ATTACHMENTS

1-6

(as referenced in Compliance Acknowledgement Order)

Department of Land Conservation and Development
OAR Chapter 660

DIVISION 025
PERIODIC REVIEW

660-025-0010
Purpose

The purpose of this division is to carry out the state policy outlined in ORS 197.010 and 197.628. This division is intended to implement provisions of ORS 197.626 through 197.646. The purpose for periodic review is to ensure that comprehensive plans and land use regulations remain in compliance with the statewide planning goals adopted pursuant to ORS 197.230, and that adequate provision for needed housing, economic development, transportation, public facilities and services, and urbanization are coordinated as described in ORS 197.015(5). Periodic Review is a cooperative process between the state, local governments, and other interested persons.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef 5-7-04

660-025-0020
Definitions

For the purposes of this division, the definitions contained in ORS 197.015, 197.303, shall apply unless the context requires otherwise. In addition, the following definitions apply:

(1) "Economic Revitalization Team" means the team established under ORS 284.555.

(2) "Filed" or "Submitted" means that the required documents have been received by the Department of Land Conservation and Development at its Salem, Oregon, office.

(3) "Final Decision" means the completion by the local government of a work task on an approved work program, including the adoption of supporting findings and any amendments to the comprehensive plan or land use regulations. A decision is final when the local government's decision is transmitted to the department for review.

(4) "Metropolitan planning organization" means an organization located wholly within the State of Oregon and designated by the Governor to coordinate transportation planning in an urbanized area of the state pursuant to 49 USC 5303(c).

(5) "Objection" means a written complaint concerning the adequacy of an evaluation, proposed work program, or completed work task.

(6) "Participated at the local level" means to have provided substantive comment, evidence, documents, correspondence, or testimony to the local government during the local proceedings regarding a decision on an evaluation, work program or work task.

(7) "Work Program" means a detailed listing of tasks necessary to revise or amend the local comprehensive plan or land use regulations to ensure the plan and regulations achieve the statewide planning goals. A work program must indicate the date that each work task must be submitted to the department for review.

(8) "Work Task" or "task" means an activity, that is included on an approved work program and that generally results in an adopted amendment to a comprehensive plan or land use regulation.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.015 & ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 3-2000, f. & cert. ef. 2-14-00

660-025-0030

Periodic Review Schedule

(1) The commission must approve, and update as necessary, a schedule for periodic review. The schedule must include the date when each local government must be sent a letter by the department requesting the local government to commence the periodic review process.

(2) The schedule developed by the commission must reflect the following:

(a) A city with a population of more than 2,500 within a metropolitan planning organization or a metropolitan service district shall conduct periodic review every seven years after completion of the previous periodic review.

(b) A city with a population of 10,000 or more inside its urban growth boundary that is not within a metropolitan planning organization shall conduct periodic review every 10 years after completion of the previous periodic review.

(c) A county with a portion of its population within the urban growth boundary of a city subject to periodic review under this section shall conduct periodic review for that portion of the county according to the schedule and work program set for the city.

(d) Notwithstanding subsection (c) of this section, if the schedule set for the county is specific as to that portion of the county within the urban growth boundary of a city subject to periodic review under this section, the county shall conduct periodic review for that portion of the county according to the schedule and work program set for the county.

(3) The commission may establish a schedule that varies from the standards in section (2) of this rule if necessary to coordinate approved periodic review work programs or to account for special circumstances. The commission may schedule a local government's periodic review earlier than provided in section (2) of this rule if necessary to ensure that all local governments in a region whose land use decisions would significantly affect other local governments in the region are conducting periodic review concurrently, but not sooner than five years after completion of the previous periodic review.

(4) The director must maintain and implement the schedule. Copies of the schedule must be provided upon request.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 3-2000, f. & cert. ef. 2-14-00

660-025-0035

Initiating Periodic Review Outside the Schedule

(1) A local government may request, and the commission may approve, initiation of periodic review not otherwise provided for in the schedule established under OAR 660-025-0030. The request must be submitted to the commission along with justification for the requested action. The justification must include a statement of local circumstances that warrant periodic review and identification of the statewide planning goals to be addressed.

(2) In consideration of the request filed pursuant to section (1), the commission must consider the needs of the jurisdiction to address the issue(s) identified in periodic review, the interrelationships of the statewide planning goals to be addressed in the periodic review project, and other factors the commission finds relevant. If the commission approves the request, the provisions of this division apply, except as provided in section (3) of this rule.

(3) The Economic Revitalization Team may work with a city to create a voluntary comprehensive plan review that focuses on the unique vision of the city, instead of conducting a standard periodic review, if the team identifies a city that the team determines can benefit from a customized voluntary comprehensive plan review. In order for a voluntary comprehensive plan review to be initiated by the commission, the city must request initiation of such a modified periodic review. The provisions of this division apply except as follows:

(a) If the city is subject to the periodic review schedule in OAR 660-025-0030, the periodic review under this section will not replace or delay the next scheduled periodic review;

(b) If the city misses a deadline related to an evaluation, work program or work task, including any extension, the commission must terminate the evaluation, work program, or work task or impose sanctions pursuant to OAR 660-025-0170(3).

(4) If the commission pays the costs of a local government that is not subject to OAR 660-025-0030 to perform new work programs and work tasks, the commission may require the local government to complete periodic review when the local government has not completed periodic review within the previous five years if:

(a) A city has been growing faster than the annual population growth rate of the state for five consecutive years;

(b) A major transportation project on the Statewide Transportation Improvement Program that is approved for funding by the Oregon Transportation commission is likely to:

(A) Have a significant impact on a city or an urban unincorporated community; or

(B) Be significantly affected by growth and development in a city or an urban unincorporated community;

(c) A major facility, including a prison, is sited or funded by a state agency; or

(d) Approval by the city or county of a facility for a major employer will increase employment opportunities and significantly affect the capacity of housing and public facilities in the city or urban unincorporated community.

(5) As used in section (4) of this rule, "the costs of a local government" means: normal and customary expenses for supplies, personnel and services directly related to preparing a work program, and completing studies and inventories, drafting of ordinances, preparing and sending notices of hearings and meetings, conducting meetings and workshops, and conducting hearings on possible adoption of amendments to plans or codes, to complete a work task.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.:

660-025-0040

Exclusive Jurisdiction of LCDC

(1) The commission, pursuant to ORS 197.644(2), has exclusive jurisdiction to review the evaluation, work program, and all work tasks for compliance with the statewide planning goals and applicable statutes and administrative rules. Pursuant to ORS 197.626, the

commission has exclusive jurisdiction to review the following land use decisions for compliance with the statewide planning goals:

(a) If made by a city with a population of 2,500 or more inside its urban growth boundary, amendments to an urban growth boundary to include more than 50 acres;

(b) If made by a metropolitan service district, amendments to an urban growth boundary to include more than 100 acres;

(c) plan and land use regulations that designate urban reserve areas.

(2) The director may transfer one or more matters arising from review of a work task, urban growth boundary amendment or designation or amendment of an urban reserve area to the Land Use Board of Appeals pursuant to ORS 197.825(2)(c)(A) and OAR 660-025-0250.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.145, ORS 197.628 - ORS 197.646, ORS 197.825

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef 5-7-04

660-025-0050

Commencing Periodic Review

(1) The department must commence the periodic review process by sending a letter to the affected local government pursuant to OAR 660-025-0030 or 660-025-0035. The department may provide advance notice to a local government of the upcoming review and must encourage local governments to review their citizen involvement provisions prior to beginning periodic review.

(2) The periodic review commencement letter must include the following information:

(a) A description of the requirements for citizen involvement, evaluation of the plan and preparation of a work program;

(b) The date the evaluation and work program or evaluation and decision that no work program is required must be submitted;

(c) Applicable evaluation forms; and

(d) Other information the department considers relevant.

(3) The director must provide copies of the materials sent to the local government to interested persons upon written request.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92

660-025-0060

Periodic Review Assistance Team(s)

(1) The director may create one or more Periodic Review Assistance Team(s) to coordinate state, regional or local public agency comment, assistance, and information into the evaluation and work program development process. The director must seek input from agencies, regional governments and local governments on the membership of Periodic Review Assistance Team(s).

(2) Members of the Periodic Review Assistance Team will provide, as appropriate:

(a) Information relevant to the periodic review process;

(b) New and updated information;

(c) Technical and professional land use planning assistance; or

(d) Coordinated evaluation and comment from state agencies.

(3) Membership. The Periodic Review Assistance Team may include representatives of state agencies with programs affecting land use and representatives of regional or local governments who may have an interest in the review.

(4) Meetings. The Periodic Review Assistance Team shall meet as necessary to provide information and advice to a local government in periodic review.

(5) Authority. The Periodic Review Assistance Team shall be an advisory body. The team may make recommendations concerning an evaluation, a work program or work task undertaken pursuant to an approved work program. The team may also make recommendations to cities, counties, state agencies and the commission regarding any other issues related to periodic review.

(6) In addition to the Periodic Review Assistance Team(s), the department may utilize the Economic Revitalization Team or institute an alternative process for coordinating agency participation in the periodic review of comprehensive plans.

(7) Consideration by the commission. The commission must consider the recommendations, if any, of the Periodic Review Assistance Team(s).

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92

660-025-0070

Need for Periodic Review

(1) The following conditions indicate the need for, and establish the scope of, review for periodic review of comprehensive plans and land use regulations when required under OAR 660-025-0030:

(a) There has been a substantial change in circumstances including but not limited to the conditions, findings, or assumptions upon which the comprehensive plan or land use regulations were based, so that the comprehensive plan or land use regulations do not comply with the statewide planning goals relating to economic development, needed housing, transportation, public facilities and services and urbanization;

(b) Decisions based on acknowledged comprehensive plan and land use regulations are inconsistent with the goals relating to economic development, needed housing, transportation, public facilities and services and urbanization;

(c) There are issues of regional or statewide significance, intergovernmental coordination, or state agency plans or programs affecting land use which must be addressed in order to bring comprehensive plans and land use regulations into compliance with the goals relating to economic development, needed housing, transportation, public facilities and services and urbanization; or

(d) The existing comprehensive plan and land use regulations are not achieving the statewide planning goals relating to economic development, needed housing, transportation, public facilities and services and urbanization.

(2) When a local government requests initiation of periodic review under OAR 660-025-0035(2), the need for periodic review may be based on factors not contained in section (1) of this rule and the scope of such a periodic review may be more limited than would be the case for scheduled periodic review under section (1) of this rule.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 3-2000, f. & cert. ef. 2-14-00

660-025-0080
Citizen Involvement

(1) The local government must use its acknowledged or otherwise approved citizen involvement program to provide adequate participation opportunities for citizens and other interested persons in all phases of the local periodic review. Each local government must publish a notice in a newspaper of general circulation within the community informing citizens about the initiation of the local periodic review. The local government must also provide written notice of the initiation of the local periodic review to other persons who, in writing, request such notice.

(2) Each local government must review its citizen involvement program and assure that there is an adequate process for citizen involvement in all phases of the periodic review process. Citizen involvement opportunities must, at a minimum, include:

(a) Interested persons must have the opportunity to comment in writing in advance of or at one or more hearings on the periodic review evaluation. Citizens and other interested persons must have the opportunity to present comments orally at one or more hearings on the periodic review evaluation. Citizens and other interested persons must have the opportunity to propose periodic review work tasks prior to or at one or more hearings. The local government must provide a response to comments at or following the hearing on the evaluation.

(b) Interested persons must have the opportunity to comment in writing in advance of or at one or more hearings on a periodic review work task. Citizens and other interested persons must have the opportunity to present comments orally at one or more hearings on a periodic review work task. The local government must respond to comments at or following the hearing on a work task.

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.628 - ORS 197.646
Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92

660-025-0085
Commission Hearings Notice and Procedures

(1) Hearings before the commission on a referral of a local government submittal of an evaluation, work program, determination that a work program is not necessary, or hearings on referral or appeal of a work task must be noticed and conducted in accordance with this rule.

(2) The commission shall take final action on an appeal or referral within 90 days of the date the appeal was filed or the director issued notice of the referral unless:

(a) At the request of a local government and a person who files a valid objection or appeals the director's decision, the department may provide mediation services to resolve disputes related to the appeal. Where mediation is underway, the commission shall delay its hearing until the mediation process is concluded or the director, after consultation with the mediator, determines that mediation is of no further use in resolution of the work program or work task disagreements;

(b) If the appeal or referral raises new or complex issues of fact or law that make it unreasonable for the commission to give adequate consideration to the issues within the 90-day limit the commission is not required to take final action within that time limit; or

(c) If the parties to the appeal and the commission agree to an extension, the hearing may be continued for a period not to exceed an additional 90 days.

(3) The director must provide written notice of the hearing to the local government, the appellant, objectors, and individuals requesting notice in writing. The notice must contain the date and location of the hearing.

(4) The director may prepare a written report to the commission on an appeal or referral. If a report is prepared, the director must mail a copy to the local government, objectors, the appellant, and individuals requesting the report in writing.

(5) Commission hearings will be conducted using the following procedures:

(a) The chair will open the hearing and explain the proceedings;

(b) The director or designee will present an oral report regarding the nature of the matter before the commission, an explanation of the director's decision, if any, and other information to assist the commission in reaching a decision. If another state agency participated in the periodic review under ORS 197.637 or 197.638, the agency may participate in the director's oral report.

(c) Oral argument will be allowed. The local government or governments whose decision is under review and parties who filed objections or an appeal may present oral argument. Oral argument will not be an opportunity to present new evidence regarding the matter before the commission. The local government that submitted the task may provide general information on the task submittal and address those issues raised in the department review, objections and the appeal. Persons who submitted objections or an appeal may address only those issues raised in objections or the appeal. Other affected local governments may address only those issues raised in objections or the appeal.

(d) The commission may request new evidence or information at its discretion and will allow the parties an opportunity to review and respond to the new evidence or information, subject to the time limits in section (2) of this rule.

(e) The director or commission may take official notice of law defined as:

(A) The decisional, constitutional and public statutory law of Oregon, the United States and any state, territory or other jurisdiction of the United States.

(B) Public and private official acts of the legislative, executive and judicial departments of this state, the United States, and any other state, territory or other jurisdiction of the United States.

(C) Regulations, ordinances and similar legislative enactments issued by or under the authority of the United States or any state, territory or possession of the United States.

(D) Rules of court of any court of this state or any court of record of the United States or of any state, territory or other jurisdiction of the United States.

(E) The law of an organization of nations and of foreign nations and public entities in foreign nations.

(F) An ordinance, comprehensive plan or enactment of any local government in this state, or a right derived therefrom.

(f) The commission must make a decision on the appeal or referral as provided in this division.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.:

660-025-0090

Evaluation, Work Program or Decision That No Work is Necessary

(1) The local government must conduct an evaluation of its plan and land use regulations based on the periodic review conditions in ORS 197.628 and OAR 660-025-0070. The local evaluation process must comply with the following requirements:

(a) The local government must follow its citizen involvement program and the requirements of OAR 660-025-0080 for conducting the evaluation and determining the scope of a work program.

(b) The local government must provide opportunities for participation by the department and Periodic Review Assistance Team. Issues related to coordination between local government comprehensive plan provisions and certified state agency coordination programs that are raised by the affected agency, or Periodic Review Assistance Team must be considered by the local government.

(c) The local government may provide opportunities for participation by the Economic Revitalization Team.

(d) At least 21 days before submitting the evaluation and work program, or decision that no work program is required, the local government must provide copies of the evaluation to members of the Periodic Review Assistance Team, if formed, and others who have, in writing, requested copies.

(e) After review of comments from interested persons, the local government must adopt an evaluation and work program or decision that no work program is required.

(2) The local government must submit the evaluation and work program, or decision that no work program is required, to the department according to the following requirements:

(a) The evaluation must include completed evaluation forms that are appropriate to the jurisdiction as determined by the director. Evaluation forms will be based on the jurisdiction's size, growth rate, geographic location, and other factors that relate to the planning situation at the time of periodic review. Issues related to coordination between local government comprehensive plan provisions and certified agency coordination programs may be included in evaluation forms.

(b) The local government must also submit to the department a list of persons who requested notice of the evaluation and work program or decision that no work program is required.

(c) The evaluation and work program, or decision that no work program is necessary, must be submitted within six months of the date the department sent the letter initiating the periodic review process, including any extension granted under section (3) of this rule.

(3) A local government may request an extension of time for submitting its evaluation and work program, or decision that no work program is required. The director may grant the request if the local government shows good cause for the extension. A local government may be permitted only one extension, which shall be for no more than 90 days.

(4) A decision by the director to deny a request for an extension may be appealed to the commission according to the procedures in OAR 660-025-0110(5), or the director may refer a request for extension under section (3) of this rule to the commission pursuant to OAR 660-025-0085.

(5) If a local government fails to submit its evaluation and work program, or decision that no work program is necessary, by the deadline set by the director or the commission, including any extension, the director shall schedule a hearing before the commission according to OAR 660-025-0170(3).

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 3-2000, f. & cert. ef. 2-14-00

660-025-0100

Notice and Filing of Objections (Work Program Phase)

(1) After the local government approves the evaluation and work program, or the evaluation and decision that no work program is necessary, the local government must notify the department and persons who participated at the local level orally or in writing during the local process. The local government notice must contain the following information:

(a) Where a person can review a copy of the local government's evaluation and work program or the evaluation and decision that no work program is necessary, and how a person may obtain a copy of the decision;

(b) The requirements listed in section (2) of this rule for filing a valid objection to the evaluation, work program or decision that no work program is necessary; and

(c) That objectors must give a copy of the objection to the local government.

(2) Persons who participated at the local level orally or in writing during the local process leading to the evaluation and work program or decision that no work program is necessary may object to the local government's decision. To be valid, an objection must:

(a) Be in writing and filed with the department no later than 21days from the date the notice was mailed by the local government;

(b) Clearly identify an alleged deficiency in the evaluation, work program or decision that no work program is necessary;

(c) Suggest a specific work task that would resolve the deficiency;

(d) Demonstrate that the objecting party participated at the local level orally or in writing during the local process.

(3) Objections that do not meet the requirements of section (2) of this rule must not be considered by the director or commission.

(4) If no valid objections are received within the 21-day objection period, the director may approve the evaluation and work program or decision that no work program is required. Regardless of whether valid objections are received, the department may make its own determination of the sufficiency of the evaluation and work program or determination that no work program is necessary.

(5) If valid objections are received or the department conducts its own review, the department must issue a report. The report must focus on the issues raised in valid objections and concerns of the department. The report must identify specific work tasks to resolve valid objections or department concerns. A valid objection must either be sustained or rejected by the department or commission based on the statewide planning goals and related statutes and administrative rules.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 3-2000, f. & cert. ef. 2-14-00

660-025-0110
Director and Commission Action (Work Program Phase)

(1) The director may:

(a) Issue an order approving the evaluation and work program or evaluation and determination that no work program is necessary;

(b) Issue an order rejecting the evaluation and work program or evaluation and determination that no work program is necessary and suggest modifications to the local government including a date for resubmittal; or

(c) Refer the evaluation and work program or evaluation and determination that no work program is necessary to the commission for review and action.

(2) The director may postpone action, pursuant to subsections (1)(a)-(c) of this rule to allow the department, the jurisdiction, objectors or other persons who participated orally or in writing at the local level to reach agreement on specific issues relating to the evaluation and work program or evaluation and determination that no work program is necessary.

(3) The director must provide written notice of the decision to the local government persons who filed objections, and persons who requested notice of the local government decision.

(4) The director's decision to approve an evaluation and work program or evaluation and determination that no work program is necessary is final and may not be appealed.

(5) The director's decision to deny an evaluation and work program or evaluation and determination that no work program is necessary may be appealed to the commission by the local government, or a person who filed an objection, or other person who participated orally or in writing at the local level.

(a) Appeal of the director's decision must be filed with the department within 21 days of the date notice of the director's action was mailed;

(b) A person appealing the director's decision must show that the person participated in the local government decision. The person appealing the director's decision must show a deficiency in the director's decision to deny the evaluation, work program or decision that no work program is necessary. The person appealing the director's decision also must suggest a specific modification to the evaluation, work program or decision that no work program is necessary to resolve the alleged deficiency.

(6) If no such appeal is filed, the director's decision shall be final.

(7) In response to an appeal, the director may prepare and submit a report to the commission. The provisions in OAR 660-025-0160(3) and (4) apply.

(8) The commission shall hear referrals and appeals of evaluations and work programs according to the procedures in OAR 660-025-0085.

(9) Following its hearing, the commission must issue an order that either:

(a) Establishes a work program; or

(b) Determines that no work program is necessary.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

[660-025-0120 renumbered 660-025-0085]

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef 5-7-04

660-025-0130
Submission of Completed Work Task

(1) A local government must submit completed work tasks as provided in the approved work program to the department along with any form required by the department. A local government must submit to the department a list of persons who participated orally or in writing in the local decision process or who requested notice of the local government's final decision on a work task.

(2) After receipt of a work task, the department must determine whether the submittal is complete.

(3) To be complete a submittal must be a final decision containing all required elements identified for that task in the work program. A portion of a task or subtask may be accepted as a complete submittal if the work program identified that portion of the task or subtask as a separate item for adoption by the local government. Task submittals are subject to the following requirements:

(a) If the local record does not exceed 2,000 pages, a submittal must include the entire local record, including but not limited to adopted ordinances and orders, studies, inventories, findings, staff reports, correspondence, hearings minutes, written testimony and evidence, and any other items specifically listed in the work program;

(b) If the local record exceeds 2,000 pages, a submittal must include adopted ordinances and orders, findings, hearings minutes, written testimony and evidence, and a detailed index listing items not included in the submittal. Items in the local record not included in the submittal must be made available for public review during the period for submitting objections under OAR 660-025-0140. The director or Commission may require submission of any materials not included in the initial submittal;

(c) A task submittal of over 500 pages must include an index of all submitted materials.

(4) A submittal includes only the materials provided to the department pursuant to section (3) of this rule. Following submission of objections pursuant to OAR 660-025-0140, the local government may provide written correspondence that is not part of the local record which identifies material in the record relevant to filed objections. The correspondence may not include or refer to materials not in the record submitted or listed pursuant to section (3) of this rule. The local government must provide the correspondence to each objector at the same time it is sent to the department.

(5) If the department determines that a submittal is incomplete, it must notify the local government. If the department determines that the submittal should be reviewed despite missing information, the department may commence a formal review of the submittal. Missing material may be identified as a deficiency in the review process and be a basis to require further work by the local government.

(6) A local government may request an extension of time for submitting a work task. The director may grant the request if the local government shows good cause for the extension. A local government may be permitted only one extension, which shall be for no more than one year.

(7) If a local government fails to submit a complete work task by the deadline set by the director, or the commission, including any extension, the director must schedule a hearing

before the commission. The hearing must be conducted according to the procedures in OAR 660-025-0090(5).

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef 5-7-04

660-025-0140

Notice and Filing of Objections (Work Task Phase)

(1) After the local government makes a final decision on a work task, the local government must notify the department and persons who participated at the local level orally or in writing during the local process or who requested notice in writing. The local government notice must contain the following information:

(a) Where a person can review a copy of the local government's final decision, and how a person may obtain a copy of the final decision;

(b) The requirements listed in section (2) of this rule for filing a valid objection to the work task; and

(c) That objectors must give a copy of the objection to the local government.

(2) Persons who participated at the local level orally or in writing during the local process leading to the final decision may object to the local government's work task submittal. To be valid, objections must:

(a) Be in writing and filed with the department's Salem office no later than 21 days from the date the notice was mailed by the local government;

(b) Clearly identify an alleged deficiency in the work task sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the task submittal is alleged to have violated;

(c) Suggest specific revisions that would resolve the objection; and

(d) Demonstrate that the objecting party participated at the local level orally or in writing during the local process.

(3) Objections that do not meet the requirements of section (2) of this rule will not be considered by the director or commission.

(4) If no valid objections are received within the 21-day objection period, the director may approve the work task. Regardless of whether valid objections are received, the director may make a determination of whether the work task final decision complies with the statewide planning goals and applicable statutes and administrative rules.

(5) When a subsequent work task conflicts with a work task that has been deemed acknowledged, or violates a statewide planning goal related to a previous work task, the director or commission shall not approve the submittal until all conflicts and goal compliance issues are resolved. In such case, the director or commission may enter an order deferring acknowledgment of all, or part, of the work task until completion of additional tasks.

(6) If valid objections are received or the department conducts its own review, the department must issue a report. The report shall focus on the issues raised in valid objections and issues of compliance identified by the department. The report shall identify specific work tasks to resolve valid objections or department concerns. A valid objection shall either be sustained or rejected by the department or commission based on the the statewide planning goals and applicable statutes and administrative rules.

Stat. Auth.: ORS 197.040 & 197.633
Stats. Implemented: ORS 197.628 - ORS 197.646
Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef 5-7-04

660-025-0150
Director Action and Appeal of Director Action (Work Task Phase)

(1) The director may:

(a) Issue an order approving the completed work task;

(b) Issue an order remanding the work task to the local government including a date for resubmittal;

(c) Refer the work task and recommendation to the commission for review and action; or

(d) The director may issue an order approving portions of the completed work task provided these portions are not affected by an order remanding or referring the completed work task.

(2) The director must send the order to the local government, persons who filed objections, and persons who, in writing, requested a copy of the action.

(3) The director's action in section (1) of this rule must be sent pursuant to section (2) of this rule within 120 days of the date the department received the task submittal from the local government unless the local government waives the 120-day deadline or the commission grants the director an extension. The local government may withdraw the submittal, in which case the 120-day deadline does not apply, provided the withdrawal will not result in the local government passing the deadline for work task submittal in the work program and any extension allowed in OAR 660-025-0130(7). If the director does not take action as prescribed in this section:

(a) If the department does not receive valid objections to the work task pursuant to OAR 660-025-0140(2), the work task shall be deemed approved and the department must provide a letter to the local government certifying that the work task is approved;

(b) If the department received one or more valid objections to the work task pursuant to OAR 660-025-0140(2), the director must refer the work task to the commission for review and action.

(4) Appeals of director decisions are subject to the requirements of this section.

(a) A person who filed a valid objection may appeal a director's approval or partial approval of a work task to the commission.

(b) The local government, a person who filed a valid objection, or other person who participated orally or in writing at the local level during the local process on the work task may appeal a director's remand or partial remand of a work task to the commission.

(c) Appeals of the director's decision must be filed with the department's Salem office within 21 days of the date the director's action was mailed;

(d) A person appealing the director's decision must:

(A) Show that the person participated at the local level orally or in writing during the local process;

(B) Clearly identify a deficiency in the work task sufficiently to identify the relevant section of the submitted task and the statute, goal, or administrative rule the local government is alleged to have violated; and

(C) Suggest a specific modification to the work task necessary to resolve the alleged deficiency.

(5) If no appeal to the commission is filed within the time provided by section (4) of this rule, the work tasks approved by the director are considered acknowledged. If the director's decision is to remand a work task and no appeal to the commission is filed within the time provided in section (4) of this rule, the decision is final.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef 5-7-04

660-025-0160

Commission Review of Referrals and Appeals (Work Task Phase)

(1) The commission shall hear appeals and referrals of work tasks according to the procedures in OAR 660-025-0085.

(2) In response to a referral or appeal, the director may prepare and submit a report to the commission.

(3) The department must mail a copy of the report to the local government, all persons who submitted objections, and other persons who appealed the director's decision. The department must mail the report at least 21 days before the commission meeting to consider the referral or appeal.

(4) Persons who filed valid objections or an appeal, and the submitting local government, may file written exceptions to the director's report within ten (10) days of the date the report is mailed. The director may issue a response to exceptions and may make revisions to the director's report in response to exceptions. A response or revised report may be provided to the commission at or prior to its hearing on the referral or appeal. A revised director's report does not require mailing 21 days prior to the commission hearing.

(5) The commission shall hear appeals based on the record unless the commission requests new evidence or information at its discretion and allows the parties an opportunity to review and respond to the new evidence or information. The written record shall consist of the submittal, timely objections, the director's report, timely exceptions to the director's report, the director's response to exceptions and revised report if any, and the appeal if one was filed.

(6) Following its hearing, the commission must issue an order that does one or more of the following:

(a) Approves the work task or a portion of the task;

(b) Remands the work task or a portion of the task to the local government, including a date for resubmittal;

(c) Requires specific plan or land use regulation revisions to be completed by a specific date. Where specific revisions are required, the order shall specify that no further review is necessary. These changes are final when adopted by the local government. The failure to adopt the required revisions by the date established in the order shall constitute failure to complete a work task by the specified deadline requiring the director to initiate a hearing before the commission according to the procedures in OAR 660-025-0170(3);

(d) Amends the work program to add a task authorized under OAR 660-025-0170(1)(b); or

(e) Modifies the schedule for the approved work program in order to accommodate additional work on a remanded work task.

(7) If the commission approves the work task under subsection (6)(a) of this section and no appeal to the Court of Appeals is filed within the time provided in ORS 183.482, the work task shall be deemed acknowledged. If the commission decision on a work task is under subsection (6)(b) through (e) of this section and no appeal to the Court of Appeals is filed within the time provided in ORS 183.482, the decision is final.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef 5-7-04

660-025-0170

Modification of an Approved Work Program, Extensions, and Sanctions for Failure to Meet Deadlines

(1) The commission may direct, or, upon request of the local government, the director authorize a local government to modify an approved work program when:

(a) Issues of regional or statewide significance arising out of another local government's periodic review requires an enhanced level of coordination;

(b) Issues of goal compliance are raised as a result of completion of a work task resulting in a need to undertake further review or revisions;

(c) Issues relating to the organization of the work program, coordination with affected agencies or persons, or orderly implementation of work tasks result in a need for further review or revision; or

(d) Issues relating to needed housing, economic development, transportation, public facilities and services, or urbanization were omitted from the work program but must be addressed in order to ensure compliance with the statewide planning goals.

(2) Failure to complete a modified work task shall constitute failure to complete a work task by the specified deadline, requiring the director to initiate a hearing before the commission according to the procedures in section (3).

