignate substantial portions of the Washington County reserve areas. As long as the remand proceedings regarding Clackamas County and Multnomah County do not result in changes to the reserves maps in those counties, there is no need to reconsider the best achieves standard to account for the HB 4078 revisions.

The Oregon legislature is presumed to be aware of existing law when it enacts new legislation. *Blanchana, LLC v. Bureau of Labor and Industries*, 354 Or 676, 691 (2014); *State v. Stark*, 354 Or 1, 10 (2013). This presumption also applies to administrative rules adopted by LCDC. *Beaver State Sand & Gravel v. Douglas County*, 187 Or App 241, 249-50 (2003). When the legislature adopted revisions to the Washington County reserves map as part of HB 4078, it is presumed to have been aware of LCDC's administrative rule requiring that there be a balance in reserve designations that "best achieves" the stated goals. The adoption of HB 4078 created a statutory requirement regarding the location of reserves in Washington County that takes precedence over LCDC's "best achieves" rule and does not require subsequent action by LCDC, Metro or the counties to explain why the statute satisfies an administrative rule requirement, because statutes necessarily control over administrative rules.

The express terms of HB 4078 also indicate a legislative intent to preempt existing land use law. Each section of HB 4078 that establishes new locations for reserve areas or the UGB begins with the phrase "*For purposes of land use planning in Oregon, the Legislative Assembly designates the land in Washington County...*" HB 4078, Sec 3(1), (2), (3) (2014). The legislature was aware that its actions in redrawing the UGB and reserve maps had the effect of acknowledging the new maps as being in compliance with state law, and thereby preempting other land use planning rules (including for example LCDC's Goal 14 rules regarding UGB expansions). The legislature included this language to clearly state that its action in adopting the new maps constituted acknowledgment of compliance with state law, and that it need not demonstrate compliance with other existing land use statutes, goals or rules, including the "best achieves" rule and the statutory requirement to provide a 40 to 50 year supply of urban reserves.

For these reasons, so long as there are no revisions on remand to the reserve maps in Clackamas County or Multnomah County, the HB 4078 revisions to the reserve designations in Washington County do not create a need to reconsider compliance with the "best achieves" standard or the sufficiency of the supply of urban reserves.

## **2. The balance in the designation of reserves still achieves the stated goals**

The meaning and application of the "best achieves" rule was the subject of considerable debate in the appeals filed with LCDC in 2011 and with the Court of Appeals in 2012. Ultimately, in the *Barkers Five* opinion, the Court of Appeals agreed with the positions taken by LCDC and Metro

that the “best achieves” standard provides significant discretion to Metro and the counties, and is satisfied through their site-specific findings concerning the application of the urban and rural reserve factors. Specifically, the Court of Appeals identified and agreed with the following four legal premises regarding the application of the standard.

First, the best achieves standard is a qualitative standard, rather than a quantitative one. The court agreed with LCDC that the standard “is not a balance in terms of the quantitative *amount* of urban and rural reserve acreage, but a balance between encouraging further urban expansion versus land conservation.” The court explained that Metro and the counties are not required to justify a quantitative “balance” in the specific amount of acreage of urban reserves and rural reserves.

Second, the best achieves standard applies to Metro and the counties’ designation of reserves “in its entirety” and not to the designation of individual properties or areas as urban or rural reserves.

Third, the best achieves standard allows for a range of permissible designations, and not a single “best” outcome. The court agreed with LCDC and Metro that the standard does not require a ranking of alternative areas from worst to best. The court specifically rejected arguments presented by the cities of West Linn and Tualatin that the word “best” requires a comparative analysis that identifies a single highest-ranked designation.

Fourth, the court held that Metro and the counties must explain how the designation satisfies the best achieves standard through their findings concerning the application of the urban and rural reserve factors to specific areas. The court agreed with LCDC that there is a close relationship between the “factors” that Metro and the counties must consider for urban and rural reserve designations and the overall “best achieves” objective, and that the best achieves standard is satisfied through findings explaining why particular areas were chosen as urban or rural reserves.

Under the four legal premises stated by the Court of Appeals in *Barkers Five*, Metro and the counties have broad discretion in reaching a conclusion regarding whether the regionwide balance of urban and rural reserves achieves the identified objectives of creating livable communities while protecting farms, forest, and natural landscape features.

Some parties have argued that the reduction in urban reserve acreage in Washington County via House Bill 4078 inherently caused a shift in the “balance” of urban reserves that runs afoul of the best achieves standard. However, under the above-stated first premise of the Court of Appeals, that is incorrect. The court held that the best achieves standard does not require quantitative balancing of the specific amount of urban reserve acreage in one county or another. Thus, the reduction of urban reserves in Washington County by 3,210 acres does not inherently raise concerns under this standard.

Metro and the counties have adopted detailed findings regarding the consideration of all urban and rural reserve factors, explaining why particular areas were chosen as urban or rural reserves,

and explaining how the regional partners came to agree that the overall package of urban and rural reserves reflects a balance that best achieves the objectives of creating livable communities while protecting farms, forest, and natural landscape features. Those findings are consistent with the fourth premise identified by the Court of Appeals regarding compliance with the best achieves standard, and the findings continue to demonstrate that the objectives stated in the rule are being achieved through the selected designations.

Metro and the counties have also adopted detailed findings that explain why the urban and rural reserves adopted by the region satisfy the best achieves standard, which are set forth above in Section II of these findings. Those findings note that urban reserves, if and when added to the UGB, are likely to take some land from the farm and forest base. However, Metro and the counties also recognized that some of the same characteristics that make an area suitable for agriculture also make it suitable for livable communities under the best achieves standard, including mixed-use pedestrian and transit-supportive urban development, as well as industrial uses. For the reasons described below, the findings in Section II are still valid and are not impacted by the reduction of urban reserves in Washington County under House Bill 4078.

The designation by Metro and the counties of urban and rural reserves achieves the objectives required under the state rule, in part, by adopting 266,628 acres of rural reserves across the region that establish the long-term limits of urbanization in the Metro area. As described above, consistency with the “best achieves” standard does not require a quantitative balancing of the amount of rural and urban reserve acreage. However, the designation of a significant amount of rural reserve areas around the region, with the vast majority (248,796 acres) being foundation and important agricultural land, demonstrates the region’s commitment to achieving the objectives of ensuring viability and vitality of the agricultural and forest industries and corresponding protection of important natural landscape features. As described in the Court of Appeals opinion, LCDC’s intent when it created the best achieves standard was to provide another level of review specifically designed to protect foundation farmland in the region:

“[Commissioner Worrix] explained that the best achieves standard was seen as ‘the best solution’ for the agricultural industry that had expressed ‘a strong concern ... that there needed to be something that highlighted the importance of foundation land and gave them that little extra bit of scrutiny.’” *Barkers Five*, 261 Or App at 312.

