

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

IN THE MATTER OF THE REVIEW OF  
THE DESIGNATION OF URBAN  
RESERVES BY METRO AND RURAL  
RESERVES BY CLACKAMAS COUNTY,  
MULTNOMAH COUNTY AND  
WASHINGTON COUNTY

CLACKAMAS COUNTY'S  
OPENING BRIEF

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## I. Scope of Brief

The Land Conservation and Development Commission (hereinafter “LCDC” or the “Commission”) has provided those parties which participated in the *Barkers Five, LLC v. LCDC*<sup>1</sup> case the opportunity to brief certain issues which are subject to remand as a result of the Court of Appeals decision, and to explain how the subsequent enactment of HB 4078 (2014) might affect the remand proceedings. This office represents Clackamas County (hereinafter the “County”). The scope of this brief will generally be limited to those issues related to whether there is substantial evidence in the record which clearly supports Metro’s designation of the Stafford Area<sup>2</sup> as urban reserves and whether the changes to Washington County’s urban reserves through HB 4078 requires further remand to the counties to address the “amount of land” and “best achieves” standards.

This brief will be organized as follows:

- A discussion of the error identified by the Court of Appeals
- A discussion of the new authority granted to LCDC by HB 4078
- A discussion of the reasons why a remand is required under the circumstances to adopt additional findings related to the urban reserve designation of the Stafford Area, particularly as it applies to the transportation issue, and to address what effect the removal of net acres of land designated urban reserve in

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<sup>1</sup> 261 Or. App. 259 (2014). Court of Appeals Case No. A152351.

<sup>2</sup> The Stafford area includes land identified as Areas 4A to 4D in the LCDC Compliance Acknowledgment Order 12-ACK-001819, dated 8/14/12 (hereinafter the “Stafford Area”).

Washington County as a result of HB 4078 has on the “amount of land” and the “best achieves” standards.

The County submits that a remand is necessary to adopt additional findings related to the urban reserve designation of the Stafford Area, particularly as it applies to the transportation issues. The County also finds that a remand is necessary so that Metro and the counties can address what effect the removal of the net acreage of land designated urban reserve in Washington County as a result of HB 4078 has on the “amount of land” and the “best achieves” standards. See Exhibits A and B, which are attached hereto and which includes the text of HB 4078 along with maps illustrating the changes to the reserve designations in Washington County as a result of the legislation. The County submits that the designation, or redesignation, of certain properties may be required on remand if found necessary to achieve the “amount of land” or the “best achieves” standard.

## **II. Court of Appeals Issue on Remand - Stafford Area Urban Reserve Designation**

The Court of Appeals found LCDC’s determination that the designation of Stafford as urban reserve was not supported by substantial evidence, citing evidence highlighted by the cities of West Linn and Tualatin (hereinafter, collectively “West Linn”). *Barkers Five, LLC*, 261 Or. App. 259 at 362. Specifically, the Court found LCDC’s resolution of West Linn’s objections pertaining to the provision of transportation to Stafford to be insufficient to support the overall determination that the urban reserve designation was appropriate for the Stafford area<sup>3</sup>. *Id.*

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<sup>3</sup> OAR 660-027-0050 provides, in part:

Although West Linn made a number of arguments related to the application of the urban reserve designation to the Stafford area, the Court reduced its final analysis to the single issue of whether LCDC's order is unlawful in substance because it misapplied its review for substantial evidence.<sup>4</sup> *Barkers Five, LLC*, 261 Or. App. at 360. Most notably, the Court found compelling evidence demonstrating that “the RTP [Regional Transportation Plan] indicates that almost all of the transportation system that would provide access to the Stafford Area will be functioning at service level F by 2035” and that money will not be available to fix those issues. *Barkers Five, LLC*, 261 Or. App. at 357.

LCDC's final order indicated that “the Clackamas County record indicates that transportation considerations were weighed when the county and Metro compared candidate urban reserve areas, in accordance with OAR 660-027-0050(1) and OAR

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“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...

- (1) Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments; ...
- (3) Can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers [.]”

<sup>4</sup> The Court also considered, and ultimately rejected, West Linn's argument whether the designation of Stafford as urban reserve complied with the urban reserve factors, finding that “compliance” with the factors is not required as those factors are not independent approval criteria. *Barkers Five, LLC*, 261 Or. App. at 360. The Court held that Metro and the counties must base the ultimate designation on “consideration” of the pertinent reserve factors. *Id.*

Additionally, the Court specifically rejected West Linn's contentions pertaining to Goal 12 (Transportation) and the Transportation Planning Rule, OAR chapter 660, division 12. *Barkers Five, LLC*, 261 Or. App. at 357.

660-027-0050(3).” *Barkers Five, LLC*, 261 Or. App. at 358. The findings also explained that,

“the RTP is a prediction of and plan to address traffic flows for a 25-year period. Conversely, the Reserves Designations are intended to address a 50-year time frame, rather than a 25-year time frame. Metro Rec. 1918. The record reflects that the transportation system will necessarily change in 25 years. In that vein, the ‘Regional High Capacity Transit System’ map identifies a new light rail line in the vicinity of I-205 as the ‘next phase’ of regional priority”.  
*Barkers Five, LLC*, 261 Or. App. at 359.