(3) If a local government fails to submit its evaluation and work program, a decision that no work program is necessary, or a work task by the deadline set by the director or the commission, including any extension, the director shall schedule a hearing before the commission. The notice must state the date and location at which the commission will conduct the hearing. The hearing will be conducted pursuant to OAR 660-025-0085 and as follows:

(a) The director shall notify the local government in writing that its submittal is past due and that the commission will conduct a hearing and consider imposing sanctions against the local government as required by ORS 197.636(2);

(b) The director and the local government may prepare written statements to the commission addressing the circumstances causing the local government to miss the deadline and the appropriateness of any of the sanctions listed in ORS 197.636(2). The written statements must be filed in a manner and according to a schedule established by the director;

(c) The commission shall issue an order imposing one or more of the sanctions listed in ORS 197.636(2) until the local government submits its evaluation and work program or its decision that no work program is required, or its work task required under OAR 660-025-0130, as follows:

(A) Require the local government to apply those portions of the goals and rules to land use decisions as specified in an order issued by the commission,

(B) Forfeiture of all or a portion of the grant money received to conduct the review, develop the work program or complete the work task,

(C) Completion of the work program or work task by the department. The commission may require the local government to pay the cost for completion of work performed by the department, following the withholding process set forth in ORS 197.335(4),

(D) Application of such interim measures as the commission deems necessary to ensure compliance with the statewide planning goals.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628-ORS 197.646

Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDC 1-1998, f. & cert. ef. 4-15-98; LCDD 3-2000, f. & cert. ef. 2-14-00

660-025-0175

Review of UGB amendments and Urban Reserve Area designations.

(1) Land use decisions establishing or amending an urban growth boundary or urban reserve area must be submitted to the department for review with the statewide planning goals and related statutes and rules when not on a work program and:

(a) A metropolitan service district amends its urban growth boundary to include more than 100 acres;

(b) A city with a population of 2,500 or more within its urban growth boundary amends the urban growth boundary to include more than 50 acres; or

(c) A city or metropolitan service district designates or amends urban reserve areas under ORS 195.145.

(2) The standards and procedures in this rule govern the local government process and submittal, and department and commission review.

(3) The local government must provide notice of the proposed amendment according to the procedures and requirements for post-acknowledgement plan amendments in ORS 197.610 and OAR 660-018-0020.

(4) The local government must submit its final decision amending its urban growth boundary, or designating urban reserve areas, to the department according to all the requirements for a work task submittal in OAR 660-025-0130 and 660-025-0140.

(5) Department and commission review and decision on the submittal from the local government must follow the procedures and requirements for review and decision of a work task submittal in OAR 660-025-0140 to 660-025-0160.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.145, 197.626 – 197.646

Hist.: LCDC 3-2000, f. & cert. ef. 2-14-00; LCDC 3-2004, f. & cert. ef 5-7-04

660-025-0180

Stay Provisions

(1) When a local government makes a final decision on a work task or portion of a work task that is required by, or carries out, an approved work program, or if the local government is a city with a population of 2,500 or more and either adopts a decision adding more than 50 acres to its urban growth boundary or designates or amends urban reserve areas, or a metropolitan service district that adopts a decision adding more than 100 acres to its

urban growth boundary or designates or amends urban reserve areas, interested persons may request a stay of the local government's final decision by filing a request for a stay with the commission. In taking an action on a request to stay a local government's final decision on a work task, the commission must use the standards and procedures contained in OAR chapter 660, division 1.

(2) The director may grant a temporary stay of a final decision on a local government decision described in section (1) of this rule. A temporary stay must meet applicable stay requirements of the Administrative Procedures Act. A temporary stay issued by the director shall only be effective until the commission has acted on a stay request pursuant to section (1) of this rule.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.145, ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD 1-1998, f. & cert. ef. 4-15-98; LCDC 3-2000, f. & cert. ef. 2-14-00

660-025-0210

Updated Planning Documents

(1) Pursuant to ORS 195.025 and 195.040 and the legislative policy described in ORS 197.010, each local government must file two complete and accurate copies of its comprehensive plan and land use regulations bearing the date of adoption (including plan and zone maps bearing the date of adoption) with the department following completion of periodic review. These materials may be either a new printing or an up-to-date compilation of the required materials or upon approval of the department, an up-to-date copy on computer disk(s) or other electronic format.

(2) Materials described in section (1) of this rule must be submitted to the department within six months of completion of the last work task.

(3) The updated plan must be accompanied by a statement signed by a city or county official certifying that the materials are an accurate copy of current planning documents and that they reflect changes made as part of periodic review.

(4) Jurisdictions that do not file an updated plan on time shall not be eligible for grants from the department until such time as the required materials are provided to the department.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 195.025 and 195.040 & ORS 197.628 - ORS 197.646

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

660-025-0220

Computation of Time

(1) For the purposes of OAR chapter 660, division 25, periodic review rule, unless otherwise provided by rule, the time to complete required tasks, notices, objections, and appeals shall be computed as follows. The first day of the designated period to complete the task, notice, objection or appeal shall not be counted. The last day of the period shall be counted unless it is a Saturday, Sunday or legal holiday recognized by the State of Oregon. In that event the period shall run until the end of the next day that is not a Saturday, Sunday or state legal holiday.

(2) When the period of time to complete the task is less than seven (7) days, intervening Saturdays, Sundays or state legal holidays shall not be counted.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 187.010, 187.020, 197.628 to 197.650

Hist.: LCDC 1-1992, f. &cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95

660-025-0230
Applicability

(1) Amendments to this division apply as follows:

(a) Local governments in periodic review that have not submitted an evaluation and work program, or decision that no work program is required, when rule amendments become effective shall apply the new requirements to the evaluation and work program or decision than no work program is required;

(b) Local governments in periodic review must apply amendments to work tasks not completed or submitted to the department on the effective date of the amendments;

(c) The commission may modify approved work programs to carry out the priorities and standards reflected in amendments;

(d) The procedures and standards in amendments for department and commission review and action on periodic review submittals, requests for extensions, and late submittals apply to all such submittals and requests filed after the effective date of the amendments, as well as any such submittals and requests awaiting initial department action on the effective date of the amendments.

(2) Amendments to OAR 660-025-0030 and 660-025-0035(3) and (4) become effective July 1, 2007.

Stat. Auth.: ORS 197.040-197.245

Stats. Implemented: ORS 197.628 to 197.646

Hist.: LCDC 3-2000, f. & cert. ef. 2-14-00

660-025-0250
Transfer of Matters to the Land Use Board of Appeals

(1) When the department receives an appeal of a director's decision pursuant to OAR 660-025-0150(4), the director may elect to transfer a matter raised in the appeal to the Land Use Board of Appeals (board) under ORS 197.825(2)(c)(A).

(2) Matters raised in an appeal may be transferred by the director to the board when:

(a) The matter is an urban growth boundary expansion approved by the local government based on a quasi-judicial land use application and does not require an interpretation of first impression of statewide planning Goal 14, ORS 197.296 or ORS 197.298; or

(b) (A) The matter alleges the work task submittal violates a provision of law not directly related to compliance with a statewide planning goal;

(B) The appeal clearly identifies the provision of the task submittal that is alleged to violate a provision of law and clearly identifies the provision of law that is alleged to have been violated; and

(C) The matter is sufficiently well-defined that it can be separated from other allegations in the appeal.

(3) When the director elects to transfer a matter to the board, notice of the decision must be sent to the local jurisdiction, the appellant, objectors, and the board within 60 days of the date the appeal was filed with the department. The notice shall include identification of the matter to be transferred and explanation of the procedures and deadline for appeal of the matter to the board.

(4) The director's decision under this rule is final and may not be appealed.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.825

Hist.:

Oregon
Theodore R. Kulongoski, Governor

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MEMORANDUM

FROM: Richard Whitman, Steve Shipsey

TO: LCDC Commissioners

RE: Metro Reserves Deliberations

DATE: October 28, 2010

This memo is intended to assist the commission in its final deliberations concerning Metro urban and rural reserves, by clarifying the department's understanding of what the commission needs to decide with regard to the three specific areas the commission indicated it wants to focus on, and what the commission's standard(s) are for making those decisions. To further assist the commission, we are providing four exhibits to this memo. Those exhibits are: (A) Three maps of the current zoning designations for Areas 7B, 7I and 8A; (B) Excerpts of the Objections and Exception relating most directly to these three areas; (C) A compilation from Washington County and Metro of the evidence in the record showing how the county and Metro considered and applied the factors to these three areas; and (D) A transcript of a portion of the final rulemaking hearing where the commission adopted its division 27 rules for urban and rural reserves. To the extent that these attachments include new evidence, we ask that the commission request these materials to assist it in its deliberations.

1. What Does the Commission Need to Decide? (Scope of Review)

What the commission reviews (it's scope of review) is set in its own rule: 660-027-0080(4). That rule provides that the commission reviews the reserves decision for four basic things (the four basic things are summarized in the bracketed capitalized language):

"* * * The Commission shall review the submittal for:

(a) Compliance with the applicable statewide planning goals. Under ORS 197.747 "compliance with the goals" means the submittal on the whole conforms with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature. To determine compliance with the Goal 2 requirement for an adequate factual base, the Commission shall consider whether the submittal is supported by

substantial evidence. Under ORS 183.482(8)(c), substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding [THE STATEWIDE PLANNING GOALS];

(b) Compliance with applicable administrative rules, including but not limited to the objective provided in OAR 660-027-0005(2) [e.g. a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents] [THE BEST ACHIEVES STANDARD] *and* the urban and rural reserve designation standards provided in OAR 660-027-0040 [THE AMOUNT OF LAND STANDARD]; and

(c) Consideration of the factors in OAR 660-027-0050 or 660-027-0060, whichever are applicable [COMPARISON OF ALTERNATIVE AREAS BY APPLYING FACTORS]. " OAR 660-027-0080(4)

What each of these four things means, is described in more detail, below.

A. Compliance with the Statewide Planning Goals

OAR 660-027-0080(4)(a) and ORS 197.747 provide that "compliance with the goals" means the submittal on the whole conforms with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature. In addition, not all goals apply to the reserves decision. For example, in the Department's opinion, Goal 10 does not apply to the reserves decision because the designation of urban and rural reserves does not commit land to urbanization or to any particular future use (that would occur only after the land was included within an urban growth boundary and planned and zoned for urban development). Similarly, some goals may apply, but only in a limited fashion. For instance, the element of Goal 11 that requires public facility plans applies only to areas within an urban growth boundary (and so does not apply to the reserves decision). However, other elements of Goal 11 could (in theory) be implicated by the reserves decision.

The requirement to comply with the goals focuses on assuring that the underlying main purpose of the goal is met, even if there are minor deviations from the technical requirements of the goal or LCDC implementing rule. *1000 Friends of Oregon v. LCDC (Lane County)*, 305 Or. 384 (Or., 1988). Thus, for example, the main purpose of Goal 3 is to preserve and maintain agricultural lands for farm use.

Goal compliance does not appear to be a major issue with regard to the three areas the commission has indicated it wants to consider more carefully, although goal compliance issues have been raised in a number of general and specific objections.

B. Compliance with the Best Achieves Standard

OAR 660-027-0005(2) states that the objective of the reserves is "a balance in the designation of urban and rural reserves that, *in its entirety*, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important

natural landscape features that define the region for its residents." (Emphasis added.) According to the records of the commission's adoption of this rule, the intent was that this standard would set a higher bar for the reserves decision than the normal requirements for locational decisions about where to expand an urban growth boundary (to consider and apply factors to alternative candidate areas – discussed below). The standard applies to the designation "in its entirety," it does not require Metro or a county to rank alternative areas. It is a standard that Metro and the counties, in the first instance, must demonstrate has been met, by explaining why in their findings.

Although the standard applies to the designation[s] in its entirety, the department believes that the commission could find that the standard is not met as a result of concerns about one or more areas (e.g., the designation[s] in its entirely could fail to meet this standard because of problems with one or more particular areas).

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

The meaning of the "best achieves" standard is best described in the transcript of the commission's January 2008 rulemaking hearing, attached as Exhibit D to this memo.

C. Compliance with the Amount of Land Standard

This standard has already been addressed in the proceedings, and is not directly relevant to the Commission's remaining deliberations. In brief, the statute and rules provide a fair degree of discretion to Metro concerning: (a) the time period that the urban reserves are planned to accommodate population and employment growth for; and (b) the methods and policy considerations that Metro uses to project future population and employment. The statute and rules also provide Metro significant discretion in determining how to apply its overall regional projections to parts of the region (counties).

If the commission were to remand one or more urban reserve areas, with direction to evaluate the area(s) in a particular way under the commission's rules and/or to drop the area from designation, it should also indicate whether Metro and the county(ies) involved would be required to replace any lands removed as a result of the remand. The department believes that, because Metro based its determination of need on a range forecast and made a policy choice to plan for the upper end of the middle third of its projection, Metro could remove some lands without adding other lands by either altering its policy choice (to, for example, plan for the middle of the middle third) or by shortening the number of years that the reserves are planned for. Alternatively, the department believes that Metro and the county(ies), could chose to leave the decisions concerning the amount of land unchanged, and add other lands as an urban reserve.

D. Comparing Alternative Areas by Applying Factors

OAR 660-027-0040(10) and (11), together with OAR 660-027-0050 (urban) and 0060 (rural), require the commission to consider *and apply* the factors for urban and rural reserves. If the lands in question are foundation farm land (as is the case for all three of the areas the commission has focused on) OAR 660-027-0040(11) requires the commission to consider and apply *both* the urban reserve factors and the rural reserve factors. The rule provisions raise at least two basic questions that the commission should decide: (a) what does it mean for Metro and the counties to consider and apply the factors; and (b) does the rule require Metro and the counties to consider and apply the factors to each area, to the region as a whole, or to each county?

a. What Does it Mean to Consider and Apply the Factors?

The department believes that the commission's rule requires Metro and the county(ies) to evaluate alternative areas in terms of each of the factors, and to then explain why it selected a particular area as an urban reserve or a rural reserve. For areas containing Foundation Agricultural Land that are considered as urban reserves, the rules require this evaluation to be done in terms of both the urban and rural factors.

It is important to note that this does *not* require a ranking, nor (under Goal 14 (as opposed to Metro's Code) does it require that the "*best*" suited lands be included) but it does require the county and Metro to show that they evaluated alternative areas in terms of each of the factors, (***Ryland Homes***, at 154), and that their findings explain why each area is appropriate as an urban or rural reserve. Finally, "[n]o single factor is of such importance as to be determinative in an UGB amendment proceeding, nor are the individual factors necessarily thresholds that must be met." ***Citizens Against Irrespons. Growth v. Metro***, 38 P.3d 956, 179 Or. App. 12 (Or. App., 2002). In other words, any one area does not have to comply with or meet every factor. The factors are considered together, and weighed and balanced as a whole.

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

The department's report to the commission states that we believe that Metro applies the factors to *areas* (not to individual properties, and not to the entire region). The department's position is based on the fact that the reserve factors derive from the Goal 14 locational factors (this is stated clearly in the history of the commission's rulemaking for division 27, *and* in the legislative history for Senate Bill 1011). The Goal 14 locational factors are *applied* to alternative locations for expanding an urban growth boundary to decide which one(s) to select to include within the expanded UGB. ***1000 Friends of Oregon v. Metro*** (***Ryland Homes***), 26 P.3d 151, 174 Or. App. 406 (2001). Similarly, under the Commission's other urban reserves rules, the Goal 14 factors are applied to proposed urban reserve *areas*. ***D.S. Parklane v. Metro***, 35 Or LUBA 516 (1999). We believe that the legislative and commission intent is the same with regard to the role of the factors in deciding which lands to designate as urban and rural reserves – e.g., the factors are applied to alternative areas to decide which ones to include as urban reserves, and which areas to include as rural reserves.

Furthermore, because SB 1011 and the commission's reserves rules require urban and rural reserves to be decided upon jointly between Metro and a county, we believe that the factors are *applied* to alternative areas within a county to decide which ones to designate as urban or rural reserves.

OAR 660-027-0040(10) requires Metro and the counties to "adopt a single, joint set of findings of fact, statements of reasons and conclusions explaining why *areas* were chosen as urban or rural reserves, how these designations achieve the objective stated in OAR 660-027-0005(2), and the factural and policy bais for the estimated land supply determined under section (2) of this rule." (Emphasis added) In other words, the commission's rules clearly require the factors to be applied to "areas" rather than specific properties or to the region or a county as a whole. OAR 660-027-0040(11) supplements the requirements of 0040(10) by requiring additional findings if "Foundation Agricultural Land" is designated as urban reserves (that term is defined by OAR 660-027-0010(1) as the lands mapped by ODA as foundation farm lands in its 2007 assessment). The department believes that the supplemental findings required by subsection (11) for Foundation Agricultural Lands do not alter the geographic unit that Metro and the counties must adopt findings for – the findings must still be by "area" rather than on a property-by-property or region-wide basis. What this means is that if Metro designates some portion or all of an area as an urban reserve, and that area includes Foundation Agricultural Land, then the joint findings must explain why the area was selected as an urban reserve by applying *both* the urban and rural factors to that area and explaining why that area is more suitable as an urban reserve than other lands within Metro's study area that are not Foundation Agricultural Lands.

c. What Did Metro and the Counties Do?

Metro adopted a single set of joint findings that explain why the region designated some areas including Foundation Agricultural Land as urban reserves. Metro Rec. at 15-19. Those findings explain why the region did not designate other (non-Foundation) lands as urban reserves, generally. The findings include some explanation of why other (non=Foundation) lands were not designated as urban reserves (instead of the Foundation lands). The findings also state: "[t]hese reasons are more fully set forth in the explanations for specific urban and rural reserves in sections VI-VIII."

Section VI contains the findings for Clackamas County, explaining why it designated Area 1F an an urban reserve (this is the only area of Foundation Agricultural Land designated as an urban reserve in Clackamas County). The findings address both the urban factors and (to at least some degree) the rural factors. Metro Rec. 25-28.

Section VII contains the findings for Multnomah County, explaining why it designated Area 1C as an urban reserve (this is the only area of Foundation Agrigultural Land designated as an urban reserve (this is the only area of Foundation Agricultural Land designated as an urban reserve in Multnomah County. The findings address, in general terms, both the urban factors and the rural factors, and explain why the county decided to designate the area as an urban reserve. Metro Rec. 48-49.

Section VIII contains the findings for Washington County. Washington County's findings address Areas 7B, 7I and 8A, individually (as well as other areas in the county), and explain why the areas were designated as urban reserves, but do not apply the rural reserve factors to the areas containing Foundation Agricultural Lands. Although the findings do not apply both sets of factors, there is evidence in the record that Washington County did so (this evidence is summarized in Exhibit C).

2. What Standard Does the Commission Use to Decide Each of the Things That it is Required to Decide? (Standard of Review)

The Oregon Court of Appeals addressed LCDC's standard of review in a UGB amendment decision at length in ***City of West Linn v. LCDC***, 119 P.3d 285, 201 Or. App. 419 (2005). While that case provides some useful guidance, it is important to note that the standard of review for the court is different from the standard for LCDC, and that the standard of judicial review in the event the commission's decision in this matter is appealed is controlled by a slightly different statute than the one that applied in ***City of West Linn*** (ORS 197.651, not ORS 197.650).

In this proceeding, the commission reviews Metro and the county findings to determine whether they provide an adequate explanation of why each area was designated as an urban or rural reserve (using the factors). The commission reviews any factual questions to determine whether there is substantial evidence in the record as a whole to support Metro and the county's decision. And, the commission reviews any legal questions to determine whether Metro correctly decided the question.

A. Adequacy of Findings

The commission's own rules require findings that explain why Metro and the counties made the decisions that they did. OAR 660-027-0040(10) provides that: Metro * * * [and the county(ies)] shall adopt a single, joint set of findings of fact, statements of reasons and conclusions explaining why areas were chosen as urban or rural reserves, how these designations achieve the objective stated in OAR 660-027-0005(2), and the factual and policy basis for the estimated land supply determined under section (2) of this rule." OAR 660-027-0040(11) requires that "* * * if Metro designates [Foundation Agricultural Land] as urban reserves, the findings and statement of reasons shall explain, by reference to the factors in OAR 660-027-0050 and 660-027-0060(2), why Metro chose the Foundation Agricultural Land for designation as urban reserves rather than other land considered under this division." And, OAR 660-027-0080(4) requires that: "(4) The joint and concurrent submittal to the Commission shall include findings of fact and conclusions of law that demonstrate that the adopted or amended plans, policies and other implementing measures to designate urban and rural reserves comply with this division, the applicable statewide planning goals, and other applicable administrative rules."

The requirement for findings is not simply a technicality, its purpose is to assure that the commission can perform its review function, and that it does not substitute its judgment for that of Metro and the counties. ***Citizens Against Irresponsible Growth v. Metro***, 179 Or App 12, 16, 38 P3d 956 (2002); ***Naumes Properties v. City of Central Point***, LUBA No. 2003-107 (Or. LUBA 1/21/2004).

In a recent decision on the City of Bend proposed urban growth boundary, the commission decided that where local findings are inadequate, it may still affirm the local decision if the local government identifies evidence in the record that "clearly supports" its decision. This is analogous to express statutory authority for the Land Use Board of Appeals to affirm local land use decisions in these circumstances (the commission indicated that it was adopting the same approach). In the LUBA cases applying its express authority to affirm decisions where the findings are inadequate but the evidence clearly supports the local government's decision, LUBA distinguishes between cases where the inadequacy in findings concerns a pure question of fact and cases where the inadequacy is in a local government's explanation of its policy choice – why it made a particular decision.

> " LUBA has narrowly interpreted the term "clearly supports" in ORS 197.835(11)(b) to mean "makes obvious" or "makes inevitable." Marcott Holdings, Inc. v. City of Tigard, 30 Or LUBA 101, 122 (1995). ORS 197.835(11)(b) authorizes LUBA to remedy minor oversights and imperfections in local government land use decisions, but does not allow LUBA to assume the responsibilities assigned to local governments, such as the weighing of evidence." ***Salo v. Oregon City***, LUBA No. 98-173 (Or. LUBA 7/14/1999).

As indicated in its report in this matter, the department believes that if the commission determines that the Metro/county findings are inadequate, it then should decide whether or not the record "clearly supports" the local decision and, if so, whether this is an appropriate case to apply this practice. That decision could depend on both how clear the evidence is, and how much policy judgment (if any) is involved in resolving the underlying question.

B. Factual Questions

The commission's rules clearly provide that it reviews Metro and the counties' factual determinations for substantial evidence in the record as a whole. OAR 660-027-0080(4)(a).

C. Compliance with Legal Standards

The commission reviews Metro and the counties' resolution of any legal questions de novo, to determine whether they correctly applied the law. There do not appear to be any pure legal questions concerning the three remaining areas that the commission will deliberate on.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ACCEPTING THE POPULATION AND EMPLOYMENT FORECASTS AND THE URBAN GROWTH REPORT AS SUPPORT FOR DETERMINATION OF CAPACITY OF THE URBAN GROWTH BOUNDARY	))))))	RESOLUTION NO. 09-4094 Introduced by Chief Operating Officer Michael Jordan with the Concurrence of Council President David Bragdon

WHEREAS, state law requires Metro to determine the capacity of the urban growth boundary (UGB) to accommodate the next 20 years' worth of population and employment growth by the end of December, 2009; and

WHEREAS, the Metro Council will direct its efforts to provide capacity for the next 20 years' worth of growth toward achieving the Outcomes that are part of its overall Making the Greatest Place initiative, as indicated by performance measures; and

WHEREAS, Metro published range forecasts of population and employment growth to the years 2030 and 2060 on March 19, 2009; and

WHEREAS, Metro published a preliminary analysis of the capacity of the existing UGB to accommodate the range of new dwelling units relating to the range of forecast population growth on March 31, 2009; and

WHEREAS, state law requires Metro to provide capacity to encourage the availability of dwelling units at price ranges and rent levels, and of transportation choices, that are commensurate with the financial capabilities of households expected over the planning period; and

WHEREAS, Metro published a preliminary Housing Needs Analysis on April 22, 2009, that showed the effects on housing affordability and household transportation costs of forecast growth under existing policies and investment levels; and

WHEREAS, Metro published a preliminary analysis of the capacity of the existing UGB to accommodate the range of new employment relating to the range of forecast employment growth on May 6, 2009; and

WHEREAS, the region has an interest in an adequate supply of land appropriate for industries that prefer larger tracts of land near transportation facilities and an interest in efficient use of existing land and transportation facilities; and

WHEREAS, Metro sought and received comments on the preliminary analyses of housing and employment capacity from its Metro Policy Advisory Committee (MPAC) and its Joint Policy Advisory Committee on Transportation (JPACT), local governments in the region, public, private and non-profit organizations and citizens; and

WHEREAS, Metro considered the comments and published revised draft analyses of the capacity of the existing UGB to accommodate growth to year 2030 on September 15, 2009; and

WHEREAS, Metro sought and received comments on the revised draft analyses from MPAC and JPACT; local governments in the region; and public, private and non-profit organizations and citizens; and

WHEREAS, the Metro Council held open houses and public hearings on the revised draft analyses on September 21, 22 and 24 and October 1, 8 and 15, 2009; and

WHEREAS, Metro considered comments received and made revisions to the final draft analyses of the capacity of the existing UGB to accommodate the range of new dwelling units and employment relating to the range of forecast population and employment growth; now, therefore,

BE IT RESOLVED that the Metro Council

1. The Council accepts the "20 and 50 year Regional population and employment forecasts" incorporated into the "Draft Urban Growth Report 2009-2030", dated September 15, 2009, as revised by this resolution, as a basis for analysis of need for capacity in the UGB to accommodate growth to the year 2030 and for actions the Council will take to add capacity by ordinance in 2010, pursuant to ORS 197.296(6) and statewide planning Goal 14.

2. The Council accepts the "Draft Urban Growth Report 2009-2030", dated September 15, 2009, with its analysis of housing needs, attached and incorporated into this resolution as Exhibit A, with the revisions described in the Staff Report dated December 3, 2009, attached as Exhibit B, as a basis for analysis of need for capacity in the UGB to accommodate growth to the year 2030 and for actions the Council will take to add housing and employment capacity by ordinance in 2010, pursuant to ORS 197.296(6) and statewide planning Goals 14 and 10.

3. The Council directs the staff to work with MPAC to identify site opportunities for industries that prefer large tracts, with a priority to mechanisms to remediate brownfields and assemble smaller parcels inside the UGB to make them more "market-ready."

4. Acceptance of Exhibit A by the Council meets Metro's responsibility under state law to analyze the capacity of the UGB to accommodate growth to the year 2030 as a preliminary step toward providing sufficient capacity to accommodate that growth. The Council will make a final land use decision to respond to this capacity analysis in 2010.

5. The Council directs the Chief Operating Officer to submit Exhibit A , together with such actions the Council adopts by ordinance to add any needed capacity pursuant to ORS 197.296(6) and statewide planning Goal 14, to the Land Conservation and Development Commission as part of periodic review pursuant to ORS 197.626, following adoption of the capacity ordinance in 2010.

ADOPTED by the Metro Council this 10th day of December, 2009

David Bragdon, Council President

Approved as to form:

Daniel B. Cooper, Metro Attorney

Officially Approved
Approvato Ufficialmente
Consiglio Metropolitano
METRO COUNCIL
Metro Council

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OMA/RPB/kvw (12/02/09)

Resolution 09-4094
Exhibit A

CLICK HERE FOR REPORT

DRAFT URBAN GROWTH REPORT

2009 – 2030

Employment and residential

September 15, 2009

CLICK HERE FOR REPORT

Resolution 09-4094
Exhibit A

September 15, 2009
Employment and residential

DRAFT URBAN GROWTH REPORT

2009 – 2030

Appendices 2 - 13

September 15, 2009

EXHIBIT B
STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4094, FOR THE PURPOSE OF ACCEPTING THE POPULATION AND EMPLOYMENT FORECASTS AND THE URBAN GROWTH REPORT AS SUPPORT FOR DETERMINATION OF CAPACITY OF THE URBAN GROWTH BOUNDARY

Date: December 3, 2009 Prepared by: Malu Wilkinson, x1680

BACKGROUND

Purpose of the forecast and the urban growth report

Oregon land use law requires that, every five years, Metro assess the region's capacity to accommodate the numbers of people anticipated to live or work inside the Metro urban growth boundary (UGB) over the next 20 years. To make this determination, Metro forecasts population and employment growth over a 20-year timeframe; conducts an inventory of vacant, buildable land inside the UGB; assesses the capacity of the current UGB to accommodate population and employment growth either on vacant land or through redevelopment and infill; determines whether additional capacity is needed; and documents the results of these analyses in an urban growth report (UGR). The UGR is the basis for subsequent consideration of the actions to be taken to close any identified capacity gap.

On the advice of the Metro Policy Advisory Committee, the Metro Council has indicated its intent to take an outcomes-based approach to assessing growth management options in 2010. It is intended that growth management decisions will help to foster the creation of a region where:

1. People live and work in vibrant communities where they can choose to walk for pleasure and to meet their everyday needs.
2. Current and future residents benefit from the region's sustained economic competitiveness and prosperity.
3. People have safe and reliable transportation choices that enhance their quality of life.
4. The region is a leader in minimizing contributions to global warming.
5. Current and future generations enjoy clean air, clean water and healthy ecosystems.
6. The benefits and burdens of growth and change are distributed equitably.

Should the Metro Council vote in favor of this resolution, it would be accepting the UGR and 20-year forecast as a reasonable and complete basis for making growth management decisions in 2010. By this resolution, the Council would also be accepting the 50-year forecast as a basis for designating urban and rural reserves. Council acceptance of the forecasts and the UGR does not constitute a land use decision, but provides a platform for subsequent growth management decisions.

Summary of forecast and UGR findings

Population and employment range forecast

20-and-50-year range forecasts of population and employment growth have been completed by Metro staff and peer reviewed by economists and demographers. The 20-year range forecast informs the UGR

and the 50-year range forecast informs the Urban and Rural Reserves process. The use of a range forecast acknowledges uncertainty and allows for growth management decisions to focus on desired outcomes rather than a specific number. The forecast is for the seven-county primary metropolitan statistical area, which includes Clackamas, Multnomah, Washington, Yamhill, Columbia, Clark, and Skamania counties.

The 20-year forecast indicates that, by the year 2030, there will be a total of 1,181,300 to 1,301,800 households and a total of 1,252,200 to 1,695,300 jobs in the larger seven-county area. There is a 90 percent chance that growth will occur within this range.

The 50-year forecast indicates that, by the year 2060, there will be a total of 1,478,400 to 1,792,500 households and a total of 1,648,400 to 2,422,900 jobs in the larger seven-county area. There is a 90 percent chance that growth will occur within this range.

In his September 15, 2009 recommendation, Metro's Chief Operating Officer, Michael Jordan, recommended that growth management decisions made by the Council in 2010 focus not on the extreme ends of the range forecast, but on the middle third of the forecast range.

Urban Growth Report

In addition to the 20-year range forecast, the UGR includes an analysis of the share of the UGB's zoned capacity that is likely to be developed by the year 2030. The UGR's analysis assumes a continuation of current policies and investment trends. No changes to existing zoning are assumed, although it is likely that up-zoning will take place in the future as communities develop and implement their aspirations. The UGR's assessment of the likelihood of development is based on historic data, scenario modeling, and the professional expertise of Metro staff, local city and county staff, economic consultants, and business representatives. UGR results are portrayed for four different categories--residential, general industrial employment, general non-industrial employment, and large lot employment—that are summarized as follows:

Residential capacity

There is ample zoned capacity within the current UGB to accommodate the next 20 years of residential growth. However, the UGR's analysis indicates that, without additional infrastructure investments or other policy changes, insufficient zoned capacity will be available for development. At both ends of the range forecast (high and low) there is a gap in the UGB's capacity to accommodate the next 20 years of residential growth on vacant land or through redevelopment and infill (refill). Depending on the amount of residential growth that may be realized, the UGR finds demand for additional capacity to accommodate 27,400 to 104,900 dwelling units.

