Oregon
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July 28, 2011

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Portland, Oregon 97214

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Washington County Board of Commissioners
155 North First Avenue MS-21
Hillsboro, Oregon 97124

RE: LAND CONSERVATION AND DEVELOPMENT COMMISSION HEARING ON METRO URBAN AND RURAL RESERVES

Enclosed is the Department of Land Conservation and Development (DLCD) report and recommendation concerning the continued hearing on urban and rural reserves adopted by Clackamas, Multnomah, and Washington counties and Metro. This matter is scheduled to be heard by the Land Conservation and Development Commission (LCDC) on August 18, 2011 in the Council Chambers at the Metro Regional Center, 600 NE Grand Avenue, Portland, Oregon. The hearing is expected to conclude on that same day with the option of being continued to August 19, 2011 at the same location if need be.

Commission rules allow the local governments that submitted the decisions, and persons who filed objections to those decisions, to file written exceptions to the enclosed report. The exceptions must be filed with DLCD within 10 days from the date this report is mailed. This means that written exceptions to the report must be *received* by DLCD at its Salem office by 5:00 p.m. on **August 8, 2011** (see OAR 660-025-0160(4)).

LCDC will make a final decision on the submittals based on the written record (unless the commission requests new evidence or information). Oral argument will be allowed at the hearing, but it will be limited to the counties, Metro, and those who filed valid objections (see OAR 660-025-0085 and OAR 660-025-0160).

In order to complete the hearing in the available period, the time for argument will be limited. The hearing will be conducted according to the schedule described below. Specific amounts of times for argument on each objection will be set in order to stay within this schedule. To complete the argument and make its decisions, the commission may alter these times.

The proposed schedule is:

Thursday (8:30 a.m. – 5:00 p.m.)

8:30-10:10	DLCD presentation of staff report (20 min)
	Metro presentation (20 min)
	Washington County presentation (30 min)
	Clackamas County presentation (15 min)
	Multnomah County presentation (15 min)
10:10-10:15	Break
10:15- 12:00	Argument on Objections
12:00-1:00	Lunch
1:00-3:00	Argument on Objections
3:00-3:15	Break
3:15-5:00 +	Commission deliberations and decisions

Friday (8:30 a.m. – 12:00 p.m.)
Commission deliberations and decisions (if needed)

Sincerely,

Jim Rue
Acting Director

cc. John VanLandingham, LCDC Chair (via e-mail)
Objectors (via e-mail and mail)
Local government contacts (via e-mail and mail)

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July 28, 2011

TO: Land Conservation and Development Commission

FROM: Jim Rue, Acting Director
Rob Hallyburton, Planning Service Division Manager
Jennifer Donnelly, Metro Area Regional Representative

SUBJECT: **Agenda Item 11, August 17-19, 2011, LCDC Meeting**

METRO URBAN AND RURAL RESERVES

I. AGENDA ITEM SUMMARY

A. Type of Action and Commission Role

The Land Conservation and Development Commission (LCDC, or "the Commission") conducted a hearing in 2010 concerning a joint submittal by the Metropolitan Service District ("Metro") and Clackamas, Multnomah and Washington counties designating urban and rural reserves. The designations were submitted "in the manner of periodic review" for review by the director of the Department of Land Conservation and Development (DLCD, or "the department") pursuant to ORS 197.626. The director referred the matter to the Commission as authorized by OAR 660-025-0150(1)(c).

At the close of the Commission's hearing, on October 29, 2010, it passed a motion to (1) approve the urban and rural reserve designations as submitted in Clackamas and Multnomah counties, (2) approve the urban reserves in Washington County with the exception of two areas, which were remanded, and (3) remand the rural reserve designations in Washington County.

The jurisdictions submitted amendments to the designations in response to the remand to the department on May 13, 2011. This "re-designation submittal" was referred to the Commission by the director.

The Commission's review of the re-designation submittal focuses on specific issues raised by the amendments adopted by the jurisdictions. This is a review on the record. The purpose of the hearing is to review the re-designation submittal, any objections to the submittal, and the department's report; to hear argument from the parties; and to decide what action to take in response to the re-designation submittal.

The Commission must make a decision pursuant to OAR 660-025-0160 and ORS 197.626 and 197.628 to 197.650.The Commission may:

(a) Approve the submittal;
(b) Remand the submittal, or a portion of the submittal to the local governments, including a date for re-submittal; or
(c) Require specific plan or land use regulation revisions to be completed by a specific date.

B. Staff Contact Information

If you have questions about this agenda item, please contact Jennifer Donnelly, DLCD Regional Representative, at (971) 673-0963, or jennifer.donnelly@state.or.us.

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II. SUMMARY OF RECOMMENDED ACTION

For the reasons described in its report, the department recommends that the Commission deny the objections and approve the submittal.

The department has carefully reviewed each of the objections from each of the parties who filed in response to the Metro and county re-designation submittals. Metro and the counties have considered what they were required to consider, have adequately explained their decisions, and have properly applied the applicable standards and criteria for their decisions. The decisions are based on substantial evidence in the record as a whole. As a result, and for the reasons set out in below in more detail, the department recommends that the Commission approve the designations of urban and rural reserves as submitted.

III. BACKGROUND

A. Purpose of Urban and Rural Reserves

The purpose section of the Oregon Administrative Rule (OAR) regarding urban and rural reserves in the Portland Metro area (OAR 660-027-0005(2)) states:

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

Under ORS 195.143, the designation of urban and rural reserves in the Portland metro region is a cooperative process, where Metro designates urban reserves and the counties designate rural reserves. The authority provided by statute for designating reserves in this way is dependent on Metro and the counties agreeing on both the urban and rural reserve designations. Metro has agreed with each of the counties concerning the urban and rural reserve designations in those counties.

B. Local Actions

Metro's decision to designate urban reserves in the three-county region was made on June 3, 2010. Multnomah, Clackamas and Washington counties made their decisions to designate rural reserves in their counties, respectively, on May 13, May 27 and June 15, 2010.

The four governments submitted their decisions to the department on June 23, 2010. Together, these decisions establish a system of urban and rural reserves in the three-county region to guide long-term planning to the year 2060. The decisions designate 28,615 acres of urban reserves to accommodate urban growth to 2060, and 266,954 acres of rural reserves to protect agricultural land, forest land and important natural landscape features from urbanization for 50 years. The decisions include changes to the comprehensive plans (of the counties) and the regional framework plan (of Metro), including the adoption of plan maps that depict the urban and rural reserves.

Subsequent to the Commission's action on review of the urban and rural reserves submittal (see subsection C of this section), Metro adopted amendments to the regional framework plan on April 21, 2011 and Washington County adopted amendments to its comprehensive plan on April 26, 2011 responding to the Commission's action. Clackamas and Multnomah counties adopted conforming plan amendments on April 21 and April 28, 2011, respectively, but these amendments did not change urban or rural reserve designations in those counties.

The amendments by Metro and Washington County adjusted the urban and rural reserve designations in that county in five ways (see Exhibit B to the Supplemental Intergovernmental Agreement between Metro and Washington County):

1. Urban Reserve Area 7B – Removed the urban reserve designation from 28 acres in an area between Council Creek and Highway 47 in the vicinity of the intersection of NW Purdin Road/NW Verboort Road and Highway 47, north of Forest Grove (leaving it undesignated)
2. North Portion of Urban Reserve Area 7I – Changed 263 acres from urban reserve to rural reserve in an area south of NW Long Road, extending from NW Cornelius-Schefflin Road to just east of NW Susbauer Road (North of Cornelius)
3. South Portion of Urban Reserve Area 7I – Removed the urban reserve designation from 360 acres in an area north of the City of Cornelius and south of the general location of NW Hobbs Road, between NW Cornelius-Schefflin Road and the floodplain of Dairy Creek (leaving it undesignated)
4. Area to the West of Urban Reserve Area 7B – Designated 352 acres urban reserve, which was formerly undesignated, north of Highway 26 and east of NW Groveland Road
5. Area to the South of SW Rosedale Road – Removed the rural reserve designation from 383 acres south of SW Rosedale Road, west of SW Farmington Road (leaving it undesignated)

Washington County otherwise readopted its rural reserves as formerly submitted.

The net effect of these changes was to decrease the amount of urban reserves designated by 299 acres, to decrease the amount of rural reserves designated by 120 acres, and to increase the

amount of undesignated lands in Washington County by 419 acres. These changes are summarized in the table below.

Table 1: Summary of Re-designation Submittal Changes

	Urban Reserve Acreage Change	Rural Reserve Acreage Change	Undesignated Acreage Change
Area 7B (North Plains)	-28 acres		+28 acres
UR Area 7I - North (Cornelius)	-263 acres	+263 acres	
UR Area 7I - South (Cornelius)	-360 acres		+360 acres
UR Area 8B (North Hillsboro)	+352 acres		-352 acres
South of Rosedale Road		-383 acres	+383 acres
TOTAL	-299 acres	-120 acres	+419 acres

C. Prior Commission Action

At the conclusion of its hearing in October 2010, the Commission passed a motion to (1) approve the urban and rural reserve designations as submitted in Clackamas and Multnomah counties, (2) approve the urban reserves in Washington County with the exception of two areas (designated by the county as 7B and 7I), which were remanded, (3) and remand the rural reserve designations in Washington County for further consideration.

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

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

A written order implementing this decision has not been issued at this time.

D. Major Legal and Policy Issues

The primary decision the Commission must address is whether the re-designation submittal by Metro and Washington County adequately responds to the Commission's remand of a portion of the original submittal. More generally, the decisions by the three counties and Metro involve issues related to the amount and location of the reserve areas leading to three general issues:

1. Amount of urban reserve land
2. Location of urban reserves
3. Appropriateness of rural reserve designations

An additional issue stems from requirements regarding planning and zoning within reserve areas. The criteria from statute and administrative rule relating to each of these issues are listed in the following section of this report.

IV. REVIEW CRITERIA, PROCESS & RECORD

A. Decision-making Criteria

ORS 195.137–195.145 provide the statutory criteria for urban and rural reserves in the Metro region. These statutes provide some of the criteria and factors that the Commission applies to review the decisions. The statutes address:

1. Amount of urban reserve land[1]
2. Location of urban reserves[2]
3. Some aspects of rural reserve designations[3]

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[1] ORS 195.145(4): "Urban reserves designated by a metropolitan service district and a county pursuant to subsection (1)(b) of this section must be planned to accommodate population and employment growth for at least 20 years, and not more than 30 years, after the 20-year period for which the district has demonstrated a buildable land supply in the most recent inventory, determination and analysis performed under ORS 197.296."

[2] ORS 195.145(5): "A district and a county shall base the designation of urban reserves under subsection (1)(b) of this section upon consideration of factors including, but not limited to, whether land proposed for designation as urban reserves, alone or in conjunction with land inside the urban growth boundary:

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

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

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

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

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

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

[3] "ORS 195.141(3) When designating a rural reserve under this section to provide long-term protection to the agricultural industry, a county and a metropolitan service district shall base the designation on consideration of factors including, but not limited to, whether land proposed for designation as a rural reserve:

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

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

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

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

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

4. Uses within an urban reserve[4]

In addition to statutory provisions governing the designation of reserves, the legislature directed the Commission to adopt rules implementing SB 1011. ORS 195.141(4). Shortly after the effective date of SB 1011, LCDC adopted OAR chapter 660, division 27, which includes additional considerations for the counties and Metro to employ in their reserve determinations. The relevant rules in this division include provisions regarding:

1. Amount of urban reserve land[5]
2. Location of urban reserves[6]

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

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

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

[4] ORS 195.145: "(3) In carrying out subsections (1) and (2) of this section:

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

[5] OAR 660-027-0040: "(2) Urban reserves designated under this division shall be planned to accommodate estimated urban population and employment growth in the Metro area for at least 20 years, and not more than 30 years, beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in the most recent inventory, determination and analysis performed under ORS 197.296. Metro shall specify the particular number of years for which the urban reserves are intended to provide a supply of land, based on the estimated land supply necessary for urban population and employment growth in the Metro area for that number of years. The 20 to 30-year supply of land specified in this rule shall consist of the combined total supply provided by all lands designated for urban reserves in all counties that have executed an intergovernmental agreement with Metro in accordance with OAR 660-027-0030.

"(3) If Metro designates urban reserves under this division prior to December 31, 2009, it shall plan the reserves to accommodate population and employment growth for at least 20 years, and not more than 30 years, beyond 2029. Metro shall specify the particular number of years for which the urban reserves are intended to provide a supply of land."

[6] OAR 6660-027-0050: 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."

3. Location of rural reserves[7]
4. Planning for areas inside urban and rural reserves[8]

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[7] OAR 660-027-0060: "(1) When identifying and selecting lands for designation as rural reserves under this division, a county shall indicate which land was considered and designated in order to provide long-term protection to the agriculture and forest industries and which land was considered and designated to provide long-term protection of important natural landscape features, or both. Based on this choice, the county shall apply the appropriate factors in either section (2) or (3) of this rule, or both.

"(2) Rural Reserve Factors: When identifying and selecting lands for designation as rural reserves intended to provide long-term protection to the agricultural industry or forest industry, or both, a county shall base its decision on consideration of whether the lands proposed for designation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"(g) Provide for separation between cities; and

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

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

[8] OAR 660-027-0070: "(1) Urban reserves are the highest priority for inclusion in the urban growth boundary when Metro expands the UGB, as specified in Goal 14, OAR chapter 660, division 24, and in ORS 197.298.

"(2) In order to maintain opportunities for orderly and efficient development of urban uses and provision of urban services when urban reserves are added to the UGB, counties shall not amend comprehensive plan provisions or land use regulations for urban reserves designated under this division to allow uses that were not allowed, or

These statutory and rule provisions provide the basis for the department's review in sections V and VI of this report. The provisions of the statute are generally repeated in a corresponding LCDC rule, so when a relevant standard is cited in this report, normally only the rule will be identified unless there is some particular reason for specific reference to the statute.

In addition to these statutes and rules, ORS 197.010 provides legislative land use policy, including these overarching principals:

1. Provide a healthy environment;
2. Sustain a prosperous economy;
3. Ensure a desirable quality of life; and
4. Equitably allocate the benefits and burdens of land use planning. (ORS 197.010(2))

The statute goes on to provide that the overarching principles provide "guidance" to a public body when the public body adopts or interprets goals, comprehensive plans and land use regulations implementing the plans, or administrative rules implementing a provision of statute; or interprets a law governing land use. However, this statute also specifies: " * * * Use of the overarching principles in paragraph (a) of this subsection and the purposes in paragraph (b) of this subsection is not a legal requirement for the Legislative Assembly or other public body and is not judicially enforceable."

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smaller lots or parcels than were allowed, at the time of designation as urban reserves until the reserves are added to the UGB.

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

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

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

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

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

"(d) Uses and land divisions that are allowed by state statute or administrative rule at the time of the designation of urban and rural reserves.

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

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

B. Procedural Requirements and Validity of Objections

Pursuant to OAR 660-027-0080, adopted urban and rural reserves are reviewed "in the manner provided for periodic review under ORS 197.628 to 197.650." OAR 660-025-0160(5) provides that the Commission will hear referrals (such as this case) based on the record unless the Commission requests new evidence or information.

OAR 660-025-0085(5)(c) states that oral argument is allowed from the local governments and those who filed objections. The local governments may provide general information on the task submittal and address those issues raised in the department review and objections. Persons who submitted objections may address only those issues raised in their objections. The Commission may take official notice of certain laws, as specified in OAR 660-025-0085(5)(e).

OAR 660-025-0160(6) states that, in response to a referral, the Commission must issue an order that does *one or more* of the following:

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

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

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

The department received 14 letters of objection to the re-designation submittal. The department has analyzed the validity of each objection. All objections are treated as valid.