Regarding important natural landscape features, the process associated with achieving a balance in the designation of urban and rural reserves also provided a significant amount of weight to the protection of natural features. Three of the urban reserve factors – (5), (7) and (8) – seek to direct urban development away from important natural landscape features, and away from farm and forest practices. This provides an example of the close relationship between the factors for urban and rural reserve designations and the “best achieves” objective (as described in the fourth premise adopted by the Court of Appeals), and demonstrates how the best achieves standard may

be satisfied through findings explaining why particular areas were chosen as urban or rural reserves. Similarly, the rules that apply to rural reserve designations include very specific directives regarding how natural landscape features must be reviewed and considered. OAR 660-027-0060(3). Section II of these findings includes a bullet-point list of areas where important natural landscape features are located that are protected with rural reserve designations.

Two of the three objectives that the best achieves standard requires to be balanced are primarily achieved through rural reserve designations: (a) protection of farm and forest and (b) protection of important natural resource features. The region's ability to achieve these two objectives through rural reserve designations is not impacted by the reduction of urban reserve acreage that occurred via House Bill 4078. In fact, that legislation enhanced the region's ability to achieve those two standards by adding approximately 2,780 acres of new rural reserves in Washington County, all of which is foundation agricultural land.

The third objective that must be balanced as part of the best achieves analysis is "livable communities." This objective is primarily achieved by designating areas across the region that will be the best locations to build "great communities" through application of the urban reserve factors. As discussed in Section II of these findings, great communities are those that offer residents a range of housing types and transportation modes from which to choose. To that end, urban reserve factors (1), (3), (4) and (6) are aimed at identifying lands that can be developed in a compact, mixed-use, walkable and transit-oriented pattern, supported by efficient and cost-effective services.

The reduction of urban reserves in Washington County by 3,210 acres does not impact the region's ability to build livable communities across the region over the next 40 to 50 years. The quantitative aspect of urban reserve planning is addressed by the rule discussed above that requires sufficient acreage for up to 50 years of urban growth. Meanwhile, the directive of the best achieves standard to provide livable communities is aimed at designating highest *quality* of locations that can provide a range of housing types and transportation modes, as well as efficient public services. As discussed above, the existing urban reserve acreage in the region still provides a sufficient amount of land for urban growth over the next 40 to 50 years. The fact that House Bill 4078 reduced the amount of urban reserves from 26,241 to 23,031 acres has no effect on the region's ability to plan and build livable communities on those 23,031 acres over the next several decades. Therefore, the balance in the designation of urban and rural reserves, in its entirety, still achieves the goals of providing livable communities, viability and vitality of farm and forest industries, and the protection of important natural landscape features that define the region.

In 2011, the region concluded, acting together, that the agreed-upon urban and rural reserve designations provide a balance that achieves the objectives of building livable communities while protecting farms, forests, and natural features. The findings adopted by Metro and the counties support a conclusion that the best achieves standard has been met, and that conclusion is



not impacted by the changes to urban and rural reserve acreage that occurred via House Bill 4078.

### **C. Responses to Issues Raised by Opponents**

During the proceedings leading up to the Metro Council's adoption of Ordinance No. 17-1397, several parties submitted testimony raising legal issues regarding the Metro staff analysis set forth in the February 22, 2017 memorandum to the Metro Council concerning the amount of urban reserves remaining in the region. Responses to these arguments are provided in the Metro staff memorandum dated March 23, 2017, which is included in the record and hereby incorporated as part of these findings.

A common theme in letters submitted by attorneys for the Maletis Brothers and Barkers Five, LLC arises out of Metro's reliance on the 2014 UGR for purposes of determining whether the amount of urban reserves is sufficient to provide a 40 to 50 year supply of urbanizable land. These parties contend that the 2014 UGR is flawed for various reasons and therefore does not provide an adequate basis to forecast the future need for residential and employment land between now and 2065.

A fundamental problem with arguments about the adequacy of the future growth projections in the 2014 UGR is that those projections were developed through a multi-year and extensively peer-reviewed process culminating in adoption of the 2014 UGR by the Metro Council via Ordinance No. 15-1361. That decision was not appealed by any party, and therefore the UGR is acknowledged by LCDC as providing a legally valid forecast that is in compliance with all state requirements. To the extent that opponents are attempting to challenge the adequacy of the assumptions and projections in the adopted and acknowledged 2014 UGR, those arguments are impermissible collateral attacks. The applicable rule establishing the requirement for a 40 to 50 year supply of urbanizable land does not require Metro to generate a new UGR for purposes of estimating the future need for urban reserves. Rather, it directs Metro to rely on the land supply analysis in the most recently adopted 2014 UGR, which is exactly what Metro has done.

Many of the staff responses in the memorandum dated March 23, 2017 to issues raised by counsel for the Maletis Brothers also apply to issues raised by counsel for Barkers Five, LLC in a letter dated March 23, 2017. Nearly all of the issues raised by Barkers Five are based on arguments regarding why they believe the 2014 UGR is not accurate. As addressed above, Metro is entitled to rely on the adopted and acknowledged 2014 UGR forecast and to apply that forecast to the urban reserve analysis. Responses to specific issues raised by counsel for Barkers Five, LLC are included in a separate memorandum from Metro staff dated April 6, 2017, which is included in the record and hereby incorporated as part of these findings.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADDRESSING	)	Ordinance No. 17-1397
STATE RULE REQUIREMENTS	)	
REGARDING THE AMOUNT OF URBAN	)	Introduced by Chief Operating Officer
RESERVES AND THE BALANCE OF	)	Martha Bennett in concurrence with
URBAN AND RURAL RESERVES IN THE	)	Council President Tom Hughes
METRO REGION	)	

WHEREAS, in 2007 the Oregon Legislative Assembly enacted SB 1011, authorizing Metro and the three counties in the Metro region to designate urban and rural reserves; and