The Court summarized these responses to West Linn’s objections as “impermissibly speculative” since Metro and the County did not explain, by reference to the evidence in the record, why the transportation system will change and improve by 2060. *Barkers Five, LLC*, 261 Or. App. at 362.

The Court concluded that the evidence highlighted by West Linn, and contained in the RTP, was “weighty, countervailing evidence that is squarely at odds with LCDC’s determination that the designation of Stafford as urban reserve is supported by substantial evidence”. *Barkers Five, LLC*, 261 Or. App. at 362. Ultimately, the Court of Appeals found that LCDC’s original order was unlawful in substance because the evidence to which West Linn points, indicating that the transportation facilities serving Stafford will be failing by 2035, is “squarely at odds with LCDC’s determination that the designation of Stafford as urban reserve is supported by substantial evidence that it gives rise to an inference that LCDC misunderstood its standard of review.” *Id.* The Court proceeded to find that it was incumbent on LCDC to provide a meaningful explanation as to why the designation of Stafford as urban reserve is supported by substantial evidence. *Id.* The Court specifically instructed that LCDC must demonstrate

that it has properly reviewed Stafford's designation as urban reserve for substantial evidence. *Barkers Five, LLC*, 261 Or. App. at 362-363.

In essence then, the direction provided by the Court on remand was for LCDC, and by extension Metro and Clackamas County, to "show their work" in how they arrived at the conclusions contained in the final order; in other words, to provide the "meaningful explanation" the Court found was lacking from the original findings.

The findings at issue on remand were adopted by Metro and Clackamas County. The Commission is limited in its ability to ultimately affirm the decision on remand. The Court of Appeals specifically held that LCDC does not have the authority to affirm the decision of the local government where the findings are inadequate, even where the evidence "clearly supports" the decision. *Barkers Five, LLC*, 261 Or. App. at 340. Limited authority to affirm the decision where the findings are inadequate was granted to the Commission through the recently passed HB 4078, which is discussed at length below. However, the County concludes that the scope of this authority is not broad enough to address the deficiencies related to the Stafford Area, and the issue created by HB 4078 with regards to the "amount of land" standard found in OAR 660-027-0040(2) and the "best achieves" standard found in OAR 660-027-0005(2). The county concludes that these issues are most appropriately addressed on remand to Metro and the counties.

### **III. HB 4078, Section 9 – Evidence in the Record that Clearly Supports the Decision**

Section 9 of HB 4078 provides, in relevant part: "the commission may approve all or part of the local land use decision if the commission identifies evidence in the record

that clearly supports all or part of the decision even though the findings of the local government either:

- (1) Do not recite adequate facts or conclusions of law; or
- (2) Do not adequately identify the legal standards that apply, or the relationship of the legal standards to the facts.”

HB 4078, Sec. 9 (2014) (*eff.* April 1, 2014). Exhibit A.

This new authority available to the Commission is analogous to the authority of the Oregon Land Use Board of Appeals (hereinafter “LUBA”) in ORS 197.835(11)(b) and is sometimes referred to as the “clearly supports” standard. It is important to note that use of this new authority by the Commission is strictly limited by Section 9 of HB 4078 to acts on remand in the *Barkers Five, LLC* matter.

Clackamas County generally agrees with the explanation and analysis set forth by Multnomah County with regards to the “clearly supports” standard, and specifically incorporates that section of Multnomah County’s brief herein. Unlike Multnomah County’s situation, however, there is lacking in the record evidence which clearly supports the local decision related to the Stafford Area. Furthermore, there is no evidence in the record whatsoever to address compliance with the “amount of land” and “best achieves” standards after the legislature changed Washington County’s urban reserve designations through HB 4078.

The Court of Appeals rejected LCDC’s attempt to affirm portions of Multnomah County’s reserve designations using the “clearly supports” standard. *Barkers Five, LLC*, 261 Or. App. at 340. The Court noted that while LCDC purported to have the same authority as has been granted to LUBA through ORS 197.835(11)(b), nothing suggested

that LCDC actually had that equivalent authority. *Id.* Of course, use of this authority was subsequently granted to the Commission through Section 9 of HB 4078.

The language of Section 9 of HB 4078 is substantively identical to its companion provision in ORS 197.835(11)(b)<sup>5</sup>. LCDC, when attempting to use the authority to affirm Multnomah County's findings, which were perceived to be inadequate, specifically cited to LUBA's analogous authority and ORS 197.835(11)(b). It stands to reason then, that the authority granted through Section 9 of HB 4078 should be interpreted in the same way as the express authority granted to LUBA in ORS 197.835(11)(b).

As noted in Multnomah County's materials, LUBA has had an opportunity to interpret the appropriate use of its authority on numerous occasions. Over time, LUBA case law has clarified the purpose of the "clearly supports" standard, and has articulated some limitations associated with the use of this authority. LUBA has held that the purpose of the authority granted under ORS 197.835(11)(b) is to remedy "minor oversights" and "imperfections" in the local government's decision, primarily to avoid delays resulting from technical deficiencies in a written decision. *See Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101, 122-123 (1995). LUBA's *Marcott* opinion went on to explain that LUBA is not authorized to assume the local government's role of weighing evidence and the preparation of adequate findings. *Id.* LUBA narrowly

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<sup>5</sup> ORS 197.835(11)(b) provides: "Whenever the findings are defective because of failure to recite adequate facts or legal conclusions or failure to adequately identify the standards or their relation to the facts, but the parties identify relevant evidence in the record which clearly supports the decision or a part of the decision, the board shall affirm the decision or the part of the decision supported by the record and remand the remainder to the local government, with direction indicating appropriate remedial action."

interprets the “clearly supports” standard to mean evidence which “make obvious” or “make inevitable” the decision. *Marcott*, 30 Or LUBA at 122.