C. The Written Record for This Proceeding

1. This DLCD staff report including responses to objections.

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

3. DLCD September 28, 2010 report to the Commission.

4. Original and Re-designation Urban and Rural Reserves submittals. The submittals responding to the Commission remand are:

    a. Metro Ordinance No. 11-1255, with exhibits

b. Clackamas County Ordinance No. ZDO-223 with revised findings dated April 21, 2011, with exhibits
c. Multnomah County Ordinance No. 2010-1180 with exhibits
d. Washington County Ordinance No.740 with exhibits
(These documents are available at http://www.oregon.gov/LCD/metro_urban_and_rural_reserves_2011.shtml)

The original submittals were:

a. Metro Ordinance No.10-1238A
b. Clackamas County Ordinance No.ZDO-223
c. Multnomah County Ordinance No.1161 and Ordinance No.1165
d. Washington County Ordinance No.733

5. Objections. The following list shows the name of the individual or organization who submitted an objection to the amendments submitted in response to the remand of the Metro and county urban and rural reserves. The reference number associated with the letter corresponds to the order of the letters in the following list and is used throughout this report. The reference number has no importance beyond identification. The letters of objection are available at http://www.oregon.gov/LCD/metro_urban_and_rural_reserves_2011.shtml)

Table 2.: List of Objectors

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

6. Any valid exceptions to the department's report and response from the department.

V. DEPARTMENT ANALYSIS

The department's review of the original urban and rural reserves decisions by Metro and Clackamas, Multnomah and Washington counties is contained in the director's report to the Commission for the original hearing (http://www.oregon.gov/LCD/docs/murr/murr_staff_report_092810.pdf). It addressed the department's review of the urban and rural reserve designations as follows:

- Amount of Urban Reserve Land, pp. 15-17
- Location of Urban Reserves, pp. 17–19
- Amount of Rural Reserve Land, pp. 19–20
- Location of Rural Reserves, pp. 20–21
- Plan and code provisions to implement reserves policy, pp. 21–22

The department reviewed the new re-designation submittal as well. No matters requiring findings, outside those issues raised by objectors, were identified. Objections are considered in section VI of this report.

The department's review is of the written record, and is limited to whether the decisions are: (a) unlawful in substance or procedure (however, error in procedure is not cause for reversal or remand unless the substantial rights of a person who filed a valid objection were prejudiced); (b) unconstitutional; or (c) not supported by substantial evidence in the whole record. SB 1010, section 9.

VI. RESPONSE TO OBJECTIONS

This section contains the department's analysis of objections to the urban and rural reserves amendments submitted in response to the Commission's October 2010 remand. The full text of all objections is available at http://www.oregon.gov/LCD/metro_urban_and_rural_reserves_2011.shtml.

A. Van De Moortele Family, LLC (Ref. 1)

This objection requests that the Commission re-designate certain land in the vicinity of the city of Cornelius from rural reserves to urban reserves. The objector provides reasons why the subject land should be designated urban reserve, but does not demonstrate why Washington County's decision to designate the area as a rural reserve violates an applicable standard. The department recommends the Commission deny this objection.

B. Coalition for a Prosperous Region (Ref. 2)

The representative for the coalition submitted a letter clarifying its understanding that the current reserves review process is a continuation of the proceedings from 2010. The letter expresses that

the coalition hopes to ensure that it continues to receive notice of comment periods and opportunities to participate.

This letter does not contain an objection to the 2011 decisions by Metro and the counties, but the coalition participated with valid objections during the earlier hearings, and its status as a party to the proceedings before the Commission is maintained.

C. City of Cornelius (Ref. 3)

The city of Cornelius raised three sets of objections: (1) to the Commission's October 2010 review of urban reserve Area 7I; (2) to Washington County Ordinance No. 740 and Metro's Amended Urban/Rural Reserves Map; and (3) collectively to the actions of the Commission, Washington County and Metro. The city's proposed solution is for the Commission to remand the decisions to Washington County to revoke the rural reserve designations and for Metro to adopt a 360-acre urban reserve north of Cornelius.

1. Objections to the Commission's decision. Regarding the first set of objections to the Commission's October 2010 review, objector city of Cornelius correctly identifies OAR 660-027-0080(2) as providing that the Commission is to review urban and rural reserve submittals as provided in statutes governing periodic review. After describing the facts presented and the procedures employed during the October 2010 Commission hearing, objector raises four arguments.

a. Statutory Authority. Objector city of Cornelius first contends that the Commission did not have statutory authority to remand the submittal, arguing:

> This decision was not a Periodic Review Work Task action by the Director of LCDC to remand. The Director had recommended approval of the Reserves Decision by Metro and the counties. It was the Commission that voted to selectively remand the Plan. It appears that may be an error, because Periodic Review procedures found in ORS 197.628 to 197.650, which are the statutes that LCDC must follow in review of Urban/Rural Reserves, do not appear to give the Commission the authority to remand a work task.
>
> ORS 197.633 (4)(b), The director may approve or remand a work task or refer the work task to the commission for a decision. A decision by the director to approve or remand a work task may be appealed to the commission.
>
> It appears that the Commission may adopt or authorize a local government to modify an approved work task [ORS 197.644(1) & (2)]. Cornelius, June 2, 2011 at 3.

The objection misconstrues applicable law. Although city of Cornelius is correct that this is not a periodic review work task *per se*, Metro and the three counties properly submitted the designation and re-designation of both urban reserves pursuant to ORS 195.145(1)(b) and rural reserves pursuant to ORS 195.141 to the department for review, pursuant to ORS 197.626, "in the manner provided for periodic review under ORS 197.628 to 197.650." The director then

referred the matter to the Commission as authorized in ORS 197.633(4)(b). The department understands objector city of Cornelius to argue that under that circumstance, the periodic review statutes only authorize the Commission to adopt the submittal or modify an approved work task under ORS 197.644.

The department recommends that the Commission conclude its authority is not limited in this way. As objector city of Cornelius recognizes, ORS 197.633(4)(b) authorizes the director to refer a submittal to the Commission "for a decision." That statute also authorizes the Commission to adopt rules for, *inter alia*, review of periodic review submittals. ORS 197.633(2). Pursuant to that authority, the Commission adopted OAR chapter 660, division 25. A provision of that division specific to the Commission's review of referrals, authorizes the Commission after review to approve, remand, or require specific revisions to a submittal. OAR 660-025-0160(6). Following the Commission's review of the original submittal and re-designation submittal it will issue a written order as authorized by OAR 660-025-0160. The department recommends the Commission reject this part of the objection.

b. Factual base. As a second subpart, objector city of Cornelius contends that the Commission did not base its October 2010 review upon facts in the public record. Cornelius, June 2, 2011 at 3. The objection itemizes several statements made during the Commission's 2010 hearings that the objector believes to be false but that were presented to the Commission during its review of Area 7I. The letter goes onto identify other statements in the record that contradict those portrayed as false. The department understands objector City of Cornelius to contend that it should be afforded the opportunity to respond to that evidence it characterizes as false during deliberation by the Commission. The objector argues "to show the contradiction with the record of facts, the City of Cornelius needed an opportunity to respond. Without a chance during the Commission deliberations to raise a hand and point to a map" the city has not had an opportunity to do so. Cornelius, June 2, 2011 at 3.

First, objector city of Cornelius points to no requirement that the Commission offer affected local governments (or any party) the opportunity to participate in its deliberations. Although OAR 660-025-0085(5)(c) provides that the Commission will allow oral argument, including argument from affected local governments addressing objections raised, nothing in OAR 660-025-0085 provides an unlimited opportunity to interject at any point in the proceeding. Second, the city of Cornelius, as an affected local government, presented the Commission facts in the record regarding the nature of Area 7I. Third, the city, as an objector, has the opportunity to raise factual issues to the Commission in the hearing on the re-designation submittal. Finally, under ORS 197.650 to raise evidentiary issues to the Court of Appeals on judicial review of the Commission's single, final written order on review of the submittal and re-designation submittal. *See* ORS 183.482(8) (standard of judicial review for agency action). The department recommends the Commission reject this second part of the objection.

c. Exceeds review authority. The third subpart of this objection contends that, in its October 2010 review, the Commission was unfair, inappropriate and exceeded its review authority by substituting its own judgment for that of Metro and Washington County with regard

to urban reserves north of Cornelius. Cornelius, June 2, 2011 at 4. Objector city of Cornelius correctly identifies OAR 660-027-0080(4) as providing the standard of review in this matter. Under OAR 660-027-0080(4)(a), the Commission review includes an analysis of whether a submittal complies with Goal 2 including that an adequate factual base supports the submittal by considering whether the record, viewed as a whole, would permit a reasonable person to make particular findings, in this case establishing that Area 7I as an urban reserve. The Commission acted consistent with OAR 660-027-0080(4) when it considered the evidentiary record and the determinations of Metro and Washington County. The Commission considered the entire record, including the evidence highlighted in presentation of the parties, in reviewing the submittal. The department recommends that the Commission reject this third part of the objection.

d. Final order. The final subpart of the city's objections to the LCDC decision is that a final order is required for such a decision. The objector contends the absence of a written order memorializing the October 2010 Commission review violates ORS 197.644(3)(a), ORS 197.644(1) and (2)[9] and ORS 197.650.[10] Cornelius, June 2, 2011 at 4.

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[9] ORS 197.644 (1) The Land Conservation and Development Commission may direct or, upon request of the local government, the Director of the Department of Land Conservation and Development may authorize a local government to modify an approved work program when:
(a) Issues of regional or statewide significance arising out of another local government's periodic review require an enhanced level of coordination;
(b) Issues of goal compliance are raised as a result of completion of a work program task resulting in a need to undertake further review or revisions;
(c) Issues relating to the organization of the work program, coordination with affected agencies or persons, or orderly implementation of work tasks result in a need for further review or revision; or
(d) Issues relating to needed housing, employment, transportation or public facilities and services were omitted from the work program but must be addressed in order to ensure compliance with the statewide planning goals.
(2) The commission shall have exclusive jurisdiction for review of the evaluation, work program and completed work program tasks as set forth in ORS 197.628 to 197.650. The commission shall adopt rules governing standing, the provision of notice, conduct of hearings, adoption of stays, extension of time periods and other matters related to the administration of ORS 197.180, 197.245, 197.254, 197.295, 197.320, 197.620, 197.625, 197.628 to 197.650, 197.712, 197.747, 197.840, 215.416, 227.175 and 466.385.

[10] 197.650 Appeal to Court of Appeals; standing; petition content and service. (1) A Land Conservation and Development Commission order may be appealed to the Court of Appeals in the manner provided in ORS 183.482 by the following persons:
(a) Persons who submitted comments or objections pursuant to ORS 197.251 (2) or proceedings under ORS 197.633, 197.636 or 197.644 and are appealing a commission order issued under ORS 197.251 or 197.633, 197.636 or 197.644;
(b) Persons who submitted comments or objections pursuant to procedures adopted by the commission for certification of state agency coordination programs and are appealing a certification issued under ORS 197.180 (7);
(c) Persons who petitioned the commission for an order under ORS 197.324 and whose petition was dismissed;
(d) Persons who submitted comments or objections pursuant to ORS 197.659 and 215.788 to 215.794 or proceedings under ORS 197.659 and 215.788 to 215.794 and are appealing a commission order issued under ORS 197.659 and 215.788 to 215.794;
(e) Persons who submitted comments or objections pursuant to ORS 197.652 to 197.658 and 197.659 or proceedings under ORS 197.652 to 197.658 and 197.659 and are appealing a commission order issued under ORS 197.652 to 197.658 and 197.659; or
(f) Persons who submitted oral or written testimony in a proceeding before the commission pursuant to ORS 215.780.

The department agrees with objector city of Cornelius that the Commission must prepare a final written order; and the Commission will do so following its consideration of the re-designation submittal, including the objections and arguments of the parties. The procedural requirements applicable to the Commission's hearing on and review of the Metro urban and rural reserve designation are in OAR 660-025-0160 and OAR 660-025-0085. OAR 660-027-0080(1) (Metro and county adoption or amendment of plans, policies and other implementing measures to designate urban and rural reserves shall be in accordance with the applicable procedures and requirements of ORS 197.610 to 197.650); OAR chapter 660, division 25 (implementing ORS 197.610 to 197.650). These rules require that the Commission issue an order that approves, remands or requires specific revisions to the urban and rural reserves designation. The Commission will issue a single final order on the original submittal and the re-designation submittal that is subject to judicial review under ORS 197.650. Accordingly, the department recommends that the Commission reject this objection. Further, the department notes that the objection does not present an argument that the re-designation submittal is flawed in manner within the Commission's consideration under OAR 660-027-0080(4), and thus presents no basis for the Commission to provide the city of Cornelius that relief it requests.

2. Objections to Washington County Ordinance No. 740 and Metro's Amended Urban/Rural Reserves Map. Regarding the city of Cornelius's objections to Washington County Ordinance No. 740 and Metro's Amended Urban/Rural Reserves Map, the objector alleges violations of Goal 1 and Goal 2. The objector contends that (1) the public has not been provided access to factual information at the times when public hearings were conducted and land use decisions were made; (2) Washington County's process was closed to public participation in the negotiations and decision making that led to the amended reserves map; and (3) none of the governing bodies provided public hearing instructions or procedures prior to a hearing being conducted. Cornelius, June 2, 2011 at 5.

a. Goals 1 and 2. In the first subpart to its second objection, objector city of Cornelius contends Goals 1 and 2 were violated because the reserves process "has not provided the public access to factual information used by LCDC, Metro and the County at the times when public hearings were conducted and land use decisions made on Reserves." The department notes that pursuant to OAR 660-025-0160(5), the October 2010 Commission review was based on the written record consisting of the submittal, timely objections, the director's report, timely exceptions to the director's report, the director's response to exceptions, and to the extent that materials distributed to the Commission at the hearing constituted new evidence and information, that too was considered.

(2) Notwithstanding ORS 183.482 (2) relating to contents of the petition, the petition shall state the nature of the order petitioner desires reviewed and whether the petitioner submitted comments or objections as provided in ORS 197.251 (2) or pursuant to ORS 197.633, 197.636, 197.644 or 197.659.
(3) Notwithstanding ORS 183.482 (2) relating to service of the petition, copies of the petition shall be served by registered or certified mail upon the Department of Land Conservation and Development, the local government and all persons who filed comments or objections.

The department understands objector city of Cornelius to imply that the factual information not provided to the public of concern is a final written order, but the objection does not explain how Goal 1 or 2 is violated. Goal 1 requires local governments to develop a citizen involvement program; it is not implicated in the re-designation submittal.[11]

Goal 2 requires both an adequate factual base and that citizens and affected governmental units be provided opportunities for review and comment during the preparation, review and revisions of plans and implementation ordinances. Objector city of Cornelius does not explain how Goal 2 is violated, other than that Metro and Washington County acted following the October 2010 Commission review and prior to a written order from the Commission. In and of itself, that circumstance does not establish that the re-designation submittal violates Goal 2. Objector city of Cornelius neither establishes that an agency order would somehow play a role in the *factual* evaluation of the factors in OAR 660-027-0050 or 660-027-0060 nor that Metro and Washington County failed to provide the city opportunities to review and comment of their decisions during their consideration of the re-designation submittal. To the contrary, the city of Cornelius objection states that it "testified against this Urban/Rural Reserves adjustment by Washington County and Metro in public workshops and the following public hearings that led to approval of the new Reserves recommendation to LCDC this summer" and lists six separate instances. Cornelius, June 2, 2011 at 1. The department recommends the Commission reject this part of the objection.

b. County process was closed to public participation. In the second subpart of its second objection, objector city of Cornelius contends "the process of amending the Urban/Rural Reserves Map for Washington County has not been in compliance with Goals 1 and 2 because it has been closed to public participation in the negotiations and decision making that led to the amended Reserves Map." As described above, the department does not agree that Goal 1 is implicated in the re-designation submittal. Because the city objects to "no public participation in planning for this amendment prior to the Planning Commission hearing," the department understands this objection to be directed to the Goal 2 requirement that affected governmental units be provided opportunities for review and comment during the preparation, review and revisions of plans and implementation ordinances.

The city concedes that Washington County provided notice of hearings as required by its comprehensive plan. Objector does not establish that Goal 2 requires more opportunities for review and comment during the preparation, review and revisions than Washington County and Metro provided. The re-designation submittal findings and the record both demonstrate that Washington County provided public involvement opportunities to the city. Metro Ordinance No. 11-1255 at 10-13. Metro and Washington County held a joint public hearing on March 15, 2011

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

prior to signing the IGA. Testimony is in the Metro Supplemental Record at 47-187. The summary of the deliberation can be found in Metro Ordinance No 11-1255 at 109-119.