The UGR also includes an assessment of future cost-burdened households in the region. The assessment defines a household as cost-burdened if they rent and spend more than half of their after-tax income on housing and transportation expenditures. If current policy and investment trends are continued, the number of cost-burdened households in the region may double by the year 2030. Under that scenario, between 17 to 23 percent of all households inside the Metro UGB may be cost-burdened. This would represent between 51 to 69 percent of renter households. This analysis also finds that, as is the case today, there are likely to be concentrations of cost-burdened households in some communities and very few in others. Centers and corridors provide residents with the most affordable transportation options, but high market demand in those locations is likely to continue driving housing prices upwards. Investing in housing and transit in centers and corridors is one way of closing the residential capacity gap and reducing the number of cost-burdened households.

General industrial employment capacity
This portion of the UGR assesses the current UGB's capacity to accommodate industrial job growth on vacant land or through redevelopment and infill (refill). The assessment of demand for large, vacant lots is handled separately. The UGR finds that, at both ends of the employment range forecast, there is adequate capacity inside the current UGB to accommodate the next 20 years of general industrial job growth.

General non-industrial employment capacity
This portion of the UGR assesses the current UGB's capacity to accommodate non-industrial (e.g. office, retail, institutional) job growth on vacant land or through refill. The analysis indicates sufficient zoned capacity, but a need to make investments or policy changes to support the high end of the demand range. Depending on the amount of non-industrial employment growth that is realized, the UGR finds that there is demand for zero to 1,168 acres of additional capacity for non-industrial employment.

Large lot employment capacity
The "large lot" portion of the UGR's analysis was completed in recognition of the fact that some firms in traded-sector industries prefer or require large, vacant lots. The UGR defines a large lot as a single taxlot with at least 25 acres of vacant, buildable area. Demand for large lots is likely to be the product of the decisions of individual firms rather than larger industry sector trends. The UGR's forecast-based assessment originally determined that, over the 20-year period, there is demand for 200 to 800 acres of additional capacity for large-lot employment uses. This range depends on the amount of employment growth realized as well as whether assembly of adjacent lots of 25 acres or more was assumed.

For several reasons listed below, at its November 18, 2009 meeting, the Metro Policy Advisory Committee (MPAC) recommended that the UGR identify a wider range of potential large lot demand:

- Large lot demand will be the result of the decisions of individual firms, so it is inherently difficult to forecast.
- Some cities in the region have identified large, traded-sector firms as the focus of their economic development plans.
- It may be preferable from a policy standpoint to have flexibility to accommodate traded-sector firms.
- The use of an employment forecast may be an inadequate means of estimating large lot demand for freight, rail, and marine terminal uses.

Consequently, MPAC has recommended that the UGR identify a demand for 200 to 1,500 acres of additional capacity for large-lot industrial uses. This demand may be satisfied through a variety of means, including brownfield cleanup, infrastructure investments, taxlot assembly, or UGB expansions.

Process for writing the forecast and the urban growth report
Process overview
The forecast and UGR have been written and revised over the course of over a year and are informed by the expertise of economic consultants and Metro staff, business focus groups, comments from numerous stakeholders, advisory committee input, a panel of economic advisors, scenario modeling, and historic data. The analyses have benefited from this extensive review.

Expert review of the population and employment forecast
The national data that drives the regional forecast comes from IHS Global Insight, an internationally respected economics firm whose data is relied upon by numerous public and private entities. Metro's

econometric model, which is used to create the regional population and employment forecast, has been subjected to considerable expert scrutiny over the years. A November 24, 2009 memo from Metro's Chief Economist, to Malu Wilkinson, Metro Principal Regional Planner, describes recent peer reviews of the forecast model and its results and is included as Attachment 3 to this staff report.

In 2006, a panel of economic advisors was convened to evaluate Metro's econometric model and forecasts. The panel included:

- Tim McDaniels, professor and interim director, Institute of Resources and Environment, School of Community and Regional Planning, University of British Columbia
- Marshall Vest, economist and director of the Economic and Business Research Center at the University of Arizona's Eller College of Management
- Tom Potiowsky, State Economist for the State of Oregon

The panel of economic advisors reviewed the model's equations, overall statistical fit and results, finding:

- The Metro econometric model is one of the more advanced regional econometric models in the country and that it exhibits sound economic theory.
- The Metro econometric model is the right type of model for the purposes for which it is used.
- It is appropriate to use national economic projections from IHS Global Insight to drive the regional forecast. It was noted that the State of Oregon also uses IHS Global Insight data in preparing the biennial budget.
- In the context of performing risk analysis, a range forecast can be superior to a single point forecast.

A Public Review Draft 2005-2060 Regional Population and Employment Forecast was released on May 19, 2008. Accompanying this release, Metro hosted a panel discussion of the forecast. To inform the UGR, a preliminary 20 and 50-Year Regional Population and Employment Forecast was released in March 2009. This newer forecast incorporates the short-and long-term effects of the current recession. During the summer of 2009, the forecast was subjected to a peer review by local economists and demographers. The peer review panel found the forecast range to be reasonable and generally felt that actual growth may end up in the lower to middle portion of the range, but that, as a policy matter, it may be beneficial to plan somewhere in the higher portion of the employment range forecast. Peer review comments were addressed in a draft forecast released in September 2009. These changes did not involve amendments to the forecast's data.

External expertise that informed the employment analysis

To complete the employment analysis portion of the UGR, Metro staff worked with a consultant team led by E.D. Hovee and Co. that included FCS Group, Bonnie Gee Yosick, and Davis Hibbits Midghall, well-respected economic and public opinion consulting firms. Metro staff also formed the Employment Coordination and Advisory Committee (ECAC), which consisted of representatives from local city staff, business advocacy groups, the Port of Portland, and the Portland Development Commission. ECAC met on multiple occasions to provide comments and input on the UGR. Additionally, from December 2008 through February 2009, business representatives were included in focus groups that discussed the region's opportunities and challenges in fostering job growth.

Preliminary versions of analyses released for comment

In order to solicit early feedback, Metro staff released: a preliminary population and employment forecast and a preliminary residential UGR in March 2009; a preliminary housing needs analysis in April 2009;

and a preliminary employment UGR in May 2009. To the extent possible, comments received on the preliminary forecast, preliminary UGRs, and the preliminary housing needs analysis were addressed in the draft forecast and draft UGR, which were released in September 2009.

Metro advisory committee involvement

For over a year, MPAC, the Joint Policy Advisory Committee on Transportation (JPACT), and the Metro Technical Advisory Committee (MTAC) have been engaged in discussions of the UGR and possible growth management strategies. Beginning in September 2008, MPAC and JPACT considered the demographic changes that may impact residential growth and how the region plans to address population growth. This included a presentation on the topic by a visiting national scholar, Dr. Arthur (Chris) Nelson. During fall 2008, staff also presented to MPAC and JPACT the results of a series of "cause and effect" scenarios intended to illustrate the potential effectiveness of several different growth management and investment strategies. These "cause and effect" scenarios were also presented to the Transportation Policy Advisory Committee (TPAC) and to MTAC in an extended session.

Throughout the spring and summer of 2009, MTAC discussed the forecast, the preliminary UGRs and the preliminary housing needs analysis. During the summer of 2009, MTAC held two, three-hour-long sessions devoted entirely to discussing the preliminary analyses. These longer sessions were in addition to regular MTAC meetings where the forecast and the UGR were frequent agenda items. At the longer MTAC sessions, MTAC made recommendations on the UGR that were addressed in the draft UGR, which was released in September 2009.

MPAC discussed the forecast, UGR, and housing needs analysis on multiple occasions during the spring and summer of 2009. Several MPAC meetings included small group discussion formats to allow for more in-depth dialogue. At an October 23, 2009 retreat, MPAC took up the topic of the forecast and the draft UGR for four hours. Eric Hovee, the economic consultant who assisted in the UGR's employment analysis, was available at the retreat to answer questions posed by MPAC.

Additional stakeholder and public comment

Throughout 2009, the Metro Council and Metro staff have also engaged with numerous stakeholders on the topics of the forecast and the UGR. These meetings have included business interest groups, elected officials, land use planning advocacy groups, housing affordability advocacy groups, and city and county staff.

To solicit comments on the draft UGR (and other elements of the *Making the Greatest Place* initiative), seven open houses and five public hearings were held in locations throughout the region in September and October 2009. During this public comment period, comments were received in writing, as oral testimony, and electronically.

Comments received on the draft UGR

Because the UGR makes projections regarding future conditions, it elicits a variety of strong opinions from different perspectives. Staff believes that the forecast and UGR are based on sound and careful analysis and that the outstanding differences of opinion expressed by some cannot be reconciled with additional technical analysis. To aid the Council in its consideration of the completeness of the forecast and UGR, comments received on the draft UGR and staff responses are summarized in Attachment 1 to this staff report. To the extent possible or appropriate, staff has addressed comments in the final urban growth report. The general nature of comments is summarized below.

Business advocacy groups, the Port of Portland, Washington County, and the cities of Hillsboro, Cornelius, and Forest Grove have called for more optimistic employment forecasts (particularly in the high-tech manufacturing sector), higher capture rates[1], and lower refill rates[2]. These stakeholders have also suggested that the UGR's analysis should more fully take into account the site characteristics sought after by specific industry sectors. Finally, these stakeholders have requested that the UGR incorporate the conclusions of Economic Opportunity Analyses recently conducted by several cities.

The Homebuilder's Association of Metropolitan Portland disagrees with some of the UGR's assumptions and conclusions. Most notably, they find infeasible the 33 percent residential refill rate assumed in the UGR.

The cities of Portland, Lake Oswego, and Wilsonville as well as land use and housing affordability advocacy groups have expressed confidence in the analysis, calling for a focus on making more efficient use of the UGB's existing capacity and pointing to the need to take measures that address a changing economy, shifting demographics, climate change, brownfield cleanup, and housing affordability.

Comments from the general public typically focused on UGB decisions that the Council may consider in 2010 (rather than providing comments on the forecast and UGR analyses themselves). Those public comments were overwhelmingly in favor of making more efficient use of the region's existing capacity.

All of these discussions and comments have resulted in improvements to the final UGR's technical assumptions and its framing of policy choices. The revisions and technical corrections that Metro staff recommends making to the September 15, 2009 Draft UGR are summarized in Attachment 2 to this staff report.

Staff recommends two noteworthy revisions to the analysis. The first revision is the expansion of the range of additional capacity that may be demanded for large lot industrial uses (revised from 200-800 acres to 200-1,500 acres), as unanimously recommended by MPAC. The second is a revision to the estimate of acres that may be demanded for future parks, which, to a small degree, reduces the current UGB's residential capacity. This revision for future park acreage uses the approach recommended by MPAC in 2002, but provides an updated estimate that correlates to the current population forecast.

MPAC recommendation

On November 18, 2009, the UGR and forecast were taken up as an action item by MPAC. MPAC recommended several additions to the language of the resolution that is before the Council. MPAC's key additions to the resolution are a specific reference to the importance of addressing housing affordability and the need to focus on brownfield cleanup and lot assembly to address large lot industrial demand. MPAC also recommended a revision to the UGR's estimate of large-lot demand, which was discussed earlier in this staff report. With those revisions, MPAC unanimously recommended that the Metro Council vote in favor of this resolution.

Next steps

If the Metro Council votes in favor of this resolution, it accepts the forecast and the UGR as complete. The Council is not yet making a decision on where within the demand ranges to plan or whether to make

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[1] Capture rate refers to the share of the larger 7-county area's population or employment growth that is expected to come to the Metro UGB.

[2] Refill rate refers to the share of future residential or employment development that occurs through redevelopment or infill.

a UGB expansion. During 2010, Metro staff will work with cities in the region to identify new policies or investments that increase the capacity of the current UGB (e.g. zoning) or increase the likelihood that capacity in the current UGB will be developed in the next 20 years (e.g. investments in centers, corridors, employment and industrial areas, and recent UGB expansion areas). Only policies or investments that are formally adopted or approved can be considered. The effects of those actions will be assessed by the end of 2010, when the Metro Council considers the adoption of a capacity ordinance. Any remaining capacity gap would need to be addressed through UGB expansions.

2010: At least 50 (and up to 100) percent of any capacity need must be addressed by the end of 2010. Any capacity need that is being addressed through efficiency measures inside the current UGB must be identified.

2011: The end of 2011 is the State deadline for making UGB expansions, if needed.

ANALYSIS/INFORMATION

1. **Known Opposition**
   Business interest groups, the Port of Portland, several cities in Washington County, and Washington County itself previously indicated that the September 15, 2009 Draft UGR did not identify a large enough gap in the UGB's capacity to accommodate employment growth. A particular focus of their criticism of the UGR has been large-lot employment demand, which these stakeholders contend is underestimated in the UGR to the detriment of the region's future economic health. MPAC has recommended a revision to the range of capacity demanded for large-lot employment uses. This revision has satisfied cities in Washington County with seats at MPAC, but Metro staff is unaware whether this revision satisfies all others who have voiced concern.

2. **Legal Antecedents**
   The forecast and UGR are completed to satisfy:
   - Statewide Planning Goals 10 (Housing) and 14 (Urbanization)
   - Oregon Revised Statutes 197.296, 197.299, and 197.303 (Needed Housing in Urban Growth Areas)
   - Oregon Administrative Rules, Division 24 (Urban Growth Boundaries)
   - Metro Regional Framework Plan, Chapter 1 (Land Use)
   - Metro Code, section 3.01.020(a) and (b)

3. **Anticipated Effects**
   Council acceptance of the forecast and UGR will allow Metro to meet its legal requirements under State law and to begin work identifying the possible policy options to consider in 2010 to enable the region to achieve its desired outcomes.

4. **Budget Impacts**
   The budget for fiscal year 2009/2010 includes staff resources for this work program. The fiscal year 2010/2011 budget will need to include staff resources.

RECOMMENDED ACTION

Staff recommends that the Metro Council accept the 20 and 50 year Regional population and employment forecasts and the capacity analysis in the Urban Growth Report 2009-2030, with the revisions recommended in this Staff Report.

ATTACHMENT 1

DRAFT URBAN GROWTH REPORT COMMENT INDEX
Fall 2009

FROM	*AFFILIATION*	*DATE*
Alford, Heidi		October 14, 2009
Anderson, Michael	Oregon Opportunity Network	October 14, 2009
Arcana, Judith		September 18, 2009
Battan, Jim		September 16, 2009
Becker, Michael		September 18, 2009
Bender, Rodney		September 18, 2009
Bidwell, Michael Patrick		September 18, 2009
Bookin, Beverly	Commercial Real Estate Economic Coalition	September 24, 2009
Boone, James L.		September 20, 2009
Brewster, Ginny		September 17, 2009
Brewster, Ginny		September 17, 2009
Brown, David		September 18, 2009
Brown, R.		September 18, 2009
Burke, Elizabeth		September 18, 2009
Carley, Ron and Fuglister, Jill	Coalition for a Livable Future	October 15, 2009
Carillo, Ken		September 18, 2009
Cavenaugh, Kevin		September 16, 2009
Cohen, Gerald J.	AARP – Oregon State Office	October 15, 2009
Conable, Barbara		September 18, 2009
Cox, Bill		September 18, 2009
Cusack, Tom		
Cushwa, Nancy		September 18, 2009
Davis, Tim		September 17, 2009
Deagle, Susie		September 18, 2009
Dibblee, Martha		September 15, 2009
Digman, Joe		September 18, 2009
Dorner, Catherine		September 18, 2009
Durtschi, Kay	Citizen Member – Metro Technical Advisory Committee	October 15, 2009
Effman, Jason		September 18, 2009
Elteto, Louis		September 18, 2009
Fain, Lisa		September 18, 2009
Fitzgerald, Marianne	Southwest Neighborhoods, Inc.	October 15, 2009
Franchesi, Cheryl and Terry		October 15, 2009
Frank, Lona Nelsen	ALPACAS of Tualatin Valley LLC	September 16, 2009
Gadea, Francisco		September 18, 2009
Gerth, John		September 18, 2009
Goldfarb, Gabriela		October 8, 2009
Goldsmith, Dell		October 10, 2009
Green, Karla		September 18, 2009
Gregory, Michele	Multnomah County Planning Commissioner	September 16, 2009
Hagen Jr., Jon Edwin		September 18, 2009
Hammon, Virginia		October 8, 2009
Hanrahan, Steve		September 18, 2009
Harvey, Linda A.		September 18, 2009
Hauk, Marna		September 18, 2009
Helm, Polly		October 15, 2009
Heyne, Klaus		September 18, 2009

City of Hillsboro (Alwin Turiel)	City of Hillsboro	October 8, 2009
Hoem, Shirley		September 15, 2009
Houck, Mike	Urban Greenspaces Institute	October 10, 2009
Hunter, Christopher		September 18, 2009
Jackson, Kelly M.		September 18, 2009
Jacobson, Pat and Jake		September 18, 2009
Johnson, Chuck		September 18, 2009
Johnson, Ellen	Housing Land Advocates	October 15, 2009
Johnson, Michael		September 18, 2009
Jones, D.		September 18, 2009
Kaplan, Seth		September 18, 2009
Karlock, Jim		October 15, 2009
Kemper, Heather	Legal Aid Services of Oregon	October 15, 2009
Kraft, Tom		September 15, 2009
Kulley, Marlowe		September 17, 2009
City of Lake Oswego (Mayor Jack Hoffman)	City of Lake Oswego	October 13, 2009
LeFeber, Bob	Commercial Realty Advisors	October 14, 2009
Lanker, Stefan		September 18, 2009
Larco, Dorothy		September 18, 2009
Laws, Kathleen		September 18, 2009
Leinova, Avery S.		September 18, 2009
Lindsey, Carolyn		September 18, 2009
Lord, Pamela J.		September 18, 2009
Malmquist, Bret		September 18, 2009
Meehan, Hilary		September 18, 2009
Merchant, Bonnie		September 18, 2009
Micheletti, Dustin		September 18, 2009
McClanahan, Gary		September 18, 2009
McClay, Mauria		September 18, 2009
McCracken, Rhiannon		September 18, 2009
McDonough, Sandra	Portland Business Alliance	October 15, 2009
McGrath, Teresa		September 20, 2009
McKinney, Trenton		September 18, 2009
Neer, Steven		September 18, 2009
Nielsen, Charles E.		October 10, 2009
Nielsen, David	Home Builders Association of Metropolitan Portland	October 13, 2009
Newman II, Will		September 17, 2009
Newman II, Will		October 15, 2009
Parker, Terry		October 15, 2009
Parks, Lindsay		October 8, 2009
Pearmine, Katie		September 18, 2009
Peterson, Kathryn		September 18, 2009
Platt, Thomas		September 18, 2009
Platt, Thomas		September 18, 2009
Port of Portland (Bill Wyatt)	Port of Portland	October 15, 2009
City of Portland (Mayor Sam Adams)	City of Portland	October 15, 2009
Pratt, Elizabeth	The League of Women Voters of Portland	October 15, 2009
Price, William R.		September 18, 2009
Qamar, Lawrence		October 15, 2009
Reid, Bill	Johnson Reid LLC	September 29, 2009
Roberts, Jeff		September 21, 2009

Rojas, Carlos		September 16, 2009
Rollow, Nina		September 18, 2009
Ross, Kelly	Western Advocates	October 15, 2009
Schlueter, Jonathan	Westside Economic Alliance	October 15, 2009
Seamons, Joe		September 18, 2009
Smith, Jefferson		October 15, 2009
Spady, Sha		September 21, 2009
Stec, Bradley		September 18, 2009
Stephens, Charlie		
Stout, Mel		September 15, 2009
Streicker, Gail		September 18, 2009
Swaren, Ron		October 15, 2009
Sweeney, J. J.		September 18, 2009
Thompson, James		September 18, 2009
Thrower, Ashley		September 18, 2009
Toll, Peter		September 16, 2009
City of Tualatin (Mayor Lou Ogden)	City of Tualatin	October 14, 2009
Waksman, Steve and Deborah		September 18, 2009
Wallauer, Martha and Robert		September 17, 2009
Washington County (Greg Miller)	Washington County	October 15, 2009
Waterston, Debra		September 18, 2009
Wilkerson, Carol Metzger		September 18, 2009
City of Wilsonville (Stephan Lashbrook)	City of Wilsonville	October 15, 2009
Wixson, Gene		September 18, 2009
Woodruff, Claire		September 18, 2009
Woods, Deanna G.		September 18, 2009
Young, Laura		October 12, 2009
Cities of Banks, Cornelius, Forest Grove, Hillsboro and North Plains (Mayors Kinsky, Bash, Kidd, Willey and Hatcher	Multiple Cities	October 9, 2009

Employment UGR—technical comments		
Comment attribution	**Comment summary**	**Metro staff response**
City of Cornelius City of Forest Grove City of North Plains City of Hillsboro City of Banks Johnson-Reid	Metro's cluster forecast is incorrect because it does not include NAICS code 334, which is the code under which solar panel manufacturing would fall.	All NAICS codes, including 334, are included in the Metro forecast. NAICS code 334 is also included in the cluster forecast. The UGR's narrative erroneously states that SolarWorld is in NAICS code 2211, but this text error has no effect on the forecast or the assessment of land need. See Appendix 3 to the UGR for a list of the NAICS codes that are included in each cluster. See Appendix 12 to the UGR for the complete forecast, which includes all sectors.
City of Cornelius City of Forest Grove City of North Plains City of Hillsboro City of Banks Johnson-Reid	The UGR should forecast future land needs for specific industry clusters, including high tech, solar manufacturing, and bio-pharma.	Statewide Planning Goal 14 (Urbanization) requires that Metro ensure capacity for housing and employment. It does not require Metro to supply land with the specific characteristics that may be desired by individual industries or industry clusters. Long-term predictions about the site needs of specific (and emerging) industries are likely to be incorrect. When making specific decisions to expand the UGB, the needs of industry clusters may be considered.
City of Cornelius, City of Forest Grove, City of North Plains, City of Hillsboro, City of Banks, Johnson-Reid, Port of Portland, Portland Business Alliance, Commercial Association of Realtors	The UGR does not adequately incorporate the analysis found in the Hillsboro Draft Economic Opportunities Analysis.	Statewide Planning Goal 9 (Economic Development) requires cities and counties to provide for the specific types of employment needs and opportunities they identify in their Economic Opportunity Analyses (EOA). Goal 9 does not, however, apply to Metro. Oregon Administrative Rule 660-024-0040(5) states that "except for a metropolitan service district [Metro]... the determination of 20-year employment land need for an urban area must comply with applicable requirements of Goal 9..." EOAs often identify specific employment sectors that are the focus of a city's economic development strategy. In EOAs, those priority clusters are sometimes assumed to see additional growth beyond what is indicated in a trend forecast. The UGR, on the other hand, provides an assessment of all employment sectors without identifying priority sectors. Though it may be beneficial to have a regional economic development strategy, Metro has not been charged with the task of developing that strategy and does not presume to have that role. Metro does, however, have a role in coordinating the population and employment forecasts for the region. Adding up the results of individual city forecasts would likely overstate regional growth in some sectors and understate it in others. Metro has some methodological concerns with the Hillsboro Draft Economic Opportunity Analysis (EOA). Primary concerns include: 1) The Hillsboro EOA's forecast treats Metro's older, pre-recession, medium forecast as a low (baseline) forecast. The Hillsboro EOA forecast explicitly rejects

Employment UGR—technical comments		
Comment attribution	**Comment summary**	**Metro staff response**
		the long-term impacts of the current recession on manufacturing sectors. 2) The Hillsboro forecast for NAICS code 334 (computer and electronic product manufacturing), and photovoltaic panel manufacturing, in particular, is so optimistic that it overwhelms the entire seven-county forecast for this sector. Population growth rates as well as the growth rates for other employment sectors have to have some logical consistency and also fit within the context of a national forecast. If the Hillsboro forecast for this sector were correct, it would have serious implications for overall regional growth as well. Factoring in the multiplier impact of the Hillsboro photovoltaic forecast would essentially explode the forecast for manufacturing, which in turn would stimulate growth in nonmanufacturing sectors such as services, retail, finance and other industries. Assuming the multipliers play out as usual, the employment forecast would likely increase from 1.5 percent annual growth (the current Metro forecast) and exceed two percent annual growth. Already, the Metro regional forecast is projected to grow faster than the U.S. average by 75 percent. At above two percent, our region's projected growth would exceed twice the normal rate. In addition, population growth would have to follow suit. Over a 20 year period, greater than two percent population and total employment growth is not realistic or sustainable. It is unlikely that a mature region like Portland metro can grow so much faster over the long-term than the regional, state and national trends depicted by other forecasters. The Hillsboro forecast for photovoltaic panel manufacturing employment is based on the Oregon Department of Energy goal for megawatts of electricity generated from solar panels. This methodology is predicated on the assumption that a significant share of the world's solar panels will be manufactured in Hillsboro. Solar panel manufacturing has entered a phase of standardization and overseas production, where companies will be competing based on low prices and low wages. Ramped up solar panel production in China and a softening of demand in Europe have resulted in a 50 percent drop in solar panel prices over the last year. This same trend has occurred in many other manufacturing sectors and is not expected to reverse itself. The greater degree of specificity found in the Hillsboro forecast, with its effort to make predictions about particular technologies (e.g. solar panels) makes it more

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Comment attribution	**Comment summary**	**Metro staff response**
		likely to be incorrect. When planning for the longer term, policy decisions will be much better served by forecasts that portray generalized aggregates that are tied to national data that have been exposed to continuous scrutiny. The Hillsboro EOA does not provide documentation of the methodologies used to forecast additional growth in the bio-tech and high tech clusters.
City of Cornelius City of Forest Grove City of North Plains City of Hillsboro City of Banks Johnson-Reid	Metro's forecast understates growth in solar manufacturing, bio-pharma, and high tech manufacturing, sectors in which our region has historic strengths.	The Metro forecast is based on data from IHS Global Insight, an internationally respected economic forecasting firm whose data is used by numerous public and private institutions. That data is subsequently adjusted to reflect our region's historic trends and economic strengths. Metro's forecast, in fact, indicates that the region will have a faster rate of growth in manufacturing and, more specifically, electronics manufacturing than the United States as a whole. But, as with the rest of the U.S., it is anticipated that manufacturing will represent a smaller share of total employment in the future. The recent recession is anticipated to have long-lasting effects, particularly on industrial sectors. Metro's forecast model has been peer-reviewed as has the recent Metro forecast (which includes the employment forecast). The peer review panel expressed confidence in the forecast's methodologies and results.
Westside Economic Alliance	Metro's forecast calls for a substantial decrease in manufacturing employment. "The Westside Economic Alliance rejects the premises used to explain these forecasts and challenges Metro to reconsider the implications of this vision."	The Metro seven-county forecast indicates growth in manufacturing employment at both the high and low ends of the forecast range. The forecast indicates that manufacturing will represent a smaller share of future employment. The Metro forecast also indicates that at the high end of the employment range forecast, manufacturing may bounce back faster than the rest of the economy.
Westside Economic Alliance	Metro's forecast is incorrect because it assumes that phenomena such as global warming, rising fuel prices, and a degraded environment will stifle population growth in the seven-county region.	Metro's seven-county forecast makes no assumptions about possible catastrophic events. Forecasted population growth rates are the product of large-scale demographic trends. The UGR suggests that rising fuel prices and climate change are compelling reasons to consider growth management policies carefully. The use of a range forecast allows for that policy discussion.
Urban Greenspaces Institute	If Climate Change increases the number of floods and wildland fires, temperatures elsewhere in the U. S., especially in the arid regions of the Southwest, is it possible Climate Change "refugees" might increase population projects even more than your current	Metro staff agrees that there is evidence to suggest that climate change may cause inter-regional migrations, but it is not clear what the degree and direction of these migrations may be. Consequently, Metro's seven-county forecast makes no assumptions about possible catastrophic events. The UGR suggests that rising fuel prices and climate change are compelling reasons to consider growth

Employment UGR—technical comments		
Comment attribution	**Comment summary**	**Metro staff response**
	modeling suggests?	management policies carefully. The use of a range forecast allows for that policy discussion.
Westside Economic Alliance	The seven-county forecast is wrong because growth rates are lower than at any time since Oregon was granted statehood.	Growth rates are forecasted to decline, but this is because of the mathematics of having an ever larger base (existing) population. When expressed in absolute numbers, the forecast is consistent with previous forecasts, which have proven accurate (see Table 1, attached to the end of this document, for a comparison of an older Metro forecast with actual growth).
City of Cornelius City of Forest Grove City of North Plains City of Hillsboro City of Banks Johnson-Reid	The presence of an existing solar manufacturing cluster in Hillsboro will result in western Washington County capturing the bulk of future high tech and solar manufacturing jobs.	Solar manufacturing firms can be found throughout Oregon, the United States, and the world. Please see Table 2, attached to the end of this document, for a summary of Oregon's recent solar recruits' location choices. Two out of the nine recruits are in Hillsboro (one of those two, SpectraWatt, has since relocated to New York because of public subsidies), while the remaining firms are dispersed throughout the state.
Port of Portland	A job forecast is inadequate for assessing land needs associated with commodity flows (freight, logistics).	This is a comment that Metro received on the preliminary UGR as well. Metro would welcome specific suggestions on how to perform this portion of the assessment differently, but has not received any to date. Staff proposes that the final UGR should reflect the Metro Policy Advisory Committee's recommendation to revise the identified demand for large lot capacity from 200-800 acres to 200-1,500 acres. This revision would acknowledge the potential shortcomings of using an employment forecast as the sole basis for assessing large lot demand. The UGR's analysis considers land extensive uses with fewer employees. The overall demand model assumptions on employees per square foot by building type have also been revised based on the feedback received on the preliminary analysis. These adjustments should address some concerns about land demand for freight uses.
Port of Portland	Freight facility expansion would likely consume other industrial land, which, in turn, would trigger demand for additional industrial land elsewhere in the region.	Freight-related jobs are included in the regional forecast and demand for capacity that is generated by these jobs is included in the UGR's assessment. Suggestions that a job forecast is not an adequate means of estimating land demand for freight uses have not been accompanied by specific suggestions for an alternative methodology.