LUBA has attempted to define what might be characterized a “minor oversight” in the context of sufficient findings. In *Harcourt v. Marion County*, LUBA found that the county's "unexplained and unsupported determination of compliance with applicable criteria..." was not a minor oversight when applying the “clearly supports” standard and determining whether to affirm the local government’s decision. 33 Or LUBA 400, 408 (1997).

LUBA will not use its authority under ORS 197.835(11)(b) to affirm a decision where there is conflicting evidence on point, or evidence which provides a reasonable basis for reaching differing conclusions. In *Friedman v. Yamhill County*, LUBA noted that while the substantial evidence standard may support a land use decision where there is conflicting evidence or evidence which is reasonably subject to differing interpretation, LUBA interprets the “clearly supports” standard as requiring a higher evidentiary standard. 23 Or LUBA 306, 311-312 (1992). LUBA later affirmed the decision in *Friedman*, noting that while the substantial evidence standard is necessarily deferential, the requirement for evidence which “clearly supports” is substantially higher, and where evidence in the record is conflicting, or provides a reasonable basis for different conclusions, such evidence does not "clearly support" the challenged decision. *Waugh v. Coos County*, 26 Or LUBA 300, 307-308 (1993). In *Waugh*, LUBA went one step further by noting that subjective standards may also limit LUBA’s ability to affirm a local decision. *Id.* LUBA held that where the relevant standards are subjective, it is “less likely that evidence will ‘clearly support’ a decision . . . .” *Id.*

There is nothing to suggest that the authority granted to the Commission under Section 9 or HB 4078 should be interpreted differently than the authority granted to LUBA under ORS 197.835(11)(b). Under the circumstances, a remand to Metro and the counties is appropriate in this case. The evidence in the record, specifically with regards to transportation in the Stafford Area, is not compelling enough that it can be said it makes compliance with OAR 660-027-0050 “obvious” or “inevitable” as is required by the “clearly supports” standard. Furthermore, there is no evidence in the record related to the issues created by HB 4078 and the “amount of land” and “best achieves” standards found in OAR 660-027-0040(2) and OAR 660-027-0005(2), respectively, which would permit the Commission to affirm the decision on remand. The evidence currently in the record is reasonably subject to interpretation, which is outside of what LUBA considers to be evidence which “clearly supports” the decision. Metro and the County’s findings with regards to the transportation issues in the Stafford Area were described by the Court as “impermissibly speculative,”<sup>6</sup> which appears to be similar in nature to the “unexplained and unsupported determination of compliance with applicable criteria,” that LUBA discussed in *Harcourt* when defining limitations on its authority under ORS 197.835(11)(b). Finally, as discussed more fully below, the standards related to the designation of urban reserves are highly subjective, requiring a balancing analysis by the local governments. LUBA finds its ability to affirm a local decision limited by these types of subjective criteria.

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<sup>6</sup> *Barkers Five, LLC*, 261 Or. App. at 362

The authorization granted to the Commission in Section 9 of HB 4078 is not broad enough to affirm the decision. Therefore, a remand of the decision to Metro and the counties is appropriate.

#### **IV. Necessity of Remand**

##### **a. Urban Reserve Designation of the Stafford Area**

As discussed above, the “clearly supports” standard is to be used in those instances where there are minor oversights or minor deficiencies with the local government’s findings. Clearly, the issues identified by the Court related to the Stafford Area are not minor issues or minor deficiencies. The evidence highlighted by West Linn related to the RTP, and that which the Court ultimately found dispositive on the issue of whether the urban reserve designation of the Stafford Area was supported by substantial evidence, was described by the Court as “weighty, countervailing evidence that is squarely at odds with LCDC’s determination that the designation of Stafford as urban reserve is supported by substantial evidence . . . .” *Barkers Five, LLC*, 261 Or. App. at 362.

The Court did not find Metro and Clackamas County’s original responses to West Linn’s arguments to be sufficient. The Court summarized these responses to West Linn’s objections as “impermissibly speculative” since Metro and the county did not explain, by reference to the evidence in the record, why the transportation system will change and improve by 2060. *Barkers Five, LLC*, 261 Or. App. at 362. On remand, it will be necessary to specifically address the evidence highlighted by West Linn.

The evidence in the record is indeed more extensive than initially explained by the County and Metro in the original findings. Additionally, Metro and Clackamas

County have adopted updated transportation plans since the time the original findings were adopted to support the conclusions contained in LCDC's order. These updated transportation plans show improvements to the bottleneck issues on I-205 in the Stafford Area as priority projects on the respective investment priority lists. The plans also illustrate the positive effect that these improvements will have on the transportation system in the Stafford Area. Pursuant to OAR 660-025-0085(5)(h)(F), the commission will be able to consider and take official notice of these materials when rendering its decision. Although the evidence in the record will ultimately demonstrate that Metro and Clackamas County appropriately considered and weighed the information, resulting in a valid designation of the Stafford Area as urban reserve, the authority granted to the Commission by Section 9 of HB 4078 is not broad enough to permit the Commission to affirm the decision without a remand to the local governments. In other words, the evidence is not such that it can be said that compliance with the requirements of OAR 660-027-0050 is obvious or inevitable.