Turning to the objection's implication that failure to adopt the Community-Farmland Compromise that included Urban Reserves north of Cornelius violates the adequate factual base requirement of Goal 2, the department recommends the Commission reject that as well. At best, the objection establishes that objectors identified conflicting evidence before the county regarding whether this area should be designated as an urban reserve, as opposed to rural reserve. Under the substantial evidence standard, where the evidence in the record is conflicting, if a reasonable person could reach the decision that Metro and the Washington County made regarding Area 7I in view of *all* the evidence in the record, the choice between the conflicting evidence belongs to the decision maker. *Mazeski v. Wasco County*, 28 Or LUBA 178, 184 (1994), *aff'd* 133 Or App 258, 890 P2d 455 (1995). The department recommends that the Commission reject this second subpart of the objection because it provides no basis for the Commission to remand.

c. Public hearing process. In the third subpart of its second objection, objector city of Cornelius contends the Metro and Washington County public hearings violated Goal 1 because neither governing body provided public hearing instructions or procedures prior to conducting a hearing and never began any of the public hearings by asking whether the hearing body whether there were any *ex parte* conflicts or other conflicts of interest to declare. However, objector does not identify any state or local requirements applicable to the proceedings before Metro or the county that require them to provide instructions to the public prior to conducting a hearing. The hearings before Metro and the County were not quasi-judicial land use proceedings; they were legislative proceedings. Further, to demonstrate a Goal 1 violation the objector must establish a failure to comply with the acknowledged citizen involvement program. *Casey Jones Well Drilling, Inc. v. City of Lowell*, 34 Or LUBA 263 (1998); *Churchill v. Tillamook County*, 29 Or LUBA 68 (1995). The department recommends that the Commission reject this subpart of the second objection.

3. Objection to the actions of the Commission, Washington County and Metro collectively. Objector city of Cornelius includes an objection to actions by the Commission in 2010 and Washington County and Metro in 2011 that resulted in the designation of Area 7I being amended to change it from urban reserve to part rural reserve and part undesignated. The objection contends that the record that addresses the statutorily required factors for designation of urban and rural reserves does not support these amended reserve area designations. The proposed remedy is for the Commission to remand the re-designation submittal to Washington County and Metro with direction for them to approve an urban reserve designation for the southern portion of the area, which was left undesignated by Washington County in the re-designation submittal. The undesignated area is 360 acres, and the proposed remedy is for an urban reserve of "about 352 acres" to replace the newly designated urban reserve in Area 8B (adjacent to Helvetia Road).

The record includes a considerable amount of analysis regarding the factors for designation of the urban and rural reserves, particularly for Area 7I. In its October 2010 review, the

Commission determined that the submittal did not establish that the urban reserve designation of Area 7I complied with division 27, the applicable goals, and other applicable administrative rules. Subsequently, Washington County and Metro divided the area into two different designations – the 360-acre southern area was left undesignated and the northern 263-acre portion was designated rural reserve. Metro's analysis of the evidence in the record for the re-designation submittal as it pertains to the undesignated area is located in Metro's supplemental findings on pp. 122-127. Washington County's analysis of the evidence in the record for the rural reserves portion of the area is on page 166 of the findings, and in the Washington County record at pp. 11005-11061. Metro and Washington County considered the evidence in the record, and applied that evidence to the applicable factors required by OAR 660-027-0050 and 0060.

The city argues that Area 7I is suitable for urbanization, based on the city's pre-qualified concept plan (PQCP), existing and planned infrastructure improvements, the city's desire for more industrial development to address an imbalance of jobs to housing in the city, the existence of areas of exception lands north of Council Creek, and the city's argument that Council Creek is not an appropriate dividing line for urbanization because it has already been broached. Cornelius, June 2, 2011 at 8.

Those same arguments were presented to the Commission at its October 2010 hearing. The PQCP and maps of the proposed urban reserve Area 7I were presented to the Commission, and Washington County specifically identified the evidence in the record supporting the suitability of the area as an urban reserve. In the Commission's view, the evidence of suitability for urbanization was at best weak, and the PQCP was far less developed than similar planning for other areas proposed as urban reserves. On the other hand, the evidence of suitability as a rural reserve to protect agricultural values was strong, including evidence of the productive capability of the area and existing farming operations. Other parties objecting to the urban reserve designation identified evidence that key, high-value agricultural operations were located within Area 7I, and that urbanization of this area would likely lead to conflicts with other agricultural operations to the north. The parties presented evidence to the Commission that Council Creek was an appropriate northern boundary for long-term urbanization, and the Commission determined that substantial evidence in the record as a whole made Metro's conclusion that the area should be an urban reserve untenable.

The objection by the city of Cornelius does not identify evidence in the record that warrants a conclusion contrary to that made by the Commission at the October hearing, in the department's view. The consolidated findings describe why a portion of the area has been designated as a rural reserve (Findings at 124-130), and a portion left undesignated. The findings also reflect that Metro and the county considered overall balance, as set forth in the purpose statement of the Commission's rules, in deciding on what portion of Area 7I would be designated as a rural reserve, along with other areas in the county. Metro and the county have considered the factors that the Commission's rule requires, and substantial evidence in the record as a whole exists to support the county and Metro's decision. As a result, the department recommends the Commission reject this objection.

D. City of Hillsboro (Ref. 4)

The city of Hillsboro objects that Metro designated too little urban reserve near the "Silicon Forest" in Washington County. The May 31, 2011 objection letter contends that additional urban reserve, or additional undesignated land as an alternative to urban reserve, is needed in the area to meet long-term demand for large industrial sites. The objection contends Metro's urban reserves decision fails to satisfy ORS 195.145 (5)(b) and the urban reserves factors contained in OAR 660-027-0050 because it does not provide sufficient suitably located urban reserve land to provide for livability and a healthy economy over the planning period. The objector's proposed remedy is for the Commission's final order to direct the region to identify additional undesignated land in the "Silicon Forest Area" to accommodate long-term employment land needs.

More specifically, the objector contends that the final decision does not adequately satisfy the urban and rural reserves designation factors; ORS 195.145(5), OAR 660-027-0005(2) and OAR 660-027-0050 Urban Reserve factors.

The record for the analysis of this area can be found in the Metro Ordinance No. 10-1238A, Metro Rec. 22-24 and Metro supp rec. 13-15. The department's September 29, 2010 report to the Commission explains the department's analysis of the sufficiency of urban reserves land at pp.115-17.

The Coalition for a Prosperous Region made essentially the same objections during the 2010 proceedings; the department's analysis of those objections is provided in the September 29 staff report at pp.25-28. Relevant findings in this analysis include:

> . . .an urban reserve designation provides an overall amount of land for potential urban needs for a 30-year year period beyond the 20-year UGB; it does not designate lands for urban use, let alone for specific future uses or subregional needs" [report at 27]; and
>
> The real issue, then, is whether there are adequate findings in the record showing that OAR 660-027-0050(2) was applied in Metro's analysis (whether the urban reserves "include sufficient development capacity to support a healthy economy"). The Department finds that there are. [report at 28]

The Commission denied the Coalition for a Prosperous Region's objections based on the amount of urban reserves and subregional need in its October 29, 2010 vote.

Hillsboro's letter includes an argument not made previously by the Coalition for a Prosperous Region. The city states:

> On October 29, 2010, the Land Conservation and Development Commission (LCDC) orally remanded the Washington County element of the Metro and Washington County Reserves Decision. The draft minutes of this LCDC proceeding includes an

> LCDC/DLCD staff discussion questioning the adequacy of "Undesignated" land in Washington County.
>
> This dialogue on the record raises critical doubt whether the final Washington County Rural Reserves set (and boundaries) are too tight to ensure that *a balance* has been reached by the Washington County Urban and Rural Reserves designations that, *in its entirety*, *best achieves livable communities* in this County, and adequately supports a *healthy economy* locally and regionally.
>
> * * *
>
> LCDC and DLCD discussions during the Reserve proceedings noted concern regarding the sufficiency of employment-oriented urban reserves in Washington County, particularly if such proposed reserves north of the City of Cornelius were not going to be included in the final set of County urban reserves acknowledged by LCDC. (Emphasis in original.) Hillsboro, May 31, 2011 at 5.

The city notes the 2011 submittal includes 299 fewer acres of urban reserve and 391 more acres of undesignated land than did the 2010 submittal. The department's recommendation does not change. While the Commission expressed concern regarding the overall flexibility for Washington County to designate new urban reserves in the future, the Commission did not direct the county to reduce the amount of rural reserves or increase the amount of undesignated land. While the amount of land designated as urban reserve has been reduced by a small amount (a net of 299 acres) the amount of undesignated land has been increased by a total of 419 acres. These changes do not fundamentally alter the ability of the region to provide land needed for industrial or other future urban land needs over the planning period. They represent changes on the order of one percent to the regional total for urban reserves, well within the forecasting range of variability over the planning period.

The department recommends the Commission find that the Washington County's and Metro's decision regarding the amount of urban reserve and undesignated land adequately applies the urban reserve factors and is based on adequate findings in the record. The department recommends the Commission reject the city of Hillsboro's objection.

E. 1000 Friends of Oregon *et al.* (Ref. 5)

The department received a letter of objection from 1000 Friends of Oregon, Washington County Farm Bureau, Save Helvetia, Friends of Council Creek, and 35 individuals (collectively "1000 Friends") on June 2, 2011. The letter contains one general objection, alleging Metro failed to properly balance urban and rural reserve designations, and eight objections to specific reserve designations (or lack of designation) by Metro and Washington County.

1. Metro's decision fails to balance urban and rural reserves. Objector 1000 Friends argues that Metro's findings do not adequately address the balancing required by OAR 660-027-0005(2), and that Metro misunderstands that balancing is a qualitative analysis. The objection

further asserts that Metro and Washington County incorrectly responded to the Commission's October 2010 decision as an exercise in replacing "lost acres," that the lost acres should not necessarily come from Washington County, and that this is compounded by misapplying the factors and Washington County's practice of using undesignated lands as a "holding zone" for future urbanization when those lands qualify for rural reserve designation. Objector 1000 Friends contends Metro improperly discounted alternatives to Foundation Agricultural Land for urban reserve designation and failed to consider reducing the urban reserve time period.

The proposed remedy is for the Commission to remand the re-designation submittal and direct Metro and Washington County to perform some combination of reducing the urban reserves time period from 30 to 20 years, reducing the amount of Foundation Agricultural Lands in urban reserves, and designating certain areas left undesignated as rural reserves.

Washington County addresses its reasoning for designating Foundation Agricultural Lands as urban reserve in the supplemental reserves findings at pp. 9616-9695 and 12732-12735. Metro cited findings relating to designation of Foundation Agricultural Lands at Ordinance No. 11-1255 pp. 3-5 and in the supplemental record at pp. 172-178, 181-288, 298-300, 440-481, 799-805, 1105-1110, and 1163-1187. Metro cited to findings explaining why certain lands were left undesignated in Metro supplemental findings at pp. 124, 127, 155, and 163-166. Metro, June 24, 2011.

The department recommends the Commission reject this objection for the reasons explained below. The context for objector 1000 Friends' specific contentions is that the decision is not "balanced" as required by OAR 660-027-0005(2) (this rule is quoted on p. 3 of this report). First, characterizing the use of "balance" in OAR 660-0-27-0005(2) as an "objective" is more accurate than calling it a "requirement." In response to an objection in 2010, the department recommended the following finding:

> The real issue is whether the findings in support of the reserves decisions demonstrate compliance with the overall objective in OAR 660-027-0005(2). * * * Although the combined findings contain few statements that explicitly address balance, the findings sections entitled "Background" and "Overall Conclusions," as a whole, adequately explain why Metro and the counties determined that their designation of urban reserves and rural reserves best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the most important landscape features that define the region for its residents. DLCD, September 28, 2010 at 37.

The "balance" of the urban and rural reserve decision in the re-designation submittal has been altered little from when the department made this recommendation. The total number of acres, and the locations of, urban and rural reserves and undesignated land in Washington County and the region as a whole has not changed significantly.

Whether Metro and Washington County were attempting to "make up" for "lost" acres of urban reserve is immaterial to the factors and criteria the Commission must consider. The pertinent

considerations include whether Metro designated too many acres of urban reserve based on the demonstrated need and whether the areas designated have been adequately justified. The September 28, 2010 DLCD staff report to the Commission included findings addressing the amount of urban reserve land designated generally at pp. 15-17 and in response to objections at pp. 32-42. The department recommended findings that Metro had appropriately inventoried buildable lands and determined need, designated urban reserves for a period authorized by statutes and rules, and used appropriate population and employment projections. The department recommended the Commission reject all of the objections that contended Metro designated too much land urban reserve. The amount of urban reserve land designated by Metro in the region and in Washington County declined in the re-designation submittal. The department found in 2010 that Metro justified the amount of land included and used an authorized planning period for establishing urban reserves; we see no reason to change that conclusion.

Objector 1000 Friends contends Washington County left land that qualified as rural reserve undesignated in order to make a "holding zone" for future urban reserves. The objection does not state that this practice, by itself, violates any provision of statute or rule, but rather states that it further compounds other problems, leading to the package of urban and rural reserves not striking the proper balance. See the department's findings above regarding balance.

Objector 1000 Friends contends that the findings for designating some Foundation Agricultural Land as urban reserve are conclusory and legally flawed. 1000 Friends *et al.* made essentially the same objection to the original submittal. The department's response to that objection is found on pp. 51-55 of the September 28, 2010 report. The department recommended the Commission reject this objection.

2. Designation of Foundation Agricultural Land in the northern portion of Area 7B as an urban reserve violates the reserve statute and rule. The objector argues that the northern portion of Area 7B should not be designated urban reserve because: (1) the area meets all the rural reserve factors and there is no evidence that it meets the urban reserve factors, (2) the justification for urban reserve improperly focuses on a specific use of the land, (3) adopted findings lack substantial evidence and fail to address the urban reserve factors and balancing, and (4) roads do not effectively separate urban and agricultural lands. The proposed remedy is for the Commission to remand the re-designation submittal with instructions for Washington County to designate the northern portion of Area 7B rural reserve.

The supplemental reserve findings for Area 7B can be found in the record at Metro Ordinance No. 11-1255 pp. 127-148 and Washington County supplemental findings p. 12694-12711. Washington County's findings for the undesignated section of 7B are in Washington County supplemental findings pp. 12728-12729.

At the October 2010 Commission hearing Metro and Washington County were directed to, at a minimum, develop additional findings explaining the urban reserve designation of Area 7B, and not necessarily to re-designate it. Metro adopted new findings responsive to the urban and rural

reserve factors. The findings explain the reasoning for adding land to the north of Forest Grove and the city's proposed plan designation for the land (mostly industrial).

Objector 1000 Friends finds several flaws in the findings:

1. Area 7B North meets all the rural reserve factors; no evidence demonstrates it meets the urban reserve factors. Metro's and Washington County's findings focus on the wrong area
2. Metro focuses on a specific use of land not a legal justification
3. Findings based on infrastructure fail to meet urban reserve factors, lack substantial evidence, and fail to meet the balancing requirement of law
4. A road is not a better buffer than a creek

a. Factors and area. There is no disagreement that Area 7B could have been designated rural reserve. The objector does not adequately explain the allegation that there is no evidence the area satisfies the urban reserve factors; Metro adopted findings based on the urban reserve factors, and the objection does not demonstrate these findings are flawed. There is a disagreement between the objector and the local governments regarding which land the Commission expressed concern with during its October 2010 deliberations. Staff recommends the Commission not attempt to connect the re-designation submittal to the earlier deliberations, but rather review the findings and conclusions justifying the urban reserve designation on their merits. The department recommends the Commission reject this portion of the objection.

b. Specific use. 1000 Friends objected to the original submittal alleging that Metro impermissibly designated urban reserve land for industrial use. The department found that Metro had not designated land (DLCD, September 28, 2010 at 45) and the Commission denied the objection. Here, objector 1000 Friends does not allege Metro *designated* the land, but maintains that the justification's strong reliance on the suitability of the land for industrial use is too specific for the time frame considered (30 to 50 years), and that Metro used other impermissible considerations (e.g., presence of an existing large lot). There is no question that the city of Forest Grove intends to designate a significant portion of Area 7B industrial if and when it is brought into the UGB. The findings that explain how the area fares when compared to the urban reserve factors are largely, but not exclusively, based on an assumption that the area will be developed with employment uses. The objector has not explained how this violates the applicable statutes and rules. The department recommends the Commission reject this portion of the objection.

c. Findings based on infrastructure. Objector 1000 Friends contends Metro's findings fail to meet the urban reserve factors because they argue against the area being designated urban reserve. The urban reserve factors are intended to elicit findings regarding whether the area is suitable for *urban* development, and Metro's submittal does that. The decision whether to designate the land as a reserve, and if so which one, utilizes these urban reserve factor findings, but only among many other findings and conclusions. Metro explained in the record why it included farmland in urban reserves.