Employment UGR—technical comments		
Comment attribution	**Comment summary**	**Metro staff response**
		Staff proposes that the final UGR should reflect the Metro Policy Advisory Committee's recommendation to revise the identified demand for large lot capacity from 200-800 acres to 200-1,500 acres. This revision would acknowledge the potential shortcomings of using an employment forecast as the sole basis for assessing large lot demand.
Port of Portland	Modify the region's assumed job capture rate to make it more aggressive.	The capture rates (industrial and non-industrial) used by Metro in the UGR are an output of scenario modeling. The policy and investment inputs into that modeling are intended to represent a continuation of current policies and investment trends. If the region is to achieve a higher job capture rate, it would likely need to implement new policies and investments. Expressing a different point of view, we have received comments from Clark County and Vancouver that the assumed capture rate is too high.
City of Cornelius City of Forest Grove City of North Plains City of Hillsboro City of Banks Johnson-Reid	Large, vacant lots are needed in order to attract solar manufacturers to the Portland metropolitan region.	The location choices of several of Oregon's recent solar manufacturing recruits indicate that large, vacant lots are not needed by most firms. Please see Table 2, attached to the end of this document, for a summary of Oregon's recent solar recruits' location choices. Of the nine recent recruits listed, seven are on properties smaller than 25 acres (three of those are on less than 10 acres). Two-thirds of these recent recruits, including SolarWorld, North America's largest solar manufacturer, have located in existing buildings. One firm, SpectraWatt, has left Oregon for New York despite having a vacant 20 acre site (cited reason is because the public subsidies offered were more enticing). Staff proposes that the final UGR should reflect the Metro Policy Advisory Committee's recommendation to revise the identified demand for large lot capacity from 200-800 acres to 200-1,500 acres. This revision would acknowledge the potential shortcomings of using an employment forecast as the sole basis for assessing large lot demand. The Metro staff recommendation is that the region should find ways to use our existing inventory of land more efficiently.
Port of Portland, Commercial Real Estate Economic Coalition	Land must be in the right amount and in the right location for the needed purpose.	Statewide Planning Goal 14 (Urbanization) requires that Metro ensure capacity for housing and employment. It does not require Metro to supply land with the specific characteristics that may be desired by individual industries or industry clusters.

Employment UGR—technical comments		
Comment attribution	**Comment summary**	**Metro staff response**
		The purpose of the UGR is to identify any gap in capacity, not to assess how and where to address the gap. Local and regional investments can support efficient utilization of land inside the UGB.
Port of Portland	Much of the region's inventory of industrial land is not ready for development due to substantial constraints including brownfield status, location or lack of infrastructure, and regulatory overlays.	These constraints are taken into account in the UGR. Brownfield sites are assumed to only be available for development in the longer term. Only half of the capacity in recent UGB expansion areas is assumed to be available in the 20-year time frame because of infrastructure shortcomings. Portions of tax lots with environmental constraints are not included in the buildable land inventory. See Tables 27 and 28 on pages 72 and 73 of the UGR for additional information.
Commercial Association of Realtors	The UGR should not assume that public financing will be in place for unknown targeted public investments.	The UGR only assumes those policies and investment trends that currently exist.
Port of Portland	The buildable land inventory does not account for upland habitat protections that reduce capacity for development.	Title 13 (Nature in Neighborhoods) upland habitat protections only apply to future UGB expansion areas. The UGR assesses the current UGB's capacity.
Urban Greenspaces Institute	How many acres of the region's supply of buildable land for employment are urban forest canopy, headwaters areas, and other natural resource lands?	The UGR's buildable land inventory takes into account existing environmental regulations, discounting the inventory where appropriate.
Port of Portland	The lack of development in new urban areas (areas brought into the UGB since 1997) is not necessarily because of a lack of infrastructure or governance, but because the land is not suitable for industrial development.	Past UGB expansions have been made in the types of locations that are dictated by current State law. Over time, these areas are intended to develop into complete communities, including employment opportunities. It is hoped that the designation of urban reserves will identify sites that are well-suited for development. Metro staff believes that infrastructure and governance must be addressed to make any future UGB expansion areas developable.
City of Tualatin, Commercial Association of Realtors	The UGR should not assume that industrial uses will locate in multi-story buildings.	The UGR's analysis does not assume that industrial uses will locate in multi-story buildings.
Commercial Association of Realtors	The UGR should not assume "ever-increasing" floor-area ratios for all building types with no regard for market feasibility.	Metro staff concurs and asserts that the UGR's assumptions regarding floor-area ratios (FAR) are conservative. No change in FAR is assumed in the short-term and very modest increases (10%) are assumed in the long-term. Assumptions about increases in FARs for industrial uses are particularly modest. The FARs that are assumed in the UGR account for the thresholds at which structured parking becomes necessary.
Commercial Association	The refill rates assumed in the UGR do not seem	The refill rates assumed in the UGR are the product of modeling that is informed

Employment UGR—technical comments		
Comment attribution	**Comment summary**	**Metro staff response**
of Realtors	reasonable.	by historic data and professional expertise.

Employment UGR—policy comments		
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City of Cornelius, City of Forest Grove, City of North Plains, City of Hillsboro, City of Banks, Johnson-Reid, Port of Portland, Portland Business Alliance, Commercial Real Estate Economic Coalition	Undersupplying land for priority industry clusters would be harmful to the economy.	Metro performs the UGR analysis every five years to ensure a 20-year supply of capacity for jobs. The effect of this is that, in the short-term (five years), there will be four times the needed capacity for jobs. It is extremely unlikely that amount will be insufficient to accommodate growth before the next UGR analysis in five years. This five-year cycle creates a built-in cushion to allow for choices among sites. Experience has shown that the majority of recent solar manufacturing recruits have located in existing buildings and on smaller sites. The final UGR will reflect the Metro Policy Advisory Committee's recommendation to revise the identified demand for large lot capacity from 200-800 acres to 200-1,500 acres. This revision acknowledges potential shortcomings of using an employment forecast as the sole basis for assessing large lot demand.
Port of Portland	Regional choices related to land supply and transportation will determine the economic future of the region.	Many factors at the global, national, state, regional and local levels have effects on the region's economy. The UGR is not intended to serve as an economic development strategy; it informs land supply decisions that will be made in 2010.
Port of Portland	One of the "six desired outcomes" is economic competitiveness and prosperity—why is there no strategy presented to achieve this outcome or an assessment of how other desired outcomes may conflict with this outcome?	The purpose of the UGR is to identify whether a capacity gap exists and, if so, to what degree. This UGR intentionally presented a variety of policy options to consider for addressing land demand and achieving the region's desired outcomes, but it is not the purpose of the UGR to determine the specifics of those policy options. The viability of those policy options does not have an impact on the capacity analysis. Those policy options can be more thoroughly considered in 2010.
Port of Portland	The UGR and transportation investment strategy need to link up with industry cluster needs. Use the Portland Regional Partners for Business list of clusters instead of the Portland Development Commission's (PDC) list.	Though it may be beneficial to have a regional economic development strategy, Metro has not been charged with the task of developing that strategy and does not presume to have that role. Because there is no agreed upon regional economic development strategy, there is no "right" cluster list to use. The Draft UGR used the PDC list as a way of presenting information in a format that addresses the economic development priorities of many cities in the region. The full forecast, which includes all employment sectors, is the basis for the capacity assessment. The cluster forecast does not figure into the capacity assessment. New cluster definitions will not change the capacity assessment.
City of Portland	The vast majority of our jobs are created through the growth of small businesses. We need to nurture and	Metro's analysis indicates that most employment will occur in smaller firms. Attracting larger firms is also of importance to the region's economy.

Employment UGR—policy comments		
Comment attribution	**Comment summary**	**Metro staff response**
	retain those companies while attracting others.	
Port of Portland	Two key elements of the strategy for providing large lot supply (brownfield cleanup and fast process for UGB expansions) will be undefined at the close of public comment on October 15.	The purpose of the UGR is to identify whether a capacity gap exists and, if so, to what degree. This UGR intentionally presented a variety of policy options to consider for addressing land demand, but it is not the purpose of the UGR to determine the specifics of those policy options. The viability of those policy options does not have an impact on the capacity analysis. Those policy options can be more thoroughly considered in late 2009 and in 2010.
Port of Portland, Commercial Real Estate Economic Coalition	Brownfield cleanup should be a priority	Metro concurs that brownfield cleanup should be a regional priority and welcomes partnerships to institute more brownfield cleanup programs. A MPAC subcommittee will be looking at brownfield cleanup as one option to make more of the region's existing industrial capacity available.
City of Portland	The City of Portland is committed to cleaning up, over time, the City's brownfield sites.	The City has a strong brownfields cleanup program and Metro efforts, focused elsewhere in the region, serve as a complement. Metro staff is open to new opportunities to partner with the City of Portland in brownfield cleanup.
City of Portland	The City of Portland is committed to consolidating and assembling adjoining parcels to provide larger sites. Opening up huge tracts of otherwise excellent agricultural land for industry, when we have land with services already in the UGB, doesn't make sense from a regional investment point of view.	Metro staff is open to opportunities to partner with the City of Portland in employment land assembly.
Port of Portland	A regional infrastructure fund is needed to make industrial sites shovel ready.	Infrastructure funding shortfalls have made it difficult to develop the region's existing supply of land for industrial uses. Metro welcomes a discussion of developing a regional investment strategy, including discussions about possible funding sources.
Portland Business Alliance	There is no reason to expect that funding will be more readily available for refill development than for expansion and to assume otherwise overstates the region's ability to accommodate growth in the existing land supply.	The refill rates that are assumed in the UGR are based on a continuation of existing public investment trends.
Commercial Association of Realtors	The Association appreciates the UGR's improved analytical approach and sensitivity to market realities, but does not believe its estimates or projections. The UGR should make conservative, market-based assumptions.	Metro staff appreciates the input given by the Commercial Association of Realtors that informed some of the UGR's technical assumptions. Metro staff believes that its approach to this analysis is market reality-based.

Employment UGR—policy comments		
Comment attribution	**Comment summary**	**Metro staff response**
Commercial Association of Realtors	The UGR should not assume that the market will respond to our policies and investments.	As pointed out by the Commercial Association of Realtors, this UGR has an improved analytical approach that acknowledges market dynamics. The UGR's market assumptions are informed by modeling, historic evidence and the professional expertise of Metro staff, consultants, and private sector representatives.
Commercial Association of Realtors	The UGR should not assume political support for some set of future policy actions	The UGR only assumes those policies and investment trends that currently exist.
Port of Portland Portland Business Alliance	The "fast track" UGB expansion process that has been proposed by some will not be fast enough once planning, annexation, zoning, and infrastructure construction are considered.	An MPAC subcommittee will take up the issue of how to ensure that large lots are available and protected for industrial uses. The fast-track process is one proposal. Metro welcome other proposals.
Johnson-Reid	The draft UGR does not consider lands north of the existing Washington County UGB as candidate expansion areas for employment growth, modeling, and employment land capacity study.	The UGR's purpose is to identify any gap in the capacity of the current urban growth boundary (UGB) to accommodate growth. The UGR is not intended to examine how or where to fill a capacity gap outside of the current UGB. Scenario modeling was used to inform the UGR. Those scenarios assume a continuation of current policies and investment trends and, as such, assume that future UGB expansions will follow the existing hierarchy of lands as defined by State law. When urban and rural reserve designations are made, scenario assumptions about future UGB expansions will be adjusted.
Port of Portland	Habitat protection programs at the regional and local levels reduce the efficiency with which land is used inside the UGB.	Habitat protection and provision of parks and open spaces are key components of the 2040 Growth Concept. Balancing these goals with efficient development of land is often challenging and Metro is always looking for new ways of doing so.
Port of Portland	The UGR implies that there has been a problem of industrial land conversion and that there is a need to revise Title 4 of the Urban Growth Management Functional Plan. Title 4 provides adequate protection. If there are conversions from industrial uses, it is an enforcement issue.	Metro staff hopes to compile more information to determine whether industrial land conversion has been occurring and, if so, why. An MPAC subcommittee will take up the issue of how to ensure that large lots are available and protected for industrial uses.
Commercial Association of Realtors, Citizen comments (less than five)	Expand the UGB	The decision about whether or not to expand the UGB will be made by the Metro Council, in consultation with MPAC, in 2010. That decision will be based on the UGR's analysis and any new policies or public investments that are adopted by the end of 2010 that affect the region's capacity.
Citizen comments	Focus growth inside the existing UGB	The decision about whether or not to expand the UGB will be made by the Metro

Employment UGR—policy comments		
Comment attribution	**Comment summary**	**Metro staff response**
(approximately 100)		Council, in consultation with MPAC, in 2010. That decision will be based on the UGR's analysis and any new policies or public investments that are adopted by the end of 2010 that affect the region's capacity.
Port of Portland, Portland Business Alliance, Commercial Association of Realtors	30 days is not an adequate amount of time for public review and comment on the UGR	Metro must meet a State-mandated deadline (end of 2009) for the Metro Council's acceptance of the UGR. The public will be able to comment throughout most of 2010 on the various policy choices that will be considered for closing any capacity gap identified in the UGR. Metro staff appreciates the time commitment that various advisory committees have made in providing review of the UGR. Metro has been working with advisory committees to refine the approach and contents of the UGR since winter of 2008. A preliminary UGR was released in May 2009 in order to proactively solicit and respond to technical comments. To the extent possible, comments received on the preliminary UGR have been addressed in the draft UGR. Please see Appendix 1 to the Draft UGR for a summary of comments received and draft Metro staff responses.

Residential UGR—technical comments		
Comment attribution	**Comment summary**	**Metro staff response**
City of Portland	Future trends such as higher energy costs, carbon taxes or regulations, and changing demographics make Portland well-positioned to provide future residents with the kinds of housing choices that they will desire. Portland has the ability to accommodate 140,000 more households without any changes to zoning.	The UGR's analysis indicates that the City of Portland and the region have ample zoned capacity to accommodate the next 20 years of residential growth. The UGR shows a need to attract the residential market to that zoned capacity. Policies and investments that encourage redevelopment and infill in centers and corridors should remain the region's focus. The trends cited by the City may attract more of the forecasted households to existing urban areas than contemplated by the UGR.
Home Builders Association of Metropolitan Portland	How does Metro plan on achieving refill rates of 50 percent?	The draft UGR assumes a 33 percent refill rate, which is in keeping with historic rates and, according to Metro's market-based economic model, is likely to be achieved under current zoning.
City of Tualatin Portland Business Alliance	A 33 percent refill rate may not be a reasonable expectation.	The draft UGR assumes a 33 percent refill rate, which is in keeping with historic rates and, according to Metro's market-based economic model, is likely to be achieved under current zoning.
City of Tualatin	Where is the analysis that indicates where refill will be occurring?	Refill rates are expected to vary from city to city, with generally higher rates in Portland than in outlying communities. Please see Maps 1-4, attached to the end of this summary, which show historic and forecasted refill rates throughout the region for single-family and multi-family residential development.
Home Builders Association of Metropolitan Portland	Lands that are likely spots ("low-hanging fruit") for refill have already seen refill occur.	Redevelopment and infill (redevelopment in particular) are ongoing market phenomena. There are many underutilized sites throughout the region that remain ripe for redevelopment and new opportunities will continue to emerge over time.
Home Builders Association of Metropolitan Portland	How does Metro anticipate having 71,000 housing units subsidized to the tune of up to $50,000 per home and what will the impact be on schools and other public services if urban renewal districts are used to created these subsidies and pull money away from other public services?	The Home Builders Association is referring to scenario assumptions in its comment. For the purpose of scenario modeling, Metro assumed a continuation of existing investment trends. The residential incentive assumptions that Metro made were reviewed by cities, counties, the Portland Development Commission, and the Metro Technical Advisory Committee. There are no assumptions made about new levels of investment. Better performance may be achieved with additional investments, investments in different locations, or simply with additional time. It is not the role of the UGR to determine the possible impact on schools and other public services if cities continue their urban renewal programs.
Home Builders Association of Metropolitan Portland,	The assumption about future park needs that is made in the UGR capacity calculation is incorrect. Cities and park providers have more financial resources today than they	There is no specific guidance in state planning law, from ORS 197.296 or Goal 8 on Recreational Needs, on methods to determine park needs. There is no perfect way of estimating future park needs since there is no regional level of service standard

Residential UGR—technical comments		
Comment attribution	**Comment summary**	**Metro staff response**
Western Advocates, Inc.	did in 2002 (year of previous UGR) to purchase park land.	for parks. To maintain an approach that is consistent with the approach used in 2002, staff proposes keeping the implicit parks level of service found in the 2002 UGR: In 2002 UGR: Forecasted 220,700 dwelling unit growth in 20 year period System-development-charge-based park deduction = 1,100 acres Implied level of service = 1,100 park acres for 220,700 new dwelling units Assuming same implied level of service as in 2002, then in 2009 UGR: Forecasted 262,400 dwelling unit growth in 20 years (baseline assumption) 1,100 /220,700 * 262,400 = **1,300 acres** of new park deduction The acres of parks and open space cited in the Regional Infrastructure Analysis include natural areas and other non-active use spaces. The UGR's parks calculation is only intended to estimate the land demand for active-use parks (i.e. not natural areas) since these are lands that could otherwise be buildable for residential purposes. The buildable land inventory takes into account vacant lands that are not buildable because of regulatory protections (Titles 3 and 13 of the Urban Growth Management Functional Plan).
Legal Aid Services of Oregon (Hillsboro Regional Office), Tom Cusack	Revise the table appearing on page 21 of Appendix 8 (needed housing data tables) to more accurately show the need for subsidies at higher rent levels than the less-than-$400 rent level currently shown.	Metro staff appreciates the careful review of the data and agrees that additional rent and ownership price categories should be denoted as "partially assisted." All categories of rental housing below $1,100 in rent and owner-occupied housing that is $200,000 or less in value may need government assistance. Corrections to tables 303.1a and 303.1b in Appendix 8 will be made in the final UGR.
Tom Cusack	Metro should review existing reports, Census data, and the American Community Survey data to determine the relative rate of Portland Metro housing mismatch by income and rent levels and adjust their demand/supply projections accordingly.	The UGR's method and the method proposed by Mr. Cusack are both valid approaches, but are suitable for different purposes. The method proposed by Mr. Cusack would provide an assessment of current conditions, but would not depict the housing production that is likely to occur in the next 20 years as required for the UGR. To get a sense of the mismatch referenced by Mr. Cusack, the housing needs analysis scenarios forecast future housing production and the number of future cost-burdened households (renters paying more than 50 percent of their income

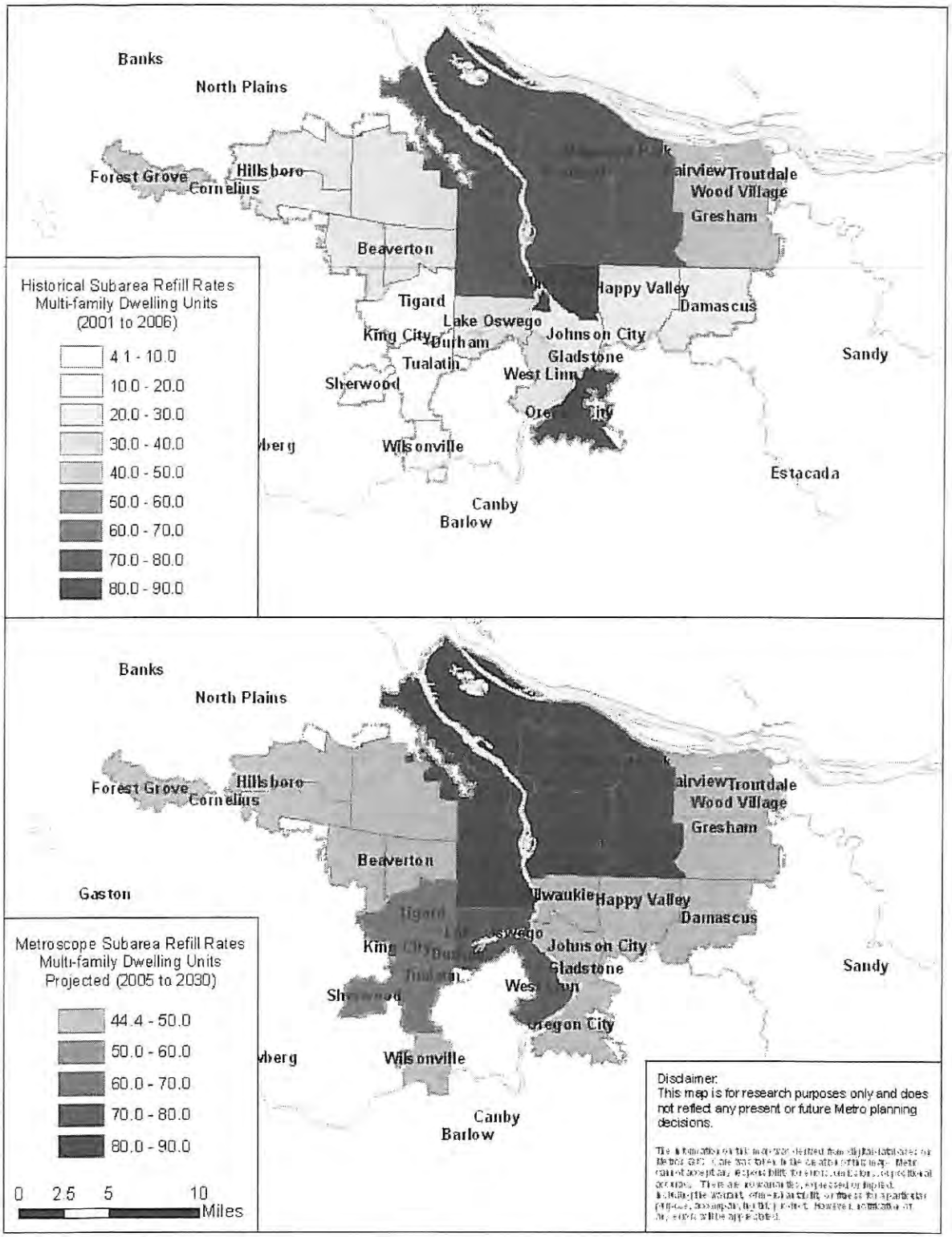
Residential UGR—technical comments		
Comment attribution	**Comment summary**	**Metro staff response**
		for housing and transportation). The UGR's approach acknowledges the fact that higher income households cannot be prevented from occupying market rate housing that is cheaper than what they could potentially afford.
Legal Aide Services of Oregon (Hillsboro Regional Office)	The report fails to mention and account for the impact of units otherwise affordable to lower income households being occupied by higher income households.	As pointed out in the comment, the analysis doesn't indicate what a household should pay (given their income), just what they do pay. This approach acknowledges that, rather than being static, housing prices are a product of market demand. This analytical approach is true to the dynamic faced by low income households in today's market. Without a housing quota system that sets aside housing for different income levels, this is also how future housing markets are expected to function. To assess affordability, the analysis provides information about the share of income spent on housing and transportation. For some households, this share is relatively small and for others it is substantial. It remains for policy discussion what can be done to improve these outcomes.
Legal Aid Services of Oregon (Hillsboro Regional Office), Tom Cusack	Add a narrative discussion and table that shows the relevant need for government housing including housing that receives public assistance.	Metro staff will add narrative to better describe affordable housing needs. The analysis indicates how many households (by rent or home price) may need government assistance. However, the question of how many households should receive government assistance is a policy matter that is open to interpretation. The UGR provides several analyses that can inform that discussion: Tables 303.1a and 303.1b, found in Appendix 8, provide the number of new, renter-occupied and owner-occupied dwelling units by rent or value range. In most rent ranges, there would appear to be a need for some amount of government assistance. This determination would also depend on wage levels. Tables 303.2a and 3032.b, found in Appendix 8, provide the number of renter-occupied dwelling units where the occupant is spending more than 50 percent of their income on transportation and housing. The UGR deems these households to be cost-burdened. The UGR further asserts that costs to these households may be reduced through a number of mechanisms including, but not limited to, subsidies. Other mechanisms include transit investments and changes to local zoning codes to allow a greater diversity of housing types and sizes.

Residential UGR—technical comments		
Comment attribution	**Comment summary**	**Metro staff response**
Legal Aid Services of Oregon (Hillsboro Regional Office)	Households with children, not seniors, will represent the majority of low income renters.	In trying to make the report more readable, Appendix 7 blends owners and renters. As a consequence, the low income renters with children household type is perhaps not as visible in the report as it could be. Household type two for renters has the same low income as household type one but is younger and has a larger household with a much greater chance of children being present. This household type has a higher propensity to consume renter single family homes and to travel much further than renter household type one. As noted in the comment, they consume a larger house or apartment than do seniors. As a consequence their cost burden is substantially higher (15 – 30%) than household type one.

Residential UGR—policy comments		
Comment attribution	**Comment summary**	**Metro staff response**
City of Lake Oswego	The City supports the UGR's analysis and is committed to helping expand capacity in the Foothills area of Lake Oswego to create a dense, new transit-oriented neighborhood.	Metro looks forward to working with Lake Oswego and other cities to identify how to regional and local actions can be coordinated to achieve local aspirations that are supportive of the 2040 Growth Concept.
Home Builders Association of Metropolitan Portland	The public will not accept higher densities.	The UGR analysis does not assume any change to current zoning, so the UGR does not assume higher zoned densities in existing neighborhoods. The 2040 Growth Concept calls for focusing growth in centers and corridors as directed by the region's citizens.
City of Wilsonville Coalition for a Livable Future	Infill and redevelopment in centers and corridors are generally preferable and more efficient that outward expansion. Infill and redevelopment protect natural resources. There is no money for infrastructure in UGB expansion areas. Infill and redevelopment can help to fund the maintenance of existing infrastructure. Infill and redevelopment will be necessary to reduce carbon emissions.	Infill and redevelopment are key market responses that the 2040 Growth Concept calls for in centers and corridors.
League of Women Voters of Portland	Compact urban form and the integration of land use and transportation will be essential for addressing climate change and providing equity of opportunity. Areas around transit centers and light rail stations, such as Lents and Gateway offer great potential and deserve attention in the investment strategy.	Metro staff concurs.
Home Builders Association of Metropolitan Portland	Policies that push more households to live outside the Metro UGB do not mesh with Metro's goals for sustainability.	Metro staff concurs that there are negative implications of having more people choose to live in neighboring cities and commuting back to the Metro region. The draft UGR identifies a residential capacity gap. There are multiple ways to fill that gap that will be discussed in 2010.
Urban Greenspaces Institute	The urban forest canopy, headwaters areas, and upland habitat must receive heightened protection if the region is to pursue infill and redevelopment. Title 13 is insufficient protection.	In determining the region's capacity for growth, the UGR must only assume regulations that are currently in place.
League of Women Voters of Portland	The League supports the diversification of the region's housing stock, by type and price.	Metro staff concurs that additional housing options are needed in the region in order to reduce the number and share of households that are cost-burdened.
Oregon Opportunity Network,	Housing and transportation affordability must be considered in growth management and investment	Metro staff concurs and notes that the UGR analysis finds that many of the region's existing centers and corridors offer the most affordable housing and

Residential UGR—policy comments		
Comment attribution	**Comment summary**	**Metro staff response**
Housing Land Advocates, AARP, Legal Aid Services of Oregon (Hillsboro Regional Office)	decisions. Transit-Oriented Development should be promoted.	transportation options. Yet, an affordability problem is likely to persist and perhaps worsen with a continuation of current policies and investment trends. Growth management policies and transportation investments alone will not, however, solve the affordability problem.
Legal Aid Services of Oregon (Hillsboro Regional Office)	Set concrete, regional goals, objectives and performance measures for housing affordability. Go beyond voluntary measures as they have not resulted in local jurisdictions making affordable housing a priority.	Metro staff appreciates this input. These tasks do not, however, fall under the purview of the UGR.
Home Builders Association of Metropolitan Portland	30 days is not an adequate amount of time for public review and comment on the UGR	The public will be able to comment throughout most of 2010 on the various policy choices that will be considered for closing any capacity gap identified in the UGR. Metro staff appreciates the time commitment that various advisory committees have made in providing review of the UGR. Metro has been working with advisory committees to refine the approach and contents of the UGR since winter of 2009. A preliminary UGR was released in May 2009 in order to proactively solicit and respond to technical comments. To the extent possible, comments received on the preliminary UGR have been addressed in the draft UGR. Please see Appendix 1 to the Draft UGR for a summary of comments received and draft Metro staff responses. Metro continues to try to give review and comment opportunities, but must meet a State-mandated deadline (end of 2009) for the Metro Council's acceptance of the UGR.
Citizen comments (less than five)	Expand the UGB	The decision about whether or not to expand the UGB will be made by the Metro Council, in consultation with MPAC, in 2010. That decision will be based on the UGR's analysis and any new policies or public investments that are adopted by the end of 2010 that affect the region's capacity.
Citizen comments (approximately 100), Southwest Neighborhoods, Inc.	Focus growth inside the existing UGB	The decision about whether or not to expand the UGB will be made by the Metro Council, in consultation with MPAC, in 2010. That decision will be based on the UGR's analysis and any new policies or public investments that are adopted by the end of 2010 that affect the region's capacity.