WHEREAS, between 2008 and 2010 Metro and the three counties conducted an extensive public process bringing together citizens, stakeholders, local governments and state agencies to consider and apply the urban and rural reserve factors to land surrounding the Metro urban growth boundary (UGB); and

WHEREAS, in 2010 Metro and each of the three counties entered into intergovernmental agreements mapping the areas that were determined to be most appropriate as urban and rural reserves under the applicable factors; and

WHEREAS, in 2011 Metro and the three counties submitted ordinances and findings formally adopting the urban and rural reserve designations to LCDC for acknowledgement, and those designations were approved and acknowledged by LCDC in 2012; and

WHEREAS, in 2014 the LCDC acknowledgement order was remanded by the Oregon Court of Appeals, and the Oregon Legislative Assembly enacted HB 4078, which legislatively designated a revised map of urban and rural reserve areas in Washington County; and

WHEREAS, in 2015 LCDC issued an order remanding the remaining urban and rural reserve designations to Metro, Multnomah County, and Clackamas County for further review consistent with the Court of Appeals opinion; and

WHEREAS, in 2016 the Metro Council addressed the remand issues arising out of Clackamas County via Ordinance No. 16-1368, which adopted findings concluding that the urban reserve study areas identified as areas 4A, 4B, 4C, and 4D (generally referred to as “Stafford”) were correctly designated as urban reserve areas; and

WHEREAS, Metro now must adopt findings addressing two state rule requirements that apply to the designation of urban and rural reserves across the entire region, in light of (a) the Metro Council’s adoption of newer regional urban growth projections in the 2014 Urban Growth Report, and (b) the reduction of urban reserve acreage in Washington County via HB 4078; and

WHEREAS, Metro held public hearings on March 2, 2017 and March 16, 2017 at which the Metro Council accepted testimony regarding the urban and rural reserve designations in the Metro Region; and

WHEREAS, the Metro Council has reviewed the staff report, the testimony submitted by interested parties, and all other materials in the record, and now concludes that (a) the amount of existing urban reserves in the region is sufficient to accommodate urban growth in the region for between 40 and 50 years after 2015, and (b) the balance in the designation of urban and rural reserves across the region best achieves the goals of creating livable communities while protecting farms, forests, and natural landscape features; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

- 1. The Findings of Fact and Conclusions of Law in Exhibit A, attached and incorporated into this ordinance, explain how the urban and rural reserve designations adopted in 2011 by Metro Ordinance No. 11-1255, as modified by the 2014 Oregon legislature in House Bill 4078, are consistent with state law.
- 2. The prior record of proceedings before the Metro Council in Ordinance No. 16-1368 is hereby adopted and incorporated as part of the record in this proceeding.

ADOPTED by the Metro Council this \_\_\_\_\_ day of April 2017.

\_\_\_\_\_  
Tom Hughes, Council President

Attest:

Approved as to Form:

\_\_\_\_\_  
Nellie Papsdorf, Recording Secretary

\_\_\_\_\_  
Alison R. Kean, Metro Attorney

## **Exhibit A to Ordinance No. 17-1397**

The findings set forth below include the supplemental findings of the Metro Council arising out of this proceeding regarding the amount of urban reserves and region-wide balance of urban and rural reserves under applicable state rules. The findings below will replace Section V of the findings adopted by the Metro Council in Ordinance No. 16-1368.

### **V. SUPPLEMENTAL FINDINGS REGARDING SUPPLY OF URBAN RESERVES AND REGIONWIDE BALANCE**

The findings in this Section V supplement the findings adopted by the Metro Council in support of the original 2011 approval of urban and rural reserves via Metro Ordinance 11-1255. To the extent any of the findings in this section are inconsistent with other findings in this document that were previously adopted in 2011, the findings in this Section V shall govern. These findings address issues related to the regionwide supply of urban reserves and the overall balance of reserves in light of (a) the Metro Council's adoption of the current Urban Growth Report in 2015, and (b) the Oregon Legislature's enactment of House Bill 4078.

On April 21, 2011, Metro enacted Ordinance 11-1255 adopting the urban and rural reserve designations agreed upon by Metro and the three counties, and submitted that ordinance and accompanying findings to LCDC for acknowledgement. On August 19, 2011, LCDC voted to approve and acknowledge the reserve designations made by Metro and the counties, and LCDC issued Acknowledgment Order 12-ACK-001819 on August 14, 2012. Twenty-two parties filed appeals of the LCDC Order, and on February 20, 2014 the Oregon Court of Appeals issued its opinion in the *Barkers Five* case, affirming LCDC's decision regarding the majority of the 26 assignments of error raised by the opponents, and remanding the LCDC Order on three substantive issues.

First, the court concluded that LCDC incorrectly approved Washington County's application of the rural reserve factors pertaining to agricultural land, because the county relied on factors that were different from those required by statute for determining whether lands should be designated as rural reserve. The court held that the county's error required remand of all urban and rural reserves in Washington County for reconsideration.

Second, the court held that LCDC incorrectly concluded that Multnomah County had adequately considered the rural reserve factors pertaining to Area 9D. The court found that the county's findings were not sufficient to explain why its consideration of the applicable factors resulted in a designation of rural reserve for *all* of Area 9D, given the fact that property owners in that area had identified dissimilarities between the northern and southern portions of the study area.

Finally, the court held that LCDC did not correctly review Metro's urban reserve designation of the Stafford area for substantial evidence. The court concluded that Metro failed to adequately respond to evidence cited by opponents from Metro's 2035 Regional Transportation Plan (RTP)

indicating that traffic in the Stafford area was projected to exceed the capacity of certain roads by 2035.

Immediately after the Court of Appeals issued its opinion, work began on legislation designed to resolve issues regarding the remand of urban and rural reserves in Washington County. On March 7, 2014 the Oregon Legislature passed House Bill 4078, which legislatively approved Metro's 2011 UGB expansion, added an additional 1,178 acres of urban reserves to the UGB, and made other revisions to the reserves map in Washington County.

As described in Section IV of these findings, when Metro and the three counties adopted their maps of reserve areas, they agreed on a total of 28,256 acres of urban reserves, which reflected Metro's estimate of the acreage that would be required to provide a 50-year supply of urbanizable land as contemplated under ORS 195.145(4). The specific forecast described above in Section IV is for a range of between 484,800 and 531,600 new dwelling units over the 50-year period ending in 2060. Metro relied on the high point of that forecast range in estimating that the region would need a supply of urban reserves sufficient to provide for approximately 152,400 new dwelling units outside of the existing UGB through 2060.