The objection claims the findings lack substantial evidence. The disagreement seems to be not on evidence but on interpretation of the evidence, specifically whether a road or ditch make a better buffer between urban and farm uses. The objection accepts other facts as presented and provides alternative analyses and conclusions. The department recommends the Commission reject this portion of the objection.

d. Road *vs.* creek. Objector 1000 Friends refutes Metro's conclusion that Purdin Road makes a better buffer between urban and farm uses than does the drainageway that bisects the urban reserve area. The objector cites testimony made to state and local hearings bodies that roads do not form effective buffers to reduce the impact of urban activities on farm use. This matter is raised by the objector as further evidence that the northern part of the area should be rural, not urban, reserve. The department concludes that Metro is not charged with selecting the "best" buffer location when designating urban reserves, but rather considering the impact of the designation on the viability and vitality of the agricultural industry, which Metro did. The department recommends the Commission reject this portion of the objection.

3. Not designating 360 acres of Area 7I as rural reserve fails to comply with the reserves statute and rule. Objector 1000 Friends argues that the undesignated section of Area 7I north of Cornelius should be designated rural reserve. Objector 1000 Friends states the lack of rural reserve designation for the area does not meet the reserves statute and rules and the area does not qualify as "undesignated." The objection lists five points backing up this claim, four of which focus on why the land is good farmland and deserves the additional protection that a rural reserve designation would provide. The final point maintains Metro did not adequately explain its decision. The proposed remedy is for the Commission to remand the decision and direct designation of the remainder of Area 7I rural reserve.

The justification for undesignated area can be found in Washington County's supplemental reserve findings at pp. 12726 and 12729-12731 and Metro supplemental record at pp. 163 and 166-167.

Washington County is not required by the reserves statute or rules to justify its decision to leave any particular area undesignated, even if application of the factors indicated it was eligible for one or both reserve designations. See also the department's response to the Department of Agriculture's third objection on p. 35 this report. The department recommends the Commission reject this objection.

4. The findings in support of designating of Area 8B as an urban reserve violate the reserves statute and rules and Goal 2. Objector 1000 Friends asserts that the Metro violated the reserves statutes (ORS 195.137 to 197.145), administrative rules (OAR chapter 660, division 27), and the Goal 2 adequate factual base requirement in adopting findings designating Area 8B urban reserve that are not supported by substantial evidence in the whole record. The department understands objector to assert both that Metro failed to make findings that the applicable statutes or rules require and to object that the findings Metro did make are not supported by the record.

a. Failure to make findings. Identifying Area 8B as "Foundation Agricultural Land" as defined in OAR 660-027-0010(1), objector 1000 Friends challenges the Metro decision's satisfaction of the urban reserve factors of OAR 660-027-0050, arguing:

> When designating Foundation Agricultural Lands for urban reserve, OAR 660-027-0040(11) requires 'findings and statement of reasons' that explain, in reference to OAR 660-027-0050, 'why Metro chose the Foundation Agricultural Land for designation as urban reserves rather than other land considered.' This provision imposes an extra obligation of identifying what it is about this land that satisfies the urban reserves factors and why that obligation cannot be satisfied by other non-Foundation Lands. Metro's decision lacks this necessary alternative lands analysis. (emphasis in the original) 1000 Friends, June 2, 2011 at 14-15.

The foregoing proffered interpretation of OAR 660-027-0040(11) appears to either overstate or constrain the explanation required by the text of the rule to an analysis of "why that obligation cannot be satisfied by other non-Foundation Lands." Although Metro certainly could, and in fact did, include such an analysis in providing the explanation required by OAR 660-027-0040(11), objector 1000 Friends does establish that any law requires Metro to include such an explanation in its findings and statement of reasons. In construing a rule, like a statute, the objective is to "ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted." ORS 174.010; *Abu-Adas v. Employment Dept.*, 325 Or 480, 486, 940 P2d 1219 (1997) (explaining court's function is not to insert in a rule what the enacting body has omitted). OAR 660-027-0040(11) does require Metro to explain why it chose Foundation Agriculture Lands, including those in Area 8B, "rather than other lands considered under this division." Metro has done so in its findings. For the modified Area 8B, Metro and Washington County applied the OAR 660-027-0050 urban reserve factors, followed by an application of OAR 660-027-0060 rural reserve factors. Exhibit B to Ordinance 11-1255 at 154 to 169. Metro and Washington County also made express "Findings and Statement of Reasons for Foundation Agricultural Lands as Urban Reserves." *Id*. at 175-178. Metro made general findings as to why the region designated any Foundation Agricultural Land as urban reserve as well. *Id.* at 4-10. The department recommends that the commission reject this objection because Metro and Washington County explained in the findings and statement of reasons why it chose the Foundation Agriculture Lands in Area 8b rather than other lands considered under division 27 as required by OAR 660-027-0040(11).

b. Unsupported findings. Turning to specific objections that the findings for Area 8B are not supported by substantial evidence, the department understands objector 1000 Friends to argue that the alternative lands analysis should have considered (a) the St. Mary's property instead of Area 8B, (b) other ODA identified Conflicted and Important lands, and (c) undesignated lands in Washington County. In discussing conflicted lands, the findings state "The entirety of the St. Mary's property * * * was included in Urban Reserve Area 6A (Hillsboro South). Exhibit B to Ordinance 11-1255 at 176; see also 75-76 (applying OAR 660-027-0050 urban reserve factors to Area 6A). Because both Areas 8B and 6A are designated urban reserve, OAR 660-027-0040(11) does not, by its text, require any comparative analysis. That rule obliges

Metro to explain why it chose Foundation Agricultural Land "rather than" other lands. Here, Metro did not choose Area 8B rather than Area 6A, it designated them both as urban reserves. Regarding lands ODA identified as Conflicted and Important, Metro provided that analysis for such lands in Washington County. Exhibit B to Ordinance 11-1255 at 175-178. Finally, objector 1000 Friends argues, "the approximately 2,500 acres of 'undesignated' land reserved by Washington County were not considered as an alternative to Area 8B's Foundation Agricultural Land." Because Metro discussed all "other land considered" in its discussion of land identified as Conflicted and Important, the department understands that "undesignated" land to also be Foundation Agricultural Land. Exhibit B to Ordinance 11-1255 at 175. OAR 660-027-0040(11) does not require an explanation regarding the choice between areas of Foundation Agricultural Land.

Objector 1000 Friends also argues that Area 8B is more suitable for rural reserves. Metro and Washington County analyzed Area 8B under the OAR 660-027-0060 rural reserves factors. Exhibit B to Ordinance 11-1255 at 164-169. The analysis shows that Area 8B could be established as a rural reserve under the agricultural factors, but not the forestry or natural landscape features factors. However, as Metro acknowledges, the 15 areas designated urban reserves that are comprised predominantly of Foundation Agricultural Land, including Area 8B, rate highly for both urban reserves and rural reserves. *Id.* at 10. Nothing in ORS 195.137 to 197.145, OAR chapter 660, division 27, or the Goals requires Metro or a county to designate land as either urban or rural reserves, respectively. The department and Commission review what is submitted, not whether a different submittal may be more suitable, except to the extent an objection clearly implicates whether a reserves designation submittal on the whole strikes the balance required in division 27. Objections that an area is more suitable as either an urban or rural designation provide the Commission no basis to remand the submittal under OAR 660-027-0080(4) and as such the department recommends that the Commission reject this aspect of the objection.

Citing OAR 660-027-0040(2), objector 1000 Friends argues that there are no general or particular findings suggesting that Area 8B is needed to accommodate the estimated urban population and employment growth in this particular area. OAR 660-027-0040(2) provides:

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

Nothing in that rule requires either general or particular findings specific to *any particular area*. Instead, the rule requires estimates for urban population and employment growth for the Metro area. Metro developed a 50-year range forecast for population and employment. Exhibit B to Ordinance 11-1255 at 13. Metro describes the assumptions that lead it to conclude that the region needs 28,256 acres of urban reserves to accommodate 371,860 people and employment land targets over the 50-year reserves planning period. *Id.* at 15. The department recommends that the Commission reject this portion of the objection.

Noting that the City of Hillsboro's Pre-Qualifying Concept Plan (PQCP) was based on the larger North Hillsboro study area, objector 1000 Friends asserts the PQCP is not substantial evidence for designating Area 8B as urban reserve. However, Metro looked to the PQCP as providing the city's infrastructure service availability, deducing that infrastructure planning capable of serving the larger area, could also provide infrastructure for Area 8B under OAR 660-027-0050(1). Exhibit B to Ordinance 11-1255 at 155. Further, in conducting the OAR 660-027-0050 analysis, the findings refine the preliminary plans of the PQCP. *Id*. at 160. The department recommends that the Commission reject this portion of the objection.

5. Area 8B does not meet any of the urban reserves factors. The findings in support lack an adequate legal or factual basis. Objector 1000 Friends contends that Area 8B meets none of the eight factors to use in evaluating whether an area qualifies as an urban reserve provided in OAR 660-027-0050. The objection goes through each urban reserve factor and contends that the findings Metro made are not reasonable, and thus do not constitute substantial evidence. Under OAR 660-027-0080(4)(a), the Commission is required to consider whether a submittal is supported by substantial evidence. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. ORS 183.482(8)(c). The department does not understand objector 1000 Friends to contend that Metro failed to consider any of the eight factors, but that in its consideration it relied on evidence that a reasonable person would not have. Metro supplemented its submittal findings for Area 8B. *Cf.* Exhibit B to Ordinance 11-1255 at 86-87 to 154-164. As the department noted in the September 28, 2010 staff report, the OAR 660-027-0050 urban reserves factors

> are *not criteria* in the sense that Metro has to show each area complies with each factor. Rather, these are each *considerations*, which Metro must take into account when deciding whether to designate an area as an urban reserve. DLCD, September 28, 2010 at 18.

Thus, in reviewing this objection as presented, the inquiry is neither whether Metro considered the urban reserve factors in deciding to include Area 8B nor whether Metro explained why Area 8B should be urban reserve using the OAR 660-027-0050 factors; the inquiry is whether there is evidence in the record as a whole that a reasonable person would rely upon to decide as Metro did.

OAR 660-027-0050(1) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB "Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure

investments." Objection 1000 Friends again argues that because the PQCP is based on a larger area than Area 8B, Metro could not have reasonably considered it under this factor. As discussed above under the prior objection, Metro appears to have accounted for that difference in looking to the PQCP for consideration of Area 8B. Objector 1000 Friends provides the example of findings regarding plans for a new water reservoir and states that the planned reservoir is to serve existing areas. However, the Metro findings regarding water note that designating Area 8B urban reserve will impact only the size of new reservoir construction necessary to serve adjacent areas to Area 8B, not the need for a new reservoir. Exhibit B to Ordinance 11-1255 at 155. Objector 1000 Friends than takes issues with the accuracy of the original Area 8B findings arguing that interchange improvements are to address existing capacity issues; however, Metro supplemental reserve findings acknowledge as much. *Cf.* Exhibit B to Ordinance 11-1255 at 87 to 156. What Metro does find is that Area 8B is suitable for providing a transportation system capable of accommodating new urban development. *Id.* at 156.

OAR 660-027-0050(2) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB "Includes sufficient development capacity to support a healthy economy." Objector 1000 Friends contends that the record shows that including Area 8B will harm the economy by perpetuating a pattern of inefficient use of land in this area. At its core, the objection challenges the Metro employment land need determination. The Commission previously considered objections related to the identified need at the October 2010 Commission hearing and the department recommends that the Commission not revisit those issues. *See* September 28, 2010 staff report at 15-17. While objector 1000 Friends may not agree with studies and analyses in the record that it takes issue with, absent a showing that a reasonable decision maker could not have based a decision on those studies instead of the conflicting evidence objectors 1000 Friends offer, the department recommends that Commission determine that the decision is based on substantial evidence.

OAR 660-027-0050(3) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB "Can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers." Should the Area 8B be designated for industrial development at the time of UGB expansion, Metro notes that the Metro Code and city industrial zoning will prohibit schools and parks. Exhibit B to Ordinance 11-1255 at 160. The fact that the West Union Elementary School is located on an 11-acre site on the northeast corner of Area 8B asserts objector 1000 Friends renders the Metro's finding inadequate to support designation of Area 8B as an urban reserve. If the factors were criteria in the sense that Metro must show each area complies with each factor, the department might agree that Metro had not complied with OAR 660-027-0050(3) as to public schools; however, the test is whether Metro considered the factor. The findings exhibit that Metro has considered this factor. Specifically, Metro determined that Washington County addressed the ability of the city to serve the area with public services, citing Washington County record at 3129-3130. *Id*.

OAR 660-027-0050(4) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB "Can be designed to be walkable and

served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers." Metro findings included a general illustration, entitled North Hillsboro Potential Transportation Facilities, of how north Hillsboro urban reserves, including Area 8B could be served with multi-modal transportation. *Id.* Characterizing that figure as showing limited multi-modal transportation options, objector 1000 Friends concludes that urbanizing Area 8B will be entirely auto-focused with no realistic alternative transportation opportunities. Again, the department might agree Metro had not complied with OAR 660-027-0050(4) as to, for example, public transit which is not depicted for Area 8B; however, the test is whether Metro considered the factor. Figure 1 notes "[c]oncept planning will study opportunities to bring transit to Area 8B and further refine transportation." Metro also relies generally for inclusion of relatively flat, undeveloped Foundation Agricultural Land on its cost of service study *Core 4 Technical Team Preliminary Analysis Reports for Water, Sewer and Transportation*. Metro Record at 1163-1187. Viewing the evidence in the record as a whole, Metro could reasonably conclude that Area 8B and adjacent urban reserves designations in conjunction with land inside the UGB can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers.

OAR 660-027-0050(5) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB "Can be designed to preserve and enhance natural ecological systems." Objector 1000 Friends argues OAR 660-027-0050(5) "requires a finding that land can be designed to preserve and enhance natural ecological systems and landscape features" and concludes this factor is not met. As discussed above, that is not the applicable standard and provides the Commission no basis to remand the re-designation submittal. Metro finds that development in Area 8B would be subject to the City of Hillsboro's Significant Natural Resources overlay zone which will require that development be designed to preserve natural resources.

OAR 660-027-0050(6) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB "Includes sufficient land suitable for a range of needed housing types." Objector focuses on Metro's finding that "this area would be targeted for large-lot industrial and employment uses if urbanized and annexed to the City" and argues assuming that certain urban reserve lands will be used for certain purposes during the reserves process is legally flawed. The department finds that Metro did make the required consideration, because it found that the city will provide an adequate mix of housing to support future urbanization of Area 8B through land inside the UGB. Exhibit B to Ordinance 11-1255 at 161.

OAR 660-027-0050(7) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB "Can be developed in a way that preserves important natural landscape features included in urban reserves." Objector 1000 Friends identifies a variety of natural landscape features of Area 8B and argues that because Metro's findings do not mention those resources, there is no indication that these resources can or will be protected. The department finds that Metro did consider whether Area 8B can develop

in a way that preserves important natural landscape features because Metro found that the city inventories natural resources in annexed areas and adds those determined to be significant and their Impact Areas to the Significant Natural Resource Overlay District as part of the rezoning process.