Maps 1 through 4:
Multi-family residential refill rates (historical and forecasted)



Single-family residential refill rates (historic and forecasted)

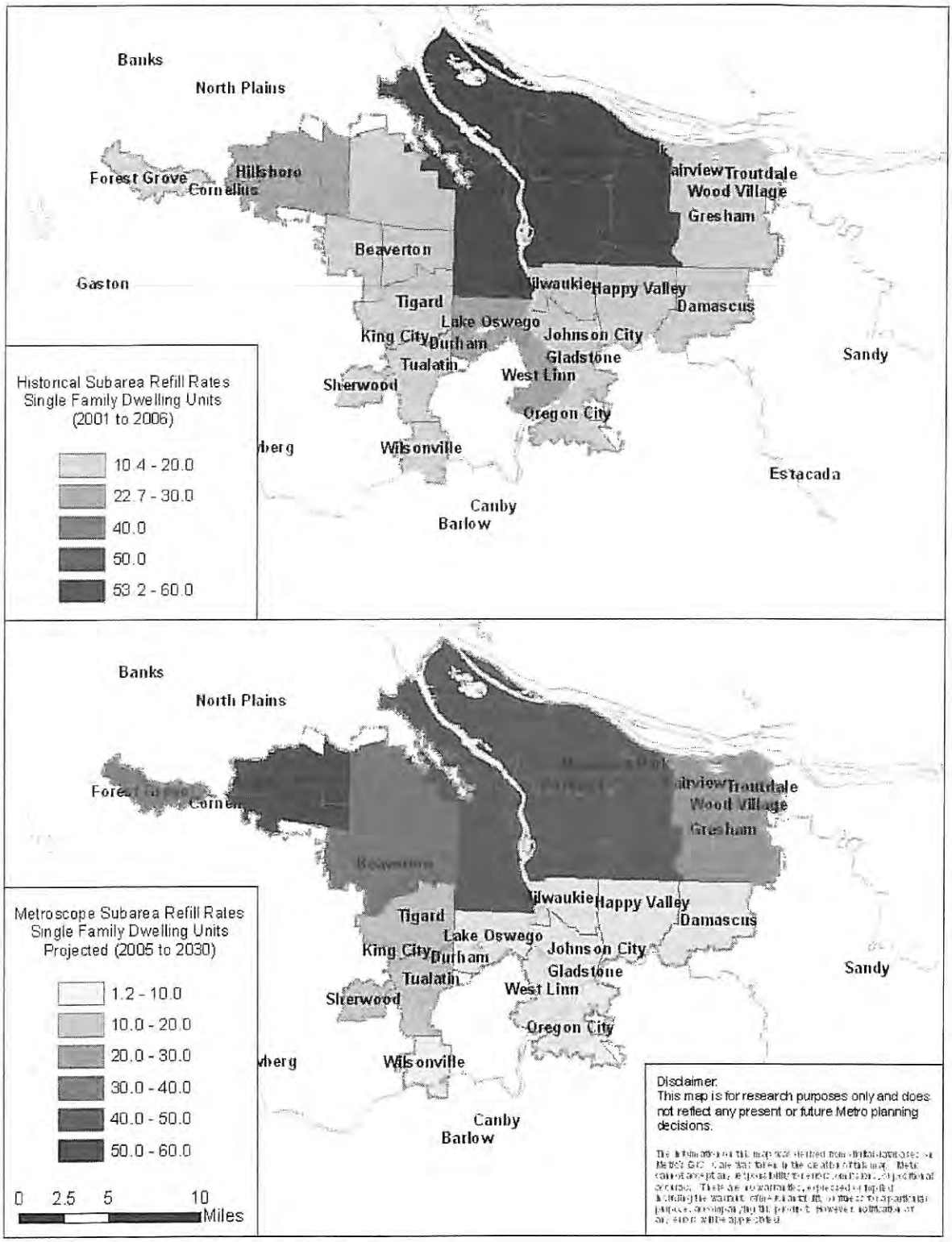


Table 1: Regional Forecast Comparison: History and 2000 UGR Forecast

Population - Portland Region (5 counties)

	Forecast	History	Difference	% Difference	commentary
2000	1,874,450	1,874,450	0	0.0%	forecast base year was 2000 Census
2001	1,902,500	1,922,984	-20,484	-1.1%	recession clouds pessimism in forecast outlook --> underforecast population growth
2002	1,934,340	1,958,976	-24,636	-1.3%	
2003	1,963,690	1,983,367	-19,677	-1.0%	
2004	2,007,710	2,003,354	4,356	0.2%	jobless recovery dampens regional up turn
2005	2,049,190	2,035,565	13,625	0.7%	
2006	2,090,960	2,075,034	15,926	0.8%	
2007	2,132,750	2,115,394	17,356	0.8%	
2008	2,170,100	2,147,260	22,840	1.1%	unforeseen recession taints trend forecast --> over forecast population growth
2009	2,203,000	2,158,115	44,885	2.1%	as steep drop in housing prices and economy depresses in-migration flows

Sources: Metro Regional Forecast: 2000-2030, Sept. 2002; U.S. Census Bureau; PSU; OFM

Employment - Portland Region (5 counties)

	Forecast	History	Difference	% Difference	commentary
2000	958,010	960,910	-2,900	-0.3%	forecast base year was 2000 BLS jobs
2001	954,750	953,750	1,000	0.1%	job growth stalls as recession hits the region
2002	951,300	932,260	19,040	2.0%	recession grips regional economy over a longer and deeper duration
2003	976,480	922,520	53,960	5.8%	--> over forecast growth during this down-cycle
2004	1,009,280	941,930	67,350	7.2%	
2005	1,043,510	971,190	72,320	7.4%	"jobless" recovery begins adding to a jobs recovery as real estate & finance bubble
2006	1,068,030	1,002,487	65,543	6.5%	spurs economic growth across the nation as growth inches towards pre-recession
2007	1,090,440	1,021,862	68,578	6.7%	growth trend
2008	1,120,200	1,022,319	97,881	9.6%	recession hits again --> over forecast jobs as growth again cycles deeper below
2009	1,144,900	N.A.			expected pre-recession employment trends

sources: Metro Regional Forecast: 2000-2030, Sept. 2000; U.S. Bureau of Labor Statistics and Oregon State Employment Division

5 counties = Multnomah, Clackamas, Washington, Yamhill and Clark

Table 2: Site choices of solar manufacturing firms in Oregon

Company	City	Acres	Using existing building?	Notes
PV Powered	Bend	9	Undetermined (appears yes)	Company founded in Bend. 100,000 square feet of building on former Oregon Woodworking site. Manufactures power inverters.
Solaicx	Portland	21	yes	
SolarWorld	Hillsboro	94	yes	Company in final stages of expansion at Hillsboro site. Moved into existing Komatsu silicon wafer facility.
Peak Sun Silicon	Millersburg	8	no	Company has option to purchase an additional 90 acres in Millersburg
XsunX	Wood Village	8.28	yes	Company first chose Oregon as a location and then began a site selection process, looking for existing buildings. The building that XsunX leases previously housed Merix, a high-tech manufacturer.
SpectraWatt	Hillsboro	20	no	Intel spinoff on Intel campus (has 20 acres). Halted construction because of a lack of investment money. Moved to New York because of public incentives.
Sanyo	Salem	20	no	
Oregon Crystal Technologies	Gresham	Less than 1	yes	In Rockwood urban renewal area – deciding between 2 existing buildings
Uni-Chem	Eugene	200	yes	Locating in old Hynix semiconductor factory, which is 1,000,000 square feet. Remainder of property is vacant.

ATTACHMENT 2

Proposed revisions and corrections to September 15, 2009 Draft Urban Growth Report

Additions to text are shown underlined
Deletions are shown ~~strikethrough~~

Employment analysis

Pg. 35:
Delete the final paragraph on the page.

Appendix 3, page 1:
Delete the final paragraph on the page.

Pg. 54, Table 20:
Edit the caption to read as follows:
"Table 20: ~~Net~~ New employment, square feet and acreage demand, net of refill, by market ring under two growth scenarios (2010 to 2030)"

Pg. 55:
Text to be revised as follows:

"Capacity demand varies by market subarea, accounting for market realities in the location decisions made by the region's employers. Based on analysis of the trends just described, net of refill demand, there will be ~~a need~~ demand for between 274 and 4,930 acres of ~~additional~~ industrial capacity and between 1,944 and 3,832 acres of ~~additional~~ non-industrial capacity within the UGB by 2030."

"Figures 14-17 show the 20-year capacity demand (net of refill ~~redevelopment~~ demand) by market subarea. At the low end of the population and employment forecast there is a projected flat demand for industrial jobs, commensurate with national trends showing a decline in manufacturing."

Pgs. 56-57, Figures 14-17:
Edit captions to clarify that demand is net of refill demand

Pg. 58:
Edit the first paragraph on the page as follows:

"New industrial opportunities that require large buildable lots are difficult to forecast accurately. Demand for large industrial lots (greater than 25 gross acres) is usually precipitated by one or more large employers looking for a new location for a production or warehouse facility. This is dependent on the decisions of individual firms and not the trends of an industry as a whole. Consequently, forecasts of large lot demand are inevitably uncertain. With that caveat, this analysis looks at the large lot preferences of large employers and multi-tenant business parks using a forecast-based approach. Given this uncertainty, the Metro Policy Advisory Committee has recommended the consideration of additional large lot demand that supplements the demand identified through the employment forecast-based approach."

Edit the final paragraph on the page as follows:

"Large-lot demand for marine and rail terminal uses is not included in this analysis. These types of facilities may have relatively few employees and little building square footage. Consequently, a job forecast may be an inadequate means of forecasting land demand for these uses. This is another reason why additional large lot demand is considered as a supplement to the demand identified through the employment forecast-based approach." ~~Furthermore~~ However, ~~t~~these uses are extremely location specific and their preferences are not likely to be met ~~accommodated~~ through UGB expansions.

Pg. 83:
Last paragraph on page to be revised as follows:

"Figures 30 and 31 depict the 5- and 20-year acreage ~~building square foot~~ demand range (from the 20-year forecast) for industrial and ~~commercial~~ non-industrial employment along with the previously described capacity range. Large lot demand and capacity are addressed separately. The demand range is illustrated with two lines that show the upper and lower end of the acreage ~~building square foot~~ demand forecast."

Pg. 84:
Insert the following text below figure 30:

"This portion of the analysis assesses the current urban growth boundary's capacity to accommodate industrial job growth on vacant, buildable land or through refill. The assessment of demand for large, vacant lots for industrial uses is handled separately. At both ends of the employment range forecast, there is adequate capacity inside the current urban growth boundary to accommodate the next 20 years of general industrial job growth."

Pg. 85:
Insert the following text below figure 31:

"Depending on the amount of non-industrial employment growth that is realized, there is demand for zero to 1,168 acres of additional capacity."

Pg. 86:
To reflect MPAC's recommendation on large lots for industrial uses, edit the heading at the top of the page to read as follows:

"Comparison of large lot supply with forecast-based assessment of ~~potential~~ large lot demand"

To reflect MPAC's recommendation, edit the second paragraph on the page to read as follows:

"Without any assumption about tax lot assembly, this employment forecast-based analysis identifies surplus capacity of 25-to-50-acre lots, but a potential deficit of tax lots over 50 acres and lots over 100 acres (under both the high and low growth forecasts), as shown in Table 32."

To reflect MPAC's recommendation, add the following section to the end of the page:

"**Policy basis for considering an expanded range of large lot demand**
The forecast-based assessment of large lot demand provides policy makers with an initial range of potential demand to consider. However, as noted, assessing future large lot demand with a job forecast-based approach has limitations. There are legitimate policy reasons to consider a wider range of demand for large lots, using the initial forecast-based approach for a sense of scale. Doing so gives policy makers the flexibility to weigh the risks and benefits of providing too much or too little large lot capacity.

There is inherent uncertainty in forecasting employment in large, traded-sector firms, which may consider several cities, regions, states or countries when choosing a site. These firms can have economic multiplier effects, bringing wealth into the region and leading to spinoff firms and employment. A few cities in the region have identified large lot users (particularly high-tech manufacturers) as a primary focus of their economic development plans. The range of large lots that will be in demand over the next 20 years will be the product of a number of factors that are impossible to forecast, including:

- Decisions of individual firms that participate in a global marketplace; and
- The political will of cities, the region, and the State (both here and in other regions) to implement economic development strategies.

The forecast-based analysis also assumes that preferences for large lots will remain largely the same in the future as they are today. There are at least two countervailing trends that indicate preferences may change, particularly for industrial, warehouse, and distribution uses. The direction and degree of change is open to interpretation:

- Rising land prices may lead to more efficient use of land, thereby increasing the number of employees per acre; and
- The substitution of machinery and robotics for human labor may reduce the number of employees per acre.

An employment forecast-based approach may also have shortcomings for estimating land demand for rail, air and marine terminal uses. These uses are critical to the health of the region's economy. Freight terminal uses can require relatively large areas of land, but do not necessarily require high employment densities. Consequently, demand for these uses may not be adequately accounted for using an employment forecast alone.

No amount of technical analysis can provide a completely precise assessment of future large lot demand. Thus, the Metro Policy Advisory Committee has expressed a desire to have flexibility in the region's plans to attract and retain potential traded-sector employment growth. Due to the limitations of further technical analysis, the expansion of the potential range of large lot demand is being done on a policy basis rather than through technical analysis. This expansion of the range is consistent with the guidance offered by Oregon Administrative Rule 660-024-0040, which states that: *"the 20-year need determinations are estimates which, although based on the best available information and methodologies, should not be held to an unreasonably high level of precision."*

When the forecast-based analysis and policy considerations are taken into account, as recommended by the Metro Policy Advisory Committee, the total 20-year demand for additional capacity in large lot

configurations is between 200 and 1,500 acres. Within this range, there is a need for policy flexibility in determining the sizes and locations of large lots to provide, so this final analysis does not specify those characteristics."

Residential analysis

Pg. 114:

Insert a map of the residential buildable land inventory.

Pages 115-117

Edit the section on parks as follows:

"**Parks:** To calculate the UGB's capacity for residential growth, this urban growth report deducts the amount of vacant land inside the UGB that may be used for future parks (effectively, this amount of land is not available for residential development). This calculation only includes future parks that are intended for active uses, such as ball fields or playgrounds. Habitat or natural areas are not included since they are already deducted from the vacant land inventory.

There are several possible ways to calculate the number of acres that may be used for future parks. ~~One approach would be to use a level-of-service standard for parks. However, an agreed upon regional standard does not exist. Since no alternative approach has been suggested,~~ This urban growth report builds on ~~uses~~ the ~~same~~ methodology that was used for the 2002 report. That ~~This~~ methodology was recommended by MPAC in 2002 and was based on estimated park land acquisition revenues~~, based on~~ from system development charges (SDCs).

To inform the analysis in this report, current park SDC rates were inventoried for each city in the region. (Information may be found in Appendix 6.) Most of the local governments that levied parks SDCs in 2002 have increased their rates. In addition, two cities, King City and Rivergrove, have started levying parks SDCs since 2002. Also, a few local governments are currently employing a system whereby different fees are levied in different locations.

The 2002 urban growth report estimated that 1,100 acres of vacant land inside the UGB would be used for future parks. Like other possible approaches to estimating future park acreage inside the UGB, this SDC approach has its limitations and should be taken as a reasonable estimate rather than a precise accounting. Due to these limitations (summarized below), the updated inventory of park SDC rates does not provide a compelling reason to substantially alter ~~change~~ this assumption:

- Each city will respond to residential growth in different ways. For instance, some cities may not have much vacant land left for parks, but will use SDC revenues to make capital improvements to existing parks.
- Different cities will witness different amounts of residential growth. A local government with high parks SDCs may not see a lot of growth over the next 20 years, while a local government with low SDC rates may see tremendous growth, or vice versa.
- While a majority of local governments around the region have increased their parks SDCs over the last several years, this does not mean that there is additional money for land acquisition.
    - It is likely that the increased rates are an attempt to more fully recuperate land acquisition or capital improvement costs and that updated SDC rates still do not cover all costs.

    - The cost of flat, vacant land will continue to increase. SDC revenues will not necessarily keep pace with land values.
- Funding for parks is and probably will continue to be limited. Metro's 2008 *Regional Infrastructure Analysis* found that the cost and availability of land is one of the biggest challenges in providing sufficient parks to accommodate future growth.
- A line item in an urban growth report for parks will not necessarily result in parks for citizens to enjoy. The effect is simply that the vacant land supply assumption is reduced, increasing the potential need for UGB expansions. A UGB expansion will not address park needs in existing urban areas, which are likely to see substantial growth.
    - There is a Major UGB Amendment process that can be initiated by local jurisdictions to bring land into the UGB for park needs that are not anticipated in cyclical legislative UGB expansions (as contemplated in the context of this report). The Major Amendment Process may be a more appropriate means of addressing specific park needs that can be accommodated through UGB expansions.

Limited funding and limited vacant land in urban locations point to a need for creative and collaborative solutions that help ensure the future provision of parks throughout the region:

- Efficient use of existing land and infrastructure by taking advantage of power line easements or the space around reservoirs and water towers. For example, Tualatin Hills Park and Recreation District utilizes existing Bonneville Power Administration rights of way to operate parks and trails.
- Collaboration between multiple districts or other local governments. Sunnyside Village Green Park is a collaborative effort between North Clackamas Parks and Recreation District and Clackamas County's Water Environment Services Department that combines park facilities with stormwater management infrastructure.
- The Trust for Public Land's 2009 article on "shoehorn parks" recognizes that school facilities can be leveraged to create park capacity, but doing so requires great collaboration and commitment to success from park districts and the school system (Harnik, 2009). Popular events like Portland's Sunday Parkways demonstrate that streets can serve as temporary park space.

To maintain an approach that is consistent with the one recommended by MPAC in 2002, an implied parks level of service was calculated as follows:

The 2002 Urban Growth Report forecasted growth of 220,700 dwelling units over the 20 year period and identified that 1,100 acres should be deducted from the vacant land supply for future parks for the same time period. The implied level of service was 1,100 park acres for 220,700 new dwelling units. The current Urban Growth Report forecasts 262,400 new dwelling units in the UGB over the next 20 years (baseline assumption). Applying the same implied level of service standard as used in 2002 (1,100 /220,700 * 262,400) results in a deduction of 1,300 acres from the region's vacant land supply to address future park demand."

Appendix 6, page 11
Edit the final paragraph on the page to read as follows:

"The 2002 urban growth report estimated that 1,100 acres of vacant land inside the UGB would be demanded ~~used~~ for future parks. Like other possible approaches to estimating future park acreage demand inside the UGB, this SDC approach has its limitations and should be taken as a reasonable estimate rather than a precise accounting. Due to these limitations (summarized below), the updated inventory of park SDC rates does not provide a compelling reason to substantially alter ~~change~~ this assumption:"

Add the following text:

"To maintain an approach that is consistent with the one recommended by MPAC in 2002, an implied parks level of service was calculated as follows:

The 2002 Urban Growth Report forecasted growth of 220,700 dwelling units over the 20 year period and identified that 1,100 acres should be deducted from the vacant land supply for future parks for the same time period. The implied level of service was 1,100 park acres for 220,700 new dwelling units. The current Urban Growth Report forecasts 262,400 new dwelling units in the UGB over the next 20 years (baseline assumption). Applying the same implied level of service standard as used in 2002 (1,100 /220,700 * 262,400) results in a deduction of 1,300 acres from the region's vacant land supply to address future park demand."

Pg. 127:
Correct the residential supply range on the bottom of the page such that the expected supply is 196,900 dwelling units and the potential supply is 356,800 dwelling units. This correction is necessary because of the revised estimate of future parks acreage demand and to correct calculation errors.

Appendix 6, page 2:

Replace the table with the following. This table contains changes that are necessary because of the revised future parks acreage estimate and to correct calculation errors.

2009 to 2030 Urban Growth Report (UGR)

Residential Dwelling Capacity Range Assessment

December 2009

Line No.		Residential DEMAND Assumption Low	Baseline	High
	Residential Demand Estimates (in Dwelling Units)			
1a/	7-County Population Forecast (2007 to 2030)	728,200	875,000	1,024,400
1b/	7-County Household Forecast (2007 to 2030)	348,600	408,300	469,100
2/	**Capture 61.8% of 7-County Forecast in Metro UGB**	**215,400**	**252,300**	**289,900**
3/	plus: 4% vacancy rate (source: 2000 Census)	8,600	10,100	11,600
4/	**Dwelling Unit Demand in the Metro UGB:**	**224,000**	**262,400**	**301,500**

		Residential SUPPLY Assumptions BASELINE	
	July 2007 Vacant Land Inventory (Metro UGB):		
5/	**Gross Vacant Land in current Metro UGB**	**44,800**	
6/	less: Local Water Quality, floodways and Habitat Protection areas (ENV)	8,600	
7/	**Gross Vacant Buildable Acres in Metro UGB (GVBA)**	**36,200**	
8/	less: Fed., State, Municipal exempt land (actual count)	3,200	
9/	less: Acres of Platted Single Family Lots (actual count)	1,300	A
10/	less: Acres for Future Places of Worship and Social Org. (actual = 600 acres)	700	C
11/	less: Major Easements (Natural Gas, Electric & Petroleum) (actual count)	1,000	R
12/	less: Acres for Future Streets (0%, 10%, 18.5%)	4,900	E
13/	less: Acres for New Schools (H=45, M=55, E=70; actual = 1,000 acres)	1,000	S
14/	less: Acres for New Parks (based on SDC fees)	1,300	
15/	less: New Urban Areas (actual net of ENV, future streeets and dev. land)	7,900	
16/	**Net Vacant Buildable Acres (NVBA) - total**	**14,800**	
	Net Vacant Buildable Acres (NVBA) by Type (less-New Urban Areas):	**Metro UGB**	
17a/	Net Vacant Buildable Acres - Mixed Use Residential (MUR)	1,000	
17b/	Net Vacant Buildable Acres - Residential	6,300	

		Residential CAPACITY Assumption Low	Baseline	High	
	Residential Housing Supply Assessment - Metro UGB				
18/	**Dwelling Unit Capacity of Vacant Land at Local Zoning (or Plan) - 2008 Q3**	**62,500**	**62,500**	**62,500**	
18a/	less: High-density MFR products not market feasible within next 20 years	(18,400)	(18,400)		
19/	add: Res. Development in vac. Mixed Use Districts (MUR)	28,600	28,600	28,600	
20/	less: Capacity Lost to SFR Underbuild @ 5%	(2,200)	(2,200)	(2,200)	
21a/	add: Res. Development Capacity on ENV land (no. taxlots wholly in Title 3)	100	100	100	
21b/	add: Res. Development Capacity on Title 13 areas (80% of zoned capacity)	19,300	19,300	19,300	U
22/	add: Units from Platted Single Family Lots under 3/8 acre (actual count)	8,800	8,800	8,800	N
23/	add: Units from Residential Refill @ 33%	73,900	86,600	99,500	I
23a/	add: Units from Residential Refill @ 40% (addition of 7% more)			21,100	T
23b/	add: Potential Units from *Subsidized* Residential Refill			71,100	S
24/	add: Estimated Capacity from New Urban Areas	48,000	48,000	48,000	
25/	less: New Urban Development not yet market feasible	(24,000)	(24,000)		
26/	**Subtotal: Dwelling Unit Capacity Supply Range**	**196,600**	**209,300**	**356,800**	

		Low Supply - High Demand		Low Demand - High Supply
27/	**Full range of difference between capacity and demand (dwelling units):**	(104,900)	(53,100)	**132,800**

		Low Supply- Low Demand	Low Supply- High Demand
28/	**UGR assessment of difference between capacity and supply (dwelling units)**	(27,400)	(104,900)

Pg. 128:
Insert the following text after the second-to-last paragraph on the page:

"Through the year 2030, counting only the "solid" capacity, there is demand for additional capacity to accommodate between 27,400 to 104,900 households."

Appendix 7, pg. 3:
Revise the table to include median household income levels for the eight household types. Include this information throughout the appendix.

Appendix 8, pg. 8:
Edit the text to read as follows:
"Figure~~s~~ 4.1AB ~~and C~~ show~~s~~ the region's residential capacity by generalized zoning. Figure 4.1AB depicts the gross buildable acres of ~~residential~~ land by "vacant" and "partially vacant" categories."

Appendix 8, pg. 8:
Insert the following table and notes:

Table 4.1AB: Gross vacant and partially vacant acres inside the UGB by zoning class (year 2007)

Zone Class	Fully Vacant Tax lot Acres	Partially Vacant Tax Lot Acres	Total Vacant Acres
CC	21	24	45
CG	349	195	543
CN	28	34	62
CO	89	51	140
FF	2,788	3,570	6,358
IH	768	1,066	1,834
IL	2,415	2,386	4,801
MFR1	41	95	135
MFR2	168	174	341
MFR3	116	144	260
MFR4	95	96	191
MFR5	9	32	41
MFR6	1		1
MFR7	73	51	124
MU	2	0	2
MUE	1,114	1,371	2,485
MUR1	79	35	114
MUR10	105	66	170
MUR2	120	160	279
MUR3	24	21	45
MUR4	141	150	291
MUR5	177	71	249
MUR6	21	9	31
MUR7	200	87	286
MUR8	128	146	275
MUR9	110	97	207
PF	54	246	299
POS	274	349	622
RRFU	4,130	7,253	11,383
SFR1	47	61	108
SFR10	40	46	86
SFR11	41	16	57
SFR12	77	74	152
SFR14	44	8	52
SFR15	26	44	71

SFR2	778	884	1,662
SFR3	36	41	77
SFR4	1,463	1,663	3,126
SFR5	1,032	1,045	2,077
SFR6	1,043	1,470	2,513
SFR7	407	331	739
SFR8	21	34	55
SFR9	164	378	541
Total	**18,859**	**24,073**	**42,932**

Note: Acreages reported in this table differ somewhat from the acres reported in the UGR because of differences in how public rights of way, public lands, etc. are accounted for.

Appendix 8, pg. 8:

Delete references to Table 4.1C. Data for Table 4.1C has been consolidated to appear in table 4.1AB.

Appendix 8, pg. 10:
Insert the following table and notes:

Table 5.1: Metro UGB historical land use consumption in acres: 2002-2007

Year	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**
Developed land	201,336	203,145	204,456	205,894	209,419	210,582
Vacant land	52,514	50,705	51,151	49,727	46,235	45,076
Total	*253,849*	*253,850*	*255,607*	*255,621*	*255,654*	*255,658*
Vacant land detail	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**
Residential vacant	16,488	15,617	14,944	13,672	12,307	12,099
Nonresidential vacant	12,047	11,679	11,865	9,764	8,881	8,485
Open space, rural, parks	16,560	16,290	17,303	15,362	15,610	15,307
Total gross buildable acres	*45,095*	*43,586*	*44,112*	*38,798*	*36,797*	*35,891*
Constrained land	7,419	7,118	7,039	10,929	9,437	9,185
Total vacant land	*52,514*	*50,705*	*51,151*	*49,727*	*46,235*	*45,076*

Notes:

- *Acreages reported in this table differ somewhat from the acres reported in the UGR because of differences in how public rights of way, public lands, etc. are accounted for.*
- *For years 2005 - 2007: res = MFR, MUR, SFR; non-res = COM, IND, MUE; other = PF, POS, RUR. Except: no PF in 2005*
- *For years 2002 - 2004: res = MFR, SFR; non-res = COM, IND, MUC; other = POS, RUR*
- *For years 2002 - 2005: PF are part of COM*
- *Constrained land for years 2005 - 2007 is based on the constrained land analysis completed for the 2009 UGR and includes Title 3 and Title 13 land*
- *Constrained land for years 2002 - 2004 is based on Title 3 land only*

Appendix 8, pg. 20:
Insert the following sentence in first paragraph:

"All dollar amounts are expressed in 2005 dollars."

Appendix 8, pgs. 20 and 21:
Correct tables 303.1a and 303.1b to reflect potential demand for government assistance at more price levels. Corrected tables to appear as follows:

Figure 303.1a: owner-occupied dwelling units by price (2005$) and housing type (2005 and 2030)

Owner-occupied dwelling units							
	Total dwelling units			Detached Housing		Attached Housing	
Approx. dwelling value	Year 2005	Year 2030	Difference in dwelling units 2005 to 2030)	Single-family and manufactured units	Manufactured units in parks	Single family units	Apartments, townhouses, condos
< $150,000	30,259	44,411	14,152	A	A	A	A
$150,000 - $200,000	27,191	26,954	(237)	A	A	A	A
$200,000 - $250,000	31,796	15,301	(16,495)	MRKT	MRKT	MRKT	MRKT
$250,000 - $300,000	21,442	30,657	9,215	MRKT	MRKT	MRKT	MRKT
$300,000 - $400,000	44,089	41,522	(2,566)	MRKT	MRKT	MRKT	MRKT
$400,000 - $500,000	49,363	52,167	2,804	MRKT	MRKT	MRKT	MRKT
$500,000 - $750,000	58,184	107,613	49,429	MRKT	MRKT	MRKT	MRKT
> $750,000	96,294	265,820	169,527	MRKT	MRKT	MRKT	MRKT
Total Units	358,617	584,445	225,828	116,848	*	*	108,980

Figure 303.1b: renter-occupied dwelling units by price (2005$) and housing type (2005 and 2030)

Renter-occupied dwelling units							
	Total dwelling units			Detached Housing		Attached Housing	
Approx. monthly rent	Year 2005	Year 2030	Difference in dwelling	Single-family and manufactured	Manufactured units in parks	Single family units	Apartments, townhouses, condos
< $400	43,167	19,195	(23,972)	A	A	A	A
$400 - $475	18,967	31,926	12,958	A	A	A	A
$475 - $550	25,514	25,812	298	A	A	A	A
$550 - $625	27,479	24,531	(2,948)	A	A	A	A
$625 - $750	24,854	38,485	13,630	A	A	A	A
$750 - $900	34,359	43,000	8,641	A	A	A	A
$900 - $1,100	13,315	40,881	27,566	A	A	A	A
> $1,100	26,038	64,724	38,686	MRKT	MRKT	MRKT	MRKT
Total Units	213,693	288,554	74,861	1,676	*	*	73,185

Appendix 8, pgs. 20 and 21:
Edit note that accompanies tables 303.1a and 303.1b to read as follows:

"A" denotes housing that would be partially assisted, given the dwelling unit value. It is a question for policy makers how many of these units will receive government assistance. As of November 2007, 10,608 households in the tri-county area received Section 8 vouchers.

Pgs. 133 and 135:
Correct data labels on pie charts (charts for high growth erroneously show the same percentages as low growth).

Pg. 151:
Under "policy choices," insert the following additional policy option:

"Expansion of housing voucher programs could increase housing choices for more households."

Pg. 153:
Edit the first paragraph of the "future cost burden" section as follows:

"If we continue with current policy and investment direction, the number of cost-burdened households could double by the year 2030. In the year 2005, there were approximately 94,000 cost-burdened households inside the Metro UGB (about 16 percent of all households in the Metro region or about 43 percent of renter households). By the year 2030, if current trends and policies continue, between 17 to 23 percent of all ~~the~~ households inside the Metro region or 51 to 69 percent of renter households could be described as cost-burdened. If the high end of the population range forecast is reached by the year 2030

and new policies and investments are not pursued, the number of cost-burdened households may more than double, totaling 200,000 households."

Pg. 154:
Correct the number of cost burdened households in the year 2005 (92,060).

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ATTACHMENT 3

Metro | *Memo*

Date:	November 24, 2009
To:	Malu Wilkinson, urban growth report project manager
From:	Dennis Yee, Metro Chief Economist
Re:	Technical Reviews Conducted to Validate Metro's Regional Macro-economic modeling and forecasting

Background

Leading up to Metro's periodic assessment of the urban growth boundary's capacity to accommodate residential and employment growth, three separate review panels were formed at various times to assist Metro in the validation of its economic/demographic modeling and forecasting methods and to analyze forecast results. The population and economic trends of the Portland-Beaverton-Vancouver PMSA region were examined by these review panels. Each panel validated Metro's overall modeling and forecasting methods and was asked to look closely at a certain aspect of the modeling and forecasting methodology. The panels' independent expertise was utilized to review and recommend improvements.

Review Panel One *(National review panel convened to validate forecast theory and practice)*

The first review panel was convened in 2006 – mainly to review the forecast methodology, analyze the technical efficiency of econometric equations and model specifications and to review the soundness of Metro's proposed probabilistic population forecast approach [i.e., range forecast methodology] and range / risk forecasting and analysis.