After LCDC voted to approve Metro's findings and acknowledge the designation of 28,256 acres of urban reserves in August of 2011, Metro relied on those designations to expand the UGB onto approximately 2,015 acres of urban reserves in Washington County. However, that expansion was called into question by the Court of Appeals decision in *Barkers Five*, which reversed and remanded all of the urban and rural reserve designations in Washington County.

The compromise reflected in House Bill 4078 included legislative approval and state acknowledgement of the 2,015 acres of 2011 UGB expansions in order to provide certainty to the cities regarding their ability to urbanize those expansion areas. In addition to acknowledging the UGB expansion areas already approved by Metro, House Bill 4078 made the following changes to the reserves map in Washington County:

- Converted 2,449 acres of urban reserves to rural and undesignated
- Converted 417 acres from rural reserve to urban reserve
- Added 1,178 acres of urban reserve to the UGB

Thus, HB 4078 resulted in the net reduction of 3,210 acres of urban reserves below the amount remaining after Metro's 2011 UGB expansion. The remaining acreage of urban reserves in the Metro region is now 23,031.

The legislature's removal of 3,210 acres of urban reserves via HB 4078 potentially implicates two elements of state law governing reserves. First, ORS 195.145(4) requires the designation of a sufficient amount of urban reserve areas to provide the Metro region with a 40 to 50 year supply of urbanizable land. Second, OAR 660-027-0040(10) requires Metro and the counties to adopt findings explaining why the reserve designations achieve the objective stated in OAR 660-

027-0005(2) of a balance in urban and rural reserves that “best achieves” livable communities, viability and vitality of farm and forest industries, and protection of important natural landscape features.

Regarding the requirement for a 40 to 50 year supply of urban reserves, the applicable state rule requires Metro’s estimate of the projected long-range need for urban reserve acreage to be based on the analysis in Metro’s most recent Urban Growth Report (UGR). The projected need for urban reserves adopted by Metro and the counties in 2011 was based on the regional growth forecast set forth in Metro’s 2009 UGR. Since that time, in 2015 the Metro Council adopted the current 2014 UGR, which provides the current residential and employment growth projections for the region.

The findings below address the status of existing urban reserve acreage in light of the newer growth projections in the 2014 UGR, as well as the impact of HB 4078 on both the amount of urban reserves and the regionwide balance of urban and rural reserves under the “best achieves” standard.

#### **A. Amount of Land Designated Urban Reserve in the Metro Region**

The state rules governing the designation of urban and rural reserves require that the amount of land designated as urban reserves must be planned to accommodate estimated urban population and employment growth in the Metro region for between 20 and 30 years beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in its most recent Urban Growth Report. OAR 660-027-0040(2). The Metro Council adopted the current 2014 UGR via Ordinance No. 15-1361 on November 12, 2015.

In order to update the 50-year need analysis for urban reserves to 2065 by applying the most current growth projections, Metro planning staff prepared a memorandum dated February 22, 2017, which was attached to the staff report for Metro’s public hearing on March 2, 2017. That memorandum provides an updated assessment of potential long-term demand for urban reserves, and concludes that the existing amount of urban reserves, combined with buildable land already inside the UGB, can provide a sufficient amount of land to accommodate expected urban growth.

Specifically, the staff memorandum includes an analysis of projected long-term need for residential and employment land, and concludes that the existing 23,031 acres of urban reserves can reasonably be expected to accommodate projected household and employment growth over the next 40 to 50 years. The staff analysis forecasts a potential need for 24,827 acres of urban reserves by 2065. Assuming an equal amount of urban reserve acreage is converted annually over 50 years, the existing 23,031 acres of urban reserves would provide a 46-year supply of land for urban growth in the Metro region.

As explained in the staff memo, any prediction about how much land will be required for urban growth in the region over a 50-year planning horizon will necessarily be a rough estimate. The

nature of this exercise requires Metro to predict what growth and development trends might look like over the next 40 to 50 years, based on the available data. State law does not provide any particular formula or methodology for estimating the future need for urban reserves. As explained by LCDC in its 2012 order regarding Metro’s compliance with the requirement to provide a 40 to 50-year supply of urban reserves, the statutes and rules provide Metro “a substantial degree of discretion concerning ... the methods and policy considerations that Metro uses to project future population and employment.” (LCDC Compliance Acknowledgment Order 12-ACK-001819, page 26).

The 50-year regional growth estimate provided in the February 22 Metro staff memorandum is based on the analysis and projections in the 2014 UGR. The UGR forecast is then subjected to a series of predictions about what will happen in the future, based on multiple levels of assumptions regarding an array of factors that affect how much residential and employment growth might be expected in the region, such as capture rate, vacancy rate, and projected share of single-family and multifamily housing types. Minor changes in the underlying assumptions regarding these factors will necessarily change the results.

The Metro Council also notes that the intergovernmental agreements between Metro and each of the three counties regarding the designation of reserves provide for a review of existing urban reserves in each county 20 years after the date of adoption, or sooner if agreed to by Metro and all three counties. Therefore, the adequacy of the amount of land designated for future urbanization can and will be revisited, and additional lands may be added if necessary, much sooner than 2065.

Based on the analysis and projections provided in the Metro staff memorandum dated February 22, 2017, the Metro Council concludes that the existing 23,031 acres of urban reserves across the region, combined with buildable land already inside the UGB, will provide a sufficient amount of land for urban growth in the region over the next 40 to 50 years, as required by state law.

#### **B. Balance in the Designation of Reserves that “Best Achieves” Certain Goals**

Included among the state rules governing urban and rural reserves is a requirement that Metro and the counties must explain how the urban and rural reserve designations achieve the following objective:

“The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents.” OAR 660-027-0005(2).

During the proceedings before LCDC regarding its adoption of the remand order in 2015, some parties argued that the reduction in urban reserve acreage in Washington County via House Bill 4078 created a shift in the balance of urban reserves that implicates the “best achieves” standard. The following two sections of these findings address the application of the best achieves standard in light of HB 4078.

First, in adopting HB 4078 the legislature enacted a new statute that acknowledged the new balance of urban and rural reserves across the region as being in compliance with state law, and therefore a new analysis by Metro and the counties is not required. Second, in the event such an analysis is required, that standard is still met.