OAR 660-027-0050(8) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB "Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves." Objector 1000 Friends argues that although Metro's findings discuss the concept of achieving buffering through planning decisions and the use of planning controls, and how buffering standards have potential suitable application to future urban use of Area 8B if it is designated urban reserve, none of it is certain to happen because no rules, ordinances, or legislation to assure the farming community, that any of the protections will be in place to adequately buffer the surrounding rural reserves if Area 8B becomes urban reserves. OAR 660-027-0050(8) asks Metro to consider whether land proposed for urban reserves can be designed in a manner to avoid or minimize adverse effects, it does not require a finding that the avoidance or minimization is "certain to happen." Metro's identification of potential methods of buffering Area 8B is adequate to demonstrate consideration of this factor.

The department recommends that the Commission reject objection 5.

6. Metro's findings demonstrate that Area 8B meet the rural reserve factors 2 and 3. Objector 1000 Friends goes into greater detail than the re-designation submittal findings in establishing that Area 8B meets the rural reserve factors. As discussed above, Metro and Washington County analyzed Area 8B under the OAR 660-027-0060 rural reserves factors and also concluded that Area 8B could be designated a rural reserve. Exhibit B to Ordinance 11-1255 at 164-169. Again, objections that an area is more suitable as either an urban or rural designation provide the Commission no basis to remand the submittal under OAR 660-027-0080(4) and as such the department recommends that the Commission reject this objection.

7. Not designating 233 acres in Area 8-SBR as rural reserve fails to comply with the reserves statute and rule. Objector 1000 Friends argues that leaving Area "8-SBR" (land left undesignated by Washington County and Metro in the original and re-designation submittals immediately west of Area 8B) undesignated fails to satisfy the requirements of OAR 660-027-0005(2), OAR 660-027-0050, and ORS 195.137-.145. The proposed remedy is for the Commission to remand the decision with directions that the remainder of the undesignated area be given a rural reserve designation.

Metro and the county reduced the undesignated area from the original submittal from 585 acres to 233 acres, designating the remainder urban reserve; see Washington County supplemental record pp. 12727-12728; Goal 5 issues are address on p. 12283 and Metro supplemental record pp. 148 and 164-165.

One of this objection's signatory organizations, Save Helvetia, objected to the undesignated status of this area during the 2010 proceedings before the Commission. This objection is addressed in pp. 991-95 of DLCD's September 28, 2010 report. The department recommended that it be rejected, and the Commission denied the objection at its October 2010 hearing. The department recommends the Commission reject this objection.

8. The decision fails to accurately apply the rural and urban reserve factors "concurrently and in coordination with on another" with regards to Areas 8B and 8-SBR. Objector 1000 Friends argues Washington County and Metro failed to apply the rural and urban reserves factors to Area 8B and 8-SBR (undesignated) as contemplated by OAR 660-027-0040(10).[12] The objection states:

> …the concurrency obligation requires deciding whether the land more closely satisfies rural objectives over urban and if so, the land must be protected for agricultural purposes consistent with the rural reserve factors. Areas 8B and 8-SBR clearly are far more qualified as rural reserves than as urban reserves.

The proposed remedy is for the Commission to remand the decision with directions to re-designate all of Area 8B and the adjacent undesignated area rural reserve.

In regards to area 8B designated an urban reserve the reserve factors are in Washington County supplemental record pp. 12712-12726 and the Metro supplemental record pp. 148-157.

As stated above in the department's response to 1000 Friends' objection 7, the rural and urban reserves factors do not apply to undesignated lands and therefore area 8-SBR is not required to have the reserve factors applied to it. Regarding Area 8B, one of this objection's signatory organizations, Save Helvetia, made the "concurrency" argument in its objection to the original submittal. DLCD's 2010 report to the Commission addresses this objection at pp. 91-95. Specific to the argument under OAR 660-027-0040(10), the report said:

> "Simultaneous consideration" does not imply any particular outcome, but rather means that the county and Metro must consider urban and rural reserve designations in the entire county and region at the same time. OAR 660-027- 0040(10) does not require both urban and rural reserve factors to be considered for each and every property, or for each and every area. Metro and the county complied with OAR 660-027-0040(10) with regard to the county and the region, and that is all that the rule requires. As a result, the Department recommends that the Commission deny this objection. DLCD, September 28, 2010 at 94.

[12] OAR 660-027-0040(10): "Metro and any county that enters into an agreement with Metro under this division shall apply the factors in OAR 660-027-0050 and 660-027-0060 concurrently and in coordination with one another. Metro and those counties that lie partially within Metro with which Metro enters into an agreement shall adopt a single, joint set of findings of fact, statements of reasons and conclusions explaining why areas were chosen as urban or rural reserves, how these designations achieve the objective stated in OAR 660-027-0005(2), and the factual and policy basis for the estimated land supply determined under section (2) of this rule."

The Commission denied this objection in its October 2010 decision, and the department recommends it do so again.

9. Metro improperly removed the rural reserve designation from the Rosedale Road area. Objector 1000 Friends argues that the subject area is Foundation Agricultural Land and satisfies all the requirements for designation as a rural reserve. Metro Ordinance No. 11-1255, pp. 163 and 167-168 and the Washington County supplemental record at 12726 explain why Washington County removed the rural reserve designation from the area. See also the department's response to the Department's of Agriculture's fifth objection on p. 38 of this report regarding undesignated areas. The department recommends the Commission reject this objection.

F. Oregon Department of Agriculture (Ref. 6)

The Oregon Department of Agriculture (ODA) submitted a letter that raised five objections, two generally to Metro and Washington County's analysis and conclusions, and three to decisions on specific areas of land. The general objections allege that the decision is not consistent with the purpose and objectives of OAR chapter 660, division 27, and that the analysis and designation of certain agricultural lands as urban reserve, and failure to designate qualified lands as rural reserve, is flawed. The specific-area objections allege that: (1) failure to designate all of Area 7I as a rural reserve is inconsistent with the reserves statue and rules, (2) the land added to the urban reserve Area 8B should be designated rural reserve, and (3) the area located south of and adjacent to Rosedale Road was improperly changed from rural reserve to undesignated.

Objector ODA's proposed remedies for the general objections are for the Commission to remand Metro and Washington County's urban and rural reserves re-designation submittal with instructions to reduce the amount of urban reserve lands, or for replacement urban reserves that avoid Foundation Agricultural Lands; change certain urban reserves to rural reserves; and adjust the amount of urban reserve lands to better achieve a balance that protects quality agricultural lands. The proposed remedies for the specific-area objections are contained in the description of the objections.

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

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

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

The department's September 28, 2010 report to the Commission addressed the application of the statutory and rule factors to achieve the purposes of the urban and rural reserves rules. The report states, on p. 3:

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

The September 2010 report also explains the department's findings regarding Metro's justification for the amount of designated urban reserve in the region at pp. 15-17. The department found that the amount of urban reserve land had been justified and recommended that the Commission reject objections to the amount of urban reserves land. The Commission agreed with the department's recommendation. The acreage of urban reserve in the region and in Washington County is largely unchanged in the re-designation submittal.

Objector ODA asserts that Metro should have looked to land that is not Foundation Agricultural Land to replace Area 7I, even if the land is outside Washington County. Metro explained its reasons for including Foundation Agricultural Land within urban reserves. Overall, Metro decreased the amount of urban reserve land in Washington County by almost 300 acres. ODA's area-specific objection to Area 8B is addressed below, and its general objection does not identify any error by Metro in reducing the overall acreage of urban reserves. As a result, the department recommends that the Commission reject this objection.

2. The analysis and designation of Washington County agricultural lands as urban reserve, and failure to designate certain lands as rural reserve, is flawed. Objector ODA argues that Washington County's analysis of agricultural land is flawed because it uses an outdated study. ODA, June 2, 2011 at 3. The objection also incorporates ODA's objection to the original submittal. ODA, July 14, 2010. The department's September 28, 2010 addressed this objection at pp. 62-64.

Objector ODA seeks a remand of the re-designation submittal because it relies on analysis of data that allegedly discounts the value of agricultural land for protection as rural reserve. The objector further suggests that the Commission could consider the analysis done by ODA and require re-designation of certain lands to rural reserve. Metro Ordinance No. 11-1255, at p. 121, explains why Washington County and Metro used additional information to distinguish among the areas of Foundation Agricultural Land at the perimeter of the portion of the UGB in the county. Virtually all of the lands surrounding the existing UGB are identified as Foundation Agricultural Land, and there is no legal error in the county's use of other data and analysis to evaluate the statutory and rule factors. Those data and analyses provide substantial evidence for the county's and Metro's decisions. For these reasons, and the reasons set forth it the department's findings and conclusions contained in the September 28, 2010 report to the Commission, the department continues to recommend that the Commission reject this objection.

3. Failure to designate Area 7I as a rural reserve is inconsistent with the reserves statue and rules. Objector ODA argues that Washington County's decision to leave a portion of Area 7I undesignated, from which Washington County removed the urban reserve designation, is inconsistent with the reserves rules and statutes because the area qualifies as rural reserve and should be so designated due to its agricultural productivity, threat of urbanization, and relationship to other farmland in the area. The proposed remedy is for the Commission to remand the decision to Washington County with instructions to designate the area rural reserve.

The Commission rejected the urban reserve designation of Area 7I at its October 29, 2010 meeting. Metro and Washington County responded to the Commission's decision by revising the intergovernmental agreement and adopting ordinances amending their respective comprehensive plan and regional framework plan maps with re-designation of Area 7I (623 acres) from urban reserve to 263 acres of rural reserves and 360 acres left undesignated.

Objector ODA alleges that leaving the subject 350 acres undesignated will create a "new edge" to the urban area with farmland on three sides and no protection for the adjacent farmland, unlike the existing buffer created by Council Creek. Objector ODA goes on to contend that "as 'undesignated' lands, these lands in effect become next in line for urbanization and in fact, could move up in line should they be designated by future actions as urban reserves…" and "because these lands could be urbanized sooner, the speculative value of the land becomes much higher then if protected for agricultural use making it difficult at best for farmers to rent, lease or acquire the subject lands."

Objector ODA makes essentially the same argument it made to the Commission regarding the initial decision to designate Area 7I as an urban reserve. ODA objected that the former urban reserve designation would lead to urban development that has detrimental impact on farm operations well beyond the boundaries of the subject property. ODA, July 14, 2010 at 6. The current submittal is significantly different, however, as it shifts the area from urban reserve status to undesignated. While ODA may be correct that the area is under some threat of urbanization, that fact alone does not *require* Metro to designate the area as a rural reserve. Metro, and

Washington County, considered that threat and decided not to designate this area as either rural or urban reserve. ODA has not identified what legal requirements apply to the Commission's review of a decision by Metro or Washington County *not* to designate an area as a reserve (urban or rural). The land in question retains rural plan designation and will be a lower priority for urbanization under ORS 197.298 than an urban reserve.

While a rural reserve designation may have forestalled immediate speculative increases in the value of the land, the objector fails to explain how this relates to the factors in OAR 660-027-0060 that Washington County was required to consider on making its rural reserve decisions. For these reasons, the department recommends the Commission reject this objection.

4. The land added to urban reserve Area 8B should be designated rural reserve. Objector ODA argues that the 440 acres designated urban reserve as Area 8B near Hillsboro (88 acres designated in 2010 and 352 added in 2011) should be designated rural reserve instead of urban reserve, as it is in the re-designation submittal, or undesignated. The objection states the area is Foundation Agricultural Land, the larger area has maintained "excellent agricultural integrity," and that designation as an urban reserve "that protrudes out into the larger rural reserve area would have implications on the area agricultural lands already deemed qualified for rural reserve designation."

Metro and Washington County have addressed OAR 660-027-0050(1)–(8) (the urban reserve factors), concluding that all factors are positive for these areas. Metro Ordinance No. 11-1255 at 148-163. These findings state that the area "is uniquely suitable for industrial development, as it is in the heart of "Silicon Forest", and has the necessary infrastructure readily available" (factor 1), that the region and Washington County need the type of development the area would accommodate and that the pre-qualifying concept plan illustrates the potential of the area (factor 2). The findings address efficient and timely provision of public services (factor 3) and the accessibility of the area (factor 4).

The findings further state that Hillsboro has adopted overlay zones to protect natural resource sites and, therefore, "[a]ny development in these areas will be required to address preservation of wildlife habitat, natural vegetation, wetlands, water quality, open space and other natural resources important to the ecosystem" (factor 5). Similar findings are made for factor 7. Regarding factor 6, Metro finds that the area is planned for industrial use, but that Hillsboro "will be able to provide an adequate mix of housing to support future industrial uses in Area 8B and the rest of the North Hillsboro Urban Reserves area…" Finally, the findings indicate the area can be adequately buffered from adjacent rural uses (factor 8).

Metro also adopted required findings relating to the rural reserve factors in OAR 660-027-0060, because the area is Foundation Agricultural Land.

In all, the department believes that Metro's findings regarding the application of the urban reserve factors to Area 8B are adequate, and are supported by an adequate factual base. Normally, that would be the end of the matter, as the choice of whether to designate an area as an

urban or rural reserve when the county and Metro agree that it could be either, after considering the statutory and rule factors, is up to Metro and the county, not the state. However, LCDC's rule at OAR 660-027-0040(11) provides that if lands were identified as Foundation Agricultural Lands (by ODA), then a more rigorous standard applies:

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

Metro's findings include a general explanation of why it chose Foundation Agricultural Land rather than other lands as urban reserves. See, Metro Ordinance No. 11-1255 at 4-10. These findings note that most of the lands surrounding existing urban areas in Washington County were identified as Foundation Agricultural Land, with the result that *any* significant urban reserve designations in Washington County would necessarily require using some Foundation lands. The findings also state:

> Throughout the technical analysis and review process leading to preliminary recommendations on urban and rural reserves, the consistent message from the Washington County Farm Bureau was that lands within the existing UGB should be used more efficiently and, with the exception of lands classified as "Conflicted" on the map developed by the Oregon Department of Agriculture, all lands in the study area within approximately one mile of a UGB should be designated as rural reserve. Farm Bureau members submitted a map and cover letter depicting their recommendations. WashCo Rec. 2098-2099; 3026; 3814-3816. The needs determination by county and city staff determined that the one-mile recommendation noted above would not address the county's urban growth needs over the 50-year reserves timeframe. The WCRCC on September 8, 2009 voted 11 to 2 in support of urban reserve areas of approximately 34,200 acres and rural reserve areas of approximately 109,750 aces in Washington County. In consideration of the concerns raised by the Farm Bureau as well as likeminded stakeholders, interest groups and community members, the Core 4 recommended a reduction of approximately 40 percent (34,200 acres to 13,561 acres) to the WCRCC's urban reserve recommendation. These adjustments represented the Core 4's judgment in balancing the need for future urban lands with the values placed on "Foundation" agricultural lands and lands that contain valuable natural landscape features to be preserved from urban encroachment." Metro Ordinance No. 11-1255 at 58.

The September 23, 2009 recommendations report from the Washington County Coordinating Committee appears in the record at WC Rec. at 2942-3034. The technical analysis contained in those recommendations addresses the rural reserve factors at OAR 660-027-0060(2)(a)–(d) for

41 subareas in the county. WC Rec. at 2976. The county also produced a chart that details how each factor was addressed in its review process. WC Rec. at 2943. As part of its consideration of the rural reserve factors, the county assigned "tiers" to lands in terms of their suitability for agriculture, with Tier 1 being the most important and Tier 4 being the least. The county assigned Tier 3 status to Area 8B. Metro Ordinance No. 11-1255 at 159. Finally, the analysis also relies on a series of "Issue Papers," which are included with the Coordinating Committee recommendations as Appendix 5. WC Rec. at 3780-3819.

As set out above, for areas identified by ODA as Foundation Agriculture Land, Metro must explain why it chose Foundation Agriculture Land over other lands when designating urban reserves, and this explanation must be by reference to both the urban *and* the rural reserve factors. OAR 660-027-0040(11). Metro's findings provide this explanation, and reference more detailed technical analyses that address the rural factors in some detail with respect to particular areas. Metro Findings at 175-178.

Fundamentally, the issues raised by this objection come down to a choice by Metro and Washington County about whether to allow communities that are largely surrounded by some of the best farmland in the state an opportunity for future expansion as part the metro region's long-term growth. As noted in the findings quoted above, Metro and Washington County substantially curtailed the amount of urban reserve lands in this area of Washington County in order to conserve Foundation Agricultural Lands. The department believes that Metro has provided an adequate explanation, supported by an adequate factual base, for its decision. For these reasons, the department recommends that the Commission deny this objection.