The urban reserve analysis for the Stafford area must still remain consistent with OAR 660-027-0050 and the Court's decision; that is, determining whether all of the factors have been adequately considered and balanced. In the context of applying reserve designations, no specific approval criteria exist. Rather, the Portland Metro area reserve rules<sup>7</sup> require that Metro and the counties consider and balance certain factors when making reserve designations, as the individual factors do not operate as criteria that must be satisfied. See *Barkers Five, LLC*, 261 Or. App. at 295-301, where the Court affirmed the "consider" and "balance" approach, while rejecting the notion that

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<sup>7</sup> See generally, OAR Chapter 660, Division 27.

the factors are independent approval criteria. LUBA has made clear that it is not appropriate to exercise the authority granted to the local governments through its use of the “clearly supports” standard. *Marcott Holdings, Inc.*, 30 Or LUBA at 122-123. The Court affirmed LCDC’s position that the area reserve rules require Metro and the counties to consider and balance the factors of OAR 660-027-0050. Therefore, affirming the urban reserve designation in the Stafford Area requires an overall finding that all of the factors of OAR 660-027-0050 have been “considered” and “balanced,” not simply that there is substantial evidence in the record to support a finding in favor of Metro and the County on the transportation issue. It is precisely this type of balancing that is the responsibility of the local governments, and which LUBA has interpreted as being outside of the scope of authority granted by ORS 197.835(11)(b).

Under the circumstances, a remand to Metro and Clackamas County is required in order to adopt new findings addressing the transportation issue in the Stafford Area. A remand would also be necessary in the event revised designations are required to comply with the factors of OAR 660-027-0050.

**b. “Amount of Land” Standard**

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 land supply 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.”

This rule, which has come to be referred to as the “amount of land” standard, establishes an urban reserve planning period which is 20-30 years beyond the normal 20 year UGB planning period. This standard applies to land in all counties that have executed an intergovernmental agreement with Metro in accordance with OAR 660-027-0030.

Perhaps an unintended consequence of the Grand Bargain bill (HB 4078), which effectively redesignated a number of acres in Washington County, was that it affected the overall amount of land designated as urban reserves in Metro area which, in turn, affected the “amount of land” standard. By removing net acreage of urban reserves from Washington County, the overall amount of land which was designated as urban reserves in the Metro area was decreased. See Exhibits A and B. It may be the case that enough land remains in urban reserves to satisfy the “amount of land” standard, or perhaps the “amount of land” standard is insulated from further review given the legislative action that was taken to redesignate the urban reserves in Washington County. Alternatively, Metro and the counties could find that additional acres of urban reserves need to be adopted to make up for the deficiency. Either way, new findings demonstrating compliance with the “amount of land” standard should be adopted. Because HB 4078 redesignated Washington County’s urban reserve acreage after LCDC adopted its findings, there is no evidence in the record addressing the “amount of land” standard post-HB 4078, and certainly no evidence which would “clearly support” the decision. Therefore, remand to Metro and the counties to address the “amount of

land” standard is required, and revised designations may be appropriate or necessary in order to comply with the standard.

**c. “Best Achieves” Standard**

OAR 660-027-0005(2) provides, in relevant part:

The objective of [Division 27] 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.

Much like the “amount of land” standard, the “best achieves” standard looks at the designations of land region-wide, to ensure that the overall designations are appropriate. The “best achieves” standard requires that there be a balance in the designation of urban and rural reserves for the purposes stated in the rule. As discussed above, the removal of net acreage of urban reserves from Washington County as a result of HB 4078 affects these region-wide acreage standards.

The Court, in its decision, recognized that a change in the joint designation of the urban reserves by Metro and the counties would require the parties to reassess whether the designation was still appropriate. *Barkers Five, LLC*, 261 Or. App. at 333. When describing the effect that the remand of Washington County’s reserves would have on the overall decision, the Court said:

“because the best achieves standard applies to Metro and the counties’ joint designation ‘in its entirety,’ LCDC must remand the entire submittal to Metro and the counties so that they can ultimately assess whether any new joint designation, in its entirety, satisfies that standard.”  
*Barkers Five, LLC*, 261 Or. App. at 333

Instead of Washington County and Metro adopting new reserve designations, the legislature did so through HB 4078. Findings should be adopted that either assess whether this new joint designation satisfies the standard, or, explain how the standard

operates in light of HB 4078. As it stands, there are no findings and no evidence in the record which address the “best achieves” standard after the changes to the overall urban reserve acreage resulting from HB 4078. Therefore, remand to Metro and the counties to address the “best achieves” standard is required, and revised designations may be appropriate or necessary in order to comply with the standard.