### **1. The “best achieves” rule is satisfied through HB 4078**

The enactment of HB 4078 resulted in the legislative acknowledgement of the new amount of urban reserves and the new balance of urban and rural reserves as being in compliance with all aspects of state law. Therefore, in the absence of any changes to the existing mapped acreage of urban and rural reserves in Clackamas County and Multnomah County, the existing balance of reserves across the region meets all applicable state requirements and there is no need for Metro to revisit the standards related to the “best achieves” requirement as part of these findings.

In the *Barkers Five* opinion, the Court of Appeals remanded the designation of all urban and rural reserves in Washington County for reconsideration. As a result of this wholesale remand of the entire Washington County reserves package, the court also noted that “any new joint designation” of reserves by the county and Metro on remand would also require new findings addressing the “best achieves” standard in OAR 660-027-0005(2). *Barkers Five* at 333.

Thus, the court’s opinion provides that the best achieves standard would only be triggered in the event there are any *new* designations of reserve areas on remand that are different from what was approved in the original decision. That is because the stated purpose of the best achieves standard is to ensure that the overall “balance in the designation of urban and rural reserves” across the entire region “best achieves” liveable communities, vitality of farm and forest uses, and protection of natural features that define the region. Thus, any changes in the “balance” of those designations by Metro and the counties on remand would require a reassessment of whether and how those objectives are still met. But, in the absence of any changes to the reserve maps, no further assessment would be required.

This aspect of the Court of Appeals decision was overridden with respect to Washington County by the enactment of HB 4078, which legislatively established a new map of the locations of the UGB and urban and rural reserves in Washington County. This legislative action negated the court’s directive requiring remand to Metro and Washington County for reconsideration of the reserve designations. The enactment of HB 4078 also negates any need to reconsider or reapply the best achieves standard, which is an administrative rule requirement that was necessarily preempted by the legislature as part of its decision to redesignate substantial portions of the



Washington County reserve areas. As long as the remand proceedings regarding Clackamas County and Multnomah County do not result in changes to the reserves maps in those counties, there is no need to reconsider the best achieves standard to account for the HB 4078 revisions.

The Oregon legislature is presumed to be aware of existing law when it enacts new legislation. *Blanchana, LLC v. Bureau of Labor and Industries*, 354 Or 676, 691 (2014); *State v. Stark*, 354 Or 1, 10 (2013). This presumption also applies to administrative rules adopted by LCDC. *Beaver State Sand & Gravel v. Douglas County*, 187 Or App 241, 249-50 (2003). When the legislature adopted revisions to the Washington County reserves map as part of HB 4078, it is presumed to have been aware of LCDC's administrative rule requiring that there be a balance in reserve designations that "best achieves" the stated goals. The adoption of HB 4078 created a statutory requirement regarding the location of reserves in Washington County that takes precedence over LCDC's "best achieves" rule and does not require subsequent action by LCDC, Metro or the counties to explain why the statute satisfies an administrative rule requirement, because statutes necessarily control over administrative rules.

The express terms of HB 4078 also indicate a legislative intent to preempt existing land use law. Each section of HB 4078 that establishes new locations for reserve areas or the UGB begins with the phrase "*For purposes of land use planning in Oregon*, the Legislative Assembly designates the land in Washington County...." HB 4078, Sec 3(1), (2), (3) (2014). The legislature was aware that its actions in redrawing the UGB and reserve maps had the effect of acknowledging the new maps as being in compliance with state law, and thereby preempting other land use planning rules (including for example LCDC's Goal 14 rules regarding UGB expansions). The legislature included this language to clearly state that its action in adopting the new maps constituted acknowledgment of compliance with state law, and that it need not demonstrate compliance with other existing land use statutes, goals or rules, including the "best achieves" rule and the statutory requirement to provide a 40 to 50 year supply of urban reserves.

For these reasons, so long as there are no revisions on remand to the reserve maps in Clackamas County or Multnomah County, the HB 4078 revisions to the reserve designations in Washington County do not create a need to reconsider compliance with the "best achieves" standard or the sufficiency of the supply of urban reserves.

## **2. The balance in the designation of reserves still achieves the stated goals**

The meaning and application of the "best achieves" rule was the subject of considerable debate in the appeals filed with LCDC in 2011 and with the Court of Appeals in 2012. Ultimately, in the *Barkers Five* opinion, the Court of Appeals agreed with the positions taken by LCDC and Metro that the "best achieves" standard provides significant discretion to Metro and the counties, and is satisfied through their site-specific findings concerning the application of the urban and rural reserve factors. Specifically, the Court of Appeals identified and agreed with the following four legal premises regarding the application of the standard.

First, the best achieves standard is a qualitative standard, rather than a quantitative one. The court agreed with LCDC that the standard “is not a balance in terms of the quantitative *amount* of urban and rural reserve acreage, but a balance between encouraging further urban expansion versus land conservation.” The court explained that Metro and the counties are not required to justify a quantitative “balance” in the specific amount of acreage of urban reserves and rural reserves.

Second, the best achieves standard applies to Metro and the counties’ designation of reserves “in its entirety” and not to the designation of individual properties or areas as urban or rural reserves.

Third, the best achieves standard allows for a range of permissible designations, and not a single “best” outcome. The court agreed with LCDC and Metro that the standard does not require a ranking of alternative areas from worst to best. The court specifically rejected arguments presented by the cities of West Linn and Tualatin that the word “best” requires a comparative analysis that identifies a single highest-ranked designation.

Fourth, the court held that Metro and the counties must explain how the designation satisfies the best achieves standard through their findings concerning the application of the urban and rural reserve factors to specific areas. The court agreed with LCDC that there is a close relationship between the “factors” that Metro and the counties must consider for urban and rural reserve designations and the overall “best achieves” objective, and that the best achieves standard is satisfied through findings explaining why particular areas were chosen as urban or rural reserves.

Under the four legal premises stated by the Court of Appeals in *Barkers Five*, Metro and the counties have broad discretion in reaching a conclusion regarding whether the regionwide balance of urban and rural reserves achieves the identified objectives of creating livable communities while protecting farms, forest, and natural landscape features.

Some parties have argued that the reduction in urban reserve acreage in Washington County via House Bill 4078 inherently caused a shift in the “balance” of urban reserves that runs afoul of the best achieves standard. However, under the above-stated first premise of the Court of Appeals, that is incorrect. The court held that the best achieves standard does not require quantitative balancing of the specific amount of urban reserve acreage in one county or another. Thus, the reduction of urban reserves in Washington County by 3,210 acres does not inherently raise concerns under this standard.