5. An area located south of Rosedale Road was improperly converted from rural reserve to undesignated status. The objector argues that this is foundation farm land and meets all the requirements for designation as a rural reserve. ODA, June 2, 2011 at 7. The letter states, on p. 7:

> The "new" undesignated area would in effect extend the potential for urbanization along the entire length of the urban growth boundary from southern Hillsboro to Kings City. It would also extend the potential for urbanization much farther south then ODA found to be conducive to long-term viable agricultural operation in the area.
>
> * * *
>
> The shape of the proposed undesignated block of land is also of concern. It does not simply parallel the existing urban growth boundary. Instead, it protrudes out into the larger block of agricultural land creating multiple edges with no buffers to the adjacent agricultural lands.

Metro Ordinance No. 11-1255, pp. 173-174 and Washington County supplemental record, p. 12726 explain why Washington County removed the rural reserve designation from the area. As stated in the department's response to ODA's third objection, above, the land will continue to

be rural, with a lower priority for addition to the Metro UGB, making urbanization of the land unlikely.

Objector ODA also contends, "There is little discussion in the decision by Metro, as required by OAR 660-027-0050(8), relating to impacts to area agricultural other than conclusionary statements relating to future land use decisions" (ODA, June 2, 2010 at 7, footnote omitted). The cited administrative rule provides factors for consideration of urban reserve designations. The subject land is not, and has not been, designated urban reserve. OAR 660-027-0050 and 0060 do not apply to the county's decision, and Metro and the county have explained why they made the decision. The department recommends the Commission reject this objection.

G. Joseph C. Rayhawk (Ref. 7)

Joseph Rayhawk raises five objections in a letter received by the department on June 2, 2011. Objector Rayhawk alleges: (1) the removal of the urban reserve designation for a portion of area 7B violates Goal 2; (2) maintaining areas 7A and 7B as urban reserves is not justified; (3) not designating a portion of area 7I removed from urban reserve as rural reserve is not consistent with rural reserve factors; (4) the newly enlarged area 8B should have been left undesignated or made rural reserve; and (5) all lands in Washington County changed from rural reserve to urban reserve or undesignated since the Fall of 2009 does not achieve a balance in the designation of urban and rural reserves that best achieves the purposes of urban and rural reserves.

Objector Rayhawk's proposed remedies are for the local governments and the Commission to: (1) re-designate areas 7A and 7B to rural reserve; (2) re-designate all of area 7I rural reserve; (3) re-designate the portion of area 8B changed from undesignated to urban reserve in the re-designation submittal be returned to undesignated and areas west of area 8A be changed from rural reserve to undesignated; and (4) return to the urban and rural reserve and undesignated area maps from December 2009. No remedy to address the first objection was proposed.

Objector Rayhawk itemized and explained the five objections, then provided a detailed explanation of how the urban and rural reserves decisions failed to comply with several of the statewide planning goals. Objector Rayhawk provides little correlation between the alleged goal violations and the objections.

1. Change of a portion of area 7B from urban reserve to undesignated violates Goal 2.
Objector Rayhawk argues that this change in 28 acres of area 7B near Forest Grove from urban reserve to undesignated is to allow a road and that this change violates Goal 2. Metro Ordinance No. 11-1255 at pp. 163-166 addresses the undesignated land, specifically the 28 acres of 7B. Washington County and Metro based the change in designation on the commission's strong opinion, based on testimony and evidence in the record, that the boundary should be Council Creek and not the roadway. The objection does not explain how Goal 2 is violated by the change or provide a remedy to solve the alleged violation. The department recommends that the Commission reject this objection.

2. Areas 7A and 7B remaining Urban Reserve. Objector Rayhawk argues that areas 7A and 7B should be redesignated rural reserve. In the Commission's October 2010 vote, they directed Metro and Washington County to "develop findings on 7B," not necessarily to re-designate it. The supplemental reserve findings for urban reserves area 7B can be found in the record at Metro Ordinance No. 11-1255 at pp. 127-148. The Commission's October 2010 action approved the urban reserve designation of area 7A. See p. 15 of the September 28, 2010 DLCD report for findings regarding the amount of urban reserve land designated in the region. See p. 17 of the report for findings regarding the location of urban reserve lands in the region. The objection does not identify what statute, goal or rule is violated. The department recommends the Commission reject this objection.

3. Area north of Cornelius as undesignated. Objector Rayhawk claims that the area north of Cornelius previously designated urban reserve area 7I should be designated entirely rural reserves, rather than part rural reserve and part undesignated. This objection is the same as 1000 Friends' third objection and similar to the Department of Agriculture's third objection. See section the department's analysis and conclusions regarding this undesignated area on pp. 25 and 35 of this report. The department recommends the Commission reject this objection.

4. Enlargement of urban reserve area 8B. Objector Rayhawk argues that urban reserve area 8B should not be enlarged and the area formerly left undesignated should remain so, or re-designated rural reserve, because it crosses Highway 26, it is distant from development infrastructure, it will contribute to traffic congestion, and there are buffering issues.

The supplemental reserve findings for Area 8B are in Metro Ordinance No. 11-1255 at pp. 148-157. The objection essentially maintains that Metro did not appropriately consider the urban reserve factors, and that others areas are more suitable for urban reserve designation. See the department's response to the fourth objection from 1000 Friends *et al.* on p. 25 of this report.

5. General objection to all land changed from rural reserve to undesignated or urban reserve after Fall 2009. The objector is arguing that Washington County should not have changed any rural designation to undesignated or urban reserves. The supplemental reserve findings for urban reserves area undesignated areas in Washington County can be found in the Metro Ordinance No. 11-1255 pages 163-165, 167-169.

Objector Rayhawk apparently feels that a map of urban and rural reserves presented during the public hearings process better achieved the balance of urban and rural reserves than does the re-designation submittal. The objection cites general and specific examples of changes made to designations by Washington County late in the original submittal process that the objector believes are inconsistent with the reserves rules.

None of the examples include decisions made for the re-designation submittal that are different than the original submittal. As such, they are not relevant to this report. The department recommends the Commission reject this objection.

6. Goal compliance. The objection includes a description of how the five objections addressed above relate to the statewide planning goals. In most cases, this description does not relate the goal analysis with the individual objections. The review criteria relevant to the urban and rural reserve designations are contained in OAR chapter 660, division 27. Nevertheless, we address this section of the objections below.

Regarding Goals 2, 6, 11, 12 and 13, objector Rayhawk has not identified which requirements of the goals are relevant or how the re-designation submittal fails to comply. With regards to Goal 1, see the department's response to the city of Cornelius (Ref. 3) and Save Helvetia (Ref. 12) regarding Washington County's Goal 1 compliance. Regarding Goal 3, objector Rayhawk contends that any land that qualifies as rural reserve is appropriate for that designation. The county is not, however, required to do so, and the lands subject to Goal 3 will still be zoned exclusive farm use, as required by the goal. Regarding Goal 9, objector Rayhawk contends Washington County asked for more urban reserve land than is needed for economic development. The objection does not offer any evidence undermining Metro's analysis that formed the basis for the urban reserve need conclusions.

H. Save Helvetia (Ref. 8)

Robert Bailey submitted a letter of objection on behalf of Save Helvetia, a citizen organization. The letter was received by the department on June 2, 2011 and contains seven objections asserting: (1) Washington County failed to comply with Goal 1, its own citizen involvement policies, and Oregon public meetings law while considering adoption of the re-designation submittal (objections 1, 2, 4 and 6); (2) Washington County failed to comply with Goal 2 by not properly evaluating alternatives (objection 3); (3) certain Washington County commissioners failed to disclose potential conflicts of interest under ORS 244.020 (objection 5); and (4) the lack of written order memorializing LCDC's October 29, 2010 decision has created confusion.

1. Goal 1 and county citizen involvement programs and policies. Objections 1, 2, 3 and 4 are considered together here. These four objections are related to Goal 1 and citizen involvement. Metro Ordinance No. 11-1255 pp. 10- 13 describe the overall process of analysis and public involvement in two sections titled; analysis and decision making and public involvement:

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

Washington County supplemental record, pp. 12664-12667, addresses the county's public involvement process. Metro and Washington County held a joint public hearing on March 15, 2011 prior to signing the IGA; testimony from this hearing is at Metro supplemental record pp. 47-187. Both governments held public hearings prior to adoption of their respective ordinances revising the reserves decision – Metro on April 21, 2011 and Washington County on March 29, April 19, and April 26, 2011. Washington supplemental record pp. 10912, 11090 and 11587.

Based on the above the department finds that Metro and Washington County followed their public involvement programs throughout the reserves process.

The department recommends that the Commission reject this objection.

2. Conflicts of interest. In its fifth objection, objector Save Helvetia asserts that Washington County Board of Commissioners Chair Duyck and Commissioner Terry have potential conflicts of interest, and that under ORS 244.120(12) and 244.130(1) they were required to, but did not, disclose these publicly. For Chair Duyck, the alleged potential conflict of interest is due to the fact that his father owned land subject to the rural reserves designation in Washington County Ordinance 740. For Commissioner Terry, Save Helvetia argues that he has a potential conflict of interest because he owned land subject to an urban reserve designation in Washington County Ordinance 740. In order to "not taint the end product of the reserves process in Washington County," Save Helvetia requests that the Commission (1) remand Washington County Ordinance 740; (2) clarify in the remand order subsequent adherence to Oregon Ethical Standards for Elected Officials; and (3) require public disclosure of potential conflict of interest in the subsequent revision.

The department recommends that the Commission reject this objection. ORS 244.020(12) defines "potential conflict of interest" as follows:

> Potential conflict of interest means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person's relative, or a business with which the person or the person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:
>
> (a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.
>
> (b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member or is engaged.
>
> (c) Membership in or membership on the board of directors or a nonprofit corporation that is tax-exempt under section 501(c)of the Internal Revenue Code.

Also, for purposes of ORS 244.020(12), "relative" includes parents of the public official. ORS 244.020(15)(d). Finally, ORS 244.120(2)(a) requires that when met with a potential conflict of interest an elected official announce publicly the nature of the potential conflict prior to taking any official action thereon and ORS 244.130(1) requires that the public body record any disclosed conflict of interest in its official records.

Providing no developed facts or explanation establishing that owning land subject to a rural or urban reserve designation could result in a pecuniary benefit or detriment, objector Save Helvetia has not established that Chair Duyck and Commissioner Terry have potential conflicts of interest that would require public disclosure under ORS 244.120(2)(a).ORS 244.130(2) provides "[a] decision or action of any public official or any board or commission on which the public official serves or agency by which the public official is employed may not be voided by any court solely by reason of the failure of the public official to disclose an actual or potential conflict of interest." Thus, even assuming for purpose of discussion that one or more commissioner did have potential conflicts of interest with regard to the approval of Washington County Ordinance 740, the department believes that the legislature has not authorized the Commission to remand the decision for that reason.

Nevertheless, the department recommends that the Commission reject this objection, because even assuming the objection established a potential conflict of interest, it would not provide the Commission a basis to remand the re-designation submittal. OAR 660-027-0080(4) provides that the Commission shall review the re-designation submittal for compliance with applicable statewide planning goals and administrative rules, and for consideration of the factors in OAR 660-027-0050 (urban reserves) or OAR 660-027-0060 (rural reserves). Because in this objection Save Helvetia has alleged a violation of ORS chapter 244, even if Save Helvetia did establish that a violation has occurred, a determination the Commission need not make, Save Helvetia has not provided a basis for the Commission to remand the re-designation submittal. The department recommends that the Commission reject this objection.

3. Oregon Public Meetings Laws. In its sixth objection, Save Helvetia asserts generally that Washington County and Metro did not comply with the requirements of Oregon's Public Meeting Laws (ORS 192.410 to 192.505) and that the Commission should remand the re-designation submittal on this basis with instructions for Metro and the County to either adhere to the Public Records Laws or explain that they do not apply.

Save Helvetia does not describe with any particularity the nature of the alleged violation of the Public Meetings Law. Even if it did, however, this objection does not provide a basis for the Commission to remand the re-designation submittal in accordance with OAR 660-027-0080(4) because the alleged violation is not for failure to comply with applicable statewide planning goals or administrative rules or for failure to consider the factors for designating urban reserves in OAR 600-027-0050 or rural reserves in OAR 660-027-0060. Accordingly, the department recommends that the Commission reject this objection.

4. Lack of written order. For its seventh objection, Save Helvetia asserts that "DLCD failed to write and distribute a written order of remand of the LCDC commissioner's deliberations of 10-29-10 as per OAR 660-002-0010: Delegation of Authority to Director (DLCD)." Save Helvetia, June 1, 2011 at 19. The department recommends that the Commission reject this objection.

The department agrees with objector Save Helvetia that the Commission must prepare a final written order. The requirements applicable to the Commission's hearing on and review of the

Metro urban and rural reserve designation are in OAR 660-025-00160 and OAR 660-025-0085. OAR 660-027-0080(1) (Metro and county adoption or amendment of plans, policies and other implementing measures to designate urban and rural reserves shall be in accordance with the applicable procedures and requirements of ORS 197.610 to 197.650); OAR chapter 660, division 25 (implementing ORS 197.610 to 197.650). These rules require that the Commission issue an order that approves, remands or requires specific revisions to the urban and rural reserves designation. The Commission will issue a final order on the submittal and the re-designation submittal that is subject to judicial review under ORS 197.650. Accordingly, the department recommends that the Commission reject this objection.

I. Tom Black (Ref. 9)

Mr. Black submitted a letter objecting to the designation of Areas 8A and 8B as urban reserves and to the undesignated status of the area west of the 8B urban reserve. This objection alleges Goals 1, 3 and 5 have been violated. The objector Black's proposed remedy is for the Commission to remand the decisions to Washington County to re-designate foundation farmland to rural reserve and limit urban reserves to less valuable farmland; preserve the natural, open space and historic resources in the subject areas; and provide more involvement by the lay public in the early stages of the planning process.

The original submittal included urban reserve Area 8A and the undesignated area west of Area 8B. In the re-designation submittal, Metro enlarged Area 8B, adding lands from what had been undesignated in the original submittal. In the October 2010 Commission review, the department recommended that the Commission reject objections to Metro's designation of Areas 8A and 8B as urban reserves. September 29, 2010 staff report at 89-90 and 91-95. The decision by Metro and the county to designate Area 8B an urban reserve and by the county to make undesignated section of 8B has also been addressed in Department of Agricultures objection above. The supplemental reserve findings for the expansion of urban reserves area 8B are in the Metro Ordinance No. 11-1255 pages 154-169.

Objector Black's first objection is that the re-designation submittal violates Goal 3 because it does not preserve farmland for farm use, and that particular areas should be designated rural reserve. Objector Black argues, "By Metro and Washington County now re-designating these three previous rural reserve areas [8A, 8B, and the undesignated area north of Highway 26 and west of Area 8B] now as 'urban reserves' and 'undesignated areas' respectively, they have effectively removed these highly productive 'High-Value' farmland acres from future agricultural production to the detriment of the local and regional farming industry." Black, June 1, 2011 at 3. As noted above, in actuality, Metro has *reduced* the amount of land designated as urban reserves in its re-designation submittal. While Metro has shifted some lands from undesignated to urban on the western edge of Area 8B, it has reduced the acreage of urban reserves north of Cornelius by a larger amount. Metro's findings demonstrate the reasoning from the four governments for the amount of urban reserve designated. Metro Ordinance No. 10-1238A, Metro rec. at 22-24; Metro supplemental record at 13-15. Metro also made findings related to the designation of Areas 8A, 8B as urban reserves. Exhibit B to Ordinance No. 11-1255 at 154-164.

Goal 3 does not prohibit the designation of farmland, foundational or otherwise, as an urban reserve. To the contrary, division 27 allows Foundation Agricultural Land to be designated as an urban reserve under specified conditions. OAR 660-027-0040(11). Land designated as an urban reserve will remain as rural land, subject to Goal 3, until and unless Metro adds the land to the regional urban growth boundary. Further, nothing in state statute or rule requires that a county designate a particular property or area as a rural reserve. OAR 660-027-0060 requires the county to indicate which land was considered for designation as rural reserves and for which purpose, which the county has done. Nothing in the reserves statutes or rules, or Goal 3, mandates that particular land be designated as a rural reserve – only that there be some rural reserves designated if the county utilizes the urban reserves authorization provided by SB 1011. The undesignated area west of Area 8B continues to be planned and zoned for exclusive farm use, and the objector does not explain how that fails to comply with Goal 3. The department recommends the Commission reject this objection.