#### **V. Conclusion**

For the forgoing reasons, the County respectfully requests that LCDC remand the decision to Metro and the counties. The County finds that a remand is necessary to adopt additional findings related to the urban reserve designation in the Stafford Area, particularly as it applies to the transportation issue. The County also finds that a remand is necessary so that Metro and the counties can address what effect the removal of the net acreage of land designated urban reserve in Washington County as a result of HB 4078 has on the “amount of land” and the “best achieves” standards. The County submits that designation, or redesignation, of certain properties may be required on remand if found necessary to achieve the “amount of land” or the “best achieves” standard.

Dated this 25th day of September, 2014.

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77th OREGON LEGISLATIVE ASSEMBLY--2014 Regular Session

# Enrolled House Bill 4078

Sponsored by Representatives DAVIS, CLEM; Representatives BARKER, BENTZ, CAMERON, THATCHER, Senators HASS, JOHNSON, STARR (Presession filed.)

CHAPTER .....

AN ACT

Relating to post-acknowledgement changes to regional framework plan in Metro; creating new provisions; amending ORS 195.085, 197.299 and 197.626; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. The Legislative Assembly finds and declares that:**

(1) Oregon law requires a metropolitan service district to establish an urban growth boundary and to maintain development capacity sufficient for a 20-year period within the boundary based on periodic assessments of the development capacity within the boundary.

(2) Metro, the metropolitan service district for the Portland metropolitan area, has not implemented an approved legislative amendment to the urban growth boundary since 2005.

(3) In 2010, Metro assessed the development capacity within the urban growth boundary and determined that the boundary did not contain sufficient capacity for a 20-year period.

(4) The Metro Council, the governing body of Metro, established policies, including an investment strategy, for using land within the urban growth boundary more efficiently by adopting Ordinance No. 10-1244B on December 16, 2010.

(5) Ordinance No. 10-1244B significantly increased the development capacity of the land within the urban growth boundary, but left unmet needs for housing and employment.

(6) On July 28, 2011, the Metro Council held a public hearing in Hillsboro to allow public review of and to take comments on proposed expansion of the urban growth boundary to fill the unmet needs for housing and employment in the region.

(7) On September 14 and 28, 2011, the Metro Council sought advice on expansion of the urban growth boundary from the Metro Policy Advisory Committee, which is composed primarily of elected and other local government officials in the region. On September 28, 2011, the Metro Council received a recommendation from the committee.

(8) The Metro Council, with the advice and support of the committee, established six desired outcomes as the basis for comparing policy and strategy options to increase the development capacity of the region.

(9) On September 30, 2011, the Metro Council reported likely effects of the proposed expansion of the urban growth boundary to:

(a) The cities and counties in the region; and

(b) Nearly 34,000 households within one mile of land proposed to be included within the urban growth boundary.

(10) The Metro Council developed, in cooperation with the cities and counties responsible for land use planning in areas potentially to be included within the urban growth boundary,

policies and strategies addressing the affordability of housing, the compatibility of residential use with nearby agricultural practices and the protection of industrial lands from conflicting uses.

(11) On October 6 and 20, 2011, the Metro Council held public hearings on the proposed expansion of the urban growth boundary.

(12) On October 20, 2011, the Metro Council unanimously adopted Ordinance No. 11-1264B, expanding the urban growth boundary to fill the unmet needs for increased development capacity for housing and for industries that require large areas of developable land.

(13) The adopted policies and strategies reflect the intention of the Metro Council to develop vibrant, prosperous and sustainable communities with reliable transportation choices that minimize carbon emissions and to distribute the benefits and burdens of development equitably in the Portland metropolitan area.

(14) The Director of the Department of Land Conservation and Development referred the expansion of the urban growth boundary by Ordinance No. 11-1264B to the Land Conservation and Development Commission for review.

(15) On May 10, 2012, the commission held a public hearing, according to rule-based procedures adopted by the commission, to consider the proposed amendment to the urban growth boundary made by Ordinance No. 11-1264B.

(16) The commission continued the public hearing to June 14, 2012, and requested that the Metro Council submit additional information describing how the record demonstrates compliance with the appropriate statewide land use planning goals, administrative rules and instructions.

(17) On June 14, 2012, the commission unanimously approved the expansion of the urban growth boundary by Ordinance No. 11-1264B in Approval Order 12-UGB-001826.

(18) Metro and other local governments have made significant investments in infrastructure to ensure that housing, education and employment needs in the region are met.

(19) Ordinance No. 11-1264B and its findings satisfy Metro's obligations under ORS 197.295 to 197.314 and under statewide land use planning goals relating to citizen involvement, establishment of a coordinated planning process and policy framework and transition from rural to urban land uses.

**SECTION 2.** (1) Section 3 of this 2014 Act is added to and made a part of ORS 195.137 to 195.145.

(2) Section 4 of this 2014 Act is added to and made a part of ORS 197.295 to 197.314.

**SECTION 3.** (1) For purposes of land use planning in Oregon, the Legislative Assembly designates the land in Washington County that was designated as rural reserve in Metro Resolution No. 11-4245, adopted on March 15, 2011, as the acknowledged rural reserve in Washington County, except that:

(a) The real property in Area 5C on Metro's map denominated as the "Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)," that is more particularly described as tax lots 1500 and 1501, section 1 of township 2 south, range 2 west, Willamette Meridian, is not designated as a reserve area.