Metro and the counties have adopted detailed findings regarding the consideration of all urban and rural reserve factors, explaining why particular areas were chosen as urban or rural reserves, and explaining how the regional partners came to agree that the overall package of urban and rural reserves reflects a balance that best achieves the objectives of creating livable communities while protecting farms, forest, and natural landscape features. Those findings are consistent with the fourth premise identified by the Court of Appeals regarding compliance with the best

achieves standard, and the findings continue to demonstrate that the objectives stated in the rule are being achieved through the selected designations.

Metro and the counties have also adopted detailed findings that explain why the urban and rural reserves adopted by the region satisfy the best achieves standard, which are set forth above in Section II of these findings. Those findings note that urban reserves, if and when added to the UGB, are likely to take some land from the farm and forest base. However, Metro and the counties also recognized that some of the same characteristics that make an area suitable for agriculture also make it suitable for livable communities under the best achieves standard, including mixed-use pedestrian and transit-supportive urban development, as well as industrial uses. For the reasons described below, the findings in Section II are still valid and are not impacted by the reduction of urban reserves in Washington County under House Bill 4078.

The designation by Metro and the counties of urban and rural reserves achieves the objectives required under the state rule, in part, by adopting 266,628 acres of rural reserves across the region that establish the long-term limits of urbanization in the Metro area. As described above, consistency with the “best achieves” standard does not require a quantitative balancing of the amount of rural and urban reserve acreage. However, the designation of a significant amount of rural reserve areas around the region, with the vast majority (248,796 acres) being foundation and important agricultural land, demonstrates the region’s commitment to achieving the objectives of ensuring viability and vitality of the agricultural and forest industries and corresponding protection of important natural landscape features. As described in the Court of Appeals opinion, LCDC’s intent when it created the best achieves standard was to provide another level of review specifically designed to protect foundation farmland in the region:

“[Commissioner Worrix] explained that the best achieves standard was seen as ‘the best solution’ for the agricultural industry that had expressed ‘a strong concern . . . that there needed to be something that highlighted the importance of foundation land and gave them that little extra bit of scrutiny.’” *Barkers Five*, 261 Or App at 312.

Regarding important natural landscape features, the process associated with achieving a balance in the designation of urban and rural reserves also provided a significant amount of weight to the protection of natural features. Three of the urban reserve factors – (5), (7) and (8) – seek to direct urban development away from important natural landscape features, and away from farm and forest practices. This provides an example of the close relationship between the factors for urban and rural reserve designations and the “best achieves” objective (as described in the fourth premise adopted by the Court of Appeals), and demonstrates how the best achieves standard may be satisfied through findings explaining why particular areas were chosen as urban or rural reserves. Similarly, the rules regarding rural reserve designations include very specific directives

regarding how natural landscape features must be reviewed and considered. OAR 660-027-0060(3). Section II of these findings includes a bullet-point list of areas where important natural landscape features are located that are protected with rural reserve designations.

Two of the three objectives that the best achieves standard requires to be balanced are primarily achieved through rural reserve designations: (a) protection of farm and forest and (b) protection of important natural resource features. The region's ability to achieve these two objectives through rural reserve designations is not impacted by the reduction of urban reserve acreage that occurred via House Bill 4078. If anything, that legislation enhanced the region's ability to achieve those two standards by adding approximately 2,780 acres of new rural reserves in Washington County, primarily on high-quality farmland.

The third objective that must be balanced as part of the best achieves analysis is "livable communities." This objective is primarily achieved by designating areas across the region that will be the best locations to build "great communities" through application of the urban reserve factors. As discussed in Section II of these findings, great communities are those that offer residents a range of housing types and transportation modes from which to choose. To that end, urban reserve factors (1), (3), (4) and (6) are aimed at identifying lands that can be developed in a compact, mixed-use, walkable and transit-oriented pattern, supported by efficient and cost-effective services.

The reduction of urban reserves in Washington County by 3,210 acres does not impact the region's ability to build livable communities across the region over the next 40 to 50 years. The quantitative aspect of urban reserve planning is addressed by the rule discussed above that requires sufficient acreage for up to 50 years of urban growth. The directive of the best achieves standard to provide livable communities is aimed at designating highest *quality* of locations that can provide a range of housing types and transportation modes, as well as efficient public services. As discussed above, the existing urban reserve acreage in the region still provides a sufficient amount of land for urban growth over the next 40 to 50 years. The fact that House Bill 4078 reduced the amount of urban reserves from 26,241 to 23,031 acres has no effect on the region's ability to plan and build livable communities on those 23,031 acres over the next 50 years.

In 2011, the region concluded, acting together, that the agreed-upon urban and rural reserve designations provide a balance that achieves the objectives of building livable communities while protecting farms, forests, and natural features. The findings adopted by Metro and the counties support a conclusion that the best achieves standard has been met, and that conclusion is not impacted by the changes to urban and rural reserve acreage that occurred via House Bill 4078.

## **SUPPLEMENTAL STAFF REPORT**

### **IN CONSIDERATION OF ORDINANCE NO. 17-1397 FOR THE PURPOSE OF ADDRESSING STATE RULE REQUIREMENTS REGARDING THE AMOUNT OF URBAN RESERVES AND THE BALANCE OF URBAN AND RURAL RESERVES IN THE METRO REGION**

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Date: April 6, 2017

Prepared by: Roger Alfred, Senior Assistant Attorney

#### **PROPOSED ACTION**

Adoption of Ordinance No. 17-1397 including supplemental findings addressing two state rule requirements that apply to the amount of urban reserves regionwide and to the “balance” of urban and rural reserve designations, in light of the Oregon legislature’s reduction of urban reserve acreage in 2014 via House Bill 4078, and the Metro Council’s adoption of the most recent Urban Growth Report.

#### **BACKGROUND**

This staff report supplements the prior staff report dated February 23, 2017. The Metro Council held public hearings on March 2, 2017 and March 16, 2017. At the close of the March 16, 2017 public hearing the Council held the record open for additional written submittals until March 23, 2017. A considerable amount of oral and written testimony has been submitted, much of it related to existing rural reserve designations in Multnomah County. Metro staff prepared a memorandum dated March 23, 2017 responding to issues that had been raised by the date of the second hearing. On March 23, 2017, the date the record was closed, Metro received a letter from the Jordan Ramis law firm on behalf of Barkers Five, LLC with accompanying exhibits. That letter raises issues regarding the Metro staff analysis of the sufficiency of existing urban reserves to provide a 50-year supply of urbanizable land.