Objector Black alleges the urban and rural reserves decision violates Goal 5 because it will allow urbanization of natural resources, cultural and historic areas, and open spaces. Goal 5 is addressed in the Metro supplemental record on p. 176. Goal 5 applies only to "significant" resource sites that are included in an inventory adopted as part of the comprehensive plan. If Metro were to expand the regional UGB, or the county were to amend the comprehensive plan designations for these areas, Goal 5 would apply at that time. Goal 5 does not apply to the decisions to designate an area as an urban reserve because that decision does not authorize any new use of the land that could conflict with an inventoried Goal 5 resource. If inventoried resources exist in the subject area, Goal 5 will require Metro and the county to evaluate them in light of conflicting uses at the time the UGB is amended or the comprehensive plan is amended to allow new conflicting uses. The department recommends the Commission reject this objection.

The final objection is that Washington County violated Goal 1 because it did not involve "a true cross-section of the citizens of Washington County in the initial review and decision making process." Objector Black feels that city representatives were given undue influence, that public hearings were "only a formality," and that decisions were made prior to the hearings. Black at 5. Goal 1 requires that a local government follow the citizen involvement program contained in its comprehensive plan. The objector concedes the local governments held extensive public hearings. Metro and Washington County held a joint public hearing on March 15, 2011 prior to signing the IGA between the two. Testimony received at this hearing is in the Metro supplemental record at p. 47-187, and the deliberations by the two bodies are summarized in the Metro findings Ordinance No. 11-1255, p. 109-119 and the Washington County supplemental record at p. 12674. Goal 1 requires opportunities for citizen involvement; Washington County and Metro provided these opportunities. The department recommends the Commission reject this objection.

J. Steve and Kelli Bobosky (Ref. 10)

On June 2, 2011, Steve and Kelli Bobosky, represented by Wendie L. Kellington (collectively, "Bobosky"), submitted procedurally valid supplemental objections to the re-designation submittal. Objectors Bobosky present 11 objections. The letter contains objections specific to the designation of the objectors' property and vicinity and others that more generally question the reserves decision and process. Ultimately, objectors Bobosky request that the Commission remand the submittal and re-designation submittal with instruction to remove the rural reserve designation from their property and include the property in an urban reserve designation or at a minimum leave the property undesignated.

1. Jurisdiction. Objectors Bobosky first contend that neither Metro nor Washington County had any jurisdiction to adopt the re-designation submittal because the Commission had exclusive jurisdiction once parties appealed the submittal to the Commission. Until there is a final written order from the Commission following the October 2010 hearing, objector Bobosky argues that Metro and Washington County have no authority to act on the subject of urban and rural reserves, respectively. While the department agrees that the Commission is required to issue a written order subject to judicial review on the submittal, objectors Bobosky have not established as a matter of law that Metro and Washington County lacked jurisdiction to submit the re-designation submittal prior to issuance of that order.

Objectors Bobosky cites to case law establishing that once appellate court jurisdiction is invoked appellate authority is exclusive until such time as the appellate courts have made disposition of the appeal. Objectors Bobosky also cite decisions of the Land Use Board of Appeals (LUBA) holding that absent statutory authority to the contrary, where jurisdiction over an appeal of a land use decision lies with an appellate court, the local government loses jurisdiction to modify that land use decision. *Standard Insurance Co. v. Washington County*, 17 Or LUBA 647, 660 (1989); *Rose v. City of Corvallis*, 49 Or LUBA 260, 270 (2005). Cases regarding judicial review of a LUBA decision appear inapposite because those cases construe statutes concerning appellate court review of a LUBA decision on a challenged land use decision.

While analogy to such cases may be instructive to Metro and Washington County jurisdiction should there be judicial review of the Commission final written order on the submittal and re-designation submittal, objectors Bobosky do not establish that they control the circumstance prior to such judicial review. Also, as distinct from LUBA and appellate courts, the Court of Appeals has held that review of final orders of the Commission may be found moot where further action of the local government occurred with respect to the area in question and superseded the prior action. *Multnomah County v. LCDC*, 43 Or App 655, 603 P2d 1238 (1979); *Carmel Estates, Inc. v. LCDC*, 51 Or App 435, 625 P2d 1367, *rev den* 291 Or 309 (1981).

The objection cites to no statutory provision in ORS chapters 195, 197, 215 or 268 which concern the jurisdiction of a county or Metro to act on a decision which is the subject of a *pending* Commission review proceeding. Under ORS 197.626(1), Metro amendments establishing urban reserves are submitted to the Commission for review in the manner of periodic review. The department agrees that ORS 197.644(3)(a) and ORS 197.633(5) clearly

establish that the Commission's final written order will be subject to judicial review upon issuance. However, objectors Bobosky point to nothing in the periodic review statutory scheme that would prohibit Metro and Washington County from making the re-designation submittal while the Commission is reviewing the original submittal in the manner of periodic review. The department recommends that the Commission reject the first objection.

2. Participation in local proceedings. In their second objection, objectors Bobosky contend they were deprived of the right to participate in the Metro and Washington County efforts leading to the re-designation submittal. For purposes of the Commission scope of review under OAR 660-027-0080(4)(a), the department understands the second objection to assert a matter of Goal 2 compliance. Goal 2 provides in part, "Opportunities shall be provided for review and comment by citizens and affected governmental units during the preparation, review and revisions of plans and implementing ordinances." Because Metro and Washington County limited the re-designation submittal proceeding to responding to their understanding of the October 2010 Commission hearing, the planning commission was not allowed to reconsider or reevaluate objectors Bobosky's property designation. However, objectors Bobosky do not establish that Goal 2 requires a local government to reconsider or reevaluate elements of a prior decision. The department recommends that the Commission reject the second objection.

3. County charter procedures. In their third objection, objectors Bobosky contend that Washington County did not comply with applicable county charter provisions or public involvement laws. To the extent this objection falls within the Commission's scope of review under OAR 660-027-0080(4)(a), the department understands the third objection to also assert a matter of Goal 2 compliance. Goal 2 is "[t]o establish a land use planning process * * * as a basis for all decision and actions related to use of land[.]" Objectors Bobosky argue that under section 103(c) of the County Charter, the County Ordinance 740 designation of rural reserves is "deemed rejected."[13] Further, objectors Bobosky argue that section 104 required County Ordinance 740 to go through the planning commission.[14] Ordinance No. 740 amends Policy 29 of the Rural/Natural Resource Plan Element of the Comprehensive Plan to modify the Rural and urban reserves map. Section 1(F) of Ordinance 740 finds that the county has followed the provisions of Chapter X, which includes sections 103 and 104. The initial public hearing on Ordinance 740 was held on March 2, 2011. Objectors Bobosky have not established that Washington County failed to comply with the county charter in adopting Ordinance 740.

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[13] Section 103(c) provides:

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

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

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

The objection next recounts aspects of the public process and implies that the decision makers were committed to a predetermined outcome. For purposes of the Commission scope of review under OAR 660-027-0080(4)(a), the department understands this part of the third objection to assert a matter of Goal 2 compliance. Goal 2 provides in part, "Opportunities shall be provided for review and comment by citizens and affected governmental units during the preparation, review and revisions of plans and implementing ordinances." Metro found "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." Exhibit B to Ordinance No. 11-1255 at 13. Contrary to the suggestion of predetermination are the summary of board and council motions. *Id.* at 111-122. The department recommends that the Commission reject the third objection.

4. Reserve analysis area arbitrary and overly large. In their fourth objection, objectors Bobosky contend that the submittal and re-designation submittal fail to establish that the Bobosky property or the residential subdivision within which it is located meets the standards for designation as rural reserve. None of the factors for selecting urban or rural reserves, or any other provision of the applicable statutes or rules, require a parcel-specific analysis for reserve-boundary location decisions. DLCD September 28, 2010 staff report at 19. The department continues to recommends that the Commission reject this objection. *Id.* at 99-100.

5. Objector's property not agricultural land. Objectors Bobosky fifth objection is similar to part of their second objection made during the 2010 proceedings. The objection contends that, since Washington County justified an exception to Goal 3 for the objectors' property (part of rural reserve Area 8F), the county already determined that the property does not contain farmland and unsuitable for or available for agriculture. The objection further maintains that the re-designation submittal is in error by using the Foundation Agricultural Land map as an evaluation mechanism for rural reserves because the county relied on ODA's map of Foundation Agricultural Land in making its rural reserve decisions. The objection states several reasons the county cannot rely on the ODA map. The proposed remedy is for the Commission to reverse or remand the decision to remove the rural reserve designation from the Boboskys' property.

The objection states:

> The Original Decision expressly stated it did not rely on the ODA's map of so-called "Foundation Agricultural Lands" for designation of Washington county (*sic*) rural reserves and the challenged decision continues that determination. Supp Metro Rec 91. However, it seems that the idea of "Foundation Agricultural Land" when convenient to do so, was used to justify rural reserves anyway. Thus, to the extent the ODA map that shows the Bobosky property or its Bendemeer subdivision as "Foundation Agricultural Land" plays any role in the rural reserve designation of the Bobosky property, as could be inferred from the above quoted Area 8F findings, then it is error to rely on such map to that end as a matter of law. Bobosky, June 1, 2011 at 22.

The department agrees that Washington County did not rely on ODA's classification scheme of agricultural land. While it may seem otherwise to the objectors, the objection cites no examples supporting that impression. The department therefore declines to address the substantive allegations contained in this objection, and recommends the Commission reject the objection.

6. Rural reserve designation violate urban reserve factors and reserves statutes. The sixth objection is nearly identical to the Boboskys' first 2010 objection. The objection contends the rural reserve designation of the objector's property violates OAR 660-027-0060 and ORS 195.139 (1)(a), and ORS 195.141(2) and (3). In addition, the decision-makers ignored professional staff and the Washington County planning commission. The proposed remedy is for the Commission to reverse or remand the decision and order Metro and Washington County to remove the rural reserve designation and make it undesignated or urban reserve for the objectors' property and the entire Bendemeer subdivision. The objector also states the Commission should remand or reverse the entirety of Washington County's rural reserves.

The department's 2010 report to the Commission addressed this objection as follows:

> Washington County and Metro determined that this area could be designated as either a rural or urban reserve. Regarding the first objection (Ref. 38-1), the inquiry the county and Metro must complete to designate a rural or an urban reserve is not required to be property-specific, but rather area-wide. The factual base is not required to address every parcel or small group of parcels…. Under OAR chapter 660, division 27, an argument that an area is better suited for one designation than another is not a basis for remand so long as the decision-maker considered the required factors and the overall region-wide decision meets the objective set forth at OAR 660-027-0005(2).... (citations omitted) DLCD, September 28, 2010 at 100.

The department recommended the Commission reject this objection at its October 2010 hearing, which the Commission did. The department again recommends the Commission reject this objection.

7. Failure to distinguish between agricultural and exceptions land. The seventh and eighth objections are nearly identical to objector Bobosky's second and third objections during the 2010 proceedings. The objectors assert that the reserves decision unlawfully fails to identify agricultural land subject to Goal 3. Rather, the decision improperly considers land "agricultural land" whether it is subject to an acknowledged Goal 3 exception or subject to Goal 3, making it impossible to lawfully apply the urban and rural reserves "criteria." The objector contends the decision violates Goal 3, ORS 195.141(3), OAR 660-0027-0050 and -0060. Objectors Bobosky also argue that, in designating acknowledged exception lands as "rural reserve," the county assigned exception lands equal status with acknowledged EFU-protected agricultural lands, and that this unlawfully undermines Goal 3 and the agricultural land use policy in ORS 215.243 because it repeals regional protection for agriculture. The Boboskys also object to Metro's repeal of Policy 1.12.[15]

[15] The repealed Policy 1.12 stated:

The proposed remedy for the seventh objection is for the Commission to reverse or remand the rural reserve designation for the Boboskys' property with direction to re-designate it urban reserve or leave it undesignated, and with direction to reconsider all other urban and rural reserve designations. The proposed remedy for the eighth objection is for the Commission to remand for Metro to restore Policy 1.12 protecting Agricultural Land, instruct Metro that it must prioritize exception lands for urban reserves, evaluate whether exception lands can accommodate land needs for urban reserves and make agricultural land urban reserves as a last resort.

The department's 2010 report to the Commission addressed this objection as follows:

> The inquiry and evaluation of what lands to designate as rural reserves is not required to be property-specific, but rather area-wide…. The county is not required, nor would it be possible, to address every parcel or even every group of parcels. The rural reserves factors are not approval criteria and are not determinative in that regard.
>
> The objectors argue that by not considering whether lands are resource lands or exception lands, the county's decision "undermines Goal 3 and land use policy established in ORS 215.243." The legislature has found that rural reserves are intended "to provide long-term protection for agriculture, forestry or important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization." ORS 195.137(1). The intent of rural reserves is to afford greater long-term protection of rural lands from urbanization. The status of particular lands as exception lands or agricultural lands is not directly relevant to the counties' decisions. Rural reserves may be designated to protect the agricultural or forest industries (not lands), or to protect important natural features of the lands. These purposes are consistent with Goal 3 and the agricultural land use policies enunciated in ORS 215.243, and do not require a property-by-property consideration of whether lands are exception lands.

It is the policy of the Metro Council that:

1.12.1 Agricultural and forest resource lands outside the UGB shall be protected from urbanization, and accounted for in regional economic and development plans, consistent with this Plan. However, Metro recognizes that all the statewide goals, including Statewide Planning Goal 10 Housing and Goal 14 Urbanization, are of equal importance to Goal 3 Agricultural Lands and Goal 4 Forest Lands which protect agriculture and forest resource lands. These goals represent competing and., some times, conflicting policy interests which need to be balanced.

1.12.2 When the Metro Council must choose among agricultural lands of the same soil classification for addition to the UGB, the Metro Council shall choose agricultural land deemed less important to the continuation of commercial agriculture in the region.

1.12.3 Metro shall enter into agreements with neighboring cities and counties to carry out Council policy on protection of agricultural and forest resource policy through the designation of Rural Reserves and other measures.

1.12.4 Metro shall work with neighboring counties to provide a high degree ·of certainty for investment in agriculture and forestry and to reduce conflicts between urbanization and agricultural and forest practices.

> The Department disagrees with the objector's assertion that designating exception areas as rural reserve undermines this intent. Uses that take place in rural areas, even if not zoned EFU, affect farming operations and practices. While Washington County was not required to designate exception areas (or any other areas) as rural reserve, no rule prohibits it, either. The effect of the rural reserves designation is greater protection of agricultural *uses*. The Department recommends the Commission find that Washington County's designation of exception areas as rural reserves does not violate Goal 3, ORS 195.141(3), OAR 660-0027-0050 or 660-027-0060, or ORS 215.243.

The department recommended the Commission reject these objections at its October 2010 hearing, which the Commission did. The department again recommends the Commission reject these objections.

8. Collateral attack on Goal 3 exception. In their ninth objection, objectors Bobosky renew what was their fourth objection in 2010, that because their property is subject to an exception to Goal 3 it cannot be designated rural reserve. In its September 28, 2010 report to the Commission, the department found this objection to be invalid because it did not include a citation of what statute, goal or rule had been violated, and the merits of the objection were not analyzed. The objectors provided additional explanation of the objection in their June 2, 2011 letter.

None of the factors for selecting urban or rural reserves, or any other provision of the applicable statutes or rules, require a parcel-specific analysis for reserve-boundary location decisions. DLCD, September 28, 2010 at 19. The department continues to recommends that the Commission reject this objection. *Id.* at 68-70.

9. Inconsistent application of factors. Objectors Bobosky's tenth objection asserts, "The challenged decision inconsistently applies the urban and rural reserves statute and administrative rule factors in an irrational and improper manner leading to an unlawful result." To establish internally inconsistency, the objection catalogues many portions of the challenged decision in which areas with either shared or distinct characteristics as the Bobosky property were considered differently or similarly when Metro and Washington County applied the urban and rural reserve factors respectively.