(b) The Legislative Assembly designates as acknowledged urban reserve the real property that is part of the original plat of Bendemeer, Washington County, Oregon, more particularly described as:

(A) All of lots 1 through 18, inclusive;

(B) The parts of lots 64, 65 and 66 that are situated between the east boundary of the right of way of West Union Road and the west boundary of the right of way of Cornelius Pass Road; and

(C) The real property that is more particularly described as: Beginning at a point of origin that is the south bank of Holcomb Creek and the east boundary of the right of way of Cornelius Pass Road; thence easterly along the south bank of Holcomb Creek, continuing

along the south bank of Holcomb Lake to its intersection with the west boundary of Area 8C; thence southerly along the west boundary of Area 8C to its intersection with the north boundary of the right of way of West Union Road; thence westerly along the right of way to its intersection with the east boundary of the right of way of Cornelius Pass Road; thence northerly along the right of way to the point of origin.

(2) For purposes of land use planning in Oregon, the Legislative Assembly designates the land in Washington County that was designated as urban reserve in Metro Resolution No. 11-4245, adopted on March 15, 2011, as the acknowledged urban reserve in Washington County, except that:

(a) The real property in Area 8A on Metro's map denominated as the "Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)," east of the east boundary of the right of way of Jackson School Road and east of the east bank of Storey Creek and the east bank of Waibel Creek is included within the acknowledged urban growth boundary.

(b) The real property in Area 8A on Metro's map denominated as the "Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)," that is south of the south boundary of the right of way of Highway 26 and west of the real property described in paragraph (a) of this subsection is designated as acknowledged rural reserve.

(c) The real property in Area 8B on Metro's map denominated as the "Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)," that is more particularly described as tax lots 100, 900, 901, 1100, 1200, 1300 and 1400 in section 15 of township 1 north, range 2 west, Willamette Meridian, is not designated as a reserve area.

(d) The real property in Area 8B on Metro's map denominated as the "Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)," that is not described in paragraph (c) of this subsection is designated as acknowledged rural reserve.

(e) The real property in Area 7B on Metro's map denominated as the "Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)," that is north of the south bank of Council Creek is designated as acknowledged rural reserve.

(f) The real property in Area 7B on Metro's map denominated as the "Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)," that is south of the south bank of Council Creek is included within the acknowledged urban growth boundary.

(3) For purposes of land use planning in Oregon, in relation to the following real property in Washington County that is not reserved by designation in Metro Resolution No. 11-4245, adopted on March 15, 2011, the Legislative Assembly designates:

(a) As acknowledged rural reserve the real property that is situated south of the City of North Plains on Metro's map denominated as the "Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)," more particularly described as tax lots 100, 101, 200 and 201 in section 11 of township 1 north, range 3 west, Willamette Meridian, and tax lots 1800 and 2000 and that portion of tax lot 3900 that is north of the south line of the Dobbins Donation Land Claim No. 47 in section 12 of township 1 north, range 3 west, Willamette Meridian.

(b) As acknowledged rural reserve the real property that is situated north of the City of Cornelius on Metro's map denominated as the "Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)," and that is north of the south bank of Council Creek, east of the east right of way of Cornelius-Schefflin Road and west of the west bank of Dairy Creek.

(c) As acknowledged rural reserve the real property that is north of the City of Forest Grove on Metro's map denominated as the "Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)," more particularly described as east of Area 7B, west of the east right of way of Highway 47 and south of the south right of way of Northwest Purdin Road.

(d) As acknowledged rural reserve the real property that is situated west of Area 8B on Metro's map denominated as the "Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)."

(4) Land in a county in Metro that is planned and zoned for farm, forest or mixed farm and forest use and that is not designated as urban reserve may not be included within the urban growth boundary of Metro before at least 75 percent of the land in the county that was designated urban reserve in this section has been included within the urban growth boundary and planned and zoned for urban uses.

(5)(a) The real property described in subsection (2)(a) of this section:

(A) Is employment land of state significance; and

(B) Must be planned and zoned for employment use.

(b) In its first legislative review of the urban growth boundary on or after the effective date of this 2014 Act, Metro shall not count the employment capacity of the real property described in subsection (2)(a) of this section in determining the employment capacity of the land within Metro.

(6) If the real property described in subsection (2)(f) of this section or section 4 (1) to (3) of this 2014 Act is planned and zoned for employment use, in its first legislative review of the urban growth boundary on or after the effective date of this 2014 Act, Metro shall not count the employment capacity of the real property described in subsection (2)(f) of this section or in section 4 (1) to (3) of this 2014 Act in determining the employment capacity of the land within Metro.

**SECTION 4.** For the purpose of land use planning in Oregon, the Legislative Assembly designates the urban growth boundary designated in Metro Ordinance No. 11-1264B, adopted October 20, 2011, as the acknowledged urban growth boundary of Metro, subject to the conditions of approval in the ordinance, except that:

(1) The real property in Area 7C on Metro's map denominated as the "Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)," is included within the acknowledged urban growth boundary.

(2) The real property in Area 7D on Metro's map denominated as the "Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)," is included within the acknowledged urban growth boundary.

(3) The real property in Area 7E on Metro's map denominated as the "Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)," is included within the acknowledged urban growth boundary.