In response to the letter from Jordan Ramis, Metro staff prepared a memorandum dated April 6, 2017 that addresses relevant concerns. That memorandum is Attachment 1 to this staff report. Staff has also prepared a revised set of supplemental findings (Exhibit A to the Ordinance), which are included in the Council packet. The revised findings are nearly identical to the draft findings that were provided to the Council for the March 16 hearing, with the primary change being the addition of a new Section C at the end, which incorporates the April 6 staff memorandum and provides other findings in response to issues raised by opponents in the public hearings and during the open record period.

#### **PROPOSED FINDINGS**

Staff has provided a set of proposed supplemental findings. The findings are “supplemental” in that they are in addition to the reserve findings previously adopted by the Council in 2011 in support of the original urban and rural reserve decision and in 2016 regarding the remand from the Court of Appeals of urban reserve designations in the Stafford area. The supplemental findings will replace Section V of the previous findings from 2016 addressing issues regarding the 50-year supply of urban reserves and the regionwide balance of urban and rural reserves. In adopting Ordinance No. 17-1397 the Council will re-adopt the entire set of findings that were adopted in 2016, with the new Section V included in that document.

## **RECOMMENDED ACTION**

Staff recommends adoption of Ordinance No. 16-1368. As described in the proposed findings, staff's analysis of the evidence in the record supports the conclusion reached by Metro staff in the February 22, 2017 that there is a sufficient amount of urban reserves to provide a 50-year supply, and supports the conclusion that the regionwide balance of urban and rural reserves best achieve the goals of creating livable communities while protecting farms, forests and important natural landscape features.

# Memo

Date: April 6, 2017  
To: Metro Council  
From: Ted Reid, Principal Regional Planner  
Roger Alfred, Senior Assistant Attorney  
Subject: Urban and rural reserves – Metro Planning and Development staff response to letter from Mr. Peter Watts

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This memorandum provides the Metro staff response to a letter submitted by Peter Watts of the Jordan Ramis law firm on March 23, 2017 regarding the sufficiency of the amount of land designated as Urban Reserve in the Metro region. Because the evidentiary record closed on March 23, 2017, this memorandum does not include any new evidence, but only staff comments regarding the arguments and exhibits submitted by Mr. Watts.

First, Mr. Watts contends that it is “unreasonable” for Metro staff to rely on the 2014 UGR for purposes of forecasting the 40 to 50 year need for urban reserves in the Metro region because the 2014 UGR analysis is overly influenced by the recession and “does not represent the current market reality.” As previously described in the Metro staff memorandum dated March 23, 2017, the applicable state rule regarding forecasting the amount of land needed for urban reserves directs Metro to base its analysis on the most recent UGR, and does not require Metro to undertake a new buildable lands analysis under ORS 197.296 in order to project future need for residential and employment land between now and 2065. The 2014 UGR was adopted by Metro Council ordinance in 2015 and acknowledged by LCDC; therefore, its conclusions are not subject to challenge in this proceeding.

In support of his arguments, Mr. Watts first points to census data from 2014 to 2016 regarding housing permits issued in the Portland-Vancouver-Hillsboro Metropolitan Statistical Area (MSA) to argue that the percentage of single family homes constructed in the last three years exceeds Metro’s projection in the 2014 UGR that 36% of new housing units would be single family. Mr. Watts also cites a 2016 Housing Market Analysis prepared by the Department of Housing and Urban Development (HUD), and argues that the HUD analysis predicts that 58% of future demand will be for single family homes, which is 22% more than predicted in the UGR.

The primary error in these arguments is that both the census report and the HUD forecast are based on data and estimates for the entire seven-county MSA, which includes Columbia County, Yamhill County, Skamania County, and Clark County. Meanwhile, the housing mix described in the 2014 UGR is limited to the area defined by the Metro UGB, and does not consider the entire seven-county region. It is not surprising that there will be higher demand for, and development of, single family homes in less densely urbanized locations such as Canby,

Vancouver, Newberg, St. Helens and Stevenson than within the Metro UGB. Comparing the census data and HUD seven-county forecast to the 2014 UGR is not comparing apples to apples.

Further, the cited figures from the seven-county HUD forecast are based exclusively on housing tenure (sales vs. rentals) as opposed to the UGR, which translates tenure into actual housing type (single family vs. multifamily). Therefore, the comparatively higher number of “single family homes” that are predicted by HUD includes condominiums, which are considered multifamily dwellings rather than single family for purposes of the UGR.

The remainder of the letter from Mr. Watts includes paragraphs (a) through (g) raising additional issues with the 2014 UGR projections. Each of those paragraphs is addressed below.

- a. Mr. Watts incorrectly asserts that the staff analysis regarding future urban reserve acreage is somehow related to estimated growth in Skamania County. That county is part of the federally defined seven-county MSA for which detailed census data are available and are relied upon by Metro as the starting point for its forecasts of population and job growth in the Metro area. However, the seven-county forecasts are then pared down through the application of a market-based land and transportation computer model that is used to determine what percentage of the new jobs and households expected in the seven-county MSA are likely to locate within the Metro UGB. This “capture rate” was approximately 72% in the 2014 UGR. Neither the UGR nor the February 22, 2017 urban reserve assessment by Metro staff include any projections regarding what particular amount of growth will occur in Skamania or any of the other counties that are not part of the Metro area. To the extent Mr. Watts is challenging the capture rate for the Metro area as applied in the 2014 UGR, that decision has been adopted and acknowledged and Metro may properly rely upon it.
- b. Mr. Watts challenges the application of a four percent vacancy rate in the February 22, 2017 urban reserve assessment. In that analysis, Metro staff applied the same four percent vacancy rate that was applied in the 2014 UGR. Mr. Watts asserts that “no county in the seven county region achieved even a 5% vacancy rate, let alone a 4% vacancy rate per the 2000 and 2010 census,” but provides no evidence to support that assertion. However, Mr. Watts did submit evidence to the contrary in the HUD report addressed above, which states on page one that the owner-occupied vacancy rate in the seven-county housing market area is one percent and the rental housing vacancy rate is 2.9%. Thus, based on the evidence provided by Mr. Watts, the 4% rate assumed by Metro staff might be considered too high. However, no particular vacancy rate is required for purposes of the urban reserve assessment and Metro may properly rely on the same vacancy rate estimate that was applied in the 2014 UGR.
- c. Mr. Watts asserts that Metro staff’s assumption in the urban reserve assessment that 45% of gross urban reserve acreage will be net developable acres is too high, pointing to net developable areas in South Hillsboro, North Bethany, South Cooper Mountain and the Stafford Basin. Regarding South Hillsboro, the page cited by Mr. Watts in the South Hillsboro Community Plan provides a figure for net developable acres of 649 but does not