Composition of review panel one

- Dr. Lawrence Carter, University of Oregon – expert in demographic forecasting
- Dr. George Hough, Portland State University – director of center for population research and census
- Dr. Tom Potiowsky – State Economist, Oregon
- Dr. Marshall Vest – director of Economic and Business Research Center, Professor of Economics, University of Arizona
- Dr. Mary Allender, University of Portland – Assoc. Professor of Economics and Statistics
- Dr. Tim McDaniels, University of British Columbia – environmental policy, decision making & risk management

Summary remarks and conclusions of review panel one

1. The panel was asked to review and then validate Metro's economic and demographic forecast methodology and confirm the correctness of using a range forecast approach.

- Panel members unanimously agreed that a range forecast is the preferred approach in helping decision makers with managing an uncertain economic future and providing leeway for managing forecast risk especially in the extreme long-run as is the case in Metro's management of the urban growth boundary. The nature of Metro's decision making should, according to the panel, rely upon an economic model that utilizes a structural approach for forecasting growth trends, and also permits analysts to run scenarios and test policy sensitivities to various land use, economic or transportation policy variables. Metro's modeling framework according to the panel is well suited for the type of analytical applications employed by Metro.

2. Upon confirming the general approach of the Metro economic model, the panel turned to analyzing and validating the individual structures of the economic model and its efficacy for Metro planning and policy analysis purposes.
   - Panel members reviewed the technical specifications of each economic equation, variable and statistical efficiency and soundness of the equations. They determined that the Metro economic model represented the current practice of modeling regional economies and employed state of the art theories and practices.
   - They found the use of the inter-industry demand variables which capture the input-output relationships between regional industries to be a unique and innovative approach that should improve forecasting accuracies and represent well the possibilities of testing policy sensitivity on industry employment changes.
   - The panel analyzed the linkages between regional job growth and national job trends. Staff explained that the econometric equations were developed to maximize the information that national forecasts would reveal in regional growth and that Metro utilized as national forecast drivers the projections produced by IHS Global Insight, Inc., a nationally recognized firm. Panel members did not believe we could necessarily do any better assuming forecast drivers from other vendors. In fact both, Oregon and Arizona forecasters utilize to a high degree products produced by Global Insight.

3. Certify the overall fitness of the Metro economic model for its use in projecting population and employment growth for the Portland-Beaverton-Vancouver, OR-WA PMSA.
   - The panel reviewed the soundness of the model by comparing the job multipliers[3] reported by Metro's econometric model and those of other known models for other regions in the U.S. The regional model passed all the battery of usual econometric and statistical tests for goodness of fit.

[3] Multipliers summarize and describe the internal properties and workings of the model –they are one of many diagnostic tools. Exceedingly large multipliers would cause the model to exhibit unstable properties and explosive non-convergence, which would tend to invalidate the model. None of the employment multipliers in the short or long-run displayed a significant problem.

Review Panel Two *(Statewide review panel convened to validate the 50-year range forecast and assumptions)*

In May 2008, Metro forecasters developed a 50-year regional forecast and implemented the recommendations from the first panel to utilize probabilistic population forecasting techniques and to produce a range forecast. Statewide professionals who were more familiar with Oregon and in particular Portland's economy were called together to discuss their views and analyze the 50-year forecast outlook for the Metro region. In front of an audience of 200 interested stakeholders, these two moderated panels discussed the merits of the range forecast (per the recommendation of the first panel) and validated the soundness of Metro's modeling and assumptions with the objective of certifying the reasonableness of a 50-year population and employment outlook. One panel also discussed the long-range demographic, economic, climate, energy and land use trends that could emerge during the forecast period to influence regional population, employment and land use.

Composition of review panel two

Panel discussion exploring long-range issues and trends that influence regional population, economy and land use

Moderated by Duncan Wyse, President of Oregon Business Council

- Eric Hovee, Principal at ED Hovee & Co., LLC
- Joe Cortright, President of Impressa LLC
- Mike Martens, Director of Spatial Analysis, EcoTrust
- Dr. Bruce Weber, Prof. of Agriculture and Resource Economics, Oregon State University

Expert panel to present and discuss results from different forecasting methods and to provide perspectives through a moderated discussion.

- Dr. Kanhaiya Vaidya – Senior State Demographer, Oregon Office of Economic Analysis
- Art Ayre – State Labor Economist, Oregon Employment Department
- Terry Morlan – Director of Planning, Northwest Power & Conservation Council
- Dennis Yee – Chief Economist, Metro

Summary remarks and conclusions of review panel two

1. Among the topics discussed were: aging population and its impact on future housing demand; economic growth and what could be drivers for the next wave of growth and innovation in the state; climate change and its impact on migration in the US; climate change and Oregon's emphasis on "green development"; and the future makeup of the Willamette Valley's agricultural economy in light of urban development pressures.
    - Although the panelists raised interesting issues that would likely confront the Portland region and impact Portland area population and economic projections, it was plain from the tenor of the discussion that these highly informed commentators had a sense of the risks to the regional forecast, but it was unclear as to how these "mega-trends" would ultimately impact the forecast in a quantifiable fashion.
    - Panelists concluded that these "mega-trends" can impact the forecast and impose significant uncertainty and risk to a forecast. The appropriate response to this very uncertain future is to use a range forecast that affords a high degree of planning flexibility.

2. The chief objective of the afternoon review panel was to gather input and comments about how "mega-trends" may eventually feed through to impact regional long-term growth. Each of the panel members are forecast practitioners who have had significant experience in forecasting growth in Oregon. The panel was charged with reviewing the implementation and results of Metro's 50-year regional range forecast.
   - The state demographer confirmed that the state and Metro employ similar cohort-component models for forecast long-run population trends. There are differences in key assumptions, but they owe to variations between state-level demographics vs. Metro demographics which tend to more urban conditions that impact fertility and mortality rate assumptions.
   - The state labor economist prepares county-level employment estimates. Although no two forecasts are necessarily alike, he concluded that the underlying assumptions are consistent between the Metro model vs. the state's county-level economic model. Growth rates in Metro's base case scenario and the state's forecasts were highly comparable (the state does not produce a range forecast so only base case numbers could be compared).
   - The NW Power Planning Council utilizes sophisticated forecast simulation software. This software is capable of generating a multitude of scenarios which are combined to form a "solution space" or "forecast envelope" (i.e., range forecast). The forecast director for the Power Planning Council echoed numerous times the importance of risk planning and the need for economic and demographic forecasts to recognize uncertainty in its growth trends. Although Metro uses a different software approach in formulating its forecast ranges, there was agreement that "range forecasting" is the appropriate means to project long-term regional growth.

Review panel three *(Local review panel convened to validate the 20-year range forecast and regional growth assumptions which could impact the economy, population and land use trends)*
A third panel was formed in 2009 to review the 20-year regional forecast that became the basis for the urban growth report for housing and employment. This panel's chief responsibility was to validate the 20-year range forecast and to identify any regional trends that didn't comport with national trends. This panel was composed of local practitioners, forecasters, consultants and stakeholders who rely on the forecast for municipal planning purposes.

Composition of review panel three

- Steve Kelley, Senior Planner, Washington County
- Scott Drumm, Manager, Research & Market Information, Port of Portland
- Eric Hovee, Principal at ED Hovee & Co., LLC
- Scott Bailey, Washington State Economist, Vancouver area focus
- Brendan Buckley, Johnson-Reid LLC
- Uma Krishnan, City of Portland Demographer
- Todd Chase, FCS group LLC

Summary remarks and conclusions of review panel three

1. Review appropriateness of range forecast methodology
   - The panel agreed that due to forecast uncertainty and the degree of risk going into the future, a "range forecast" was more preferable than a "point forecast". Planning flexibility was an oft-cited reason in favor of proceeding with a range forecast.

2. Discuss reasonableness of the "width of the range forecast"
   - The panel did not spend much effort reviewing the variance assumptions that comprise the range, but generally believed that using historical variances as a surrogate for future forecast variances was a satisfactory means of estimating future ranges. The ranges were estimated using "monte carlo" simulation software such that a 90% cumulative distribution function was defined as the forecast range for population. Overall, total employment and population "widths" for the forecast range seemed statistically appropriate, but some disagreement arose when discussion turned to individual industry projections for employment. (see next bullet)

3. Review soundness of forecast outlook
   - There was minimal concern that the annualized growth rates for both population and employment projections for the region were slower than at any recent historical experience except for decade of the 80's which saw growth plummet due to the recession. It was explained that in the last 30 years, the Portland region is now (over 2 million people) twice its former size. Even with lower predicted growth rates (1.4% APR), growth compounding each year the region is expected to again nearly double in size during the next 30 years.
   - The debate on the regional forecast centered mostly around selected industries and, in particular, the potential for some emerging industry(s) to erupt with significant job growth and, with that job trend, bring large firms that could anchor growth in that particular industry for decades to come. The debate circled around how much faster can we reasonably predict job growth in one industry to outpace the U.S. average or U.S. forecast. The Metro forecast already assumes (as a placeholder) the high tech sector in the region to be a sector that we predict to be a "high-flyer" in manufacturing. (Most other Metro manufacturing sectors are projected to perform slightly better over the forecast period than the U.S. projected average, but high-tech has been singled out to be an above average growth sector.) [Please see Metro Regional Forecast Employment appendix that compares the US forecast against the Metro forecast.] The debate boils down to a matter of degree about how much faster high tech in the region will likely outpace nationwide trends. Metro believes that its forecasting is sound and based on statistically valid relationships modeled between the regional economy and the U.S. A minority of the panel members disagreed, believing that anecdotal interviews and ad hoc evidence point to significantly faster economic growth.

4. Discuss impact land supply has on regional growth projections
   - Land supply is not presently an explicit explanatory variable in the regional macro-economic model. In the past, there was no statistical evidence that showed land supply as a sticking point to economic growth. However, in the past, vacant land was not as scarce as it is today for urban style development purposes. Land has not been a limiting factor in the past, so it's not surprising that Metro's statistical modeling would not reveal any tangible correlation.
   - Recently, practical measurements of land supply indicate much less available land than previous measures have shown. Members agreed that land is a factor input into production and a key ingredient in promoting economic development. Still, there has been scant statistical evidence that we can draw upon to embed a land and capital substitution parameter into the econometric model that would stand up to statistical inquiry. On the other hand, there is mounting conjectural evidence that large tracts of inexpensive land can be a motivating factor to attracting large scale manufacturing plants to a particular region.
   - Technological innovation and comparative manufacturing advantages may make this point moot in the distant future, but again the panel could not settle on a conclusion. This issue is still unresolved and to be determined in future forecasts.

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

IN THE MATTER OF	)	**APPROVAL**
THE PERIODIC REVIEW OF	)	**ORDER**
THE REGIONAL URBAN GROWTH	)	**07-WKTASK-001726**
BOUNDARY FOR METRO	)	

This matter came before the Land Conservation and Development Commission (Commission) on March 23 and April 12, 2006, as a referral of Metro's re-submittal of periodic review Work Task 2, pursuant to ORS 197.633, ORS 197.644(2) and OAR chapter 660, division 25.[1] Metro adopted the submittal in response to the Commission's Partial Approval and Remand Order 05-WKTASK-001673 and Remand Order 05-WKTASK-001685. The Commission fully considered Metro's Work Task 2 re-submittal; oral argument and written comments, objections and exceptions of parties and Metro; and the report of the Director of the Department of Land Conservation and Development (Department).

History and Summary of Work Task 2

The Commission approved Metro's Periodic Review Work Program on July 28, 2000 (Approval Order #001243). Work Task 2 of the approved Work Program required Metro to estimate 20-year population and employment growth to the year 2022 and assess the capacity of the regional Urban Growth Boundary (UGB) to accommodate the identified need, and, if necessary, increase the capacity of the UGB. Work Task 2 consisted of specified subtasks (12a – Regional Forecast; 12b – Housing Needs Analysis; 13 – Land Supply Analysis; 14a – Residential Land Needs Analysis; 14b – Employment Land Need Analysis; 15 – Alternative Analysis; 16 – Technical Amendments to the UGB; 17 – Selection of Lands for UGB Amendment).

Metro forecasted a population increase of 525,000 people and identified a need to accommodate 355,000 jobs by 2022. Metro analyzed the capacity of land within the UGB to accommodate the determined need. Metro's Task 2 submittals have included measures both to increase the capacity of residential and employment land within the present UGB and to expand the UGB to accommodate the determined need. On March 20, 2003, the Commission granted partial approval of Task 2 to acknowledge Metro's amendment of the regional UGB to include five "Regionally Significant Industrial Areas." LCDC Order 03-WKTASK-001491. On July 7, 2003, the Commission approved an UGB expansion of 18,638 acres to accommodate Metro's identified

[1] The Land Conservation and Development Commission amended OAR chapter 660, division 25 effective May 15, 2006. The prior version of OAR chapter 660, division 25, filed and certified effective February 14, 2000, applies to the Commission review of Metro's submittal. *See* OAR 660-025-0230(1)(d) (establishing applicable date for amendments as relevant to this submittal). Where this order cites to OAR chapter 660, division 25, it is citing to the applicable version of that rule.

residential and a portion of the identified employment need. LCDC Order 03-WKTASK-001524. The Commission also remanded portions of Task 2 to Metro to address three issues. *Id.* at 50. On judicial review of that order, the Oregon Court of Appeals reversed and remanded for reconsideration Metro's decision to include Study Areas 37 and 94, but otherwise affirmed the order. *See City of West Linn v. LCDC*, 201 Or App 419, 119 P3d 285 (2005). On October 31, 2005, the Commission modified its Partial Approval and Remand Order 03-WKTASK-001524 to reverse the approval of the inclusion of Study Areas 37 and 94 and to remand to Metro the inclusion of Study Areas 37 and 94 for further findings under Metro Code 3.01.020. LCDC Order 05-WKTASK-001685. The Commission instructed Metro on remand to "either include Study Areas 37 and 94 based on findings under Metro Code 3.01.020 that are supported by substantial evidence, or fulfill the requirements of Work Task 2 in any other manner that complies with the statewide planning goals." *Id.* at 2.

On July 22, 2005, the Commission approved an UGB expansion of 1,678 acres to accommodate a portion of Metro's identified employment need. LCDC Order 05-WKTASK-001673. The Commission also remanded portions of Task 2 to Metro to complete work on six issues. *Id.* at 70-71. The Commission partially remanded Metro's submittal to:

> "(a) Ensure that the amount of land added to the UGB under Task 2 includes an adequate amount of land for public infrastructure including streets;
> "(b) Amend the *2002–2022 Urban Growth Report: An Employment Land Needs Analysis* as necessary, to incorporate any changes to assumptions in that analysis (such as the change in the 52 percent redevelopment and infill rate on industrial lands);
> "(c) Demonstrate that the supply of large lots within the UGB is sufficient to meet the need identified in the *2002-2022 Urban Growth Report: An Employment Land Need Analysis*, provide additional large lot parcels to meet the identified need, or demonstrate how the need can be accommodated within the existing UGB;
> "(d) Clarify whether the 70 percent of land for warehousing and distribution uses applies to all vacant industrial land or only to the need to add land to the UGB;
> "(e) Based on the results of the analysis of (a) through (c), recalculate the total acreage of industrial land supply and compare that number with the identified land need of 1,180 net acres; and
> "(f) Refine the analysis of how Metro 'balanced' the locational factors of Goal 14 (factors 3 through 7) in reaching its decision to include the Cornelius area as described in Exhibit E to Ordinance No. 04-1040B in the UGB over other areas of equal statutory priority, including why the economic consequences outweighed the retention of agricultural land and compatibility with adjacent agricultural uses." LCDC Order 05-WKTASK-001673 at 70-71.

No party sought judicial review of that order pursuant to ORS 197.650 and ORS 183.482.

On remand of LCDC Order 05-WKTASK-001673 and LCDC Order 05-WKTASK-001685, Metro adopted Ordinance No. 05-1070A on November 17, 2005.

Metro Ordinance No. 07-1070A amends the Metro UGB to include 65 gross acres of land near Cornelius; 550 gross acres of land near Hillsboro (Evergreen); and 261 acres of land at Hayden Island Terminal 6. That Ordinance excludes the portions of Study Areas 37 and 94 that were added to the UGB by Ordinance No. 02-969B. Metro also amended the *2002-2022 Urban Growth Report: An Employment Land Need Analysis*. Additionally, Metro adopted findings of fact and conclusions of law to explain how the submittal complies with applicable statewide and regional land use law provisions.

Pursuant to OAR 660-025-0150(1)(c), the Director referred Metro's submittal to the Commission for review and action. As discussed below, the Commission concludes that Ordinance No. 05-1070A complies with applicable statewide and regional land use law provisions. The Commission therefore orders that Metro Work Task 2 is approved, pursuant to OAR 660-025-0160(8)(a).

Objections

The Department received a total of eight objections it determined to be valid under OAR 660-025-0140(2). The valid objectors are the City of Hillsboro, the City of Cornelius, the City of Forest Grove, 1000 Friends of Oregon, Commercial Real Estate Economic Coalition (CREEC), National Association of Industrial and Office Properties (NAIOP), Westside Economic Alliance, and the Washington County Farm Bureau.[2] The Department determined that the objection of James H. Burns was not filed within the 21-day deadline provided in OAR 660-025-0140(2)(a); therefore, Mr. Burns did not file a valid objection and the Commission did not consider it. OAR 660-025-0140(3).

Exceptions

Under the Commission's rules, persons that filed a valid objection to this Task 2 submittal are permitted to file written exceptions to the director's report. OAR 660-025-0160(3). The City of Hillsboro, the City of Cornelius, 1000 Friends of Oregon, CREEC, NAIOP, and Westside Economic Alliance filed valid exceptions.

Oral Argument

On its own motion, the Commission decided to allow oral argument, pursuant to OAR 660-025-0160(7). The Commission provided an opportunity for the department, objectors and Metro to argue. The Commission did not request any new evidence or information. The Commission did allow the City of Hillsboro's motion to take new information in the form of three newspaper articles:

1. Jim Redden, *Plant may signal a biotech future*, Portland Tribune, March 21, 2006

2. *Oregon hits a big score with Genentech*, The Oregonian, March 18, 2006

[2] The Washington County Farm Bureau objection is signed by Tad VanderZanden, Dave Vanasche, Larry Duyck, and Keith Fishback as individuals and members of the Washington County Farm Bureau. This order refers to those individuals and the farm bureau collectively as the Washington County Farm Bureau.

3. Ted Sickinger and Joe Rojas-Burke, *Genentech will build site in Hillsboro*, The Oregonian, March 18, 2006

The City of Hillsboro submitted the articles to demonstrate that a large tract of the Shute Road site added to the UGB by Ordinance No. 02-983B and acknowledged by LCDC Order 03-WKTASK-001491 on March 20, 2003, is being purchased for a biotechnology manufacturing use. The Commission provided the other objectors and Metro the opportunity to comment on the information that the City of Hillsboro submitted. The Commission otherwise heard the referral based on the written record.

Review of Metro's Submittal

Removal of Study Areas 37 and 94

The Commission remanded Metro Task 2, in part, ordering Metro to "either include Study Areas 37 and 94 based on findings under Metro Code 3.01.020 that are supported by substantial evidence, or fulfill the requirements of Work Task 2 in any other manner that complies with the statewide planning goals." LCDC Order 05-WKTASK-001685 at 2. Metro amended the UGB to exclude the portions of Study Areas 37 and 94 that were previously added to the UGB. Ordinance No. 05-1070A at 2. Metro determined that the exclusion of Study Areas 37 and 94 would eliminate 1,221 dwelling units, eliminating the previous surplus of 666 dwelling units. Metro determined that overall, it had met 99.6 percent of the identified need for residential land. November 8, 2005 Memorandum to Metro Council from Lydia Neill. The Department received no objections regarding this portion of Metro's submittal.

On review of Work Task 2, the Commission previously decided that "Metro's inclusion of capacity for 666 dwelling units in excess of the estimated 20-year demand for 220,700 dwelling units conforms with the purposes of Goal 10 to encourage adequate numbers of needed housing and Goal 14 to provide for an orderly and efficient transition from rural to urban use." LCDC Order 03-WKTASK-001524 at 27. The Commission likewise now concludes that Metro has complied with the goals on the whole, and that the .4 percent deficit from the identified need for dwelling units is both technical and minor in nature under ORS 197.747. The Commission concludes that Metro has complied with this requirement of LCDC Order 05-WKTASK-001685 and the goals.

Land for Public Infrastructure

The Commission remanded Metro Task 2 to "[e]nsure that the amount of land added to the UGB under Task 2 includes an adequate amount of land for public infrastructure including streets[.]" LCDC Order 05-WKTASK-001673 at 70. On remand, Metro found that 175 acres must be deducted from the amount of buildable land added to the UGB. Ordinance No. 05-1070A amends the Metro UGB to add 345 net buildable acres of industrial land, including the 175 acres to address the deduction for infrastructure. Exhibit D to Ordinance No. 05-1070A at 2. The Department concluded

that Metro's submittal satisfied this remand item. DLCD Revised Staff Report at 6. The Department did not receive any objections to this portion of Metro's submittal. The Commission concludes that Metro has complied with this requirement of LCDC Order 05-WKTASK-001673 and the goals.

Amend *2002 –2022 Urban Growth Report: An Employment Land Needs Analysis*

The Commission remanded Metro Task 2 to "[a]mend the *2002–2022 Urban Growth Report: An Employment Land Needs Analysis* as necessary, to incorporate any changes to assumptions in that analysis (such as the change in the 52 percent redevelopment and infill rate on industrial lands)[.]" LCDC Order 05-WKTASK-001673 at 70. On remand, Metro amended the *2002–2022 Urban Growth Report: An Employment Land Needs Analysis* to include an addendum that changes the commercial refill rate to recognize changes taking place in the marketplace. Exhibit C to Ordinance No. 05-1070A. The Department concluded that Metro's submittal satisfied this remand item. DLCD Revised Staff Report at 6. The Department did not receive any objections to this portion of Metro's submittal. The Commission concludes that Metro has complied with this requirement of LCDC Order 05-WKTASK-001673 and the goals.

Satisfy Identified Industrial Need for Large Lots

The Commission remanded Metro Task 2 to "[d]emonstrate that the supply of large lots within the UGB is sufficient to meet the need identified in the *2002—2022 Urban Growth Report: An Employment Land Need Analysis*, provide additional large lot parcels to meet the identified need, or demonstrate how the need can be accommodated within the existing UGB[.]" LCDC Order 05-WKTASK-001673 at 71. On remand, Metro amended the UGB to include the Evergreen Expansion Area. Metro placed a condition of approval on the Evergreen Expansion Area that requires the City of Hillsboro to develop a lot/parcel reconfiguration plan that results in at least one parcel that is 100 acres or larger in size. Exhibit B to Ordinance No. 05-1070A at 1. Metro found that the addition of the Evergreen Expansion Area large lot would fulfill the identified need for large parcels of industrial lands. Exhibit D to Ordinance No. 05-1070A at 2-3. The Department concluded that Metro's submittal satisfied this remand item. DLCD Revised Staff Report at 7. The Department received objections and an exception challenging on this and other bases Metro's inclusion of the Evergreen Expansion Area. Because Metro met its identified employment need for large parcels of industrial land in part by the inclusion of the Evergreen Expansion Area, the Commission turns to consideration of the site specific objections to the Evergreen Expansion Area.

Objections to Evergreen Expansion Area

Metro amended the UGB to include 550 gross acres of the Evergreen Study Area north of Hillsboro.[3] Ordinance No. 05-1070A. The Evergreen Expansion Area,

[3] Metro identified the Evergreen Study Area in the 2003 Industrial Land Alternative Analysis Study as a 985 total acre area composed of 2002 Alternative Analysis Study Areas 79 and 80 and 2003 Alternative Analysis Study Area L. 2003 Industrial Land Alternative Analysis Study at 100. The Evergreen

comprised of 337 acres of EFU-zoned resource land and 213 acres of exception land, would provide 416 gross buildable acres, which after deducting 95 acres for public infrastructure, adds 321 net buildable acres of land to the UGB designated for industrial use. Exhibit A-1 to Ordinance No. 05-1070A. 1000 Friends of Oregon objects that the inclusion of the Evergreen Expansion Area does not comply with Metro Regional Framework Plan (RFP) Policies 1.1 (Urban Form), 1.4 (Economic Opportunity & Industrial Lands), 1.6 (Growth Management) 1.7 (Urban/Rural Transition) and 1.12 (Protection of Agricultural and Forest Resource Lands); Statewide Planning Goal 14, and ORS 197.298.[4] The Washington County Farm Bureau objects generally that the inclusion of the Evergreen Expansion Area takes land from an agricultural industrial use to make it available for other industrial uses, and specifically that it does not comply with RFP Policies 1.7 and 1.12, Statewide Planning Goals 9 and 14, and ORS 197.298.

Statewide Planning Goal 9

The Washington County Farm Bureau objects that taking land "from a going and growing industry for mere speculation" seems contrary to Statewide Planning Goal 9. Goal 9 is "[t]o provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens." The Washington County Farm Bureau observes that the Evergreen Expansion Area is presently employed in an industrial use, to wit, agricultural production, that currently produces traded sector products and that the region's agricultural industry requires an adequate land base. Metro recognized that all of the areas under consideration, including the Evergreen Expansion Area, contribute to the agricultural economy of the region. Exhibit D to Ordinance No. 05-1070A at 10. Metro placed significance on its determination that the Evergreen Expansion Area "lies next to some of the most important industrial land in the region and the state." *Id.* at 13. The Commission observes that Goal 9 does not specifically address changing land from one type of industry to another type of industry. However, the Commission rejects this objection as a matter of law, because neither Goal 9 nor the Goal 9 rule applies to Metro. LCDC Order 05-WKTASK-001673 at 14.

Statewide Planning Goal 14, factors 6 and 7, RFP Policy 1.12, and ORS 197.298

1000 Friends of Oregon and the Washington County Farm Bureau both object that inclusion of the Evergreen Expansion Area is a significant incursion into the Tualatin Valley's agricultural land base, contrary to the provisions of RFP Policy 1.12, Goal 14, factors 6 and 7, and ORS 197.298. 1000 Friends of Oregon and the Washington County Farm Bureau also cite to the rankings of the Oregon Department of Agriculture's *Limited Choices* report, which ranked Evergreen as a low priority for urbanization.

Expansion Area Metro added in Ordinance No. 05-1070A is a 550-acre portion of the Evergreen Study Area. *See* Exhibit A-1 to Ordinance No. 05-1070A. This order refers to the area added to the UGB as the Evergreen Expansion Area.

[4] 1000 Friends of Oregon filed a timely exception that renewed the arguments made in its objections. The Commission considers 1000 Friends of Oregon's exception in the discussion and disposition of their objection.

ORS 197.298 provides a hierarchy of lands for inclusion within an UGB, with higher value agricultural lands being last in the hierarchy under most circumstances. Goal 14, factors 6 and 7 require Metro to consider retention of agricultural lands and compatibility of urban uses with nearby rural agricultural uses.[5] RFP Policy 1.12 provides in part:

> "1.12.1 Agricultural and forest land outside the UGB shall be protected from urbanization, and accounted for in regional economic and development plans, consistent with this Plan. However, Metro recognizes that all the statewide goals, including Statewide Goal 10, and Goal 14, Urbanization, are of equal importance to Goals 3 and 4, which protect agriculture and forest resource lands. These goals represent competing and, some times, conflicting policy interest which need to be balanced.
>
> "1.12.2 When the Council must choose among agricultural lands of the same soil classification for addition to the UGB, the Council shall choose agricultural land deemed less important to the continuation of commercial agriculture in the region."[6]

The Evergreen Expansion Area contains Class II soils. Because Metro determined that it had utilized all lands of higher priority under ORS 197.298 capable of accommodating the identified need for industrial land, Metro considered 12 areas of predominantly Class II soils: Forest Grove West, Forest Grove East, Jackson School Road, Wilsonville East, Wilsonville South, Cornelius (rest of 1,154 acres studied), Farmington, Helvetia, West Union, Evergreen, Noyer Creek and Hillsboro South. Exhibit D to Ordinance No. 05-1070A at 4. The Commission agreed that ORS 197.298 does not establish a priority between areas of Class II soils and that Metro must look to the Goal 14 locational factors 3-7 to determine which areas of Class II soils should be brought into the UGB to meet the identified industrial need. LCDC Order 05-WKTASK-001673 at 43-44.

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[5] Goal 14 provides in part:

> "Urban growth boundaries shall be established to identify and separate urbanizable land from rural land. Establishment and change of the boundaries shall be based upon considerations of the following factors:
>
> "* * *
>
> "(6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,
>
> "(7) Compatibility of the proposed urban uses with nearby agricultural activities."

[6] The Commission acknowledged Metro amendments to RFP Policy 1.12. LCDC Order 05-WKTASK-001673 at 70. The Commission concluded "the amendments to RFP Policy 1.12 comply with the statewide planning goals and ORS 197.340(1), which requires Metro to give the goals equal weight." LCDC Order 05-WKTASK-001673 at 41.

Metro described its methodology for selecting amongst the study areas of the same soil type:

> "Finally, the Council turned to the many lands under consideration with predominantly Class II soils. To choose among thousands of acres of this flat farmland near urban industrial areas or near freeway interchanges, the Council considered the locational factors of Goal 14 and policies in its Regional Framework Plan ('RFP') and Regional Transportation Plan ('RTP'). Further, the Council sought advice from a group of farmers and agriculturalists in the three counties, assembled by the Oregon Department of Agriculture ('ODA'). This group submitted a report to the Council entitled 'Limited Choices: The Protection of Agricultural Lands and the Expansion of the Metro Area Urban Growth Boundary for Industrial Use.' [Appendix A, Item (i).)] Preliminary guidance from ODA led the Council to consider an amendment to Policy 1.12 of the RFP on agricultural land, adopted and applied in Ordinance No. 04-1040B: 'When the Council must choose among agricultural lands of the same soil classification for addition to the UGB, the Council shall choose agricultural land deemed less important to the continuation of commercial agriculture in the region.'" Exhibit G to Ordinance No. 04-1040B at 5.

The Commission has discussed the role of the RFP in Metro's consideration of areas for inclusion in the regional UGB:

> "[F]or lands of the same priority under ORS 197.298 that can reasonably accommodate Metro's identified need for industrial land, Metro considers and balances Goal 14, factors 3 to 7 to determine locations to expand the UGB. Although they do not take precedence over criteria in state law, Metro also bases the selection of lands of the same priority for inclusion on RFP policies. *See* Ordinance No. 04-1040B, Appendix A, item a at 5 and Attachment 1 (describing and diagramming relationship of applicable provisions). In RFP Policy 1.12.2, Metro has refined the consideration and balancing that it undertakes under the Goal 14, factors 3 to 7. RFP Policy 1.12.2 relates to the maximum efficiency of commercial agriculture on the fringe of the UGB (factor 4); the economics of commercial agriculture (factor 5); and refines the retention of agricultural land (factor 6) and compatibility (factor 7) analysis." LCDC Order 05-WKTASK-001673 at 41.