**SECTION 5.** ORS 197.299 is amended to read:

197.299. (1) A metropolitan service district organized under ORS chapter 268 shall complete the inventory, determination and analysis required under ORS 197.296 (3) not later than [*five*] six years after completion of the previous inventory, determination and analysis.

(2)(a) The metropolitan service district shall take such action as necessary under ORS 197.296 (6)(a) to accommodate one-half of a 20-year buildable land supply determined under ORS 197.296 (3) within one year of completing the analysis.

(b) The metropolitan service district shall take all final action under ORS 197.296 (6)(a) necessary to accommodate a 20-year buildable land supply determined under ORS 197.296 (3) within two years of completing the analysis.

(c) The metropolitan service district shall take action under ORS 197.296 (6)(b), within one year after the analysis required under ORS 197.296 (3)(b) is completed, to provide sufficient buildable land within the urban growth boundary to accommodate the estimated housing needs for 20 years from

the time the actions are completed. The metropolitan service district shall consider and adopt new measures that the governing body deems appropriate under ORS 197.296 (6)(b).

(3) The Land Conservation and Development Commission may grant an extension to the time limits of subsection (2) of this section if the Director of the Department of Land Conservation and Development determines that the metropolitan service district has provided good cause for failing to meet the time limits.

(4)(a) The metropolitan service district shall establish a process to expand the urban growth boundary to accommodate a need for land for a public school that cannot reasonably be accommodated within the existing urban growth boundary. The metropolitan service district shall design the process to:

(A) Accommodate a need that must be accommodated between periodic analyses of urban growth boundary capacity required by subsection (1) of this section; and

(B) Provide for a final decision on a proposal to expand the urban growth boundary within four months after submission of a complete application by a large school district as defined in ORS 195.110.

(b) At the request of a large school district, the metropolitan service district shall assist the large school district to identify school sites required by the school facility planning process described in ORS 195.110. A need for a public school is a specific type of identified land need under ORS 197.298 (3).

**SECTION 6.** ORS 197.626 is amended to read:

197.626. (1) A local government shall submit for review and the Land Conservation and Development Commission shall review the following final land use decisions in the manner provided for review of a work task under ORS 197.633:

(a) An amendment of an urban growth boundary by a metropolitan service district that adds more than 100 acres to the area within its urban growth boundary;

(b) An amendment of an urban growth boundary by a city with a population of 2,500 or more within its urban growth boundary that adds more than 50 acres to the area within the urban growth boundary;

(c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a metropolitan service district or by a city with a population of 2,500 or more within its urban growth boundary;

(d) An amendment of the boundary of an urban reserve by a metropolitan service district;

(e) An amendment of the boundary of an urban reserve to add more than 50 acres to the urban reserve by a city with a population of 2,500 or more within its urban growth boundary; and

(f) A designation or an amendment to the designation of a rural reserve under ORS 195.137 to 195.145 by a county, in coordination with a metropolitan service district, and the amendment of the designation.

**(2) When the commission reviews a final land use decision of a metropolitan service district under subsection (1)(a), (c), (d) or (f) of this section, the commission shall issue a final order in writing within 180 days after the commission votes whether to approve the decision.**

**[(2)] (3)** A final order of the commission under this section may be appealed to the Court of Appeals in the manner described in ORS 197.650 and 197.651.

**SECTION 7.** ORS 195.085 is amended to read:

195.085. (1) *[No later than the first periodic review that begins after November 4, 1993,]* Local governments and special districts shall demonstrate compliance with ORS 195.020 and 195.065.

(2) The Land Conservation and Development Commission may adjust the deadline for compliance under this section when cities and counties that are parties to an agreement under ORS 195.020 and 195.065 are scheduled for periodic review at different times.

(3) Local governments and special districts that are parties to an agreement in effect on November 4, 1993, which provides for the future provision of an urban service shall demonstrate compliance with ORS 195.065 no later than the date such agreement expires or the second periodic review that begins after November 4, 1993, whichever comes first.

(4) An urban service agreement in effect on the effective date of this 2014 Act does not apply to real property described as Area 2 on Metro's map denominated "2011 UGB Expansion Areas, Ordinance 11-1264B, Exhibit A, October, 2011."

**SECTION 8.** (1) For the purpose of ORS 195.065, the City of Hillsboro and Tualatin Valley Fire and Rescue shall enter into an urban service agreement for the unincorporated communities of Reedville, Aloha, Rock Creek and North Bethany in Washington County.

(2) The agreement must generally follow a boundary between the City of Hillsboro and Tualatin Valley Fire and Rescue along the north-south axis of Southwest 209th Avenue in Washington County, between Southwest Farmington Road and the intersection of Northwest Cornelius Pass Road and Northwest Old Cornelius Pass Road, excluding areas that are within the City of Hillsboro on the effective date of this 2014 Act.

(3) The City of Hillsboro and Tualatin Valley Fire and Rescue shall report to the Legislative Assembly in the manner described in ORS 192.245 on or before January 1, 2015, on the agreement required by this section.

**SECTION 9.** When the Land Conservation and Development Commission acts on remand of the decision of the Oregon Court of Appeals in Case No. A152351, the commission may approve all or part of the local land use decision if the commission identifies evidence in the record that clearly supports all or part of the decision even though the findings of the local government either:

(1) Do not recite adequate facts or conclusions of law; or

(2) Do not adequately identify the legal standards that apply, or the relationship of the legal standards to the facts.