provide the gross acreage for the entire plan area. However, page three of the Community Plan describes the plan area as containing approximately 1,400 acres, which equates to 46% net developable acres. Similarly, Mr. Watts describes North Bethany as having 237 net developable acres out of 691 gross acres, but the page he cites in the Washington County materials that he submitted as an exhibit does not reflect those figures. Rather, those materials consistently refer to 326 net developable acres. Assuming that the 691 gross acre figure is correct, 326 acres out of 691 equates to 47% net developable acres. Mr. Watts also cites South Cooper Mountain where the net-to-gross acreage was 237/544, which equates to 43.6% buildable land, or only 1.4% less than the 45% assumed by Metro staff in the urban reserve assessment.

The reliance by Mr. Watts on the concept plan materials he submitted regarding the Stafford Basin is similarly puzzling. His letter states that only 1,000 out of 4,700 acres were deemed buildable; however page 5 of the plan document states the following: "The Basin covers roughly 4,300 acres of land, of which just over 2,000 are considered buildable after accounting for existing homes, natural areas and steep slopes." Based on this statement, net buildable acreage in the Stafford Basin would be 46.5% of the gross acreage. To be fair, we know that the three urban reserve areas at issue (4A, 4B and 4C) actually do contain approximately 4,700 acres. Assuming that the Stafford Basin concept plan materials are correct regarding the basin containing 2,000 acres of net buildable land (which is questionable since it appears to have considered only a 4,300 acre plan area rather than a 4,700 acre area), that would equate to 42.5% net buildable land.

These four examples, which all fall within about two percentage points of 45% (two of the examples are higher), validate Metro staff's decision to apply an assumption that 45% of urban reserve land will be buildable.

- d. Mr. Watts points to existing urban reserve areas that are located east and south of the former City of Damascus and contends that those areas "are no longer viable as urban reserves" because water and sewer services cannot be easily provided and they are unlikely to be annexed by Gresham or Happy Valley. When these urban reserve areas were designated in 2010, they were adjacent to the UGB and the City of Damascus. While the disincorporation of that city might make it more challenging for these areas to be urbanized in the future, they remain designated as urban reserves and Metro cannot disregard their existence for purposes of undertaking the analysis required under OAR 660-027-0040(2). Further, even if Mr. Watts is correct that the City of Gresham is currently not interested in annexing into Clackamas County, there is no reason to believe that the city's current political position will never change over the course of a 50-year planning horizon.
- e. Mr. Watts asserts that the Metro staff assumption of 10 dwelling units per acre in the February 22, 2017 urban reserve assessment is too high, citing a prior agreement regarding future density in the Stafford area; however, no such agreement has been submitted as evidentiary support for this statement. Assuming that portions of Stafford urban reserves are brought into the UGB at some point in the future, future development and density in

those areas will be based on concept plans prepared by a city with plans to annex the area, in conjunction with Metro and Clackamas County. The same is true for the Advance Road urban reserve area adjacent to the City of Wilsonville.

- f. Mr. Watts asserts that the Metro staff assumption of 10 dwelling units per acre in the urban reserve assessment is unlikely, and actual density in future urban areas will be lower. As examples, Mr. Watts cites a recent UGB expansion in the City of Lafayette with a density of six units per acre, as well as suburban locations and smaller cities in Clark County, Washington. It is entirely possible, and not at all surprising, that development is occurring at lower densities outside of the Metro UGB in Washington. Metro has no jurisdiction over those decisions. In the Metro region, cities and counties are subject to DLCD's Metropolitan Housing Rule, which requires higher densities. In fact, that rule requires an overall density of 10 units per acre in Multnomah County, Portland, Gresham, Beaverton, Hillsboro, Lake Oswego and Tigard. The Metro Council has the authority to place conditions of approval, including expectations for housing numbers and densities, on UGB expansions. For instance, the 2011 Metro Council ordinance expanding the UGB into South Hillsboro and South Cooper Mountain included conditions resulting in densities in the range of 10 to 15 units per net developable acre, as referenced in Metro staff's February 22, 2017 assessment.

Mr. Watts asserts that Metro is ascribing 28 percent of future growth to the four counties outside of the Metro UGB and asserts that those counties (Yamhill, Skamania, Columbia and Clark counties) cannot be expected to take on that much growth. We believe that Mr. Watts is referencing the 28 percent of total seven-county growth that is not "captured" in the Metro UGB per the 2014 UGR's analysis (72 percent is the forecast Metro UGB capture rate). The premise of this argument is incorrect because the 72 percent capture rate applies to projected growth inside the Metro UGB, not inside the boundaries of the three counties included in the Metro UGB. There are many other cities located within Washington, Clackamas and Multnomah counties where future growth will occur that are not within the Metro UGB. It is incorrect to say that all growth not captured within the Metro UGB will occur in the other four counties; therefore, that number would actually be much smaller than 28 percent. In any event, the capture rate forecast is based on the best available information and results from Metro's land use model – Metro's job is to predict how much growth will occur within the Metro UGB, not to forecast growth in Yamhill, Skamania, Columbia and Clark counties.

- g. Mr. Watts states that the population growth estimates for the region are too low, pointing to estimates released in 2015 from the U.S. Census Bureau. The Metro staff estimates are based on the population forecast in the 2014 UGR that was adopted by the Metro Council and acknowledged by LCDC. The population forecast in the 2014 UGR is derived from the most recent U.S. Census data available at the time, in the 2010 census. As described above, the urban reserve rules do not require Metro to undertake a new UGR analysis under ORS 197.296 and corresponding population forecast for purposes of estimating the current sufficiency of urban reserves. Rather, Metro is correctly relying on the projections set forth in the adopted and acknowledged 2014 UGR.