While the department does not disagree that the Bobosky property, considered in isolation, could have been either left undesignated or designated an urban reserve and either action would be consistent with the applicable law, that, however, is not the inquiry before the Commission. Under OAR 660-027-0080(4), the Commission reviews the submittal and the re-designation submittal, not what could have been submitted. Again, none of the factors for selecting urban or rural reserves, or any other provision of the applicable statutes or rules, require a parcel-specific analysis for reserve-boundary location decisions. DLCD, September 28, 2010 at 19.

In large part, the inconsistency identified by objectors Bobosky is inherent in the nature of the urban and rural reserves process. Metro and the counties are tasked with considering specified factors when designating areas as reserves. The factors are considerations, they are not criteria

that must be met. Ultimately the reserves are on balance to achieve a prescribed purpose. Thus, in considering factors and achieving the prescribed balance, it is not outside the law for two areas with many similar characteristics to not come out with the same designation as urban reserve, rural reserve, or undesignated areas. Because this objection provides no basis for remand under OAR 660-027-0080(4), the department recommends that the Commission reject it.

10. Violation of ORS 197.298 (2). The sixth objection is similar to objectors Bobosky's fifth 2010 objection. The objection contends that because the urban and rural reserve designations directly influence how Goal 14 and the priorities for locating UGB expansions are applied, the urban and rural reserve designations must comply with ORS 197.298[16] and Goal 14. The proposed remedy is for the Commission to reverse or remand the rural reserve designation on the objectors' property and the subdivision in which the property exists, with direction to re-designate the property urban reserve or leave it undesignated. (The objector does not ask that Metro and the counties apply ORS 197.298 (2) region-wide.)

In its September 28, 2010 report to the Commission, the department found this objection to be invalid because it did not include a citation of what statute, goal or rule had been violated, and the merits of the objection were not analyzed. The objectors provided additional explanation of the objection in their June 2, 2011 letter.

By its own terms, ORS 197.298 applies only to consideration of including land in a UGB. Neither the reserves statutes nor rules incorporate a requirement for the local governments to consider ORS 197.298 in making urban or rural reserve location decisions. The objection does not explain how the re-designation submittal violates Goal 14 or even what provision of Goal 14 may apply. Therefore, the department recommends the Commission reject this objection.

[16] ORS 197.298 (1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:

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

(b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.

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

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

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

* * *

K. Maletis *et al.* (Ref. 11)

Objectors Chris Maletis, Tom Maletis, Exit 282A Development Company, LLC, and LFGC, LLC (Maletis) filed a letter of objections to the re-designation submittal dated June 2, 2011. The objections concern particular property within the larger 4J Rural Reserve located generally south of the Willamette River, east of I-5, and west of Airport Road in Clackamas County. Clackamas County designated Study Area 4J, including the subject property, as a rural reserve. Metro and the counties incorporated the rural reserve designation into the original reserves designation. The re-designation submittal did not modify the rural reserve designation for Study Area 4J (4JRrural), but did provide additional findings related to OAR 660-027-0060. Revised Findings for Clackamas County Urban and Rural Reserves April 21, 2011 at 21-23.

1. Objections Incorporated by Reference. The first objection correctly identified OAR 660-027-0080(4) as providing the standard of review for the Commission's consideration of the joint and concurrent re-designation submittal. However, the objectors contend that, under ORS 197.040(1)(b)(C)-(E), Metro must consider all alternatives, including whether leaving property as "undesignated" serves the same state interest as a "rural reserve" designation while imposing fewer burdens on identified economic interests. The department recommends that the Commission conclude that as a matter of law ORS 197.040(1)(b)(C)-(E) imposes no requirements on Clackamas County. That statute authorizes the Commission to undertake rulemaking to carry out ORS chapters 195, 196, and 197 and provides directions to the Commission when it undertakes "designing its administrative requirements The statute does not apply to Clackamas County, and provides no basis for the Commission to reverse or remand the county's decision.

For the re-designation submittal, the objectors' first objection specifically maintains their prior objections on the same grounds and for the same reasons set forth in their objections filed July 14, 2010.[17] The department addressed those objections in the department's September 28, 2010 report, including at pp. 30-32, 46-47, 49-50, 56-57, and 79-82. Nothing in the recent objection or the intervening period causes the department to reconsider its prior recommendation.

2. Adoption Procedure. In their second objection, the objectors contend that the Clackamas County Board of Commissioners made procedural and substantive errors that require remand of the re-designation submittal. The objection explains:

> On May 27, 2010, the Clackamas County Board of Commissioners ("BOC") adopted the Ordinance which amended the County's adopted comprehensive plan to adopt urban and rural reserves. Section 2 of the Ordinance adopted findings in support of the County's decision ("2010 Findings"). On April 21, 2011, the BOC adopted "Overall Findings for Designation of Urban and Rural Reserves" and "Revised Findings for Clackamas County Urban and Rural Reserves" (together, "New Findings"). These documents were free-standing and not included as part of an ordinance, resolution, or order. The BOC considered them as a consent agenda item and did not accept public testimony at the

[17] Although the objector does not likewise specifically reassert its prior exceptions to the director's report dated October 8, 2010, the Commission will also expressly consider those exceptions in the written final order.

> meeting before adopting the New Findings. In addition, the New Findings do not state that they replace or supersede the 2010 Findings. Maletis, June 2, 2011 at 6.

The objection argues that under both statutory provisions requiring legislative acts related to land use planning to be adopted by ordinance and prescribing procedure for adopting such ordinances, and case law interpreting those statutory requirements, Clackamas County erred procedurally in adopting the "new findings" on April 21, 2011. The department does not agree that Oregon law requires a local government to adopt findings supporting a legislative land use decision by ordinance. The objectors are correct that Oregon law requires a legislative land use decision to be made by ordinance, with a public hearing, but nothing in statute or case law requires the *findings* supporting the decision to be adopted in the same way. Further, the objector has not established how that would require the Commission to remand the re-designation submittal under its standard of review: OAR 660-027-0080(4). Because this objection fails to establish that the re-designation submittal is non-compliant with the goals or applicable administrative rules, or that the county failed to consider the factors for designation of lands as rural reserves under OAR 660-027-0060, it provides no basis for the Commission to remand the re-designation submittal. The department recommends that the Commission reject this objection.

3. Equal Protection Clauses. In their third objection, the objectors assert that the re-designation submittal violates the Equal Protection Clauses of the United States Constitution and the Oregon Constitution, both facially and as applied.[18] Arguing that the land use statutes governing reserves on their face treat farmland differently than non-farmland and that as applied the re-designation submittal treated similarly situated properties in a disparate manner, the objectors conclude that the submittal "is unconstitutional and must be remanded." Maletis, June 2, 2011 at 7.

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

> As relevant here, to establish that the challenged decision violates Article I, section 20, of the Oregon Constitution, petitioner must show that (1) another group has been granted a "privilege" or "immunity" that petitioner's group has not been granted; (2) petitioner's group constitutes a "true class"; and (3) the distinction between the classes does not have a rational relationship to a legitimate end. *Withers v. State of Oregon*, 163 Or App 298, 306, 987 P2d 1247 (1999). A true class is one that is defined in terms of characteristics that are shared apart from the challenged law or action. *Id.* If the true class is one with immutable characteristics, or a distinct, socially recognized group of citizens that has been the subject of adverse social and political stereotyping, then it is a suspect class, subject to a more exacting review standard. *Tanner v. OHSU*, 157 Or App 502, 520, 971

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

> P2d 435 (1998). A true class that is defined by other characteristics, such as geographical residency or employment status, is subject to a less exacting rational relationship test. *Gunn v. Lane County*, 173 Or App 97, 103, 20 P3d 247 (2001); *Sherwood School Dist. 88J v. Washington Cty. Ed.*, 167 Or App 372, 6 P3d 518 (2000). 42 Or LUBA at 200.

Were the Commission to reach the merits of this objection, the department would recommend that it be rejected, because at a minimum, the objector has not established either that it is part of a true class or, even assuming it were, that distinguishing between farmland and non-farmland does not have a rational relationship to a legitimate legislative end (to protect farmland for farm use). This objection fails to establish that the re-designation submittal is non-compliant with the goals or applicable administrative rules, or that the county failed to consider the factors for designation of lands as rural reserves under OAR 660-027-0060. As a result, the department recommends that the Commission reject the objection.

4. Metro Has No Authority to Designate Reserves Outside of the Service District Boundary.
In their fourth objection, objectors Maletis contend that Metro lacks the authority to designate reserves, either urban or rural, outside of the metropolitan service district boundary. After arguing that select provisions of ORS chapter 268 and the Metro Charter constrain Metro in all matters to acting within the district, the objector contends:

> Although ORS 195.137 through 195.145 purport to allow Metro, in tandem with area counties, to designate urban reserves, these provisions do not explicitly extend the geographic scope of Metro's governing authority outside of the boundaries of the metropolitan service district. Rather, the Legislature's grant of authority in ORS Chapter 195 must be read consistent with the statutory and charter provisions cited above, which clearly confine Metro's jurisdiction to a limited geographic area. Therefore, to the extent that the Ordinance purports to designate urban reserves outside of the boundaries of the metropolitan service district, the Ordinance exceeds the scope of Metro's authority and is void *ab initio.* Maletis, June 2, 2011 at 8.

As acknowledged by the objector, ORS 195.137 through 195.145 provide specific authorization to Metro and the counties to simultaneously designate and establish urban and rural reserves. Under ORS 195.143, Metro may not designate urban reserves in a county until it has entered into an agreement as provided for in ORS 195.145(1)(b) that identified land to the district is designating as urban reserve in the regional framework plan. Thus, the county, which is statutorily required to adopt a comprehensive plan for all of the land in the county and authorized to revise the plan by geographic area under ORS 215.050(1), must be in agreement with Metro regarding the designation and establishment of urban and rural reserves within the county. Nothing in ORS 268.310(6); Metro Charter, Chapter I, Section 3; or ORS 268.380(1)(a) and (c) cited by objectors, expressly prohibits Metro from entering into an intergovernmental agreement with a county to act in a coordinated manner in undertaking land use planning. To the contrary, ORS 268.380 is more properly construed as a permissive legislative authorization to both engage in land use planning within the district and to do so in coordination with governments with such authority outside the district.

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

Secondly, in construing the legislative intent underlying ORS 195.137 through 195.145, ORS 268.380 and ORS 215.050, it is possible to understand them to authorize coordinated land use planning for purposes of designating and establishing urban and rural reserves. That construction comports with ORS 174.010, which requires that in construing separate statutory provisions together, "where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all." Finally, the department notes that the provision of the Metro Charter relied upon by objector as a constraint, actually provides, "The Metro Area of governance includes all territory within the boundaries of the Metropolitan Service District . . . and any territory later annexed or *subjected to Metro governance under state law*." Chapter I, section 3 (emphasis added). Objectors Maletis do not explain why ORS 195.137 through 195.145 should not be construed as a state law that subjects the coordinated designation and establishment of urban and rural reserves to Metro governance, consistent with Metro Charter, chapter I, section 3. For these reasons, the department recommends that the Commission reject the fourth objection.

5. The re-designation does not properly address the owners' objection to the reliance on the "safe harbor" provision. In the fifth objection, objectors Maletis supplement their objections pertaining to the application of the "safe harbor" provision of OAR 660-027-0060(4) that the department addressed in the department's September 28, 2010 report at pp. 79-82. In addition to findings related to the "safe harbor" provision of OAR 660-027-0060(4), Clackamas County made additional findings related to OAR 660-027-0060. Revised Findings for Clackamas County Urban and Rural Reserves April 21, 2011 at 21-23.

The objectors now contend that the county should have made findings specific to the subject property in isolation and not as to the entirety of Rural 4J. However, objector neither points to a requirement of the goals or applicable administrative rules that provide a basis for the department to determine a lack of compliance nor establishes that the county failed to consider the factors for designation of lands as rural reserves under OAR 660-027-0060. At best, the objection establishes that objectors identified conflicting evidence before the county regarding designation as an urban, as opposed to rural reserve. Under the familiar substantial evidence standard, where the evidence in the record is conflicting, if a reasonable person could reach the decision that Metro and the Clackamas County made regarding Rural 4J in view of *all* the evidence in the

record, the choice between the conflicting evidence belongs to the decision maker. *Mazeski v. Wasco County*, 28 Or LUBA 178, 184 (1994), *aff'd* 133 Or App 258, 890 P2d 455 (1995). For these reasons, the department recommends that the Commission reject the fifth objection.

L. Forest Park Neighborhood Association (Ref. 12)

Jim Emerson and Carol Chesarek, and Jerry Grossnickle as an individual and president of the Forest Park Neighborhood Association (collectively "Forest Park NA"), filed a letter of objection dated June 2, 2011. The objection supported rural reserve designation in Multnomah County Areas 9A, 9B, 9C, 9d, and 9F and requested supplemental findings and citations to evidence and arguments in the record that support the decision. Objectors Forest Park NA present no new objections, as the letter states, "We submit this objection to renew our objection and exception to the original urban and rural reserves decision. We incorporate herein by reference all documents and exhibits that are part of the record of those proceedings including our objection and exception." Under that circumstance, the department recommends that the Commission not reconsider the department recommendation to reject these previously presented objections and exceptions. DLCD, September 28, 2010 staff report at 104. The Commission will fully address the objections and related exceptions in the final written order on the submittal and re-designation submittal.

M. Metropolitan Land Group (Ref. 13)

Metropolitan Land Group ("MLG"), represented by Steven L. Pfeiffer, filed a written objection to the April 26, 2011 Multnomah County revised findings and Ordinance No. 2010-1180 and Metro Ordinance No. 11-1255. The objection letter dated May 31, 2011 does not restate the objections in this letter but refers to the previous objection. The objector challenges the submittal and re-designation submittal in six specific ways and suggests as a remedy that Multnomah County remove the rural reserve designation from the "L" within Area 9B and that Metro designate the "L" an urban reserve. Objector MLG presents no new objections specific to Multnomah County's revised findings, acknowledging that "…the Redesignation maintains the same deficiencies as the initial reserves designation, particularly as it relates to the Property, As such, MLG objects to the Redesignation on the same grounds and for the same reasons set forth in the objections." Under that circumstance, the department recommends that the Commission not reconsider the department recommendation to reject these previously presented objections and exceptions. DLCD September 28, 2010 staff report at 106-107. The Commission will fully address the objections and related exceptions in the final written order on the submittal and re-designation submittal.

N. East Bethany Owners (Ref. 14)

Robert Burnham, Vicki Burnham, Janet Burnham, John Burnham, Hank Skade, Dorothy Partlow, and Robert Zahler (collectively the "East Bethany Owners") filed a written objection to the April 26, 2011 Multnomah County revised findings and Ordinance No. 2010-1180 and Metro Ordinance No. 11-1255. The objection challenges the submittal and re-designation submittal in nine specific ways and suggests as a remedy that Multnomah County remove the rural reserve designation from the "L" within Area 9B and that Metro designate the "L" an urban reserve.

Objectors East Bethany Owners present no new objections specific to Multnomah County's revised findings, acknowledging that "None of these exceptions has been addressed by the recent revision of the findings." Under that circumstance, the department recommends that the Commission not reconsider the department recommendation to reject these previously presented objections and exceptions. DLCD, September 28, 2010 staff report at 105-107. The Commission will fully address the objections and related exceptions in the final written order on the submittal and re-designation submittal.

VII. DEPARTMENT RECOMMENDATION AND DRAFT MOTIONS

A. Recommendation

The department recommends that the Commission find that the adopted plans designating urban and rural reserves in the Portland metro area under ORS 195.137 to 195.145 and OAR 660-027 comply with ORS 195.141 and 195.145, OAR chapter 660, division 27, the applicable statewide planning goals, and other applicable rules of the Commission.

B. Proposed Motion

Recommended Motion: I move that the Commission accept the department's recommendation, reject the objections, and approve the designations of urban and rural reserves for the Portland Metro area and accompanying plan amendments submitted by Metro, Clackamas County, Multnomah County, and Washington County.

Alternative Motion: I move that the Commission remand the designations of urban and rural reserves for the Portland metro area and accompanying plan amendments to Metro and __ counties for them to _____.