**SECTION 10.** The amendments to ORS 197.626 by section 6 of this 2014 Act apply to a final land use decision of a metropolitan service district that is submitted to the Land Conservation and Development Commission for review on or after the effective date of this 2014 Act.

**SECTION 11.** Section 8 of this 2014 Act is repealed December 31, 2015.

**SECTION 12.** The amendments to ORS 197.299 by section 5 of this 2014 Act become operative January 1, 2015.

**SECTION 13.** This 2014 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect on its passage.

Passed by House February 28, 2014

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate March 4, 2014

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2014

Approved:

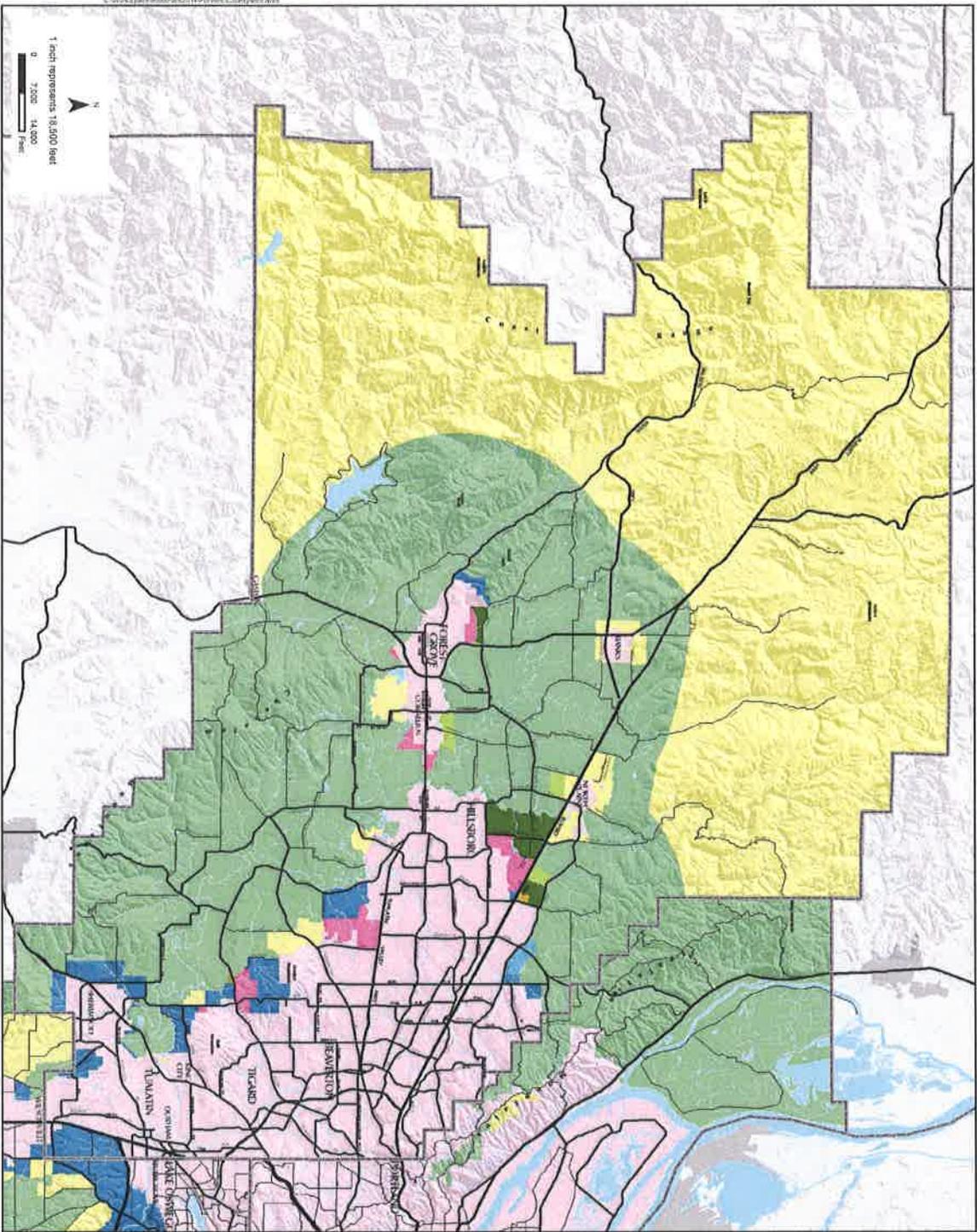
.....M.,....., 2014

.....  
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2014

.....  
Kate Brown, Secretary of State



**WASHINGTON COUNTY**  
**OREGON**

Rural and Urban Reserves

## House Bill 4078 Changes

*Boundaries based on Washington County interpretation of draft bill. Subject to change and correction based on final legislative action and materials.*

- Change from undesignated to Rural Reserve
- Change from UR to Rural Reserve
- Change from RR to Urban Reserve
- Change from RR to undesignated
- Change from UR to undesignated
- Added to Regional UGB
- Urban Area
- Rural reserves
- Urban reserves
- Unchanged undesignated

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Department of Land Use and Transportation  
Planning and Development Services Division

May 09, 2014