For the Evergreen Expansion Area, Metro made findings regarding Goal 14, factors 6 and 7 and RFP Policy 1.12. Metro concluded that the Evergreen and West Union study areas contain a lower percentage of Class I and II soils than the other areas. Exhibit D to Ordinance No. 05-1070A at 11. Metro noted that the Evergreen Expansion Area resource land is neither irrigated nor within an irrigation district, and that only Wilsonville East ranks lower in importance for commercial agriculture than Evergreen in ODA's *Limited Choices* report. *Id.* Metro concluded that of the 12 study areas, inclusion

of Evergreen Expansion Area would best protect farmland that is most important to the continuation of commercial agriculture in the region. *Id.*

Metro also considered the compatibility of urban uses of the Evergreen Expansion Area with nearby agricultural activities on resource lands outside the UGB as required by Goal 14, factor 7 and RFP Policy 1.12. Metro found:

> "Development in the Evergreen area would have some adverse effects on nearby farm practices, but less significant than the effects generated by industrial development in most other areas under consideration. Evergreen borders the UGB on the east and south and rural residential development and roads on the west. In *Limited Choices: The Protection of Agricultural Lands and the Expansion of the Metro Area Urban Growth Boundary for Industrial Use*, April, 2004, the Oregon Department of Agriculture characterized the Evergreen area south of Waible/Gulch Creek as 'nearly surrounded', and for that reason, advised Metro to include the area before including other farmland areas under consideration except Wilsonville East. Following the recommendation, Ordinance No. 05-1070A includes only that portion of the Evergreen Study Area that lies south of the creek." Exhibit D to Ordinance No. 05-1070A at 8.

Metro concluded "inclusion of the Noyer Creek Area or portions of the Cornelius and Evergreen Study Area would have the fewest adverse effects on nearby farm or forest practices." *Id.* at 9.

The Commission finds that Metro considered the provisions of RFP Policy 1.12 and considered and balanced the location factors of Goal 14, including factors 6 and 7, and complied with the hierarchy of ORS 197.298. The Commission rejects these objections by 1000 Friends of Oregon and the Washington County Farm Bureau.

RFP Policy 1.1 (Urban Form), **RFP Policy 1.6** (Growth Management), and **RFP Policy 1.7** (Urban/Rural Transition)

1000 Friends of Oregon objects that the Evergreen Expansion Area does not meet Metro's urban form polices, contending that the Evergreen Expansion Area is not compact, does not use natural or built features as a boundary, and does not provide a clear distinction between urban and rural lands. 1000 Friends of Oregon and the Washington County Farm Bureau contend that Shute Road serves as a logical western edge for the UGB, or alternatively that the exception area at Sewell Road better demarks a distinction between urban and rural lands.

Metro RFP Policy 1.1, relating to Urban Form, provides:

"It is the policy of the Metro Council to:
"1.1.1 Balance the region's growth by:
"a. Maintaining a compact urban form, with easy access to nature.

"b. Preserving existing stable and distinct neighborhoods by focusing commercial and residential growth in mixed-use centers and corridors at a pedestrian scale.
"c. Ensuring affordability and maintaining a variety of housing choices with good access to jobs and assuring that market-based preferences are not eliminated by regulation.
"d. Targeting public investments to reinforce a compact urban form."

Consistent with RFP Policy 1.1, and Goal 14, factor 4,[7] Metro compared the candidate study areas for efficient use of land, both the land considered for addition to the UGB and the adjacent land within the UGB. *See* Exhibit D to Ordinance No. 05-1070A at 5-7. Metro concluded that the Evergreen Expansion Area could efficiently provide large industrial sites in an area that joins an existing industrial area on two sides. The Commission concludes that Metro considered maintaining a compact urban form in concluding that adding industrial land adjacent to an important industrial area within the UGB maximizes the efficient use of both areas. 1000 Friends of Oregon does not explain how the Evergreen Expansion Area detracts from Metro's policy to maintain "compact" urban growth. The Commission rejects 1000 Friends of Oregon's objection that Metro's inclusion of the portion of the Evergreen Study Area does not comply with RFP Policy 1.1.

Metro RFP Policy 1.6, relating to Growth Management, provides in part:

"It is the policy of the Metro Council to:
"1.6.1 Manage the urban land supply in a manner consistent with state law by:
"* * *
"b. Providing a clear distinction between urban and rural lands."

Complementary to RFP Policy 1.6.1(b), Metro RFP Policy 1.7, relating to Urban/Rural Transition, provides in part:

"It is the policy of the Metro Council to:
"1.7.1 Ensure that there is a clear transition between urban and rural land that makes best use of natural and built landscape features and that recognizes the likely long-term prospects for regional urban growth.
"1.7.2 Locate the Metro UGB using natural and built features, including roads, rivers, creeks, streams, drainage basin boundaries, floodplains, power lines, major topographic features and historic patterns of land use or settlement."

Metro included the Evergreen Expansion Area, which adjoins the UGB to the south and to the east. To the north, Metro decided to include only the portions of the Evergreen Study Area that are south of Waible/Gulch Creek, finding that to be consistent with the advice in the "*Limited Choices: The Protection of Agricultural Lands and the Expansion of the Metro Area Urban growth Boundary for Industrial Use*" report. Exhibit D to Ordinance No. 05-1070A at 8. The "*Limited Choices*" report states, "[Waible] Creek, its

[7] Goal 14, factor 4 requires Metro to consider "[m]aximum efficiency of land uses within and on the fringe of the existing urban area."

associated riparian corridor and the exceptions lands located along Sewell Road would provide buffers between future urbanization and farming operations located further to the and to the west." Ordinance No. 04-1040B, Appendix A, item i at 10. The "*Limited Choices*" report does support 1000 Friends of Oregon's and the Washington County Farm Bureau's contention that the Sewell Road exception area would provide a buffer between rural and urban uses. However, as exception lands, ORS 197.298 prioritizes that area for urbanization. The Commission cannot conclude that Metro erred in including the Sewell Road exception area as part of the Evergreen Expansion Area. Metro chose a road for the western boundary of the expansion area. RFP Policy 1.7.2 expressly allows built features, including roads to locate the UGB. The Commission concludes that Metro considered and applied the provisions of RFP Policies 1.6 and 1.7 in establishing the portion of the Evergreen Study Area to include in the UGB. The Commission rejects the objections of 1000 Friends of Oregon and the Washington County Farm Bureau under and related to RFP Polices 1.6 and 1.7.

RFP Policy 1.4 (Economic Opportunity & Industrial Lands)

1000 Friends of Oregon objects that the Evergreen Expansion Area violates RFP Policy 1.4 (Economic Opportunity & Industrial Lands). 1000 Friends of Oregon objection at 2. 1000 Friends of Oregon states "Metro Policies 1.4 calls for Metro to 'maintain a strong economic climate' through a 'diverse and sufficient supply of jobs' and to designate and protect those areas 'with site characteristics that make them especially suitable to the particular requirements of industries'[.]" *Id.* at 3. The Commission does not find the quoted policies in the applicable RFP Policy 1.4. LCDC Order 03-WKTASK-001524 acknowledged Metro's amendments to RFP Policy 1.4 (Exhibit D to Ordinance 02-969B).[8] The Evergreen Expansion Area is not designated a

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[8] Exhibit D to Ordinance No. 02-969B states:

> "New Regional Framework Plan Policy on Economic Opportunity
>
> "According to the Regional Industrial Land Study, economic expansion of the 1990s diminished the region's inventory of land suitable for industries that offer the best opportunities for new family-wage jobs. Sites suitable for these industries should be identified and protected from incompatible uses.
>
> "1.4.1 Metro, with the aid of leaders in the business and development community and local governments in the region, shall designate as Regionally Significant Industrial Areas those areas with site characteristics that make them especially suitable for the particular requirements of industries that offer the best opportunities for family-wage jobs.
>
> "1.4.2 Metro, through the Urban Growth Management Functional Plan, and local governments shall exercise their comprehensive planning and zoning authorities to protect Regionally Significant Industrial Areas from incompatible uses."

Presently, RFP Policy 1.4 "Economic Opportunity" provides:

> "It is the policy of the Metro Council to:
>
> "1.4.1 Locate expansions of the UGB for industrial or commercial purposes in locations consistent with this plan and where, consistent with state statutes and statewide goals, an assessment of the type, mix and wages of existing and anticipated jobs within subregions justifies such expansion.

Regionally Significant Industrial Area by this submittal. The Commission concludes that the submittal does not violate the applicable provisions of RFP Policy 1.4.

Regardless, the Commission understands the gist of 1000 Friends of Oregon's objection to be that Metro is taking land from the land base of the agriculture industry in favor of urban industrial land use. The Commission does not find that the goals specifically address changing land from one type of industry to another type of industry. To the extent the restriction 1000 Friends of Oregon assigns RFP Policy 1.4 in its objection implicated the Evergreen Expansion Area, the Commission finds that the Goal 14 "locational factors" are the means for considering the impact of taking land from the land base of the agriculture industry in favor of urban industrial land use. The Commission rejected 1000 Friends of Oregon's objection based on Goal 14, factors 4, 6, and 7, above. 1000 Friends of Oregon asserts that Metro's Goal 14, factor 5 staff report regarding the economic, social, and energy impacts of taking this land out of the county's agricultural land base is not adequate.[9] The staff report is part of Metro's submittal in support of Ordinance No. 05-1070B. Attachment 5 to that report, the September 2005 Addendum to the Alternatives Analysis, concludes that inclusion of the Evergreen Expansion Area would result in moderate social, energy, and economic consequences. That conclusion appears in the overall consideration of the locational factors. *See* Staff Report Table 4 to Ordinance No. 05-1070 at 11. Metro identified that a con of the Evergreen Expansion Area is the impact on commercial agriculture by pushing urban development further into the agricultural base in Washington County, but concluded:

> "The nearly surrounded nature of the agriculture lands in the Evergreen area (between the UGB on the east and south and exceptions lands to the west), potential for good edges, moderate level of small parcels and the fact that the areas is not in an irrigation district are the primary reasons that this area received consideration." Staff Report to Ordinance No. 05-1070 at 13.

"1.4.2 Balance the number and wage level of jobs within each subregion with housing cost and availability within that subregion. Strategies are to be coordinated with the planning and implementation activities of this element with Policy 1.3, Housing and Affordable Housing, and Policy 1.8, Developed Urban Land.

"1.4.3 Designate, with the aid of leaders in the business and development community and local governments in the region, as Regionally Significant Industrial Areas those areas with site characteristics that make them especially suitable for the particular requirements of industries that offer the best opportunities for family-wage jobs.

"1.4.4 Require, through the Urban Growth Management Functional Plan, that local governments exercise their comprehensive planning and zoning authorities to protect Regionally Significant Industrial Areas from incompatible uses."

[9] Goal 14, factor 5 requires consideration of:

"Environmental, energy, economic and social consequences[.]"

1000 Friends of Oregon's objection does not fault Metro's 'environmental' analysis of the Evergreen Expansion Area. *See* Addendum to the Alternatives Analysis (September 2005) at 3-4.

In the findings, Metro also found that because the Evergreen Expansion Area would be available for industrial use sooner than any other study area under consideration, perhaps as a "shovel-ready" site, it would have the best overall consequences for the region. Exhibit D to Ordinance No. 05-1070 at 8. The Commission finds that collectively, the social, energy, and economic analysis submitted by Metro is an adequate consideration of the locational factors of Goal 14. The Commission rejects this objection of 1000 Friends of Oregon.

1000 Friends of Oregon and the Washington County Farm Bureau both observe that urban industrial use of the Evergreen Expansion Area will place greater transportation and infrastructure demands than agricultural use of the area. Both parties also observe that urbanization will make it more difficult to move farm equipment. Washington County Farm Bureau observes that much of the region's growth has occurred in Washington County, that farmland is a natural resource and contributes to livability. Neither party explains how these observations amount to a deficiency in Metro's submittal. The Commission finds that Metro considered these consequences of urbanization of the Evergreen Expansion Area. In recognition of these and consequences, Metro adopted conditions of approval, including a requirement that the City of Hillsboro adopt land use regulations to enhance the compatibility between industrial uses in the Evergreen Expansion Area and agricultural practices on adjacent land outside the UGB. Exhibit B to Ordinance No. 05-1070. The Commission rejects these objections of 1000 Friends of Oregon and the Washington County Farm Bureau.

1000 Friends of Oregon argues that the Evergreen Expansion Area is not necessary to meet the region's large industrial lots or warehouse and distribution needs. The Commission disagrees. As discussed above, Metro found that the addition of the Evergreen Expansion Area large lot would fulfill the identified need for large parcels of industrial lands. Exhibit D to Ordinance No. 05-1070A at 2-3. Although 1000 Friends of Oregon correctly observes that the addition of the Evergreen Expansion Area would not fulfill the identified need for the warehouse and distribution industry, as discussed below, Metro determined that "more than 70 percent of vacant, buildable industrial land within the UGB is suitable for the warehouse and distribution industry." Exhibit D to Ordinance No. 05-1070A at 3. Therefore, although the Evergreen Expansion Area is not needed to meet the warehouse and distribution component of the identified employment need, it does satisfy part of the identified need for large parcels of industrial lands. The Commission rejects this objection of 1000 Friends of Oregon.

The Commission, having rejected all objections to Metro's inclusion of the Evergreen Expansion Area, approves Metro's inclusion of that area and the condition requiring reconfiguration to produce at least one parcel that is 100 acres or larger in size. The Commission concludes that Metro has complied with remand item 7(c) of LCDC Order 05-WKTASK-001673 and the goals.

Land for Warehousing and Distribution

The Commission remanded Metro Task 2 to "[c]larify whether the 70 percent of land for warehousing and distribution uses applies to all vacant industrial land or only to the need to add land to the UGB[.]" LCDC Order 05-WKTASK-001673 at 71. On remand, Metro evaluated all of the vacant buildable land in the region including land added to the UGB, finding that "more than 70 percent of vacant, buildable industrial land within the UGB is suitable for the warehouse and distribution industry." Exhibit D to Ordinance No. 05-1070A at 3. The Department concluded that Metro's submittal satisfied this remand item. DLCD Revised Staff Report at 7. The Department did not receive any objections to this portion of Metro's submittal. The Commission concludes that Metro has complied with this requirement of LCDC Order 05-WKTASK-001673 and the goals.

Recalculate Total Acreage of Industrial Land Supply

The Commission remanded Metro Task 2 to "recalculate the total acreage of industrial land supply and compare that number with the identified land need of 1,180 net acres[.]" LCDC Order 05-WKTASK-001673 at 71. Metro calculated that it had not met 435 net acres of the total identified need of 9,366 acres for industrial land. Exhibit D to Ordinance No. 05-1070A at 3-4. On remand, Metro added 345 net acres, bringing the industrial land capacity of the UGB to 9,276 acres, 90 acres shy of the need Metro identified in the *2002-2022 Urban Growth Report: An Employment Land Need Analysis* (UGR-E). Metro found that this "supply is so close to the calculated need that it is well within the limits of precision of the many assumptions that are part of the need determination (the population forecast; the employment capture rate; the industrial refill rate; employment density; the rate of encroachment by non-industrial uses; the vintage industrial relocation rate)." Exhibit D to Ordinance No. 05-1070A at 4. Metro concluded that the difference of less than one percent between the need and the supply is so small as to be minor and technical in nature. *Id.* The Department received objections and exceptions challenging Metro's conclusion that it has provided a 20-year supply of industrial land for the region in compliance with Goal 14.

Statewide Planning Goal 14

Several objectors contend that Metro's submittal does not comply with Statewide Planning Goal 14. Generally, the objections and exceptions contend that either as a matter of law or based on a prior Commission decision in this matter, that Goal 14 requires Metro to provide an amount of land necessary to precisely meet or exceed the identified employment need in the UGR-E. Some objectors contend that Metro must be able to meet some of the identified employment need in the immediate or short-term. One objector contends that the Commission should require Metro to reevaluate its identified need.

Goal 14 is "[t]o provide for an orderly and efficient transition from rural to urban land use."[10] OAR 660-015-0000(14). Goal 14 requires that change to a UGB be based upon considerations of seven factors:

> "(1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
>
> "(2) Need for housing, employment opportunities, and livability;
>
> "(3) Orderly and economic provision for public facilities and services;
>
> "(4) Maximum efficiency of land uses within and on the fringe of the existing urban area;
>
> "(5) Environmental, energy, economic and social consequences;
>
> "(6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,
>
> "(7) Compatibility of the proposed urban uses with nearby agricultural activities."

Factors 1 and 2 are the "need" factors. *Friends of Linn County v. Linn County*, 41 Or LUBA 342, 344 (2002). Factors 3 to 7 are known as the "locational factors." *D.S. Parklane Development, Inc. v. Metro*, 165 Or App 1, 7 n 1, 994 P2d 1205 (2000).

Identified Need

The Westside Economic Alliance objects that the need forecasted in the UGR-E understates the true needs of the region and suggests that the Commission should remand Metro's submittal with direction to meet the region's true employment need, not that identified in the acknowledged UGR-E. The Westside Economic Alliance objection argues "the region and the state would be better served if Metro were ordered to rely on Metro's updated information, and to satisfy the need as it is now anticipated to exist." Westside Economic Alliance objection at 4. The Westside Economic Alliance renews this concern in its exception, stating "we believe the Commission should require Metro to use the new information they have, to accommodate the demands we now agree are coming much faster than expected." Westside Economic Alliance exception at 3. Because sustaining this objection or exception would require Metro to reevaluate its identified need for employment opportunities, the Commission considers it first.

Pursuant to Goal 14, factor 2, Work Task 2, Subtask 14b required Metro to analyze the region's projected need for employment land to 2022. The *2002—2022 Urban Growth Report: An Employment Land Need Analysis* (Ordinance No. 02-969B,

[10] On April 28, 2005, the Commission adopted amendments to Goal 14 and amended related OARs. The Commission reviews this work task submittal under the prior version of Goal 14 effective at the time the Commission approved Metro's periodic review work program in 2000.

Appendix A, item 4) and the supplement to the UGR-E (Ordinance No. 04-1040B, Appendix A, item b) provide Metro's analysis of the need for land for new jobs through the year 2022. Metro defined its industrial land need as having particular characteristics:

> "Metro defined the need as 1,968 acres of land composed generally of less than 10 percent slope that lies either within two miles of a freeway interchange or within one mile of an existing industrial area." Exhibit G to Ordinance No. 04-1040B at 2.

The Commission previously rejected objections to Metro's employment lands needs analysis, Subtask 14b, the UGR-E and approved Metro's identified employment opportunities need. LCDC Order No. 03-WKTASK-001524 at 2, 22, 50. While the Commission subsequently remanded the UGR-E for amendment pursuant to the consistency provisions of Goal 2, the Commission did not sustain any objections to Metro's identified employment opportunities need. *See* LCDC Order No. 001673 at 16-32. Because the Commission approved the employment need identified in the UGR-E and no party sought judicial review of that approval, the employment need identified in the UGR-E is acknowledged. OAR 660-025-0160(9). The Commission finds that nothing in Metro's current submittal requires Metro to rework the employment need of the previously acknowledged UGR-E. *Hummel v. LCDC*, 152 Or App 404, 410-411, 954 P2d 824 (1998). The Commission rejects Westside Economic Alliance's objection, exception, and proposed remedy regarding Metro's acknowledged need for employment opportunities.

Means of Meeting the Identified Need

Westside Economic Alliance contends that the Commission should require Metro to add 1,968 acres of land representing the employment need that was identified in 2002. In previously rejecting a similar objection, the Commission stated:

> "The Commission finds that Metro did not reduce the identified industrial land need. Metro started with an unmet industrial need of 1,968 acres, consistent with the UGR-E and LCDC Order 03-WKTASK-001524. To the extent that this and other objections contend that the Commission directed Metro to simply add 1,968 net acres to the UGB, the objections misconstrue the Commission's order and the Goal 2 and 14 requirements for expanding a UGB. The Commission concludes that Metro complied with the goals and the requirements of its acknowledged Periodic Review Work Program in first determining whether the identified need for industrial employment opportunities could be accommodated within the existing UGB before adding land to the UGB to meet the identified need. Goal 2, Goal 14, and OAR 660-004-0010(1)(c)(B)(ii); *see also* Metro Periodic Review Work Program, Subtask 17 at 13 (requiring 'consideration of whether needs can be accommodated within the existing UGB before expanding it.')." LCDC Order No. 001673 at 21-22.

The Commission also specifically determined that Metro had an adequate factual base to demonstrate that the efficiency measures in Title 4 of the Urban Growth Management Functional Plan (UGMFP) would save an estimated 1,400 acres of industrial land. *Id.* at 22. Neither Westside Economic Alliance nor any other party sought judicial review of that conclusion. The Commission rejects this objection both on the merits and as an untimely challenge to its prior order.

Meeting the Identified Need

The City of Hillsboro, the City of Cornelius, the City of Forest Grove, CREEC, and NAIOP argue that, as a matter of law the Goal 14, factor 1 and 2 "Need" requirement imposes upon Metro a legal obligation to provide an amount of land that is "at least" equal to the projected land needs for a 20-year supply of industrial land. City of Hillsboro objection at 6; exception at 1-2; City of Forest Grove objection at 4-5, NAIOP objection at 3; exception at 1-2; CREEC objection at 5; exception at 1-2. The objectors contend that the Commission must strictly construe and Metro must accommodate the 1,180 net acres industrial land need Metro identified. The City of Hillsboro takes exception to the notion that Goal 14 allows land need deficits that are minor in nature. City of Hillsboro exception at 2. The Westside Economic Alliance objects that Metro was directed to correct the 133 acre deficit, but failed to add 133 acres to do so. Westside Economic Alliance objection at 4; exception at 2. The City of Cornelius argues "Metro must fully accommodate its identified land need as a matter of law and policy." City of Cornelius Exception at 1.

The City of Cornelius objection cites to the commission's 2003 Order as "the law of the case"[11] that held that Metro must provide an amount of land "at least" equal to the identified employment need for industrial land. The Commission stated:

> "The Associated General Contractors, Portland Business Alliance, and Regional Economic Development Partners object that Metro did not provide sufficient industrial land to meet all of the need which it has identified. OAR 660-009-0025(2) requires Metro to provide an amount of land that is at least equal to the projected land needs for a 20-year supply of industrial land. The Commission concludes that Work Task 2 has not provided sufficient industrial land to meet the identified need. The Commission sustains the objections to the incomplete accommodation of the need for industrial lands." LCDC Order 03-WKTASK-001524 at 28.

In that passage, the Commission analogized to the requirements of the Goal 9 rule, OAR chapter 660, division 9. As this Commission clarified in its more recent order, neither Goal 9 nor the Goal 9 rule applies to Metro. LCDC Order 05-WKTASK-001673 at 14-16. The Commission clarified that Metro's responsibility to ensure a long-term supply of employment land inside the UGB stems from Goal 14, not Goal 9. LCDC Order 05-

[11] The "law of the case" doctrine "is that principle under which determination of questions of law will generally be held to govern case throughout all its subsequent stages where such determination has already been made on a prior appeal to a court of last resort." *Black's Law Dictionary* 798 (5th ed 1979).

WKTASK-001673 at 16 n 8. The Commission considered and rejected arguments that either Goal 14 or the Commission's 2003 order obliged Metro to "fully accommodate" the identified need for employment lands. The Commission *specifically* left open the possibility that a shortfall in meeting the employment land needs would be deemed "minor in nature" under ORS 197.747.

> "The Commission concludes that a 133-acre shortfall, constituting one percent of the total overall land need of 9,366 acres for the 20-year planning period (UGR-E), may ultimately be considered 'minor in nature' as a matter of law. However, the Commission further concludes that such a determination is premature in light of the Commission's partial remand in this Order for Metro to evaluate elements of its Goal 14 needs analysis." LCDC Order 05-WKTASK-001673 at 30.

To the extent that the law of the case doctrine pertains to this issue, it is the latter holding of the Commission – that a shortfall may be minor in nature as a matter of law – that is the law of the case. No party sought judicial review of that holding.

Ordinance No. 05-1070A adds 345 net acres of land to the UGB, bringing the industrial land capacity of the UGB to 9,276 acres, 90 acres shy of the total need for industrial land identified in the UGR-E. Exhibit D to Ordinance No. 05-1070A at 4. The Commission now turns to whether a 90-acre shortfall, constituting less than one percent of the total overall identified land need of 9,366 acres for the 20-year planning period, may be considered 'minor in nature' as a matter of law. The objectors contend that either Goal 14 or *former* RFP Policy 1.9[12] require Metro to precisely provide a 20-year supply of land to satisfy the employment opportunities need. Several objectors note that nothing in the plain language of the Goal 14 need factors state or imply that accommodating anything less than full 20-year land need is permissible. While the Commission agrees that Goal 14 requires Metro to project its 20-year need for employment opportunity and to take steps to reasonably accommodate the identified need, the objector's contention that Metro must "fully accommodate" or provide "at least" its identified need of 9,366 acres of industrial land ignores ORS 197.747. ORS 197.747 defines "compliance with the goals" to mean that the submittal, "on the whole, conform with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature." It is ORS 197.747, not Goal 14 that allows a minor shortfall in accommodating an identified need. Metro found that the 9,276 acre "supply is so close to the calculated need that it is well within the limits of precision of the many assumptions that are part of the need determination (the population forecast; the employment forecast; the capture rate; the industrial refill rate, employment density; the rate of encroachment by non-industrial uses; the vintage industrial relocation rate)." Exhibit D to Ordinance No. 05-1070A at 4. Metro concluded that the difference of less than one percent between the need and the supply is so small as to be minor and technical in nature. *Id.* The Commission concludes that Goal 14 read together with ORS 197.747 allows the

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[12] The City of Forest Grove, CREEC, and NAIOP cite to *former* RFP Policy 1.9, which provided in part:

> "The regional UGB, a long-term planning tool, shall separate urbanizable from rural land and be based on the region's 20-year projected need for land[.]"

Commission to approve Metro's submittal where it accommodates over 99 percent of its acknowledged need for employment opportunities. The Commission rejects each objection and exception that contends otherwise.

Finally, the City of Cornelius argues that by adding the entire Cornelius study area, Metro would have exceeded its identified employment land need by one-acre, which is more "minor in nature" than a 90-acre deficit is. Assuming for purposes of discussion that contention is correct, that is not what Metro has submitted as its completed work task, and is not what is before the Commission. The Commission has jurisdiction to review Metro's completed work task submittals. ORS 197.644(2). The Commission is not in a position to anticipate how Metro would satisfy the 90-acre deficit if the Commission were to direct Metro to do so. Thus, the issue properly before the Commission on its review of this submittal is whether a 90-acre shortfall, constituting less than one percent of the total overall land need of 9,366 acres for the 20-year planning period (UGR-E), is 'minor in nature' as a matter of law. As decided above, the Commission concludes that the shortfall is minor in nature and that Metro had provided an adequate supply of industrial land to meet the need identified in the UGR-E.

Short-term needs

The Westside Economic Alliance objects that Metro failed to accommodate the region's short-term industrial land needs, contrary to Goal 9 and Goal 14. WEA objection at 6-8. Objectors the City of Forest Grove, NAIOP, and CREEC contend that Metro failed to insure that a reasonable portion of the 20-year supply of industrial land is either development ready or capable of being made so within a short period of time. City of Forest Grove objection at 3, CREEC objection at 5, NAIOP objection at 4. The Commission has rejected the assertion that Metro has an obligation under state law to provide a short-term supply of industrial land.

"Short-term Supply of Land

"Langdon Farms, Hillsboro, and Westside Economic Alliance raised objections and exceptions regarding the short-term supply of industrial land, specifically that for warehouse/distribution. The obligation to provide a short-term supply of serviceable sites comes from OAR chapter 660, division 009, which implements Goal 9 and ORS 197.712. As discussed above, Goal 9, ORS 197.712, and division 009 do not apply to Metro. OAR 660-009-0025(3), pertaining to short-term supply of serviceable sites, provides "[i]f the local government is required to prepare a public facility plan by OAR chapter 660, division 011." Because Metro is not a local government that is required prepare a public facility plan by OAR chapter 660, division 011, the rule on its face does not apply to Metro. *The Commission concludes that Metro is not responsible for planning a short-term supply of industrial land.*" LCDC Order 05-WKTASK-001673 at 16 (emphasis added).

The Commission rejects these objections of Westside Economic Alliance, the City of Forest Grove, CREEC, and NAIOP.

The Commission concludes that Metro has complied with Goal 14 and the requirement of LCDC Order 05-WKTASK-001673 to "recalculate the total acreage of industrial land supply and compare that number with the identified land need of 1,180 net acres[.]"

Objections to Cornelius Expansion Area

The Commission remanded Metro Task 2 to "[r]efine the analysis of how Metro 'balanced' the locational factors of Goal 14 (factors 3 through 7) in reaching its decision to include the Cornelius area as described in Exhibit E to Ordinance No. 04-1040B in the UGB over other areas of equal statutory priority, including why the economic consequences outweighed the retention of agricultural land and compatibility with adjacent agricultural uses." LCDC Order 05-WKTASK-001673 at 70-71. On remand, Metro concluded that adding 65 acres (24 net acres) north of the City of Cornelius best achieves the RFP policies and complies with state law.[13] Metro found that the Cornelius Expansion Area reduces the impact of UGB expansion on the agriculture industry; is among the easiest study areas to serve efficiently; accommodates industrial development more efficiently than other study areas; reduces impacts on area roads relative to the prior submittal; avoids negative economic and social consequences from loss of the agricultural land base; and supports the designated Main Street in the City of Cornelius, which effectively serves as the "center" of Cornelius. *See* Exhibit D to Ordinance No. 05-1070A at 5-20 (Metro findings comparing Cornelius Expansion Area to 12 study areas under consideration).

ORS 197.298

The City of Hillsboro contends "the exception land must be brought into the UGB <u>before</u> (or concurrent with) any Class II resource land within the Cornelius Site in order to avoid violating the ORS 197.298(1) priorities." City of Hillsboro objection at 9. The City of Hillsboro, the City of Forest Grove, NAIOP and CREEC object that Metro violated ORS 197.298 by not including exception land to the north of Council Creek on the basis that Council Creek is a "natural boundary." City of Hillsboro objection at 7-10, City of Forest Grove objection at 5-6, NAIOP objection at 4-5; exception at 2, CREEC objection at 6-7; exception at 2. The City of Cornelius objects that the Cornelius Study

[13] Metro identified the Cornelius Study Area in the 2003 Industrial Land Alternative Analysis Study as a 1,154 total-acre area composed of 2002 Alternative Analysis Study Areas 75 and 76 and 2003 Alternative Analysis Study Area H. 2003 Industrial Land Alternative Analysis Study at 84. Metro submitted a 262-acre portion of the Cornelius Study Area for inclusion in the UGB in Ordinance No. 04-1040B, which the Commission remanded for further consideration. *See* Exhibit E to Ordinance No. 04-1040B (depicting 262-acre portion submitted for inclusion in the UGB). The Cornelius Expansion Area Metro added in Ordinance No. 05-1070A is a 65-acre portion of the Cornelius Study Area. *See* Exhibit A-1 to Ordinance No. 05-1070A. This order refers to the area added to the UGB as the Cornelius Expansion Area.

Area has the highest priority under ORS 197.298 of the areas Metro studied. City of Cornelius objection at 7; exception at 2-3.

As discussed above with respect to the Evergreen Expansion Area, for this expansion effort, Metro was considering 12 areas of predominantly Class II soils.[14] Exhibit D to Ordinance No. 05-1070A at 4. ORS 197.298 does not establish a priority between areas of Class II soils; therefore, Metro must look to the Goal 14 locational factors 3-7 to determine which areas of Class II soils should be brought into the UGB to meet the identified industrial need. LCDC Order 05-WKTASK-001673 at 43-44. Metro recognized that the Cornelius Expansion Area did not include areas of exception land that had previously been submitted to the Commission as an UGB expansion in Ordinance No. 04-1040B. Metro provided three reasons for not including the exception areas north of Council Creek:

> "First, the exception land, like the excluded farmland, lies north of Council Creek. Both the Oregon Department of Agriculture and the Washington County Farm Bureau urged the Council not to expand the UGB north of this creek. Council Creek is the best barrier between urbanization in Cornelius and commercial agriculture to the north. Urbanization of this exception land would not only threaten commercial agriculture on the excluded farmland that lies between the two exception areas. It would also allow development that would worsen the existing intrusion into the commercial farm area north of Council Creek and erode the confidence of area farmers in the viability of commercial agriculture in the area.
>
> "Second, provision of urban services to the two exception areas would not be efficient without providing services to the farmland that lies between them. Extension of streets into the exception areas alone would limit accessibility to fire and life safety vehicles and place additional demands on local streets within the pre-expansion UGB. Development of looped water and sewer systems – more efficient and safer – through the exception areas and intervening farmland becomes less feasible without development of the farmland and may not be legally possible under state planning laws.
>
> "Third, the exception land that lies to the east of the excluded farmland borders residential land across the UGB to the south. It does not adjoin industrial land. Further, Council Creek also traverses the area east to west, following approximately the course of the UGB. As noted in the Alternative Analysis attached to the September 20, 2005, Staff Report, there is protected corridor

[14] The City of Cornelius contends that the Cornelius Study Area is "exceedingly close to qualifying as second priority land under ORS 197.298(1)(b)." Assuming that is correct, the Commission does not conclude that Metro can be held to have erred on this record for considering the Cornelius Study Area as Soil Class II resource land under ORS 197.298(1)(d) and (2). The 1,154 acre Cornelius Study Area contained 55 percent Class II soils and 20 percent exception land. October 13, 2005 Staff Report to Ordinance No. 05-1070 at 11. The 262-acre portion of the Cornelius Study Area for inclusion in the UGB in Ordinance No. 04-1040B also contained 55 percent Class II soils. *Id.*

> averaging 280 feet wide along the creek that would separate industrial uses in the exception area from uses within the existing UGB.
>
> "In sum, in order to protect the commercial agricultural land base and use industrial land efficiently, it is necessary to exclude all land north of Council Creek."

Exhibit D to Ordinance No. 05-1070A at 19-20. Metro applied the locational factors of Goal 14 and its RFP Polices to determine which of the 12 identified study areas should be utilized to accommodate the identified need for employment opportunities in the UGR-E. Metro's findings under those criteria are at Exhibit D to Ordinance No. 05-1070A at 5-20.

Statewide Planning Goal 2 – Adequate Factual Base

The City of Cornelius objects that Metro lacked an adequate factual base under Goal 2 to decide to meet industrial need in the Cornelius area only on lands south of Council Creek. City of Cornelius objection at 5; exception at 4. The City of Cornelius argues that an adequate factual base exists to support the portion of the Cornelius Study Area that Metro submitted in Ordinance No. 04-1040B.

The Goal 2 requirement for an adequate factual base requires that legislative land use decision be supported by substantial evidence. *DLCD v. Douglas County*, 37 Or LUBA 129, 132 (1999). Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make the finding. ORS 183.482(8)(c) and *Dodd v. Hood River County,* 317 Or 172, 179, 855 P2d 608 (1993). Where the evidence in the record is conflicting, if a reasonable person could reach the decision Metro made in view of all the evidence in the record, the choice between the conflicting evidence belongs to Metro. *Mazeski v. Wasco County,* 28 Or LUBA 178, 185 (1994), *aff'd* 133 Or App 258, 890 P2d 455 (1995).

The Commission has jurisdiction to review Metro's completed work task submittals. ORS 197.644(2). The Commission does not foretell whether Metro would determine, based on consideration of the locational factors of Goal 14, that the portion of the Cornelius Study Area that Metro submitted in Ordinance No. 04-1040B was on balance an appropriate place to expand the UGB at this time. As a matter of law, that is precisely why the Commission remanded Metro's analysis of the "balancing of the locational factors of Goal 14 (factors 3 through 7) in reaching its decision to include the Cornelius area as described in Exhibit E to Ordinance No. 04-1040B in the UGB over other areas of equal statutory priority, including why the economic consequences outweighed the retention of agricultural land and compatibility with adjacent agricultural uses." LCDC Order 05-WKTASK-001673 at 70-71. The question before the Commission is not that posed in the City of Cornelius' objection – whether there would have been substantial evidence to support a decision to bring in the portion of the Cornelius Study Area that Metro submitted in Ordinance No. 04-1040B – the question

before the Commission is whether Metro's decision to include the Cornelius Expansion Area was supported by substantial evidence.[15]

Metro's findings regarding the Cornelius Expansion Area include the following:

> "The Council was persuaded by testimony of farmers in the area and the Oregon Department of Agriculture that adding land north of Council Creek would create an intrusion into an area of critical importance to commercial agriculture in the Tualatin Valley." Exhibit D to Ordinance No. 05-1070A at 4.

and

> "Avoidance of negative economic and social consequences from loss of agricultural land was one of the reasons the Council reduced the size of this area, based upon testimony by the Oregon Department of Agriculture and the Washington County Farm Bureau that land to the north of Council Creek is important to the commercial Agricultural land base in the Tualatin Valley. *Id.* at 16.

and

> "The Washington County Farm Bureau testified that inclusion of *any* land north of Council Creek – farmland or exception land (some of which is being farmed) – would harm commercial agriculture in the Tualatin Valley by diminishing the land base and introducing conflicts. Development north of Council Creek would encounter no significant barrier to further expansion to the north, eroding certainty among farmers in the Tualatin Valley. Letters from a farm products processor and a farm implement dealer in Cornelius expressed concern that further loss of farmland would make it difficult for them to remain in business. All of this evidence persuades the Council that inclusion of land north of Council Creek would be inconsistent with [RFP] Policy 1.12 and Goal 14 and would be more harmful to commercial agriculture than inclusion of farmland in the Evergreen Area." *Id.* at 18.

The record contains a report to Metro entitled "*Limited Choices: The Protection of Agricultural Lands and the Expansion of the Metro Area Urban growth Boundary for Industrial Use*" that was prepared by a group of farmers and agriculturists assembled by the Oregon Department of Agriculture. With regard to the Cornelius Study Area, the report states:

> "The workgroup is very concerned about beginning a pattern of development that would protrude out into the agricultural lands located north of Cornelius and

[15] The City of Cornelius also argues that Metro could have brought in the resource land north of Council Creek pursuant to ORS 197.298(3)(b) and (c). Assuming that is correct, the Commission does not consider this possibility a basis to remand Metro's decision. As discussed above, the Commission's jurisdiction is limited to review of Metro's submittal.

> Forest Grove and west of Hillsboro. The current urban growth boundary corresponds with Council Creek. Council Creek and its associated floodplain and riparian zone currently provide a good edge and buffer between urban and resource lands. *The area located north of these cities and west of the City of Hillsboro is considered by the workgroup to be a core agricultural area in the county and metro area. The long-term integrity of this agricultural core area could be compromised with the protrusion of development into the core area.*" Ordinance No. 04-1040B, Appendix A, item i at 11-12 (emphasis in the original).

Metro's submittal includes an October 25, 2005 letter from the Oregon Department of Agriculture which expresses concern about introducing development into agricultural core areas, stating "Expansion north of [Council] Creek would project a finger of urban development with several edges into prime farmland."

The record also includes the 2003 Industrial Land Alternative Analysis Study, which determined that urbanization of the entire Cornelius Study Area would have high adverse consequences for nearby agriculture. *Id.* at 85-86; Table A-4. By comparison, urbanization of the Cornelius Expansion Area "would have a medium impact on adjacent agricultural activity to the north, east and west." September 2005 Addendum to the Alternative Analysis, Cornelius Supplement at 3. The Commission concludes that Metro's decision to meet some of its identified industrial need in the Cornelius Expansion Area, *i.e.*, only on lands south of Council Creek, is supported by substantial evidence. The Commission further concludes that although the record included evidence that could support inclusion of a larger portion of the Cornelius Study Area, such evidence was in conflict with the substantial evidence described above. Under those circumstances, because the Commission concludes Metro reasonably could reach the decision it made in view of all the evidence in the record, the choice between the conflicting evidence belongs to Metro. *Mazeski v. Wasco County,* 28 Or LUBA at 185.

Scope of LCDC Order 05-WKTASK-001673 Remand

The City of Cornelius contends the Commission's remand order simply directed Metro to adopt new findings under the locational factors to justify inclusion of the portion of the Cornelius study area previously submitted in Ordinance No. 04-1040B. City of Cornelius objection at 9-10; exception at 4. The City of Cornelius further contends that Metro lacked the authority to include less than all of the Cornelius Study Area, or to conclude that another area studied for inclusion was more suitable based upon consideration of the locational factors of Goal 14. The City of Hillsboro argued that the Commission's remand to Metro directed Metro "how" to comply with Goal 2 Coordination, stating "It was only supposed to prepare sufficient findings to support the entire Site being added to the UGB." Remarks of Hillsboro to the Commission on March 23, 2006.

The Commission remanded the inclusion of the Cornelius Study Area for further analysis by Metro and additional findings to demonstrate its consideration and balancing

of the Goal 14, factors 3 to 7. LCDC Order 05-WKTASK-001673 at 35. The Commission remanded the Cornelius study area to:

> "Refine the analysis of how Metro 'balanced' the locational factors of Goal 14 (factors 3 through 7) in reaching its decision to include the Cornelius area as described in Exhibit E to Ordinance No. 04-1040B in the UGB over those areas of equal statutory priority, including why the economic consequences outweighed the retention of agricultural land and compatibility with adjacent agricultural uses." *Id.* at 70-71.

The Commission did not order Metro to include the Cornelius area, either in whole or in part. *See* OAR 660-025-0160(8)(c) (authorizing Commission to order specific plan or land use regulation revisions which are final and do not require further Commission review). The Commission specifically remanded to Metro to refine its analysis of that area under the locational factors emphasizing the focus to include factors 6 and 7. Metro did so and determined that at this time, the urbanization of the agricultural lands north of Council Creek was neither compatible with the continuation of Washington County agricultural activities nor an efficient use of industrial land.

Goal 14, factors 3 to 7, known as the "locational factors," do not stand alone as five independent approval criterion, the factors must be individually addressed and applied equally, and then Metro must consider and balance the five factors in reaching a conclusion concerning whether adding a specific area to the UGB achieves the overall goal to provide for an orderly and efficient transition from rural to urban land use. *D.S. Parklane Development, Inc.*, 165 Or App at 24; *1000 Friends of Oregon v. Metro*, 174 Or App 406, 410, 26 P3d 1108 (2001). The purpose of evaluation of the locational factors of Goal 14 is to determine which lands are best able to meet the identified need and Goal 14 overall. In this instance, Metro determined that the lands south of Council Creek met some of the identified need, but because the lands north of Council Creek posed such a negative impact to the integrity of the agricultural enterprise in the area, that in balancing the locational factors, the regional UGB should not include the area north of Council Creek. This is exactly the type of analysis that the Commission remanded the prior submittal to Metro to perform. The Commission concludes that Metro did not exceed its authority on remand.

The Westside Economic Alliance Objection 3 contends that the Commission should direct Metro "to reinstate, with justifications already ordered, the 262 acre expansion north of Cornelius previously proposed in Ordinance 04-1040B" or in the alternative "include other lands that satisfy the identified regional need for industrial lands." Westside Economic Alliance objection at 4. As discussed above, the Commission previously remanded for clarification Metro's justification for submitting the portion of the Cornelius Study Area in Ordinance No. 04-1040B. Inherent in that remand is the Commission's conclusion that the justification for the 262 acre area was not clear as to how Metro justified the submittal. The Commission concludes that reinstating those same justifications now would still not be sufficiently clear to include the 262 acre expansion. The Commission also notes that it has concluded above that

Metro's submittal has met its identified employment need, because the remaining shortfall for the region is minor in nature.

Hard Boundaries

Westside Economic Alliance Objection 4 contends that establishing "hard boundaries" in general, and specifically the decision to not include lands north of Council Creek, is inconsistent with ORS 197.298 and Goal 14. Westside Economic Alliance objection at 4. The City of Forest Grove, NAIOP, and CREEC object to the use of "'artificial edges', whether natural, e.g., creeks, or man-made, e.g., highways to 'trump' the land hierarchy established in ORS 197.298." *See also* CREEC and NAIOP exception at 2. As discussed above, to meet the identified employment need, Metro was considering 12 study areas that included Class II soils. Exhibit D Ordinance No. 05-1070A at 4. The Commission agreed that ORS 197.298 does not establish a priority between areas of Class II soils and that Metro must look to the Goal 14 locational factors 3-7 to determine which areas of Class II soils should be brought into the UGB to meet the identified industrial need. LCDC Order 05-WKTASK-001673 at 43-44. The Commission has held

> "for lands of the same priority under ORS 197.298 that can reasonably accommodate Metro's identified need for industrial land, Metro considers and balances Goal 14, factors 3 to 7 to determine locations to expand the UGB. Although they do not take precedence over criteria in state law, Metro also bases the selection of lands of the same priority for inclusion on RFP policies. *See* Ordinance No. 04-1040B, Appendix A, item a at 5 and Attachment 1 (describing and diagramming relationship of applicable provisions)." LCDC Order 05-WKTASK-001673 at 41.

To the extent that Metro's submittal had the effect of establishing a "hard boundary" or "artificial edge" at Council Creek, the Commission concludes that Metro did so by applying the locational factors of Goal 14 and consistent with RFP 1.7.2. The Commission does not find that Metro established either "hard boundaries" or an "artificial edge" that are not in compliance with either ORS 197.298 or Goal 14. The Commission rejects Westside Economic Alliance Objection 4 and this aspect of the City of Forest Grove's third objection, NAIOP's second objection, and CREEC's third objection.

Statewide Planning Goal 2 – Coordination

The City of Forest Grove and CREEC object that Metro did not comply with ORS 197.015(5), Statewide Planning Goal 2, and OAR 660-015-0000(2). Forest Grove and CREEC contend Metro "failed to respect MPAC's original recommendation and failed to afford an opportunity for MPAC and the most affected jurisdictions, the Cities of Hillsboro and Cornelius, to advise it regarding new information attained at the 11/10/0[5] hearing in a timely and meaningful way before final adoption." Forest Grove objection at 4; CREEC objection at 4. The City of Hillsboro objects and filed an exception

contending that Metro did not comply with the coordination requirements of Goal 2. The Westside Economic Alliance also objects that Metro ignored its Goal 2 obligation to coordinate with local government by ignoring the findings and recommendations of local officials. Westside Economic Alliance objection at 5.

Goal 2 provides "[e]ach plan and related implementation measure shall be coordinated with the plans of affected governmental units."[16] As used in Goal 2, a regional framework plan is "coordinated" once "the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible." ORS 197.015(5). Previously, the Commission has stated the coordination requirement as follows;

> "the coordination requirement is satisfied where Metro has engaged in an exchange of information regarding an affected governmental unit's concerns, put forth a reasonable effort to accommodate those concerns and legitimate interests as much as possible, and made findings responding to legitimate concerns." LCDC Order 05-WKTASK-001673 at 10.

Metro detailed its coordination with local governments and special districts, finding that it "accommodated the requests and concerns of local governments as much as it could, consistent with statewide planning Goal 2, ORS 195.025 and ORS 268.385,[17] Regional Framework Plan Policy 1.11 and Regional Transportation Plan Policy 2.0." Exhibit D to Ordinance No. 05-1070A at 1. The record includes a November 14, 2005 letter from Metro Council President David Bragdon to Cornelius Mayor Terry Rilling setting forth Metro's reasons regarding the Cornelius Expansion Area. The City of Cornelius and others submitted additional written testimony to Metro and testified at the November 17, 2005 hearing. The record reflects that in this instance, Metro has exchanged information with the affected local governments of the cities of Cornelius, Forest Grove, and Hillsboro, and also MPAC. The record also reflects that Metro exchanged information with the Oregon Department of Agriculture pertinent to the Cornelius Expansion Area.

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[16] Goal 2 defines "Affected Governmental Units" as "those local governments * * * which have programs, land ownerships, or responsibilities within the area included in the plan."

[17] ORS 195.025 provide in part:

> "(1) In addition to the responsibilities stated in ORS 197.175, each county, through its governing body, shall be responsible for coordinating all planning activities affecting land uses within the county, including planning activities of the county, cities, special districts and state agencies, to assure an integrated comprehensive plan for the entire area of the county. In addition to being subject to the provisions of ORS chapters 195, 196 and 197 with respect to city or special district boundary changes, as defined by ORS 197.175 (1), the governing body of the Metropolitan Service District shall be considered the county review, advisory and coordinative body for Multnomah, Clackamas and Washington Counties for the areas within that district."

ORS 268.385(1) provides:

> "For the purposes of ORS 195.025, the district formed under this chapter shall exercise within the district the review, advisory and coordinative functions assigned under ORS 195.025 (1) to each county and city that is within the district."

Ultimately, Metro made a determination that under the locational factors of Goal 14, the area south, but north of Council Creek should be brought into the regional UGB. Metro made findings relating how concern over intrusion into the agricultural area north of Council Creek led Metro to conclude that that area was not appropriate for urbanization at this time. The coordination requirement of Goal 2 does not dictate outcomes, only a good faith obligation to a process.

The City of Cornelius argues that Metro's initial decision on November 10, 2005 to include the Cornelius Expansion Area that the City then testified on at the November 17, 2005 hearing did not permit the City to make any substantive comments because Metro had not yet adopted findings for the Cornelius Expansion Area. The Commission does not find anything in Goal 2 that requires Metro to provide an opportunity to comment on *findings*, let alone an opportunity to do so before Metro adopts them. *See DLCD v. Fargo Interchange Service District*, 27 Or LUBA 150, 154, *rev'd & rem'd on other grounds* 129 Or App 447, 879 P2d 224 (1994) (no statute, statewide planning goal or administrative rule requires that a local government adopt findings to support a legislative land use decision); *Citizens for Resp. Growth v. City of Seaside*, 23 Or LUBA 100, 115 *rev'd & rem'd on other grounds* 116 Or App 275, 840 P2d 1370 (1992) (no prohibition against a local government making a tentative oral decision, followed by adoption of a final written decision containing its supporting findings). The City of Cornelius argues "we believe Goal 2 required Metro to provide Cornelius more than seven days to rebut the farmer's conclusions and demonstrate why including all of the site would not constitute an intrusion into farmland[.]" City of Cornelius exception at 3-4. To the extent the City of Cornelius contends that seven days between hearings was not an adequate amount of time for coordination, the Commission disagrees. See *Residents of Rosemont v. Metro*, 38 Or LUBA 199, 230 (2000) *aff'd; rev'd & rem'd on other grounds* 173 Or App 321, 21 P3d 1108(2001) (LUBA held that a seven day comment period on a revised UGB expansion by Metro to be consistent with Goal 2 coordination requirement under circumstances where local government had opportunity to comment on original plan).

The City of Hillsboro argues "we believe Metro had the Goal 2 duty to 'accommodate as much as possible' the Cornelius need for the entire Cornelius site to remain within the UGB" because including the site was "possible." City of Hillsboro exception at 3. The Commission concludes that nothing Goal 2 or ORS 195.025 and ORS 268.385 require Metro to include a site within the UGB if a local government asks Metro to do so and the proposed site meets the legal standards for a UGB amendment. *City of Sandy v. Metro*, 48 Or LUBA 363, 379 *aff'd* 200 Or App 481, 115 P3d 960 (2005). As LUBA noted, "Metro could have any number of reasons why it might favor one site that meets those standards over another site that also meets those standards." *Id.* at 379 n 16. Thus, the Goal 2 duty to 'accommodate as much as possible' does not carry an "obligation" of accommodation. *Id.* at 379.

CREEC and NAIOP argue that "The Regional Goal 2 obligates Metro to do more than just 'exchange information' with the Cornelius and its advisory committees, MTAC and MPAC, about the size of the Cornelius Site it includes in the Regional UGB."

CREEC and NAIOP exception at 2. To the extent CREEC and NAIOP contend that there is a "Regional Goal 2" that requires more of Metro than Goal 2, the Commission disagrees. Metro does not have a higher obligation in performing its coordination than is imposed under Goal 2. *City of Sandy v. Metro*, 48 Or LUBA at 379.

The Commission has considered all of the objections and exceptions raised regarding the Goal 2 coordination obligation. The Commission rejects those objections and exceptions.

Complete Communities

The City of Cornelius generally objects that Metro's submittal does not advance the 2040 Growth Concept ambition of creating "complete communities." City of Cornelius objection at 10. Metro found that the Cornelius Expansion Area supports the designated Main Street in the City of Cornelius, which effectively serves as the "center" of Cornelius, and will provide employment opportunities for the many residents of Cornelius who now travel to other parts of the region for work. Exhibit D to Ordinance No. 05-1070A at 17. The City of Cornelius does not explain how the submittal is not in compliance with an applicable provision of state or regional planning law; it only asserts that a larger expansion area would do more to further regional policy. The Commission does not find a basis to sustain this objection.

Port of Portland Terminal 6

Metro amended the UGB to include 261 acres of land at the Port of Portland's Terminal 6 at Hayden Island. Exhibit A-4 to Ordinance No. 05-1070A. The Hayden Island Expansion Area makes the UGB conterminous with the City of Portland City Boundary. The department found no issues with this aspect of Metro's submittal. DLCD Revised Staff Report at 8 The department did not receive any objections to this portion of Metro's submittal. The Commission concludes that Metro's inclusion of this area complies with the goals.

COMPLIANCE WITH STATEWIDE PLANNING GOALS

Goal 1 – Citizen Involvement

Metro's citizen involvement efforts comply with Goal 1 and Metro's public involvement policies that implement Goal 1.

Goal 2 – Land Use Planning

Metro complied with the Goal 2 requirement that it provide opportunities for review and comment by citizens and affected governmental units.

Metro complied with the Goal 2 requirement for an adequate factual base because the Task 2 submittal is supported by substantial evidence in the record, viewed as a whole.

Metro also complied with the requirement of Goal 2 that it coordinate its Task 2 subtasks with affected units of local government. Metro included, retained, or decided not to include some areas within the UGB over the objections of several local governments. The coordination requirement requires Metro to offer the local government a meaningful opportunity to make its concerns known to Metro, to accommodate those concerns as much as possible, and to make responsive findings to legitimate concerns.

Goal 2 also requires the submittal to be consistent with applicable plan and implementation measures, including Metro's RFP and the Regional Transportation Plan ("RTP"). Metro complied with Goal 2.

Goal 3 – Agricultural Lands

By complying with Goal 14 and the priorities of ORS 197.298(1), Metro has complied with Goal 3.

Goal 4 – Forest Lands

By complying with Goal 14 and the priorities of ORS 197.298(1), Metro has complied with Goal 4.

Goal 5 – Open Spaces, Scenic and Historic Areas and Natural Resources

Metro's submittal complies with Goal 5. UGMFP Title 11 (acknowledged) carries previously acknowledged Goal 5 code provisions of Clackamas, Multnomah and Washington Counties forward until local governments adopt plan amendments and zone changes to authorize urbanization of land added to the UGB. Goal 5 will apply to those amendments.

Goal 6 – Air, Water and Land Resources Quality

UGMFP Title 11 (acknowledged) requires each local government to comply with UGMFP Title 3 (acknowledged) when it amends its comprehensive plan and land use regulations to authorize urbanization of land added to the UGB. Metro's Task 2 decisions comply with the policies of the RTP. The Commission acknowledged UGMFP Title 3 and the RTP to comply with Goal 6. Metro's submittal complies with Goal 6.

Goal 7 - Areas Subject to Natural Disasters and Hazards

Metro excluded environmentally constrained areas from the inventory of buildable land or limited its capacity in its calculation of the employment capacity of each study area (see Alternatives Analysis). Each local government responsible for an

area added to the UGB must complete the planning requirements of UGMFP Title 11 (acknowledged), including compliance with UGMFP Title 3 (acknowledged) on floodplains, riparian areas and erosion control. Metro's submittal complies with Goal 7.

Goal 8 – Recreational Needs

The UGR-E removed parks and open space from the inventory of buildable land. UGMFP Title 11 (acknowledged) requires local governments to show general locations for new parks and open spaces in "urban growth diagrams" for territory added to the UGB. The submittal complies with Goal 8.

Goal 9 - Economic Development

Goal 9 assigns no direct responsibility to Metro. Under Task 2, Metro reviewed the economic development elements of the comprehensive plans of the 24 cities and three counties that comprise the metropolitan area. Metro used the review in its determination of the region's need for employment land and for coordination with local governments of its choices to add land to the UGB for employment purposes.

Metro revised UGMFP Title 4 (Industrial and Other Employment Areas) to improve protection of the land base for industrial uses from conflicts with other uses. Metro also, in adding land to the UGB for industrial use, placed conditions to help ensure the land's availability for that purpose. These measures comply with Goal 9.

Goal 10 - Housing

Metro's submittal removes Areas 37 and 94, resulting in a .4 percent deficit from the identified need for dwelling units. That deficit is both technical and minor in nature under ORS 197.747; therefore Metro has complied with Goal 10 on the whole.

Goal 11 – Public Facilities and Services

Goal 11 requires cities and counties, not Metro, to develop public facility plans. Goal 11 does make Metro responsible for coordination of city and county public facility plans. OAR 660-011-0015(2). For areas added to the UGB, Metro accomplishes coordination through implementation of UGMFP Title 11 (acknowledged). UGMFP Title 11 requires the local government with planning responsibility over land added to the UGB to include public facility planning in the amendments to its comprehensive plan and land use regulations prior to urbanization. Goal 11 applies directly to these local amendments. Metro's submittal complies with Goal 11.

Goal 12 – Transportation

Metro found and concluded that its submittal complies with its acknowledged RTP policies. As with public facilities, UGMFP Title 11 (acknowledged) requires the local government with planning responsibility over land added to the UGB to include

transportation planning in the amendments to its comprehensive plan and land use regulations prior to urbanization. Goal 12 applies directly to these local amendments. Metro's submittal complies with Goal 12.

Goal 13 – Energy Conservation

Through compliance with Goal 14, which requires an efficient transition from rural to urban land use, and the RFP (2040 Growth Concept), which requires a compact urban form, Metro's Task 2 decisions comply with Goal 13.

Goal 14 – Urbanization

Metro's submittal addressed the remand tasks related to Goal 14. Metro has based its change to the UGB on the need to provide adequate employment opportunities. Pursuant to ORS 197.747, the Commission concluded that where Metro accommodated more than 99 percent of its acknowledged need for employment opportunities, any shortfall is technical or minor in nature. Metro's submittal, on the whole, complies with Goal 14.

Goal 15 – Willamette River Greenway

UGMFP Title 11 (acknowledged) carries previously acknowledged Goal 5 code provisions of Clackamas, Multnomah and Washington Counties taken to comply with Goal 15 forward until local governments adopt plan amendments and zone changes to authorize urbanization of land added to the UGB. Goal 15 will apply to those amendments.

UGMFP Title 11 also requires local governments to apply UGMFP Title 3 (acknowledged) to lands added to the UGB. Included within Title 3 are limitations on the use of floodplains and riparian areas.

Metro's Task 2 submittal complies with Goal 15.

Conclusion

Based on consideration of the record as a whole, the foregoing discussion, the director's report, and responses to the objections, exceptions, and oral argument, the Commission concludes that Metro's periodic review Task 2 complies with the statewide planning goals and is approved, pursuant to OAR 660-025-0150 and 660-025-0160.

THEREFORE, IT IS ORDERED THAT:

Pursuant to OAR 660-025-0160(8)(a), the Commission orders that Metro Work Task 2 is approved. If no appeal to the Court of Appeals is filed within the time provided in ORS 183.482, Work Task 2 shall be deemed acknowledged. OAR 660-025-0160(9).

The Commission has considered every valid objection and exception. The Commission rejects all objections and exceptions, whether discussed herein or not.

Scope of Appellate Review: Pursuant to the Commission's authority under OAR 660-025-0160(7) to take appropriate action on Metro Periodic Review Work Task 2, the Commission hereby orders that to the extent any of the UGB Expansion Areas are not affected by a specific appeal of another UGB Expansion Area, and to the extent no appeal is made on an objection that affects all expansions, any unaffected expansion areas are severed from any further proceedings or appeals associated with Work Task 2, and Metro's decision regarding those unaffected expansion areas is acknowledged.

DATED THIS 2nd DAY OF MAY 2007.

FOR THE COMMISSION:

Lane Shetterly, Director
Department of Land
Conservation and Development

NOTE: You may be entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this final order. Judicial review is pursuant to the provision of ORS 183.482 and 197.650.

Copies of all exhibits are available for review at the department's office at 635 Capitol Street NE, Suite 150, Salem.

J:\PR\Metro\Metro T2 UGB LCDC 07-WKTASK-001726 Order 5-2-2007.DOC

2:01:28

John VanLandingham – Issue is best and balance. Dick Benner just said to us before our break that the workgroup is fine with it that's the best they can do. So, what do we think. Marilyn do you want to say something.

Marilyn Worrix – spent a great deal of time on this. Without including best, even though there was an attempt to keep the process fluid um some people felt there just simply was not enough direction and there wasn't a measurement of any kind. While recognizing that best may be difficult to evaluate um by putting it in the objective it was intended to serve as a guidepost. You're headed toward the best overall balance of these various issues. The um we we were taught about best originally um in ah 0040(10) or (11). But we um we related it back to the objective and decided to include the word best early on as a sort of beacon this is where we are going. But it needs to be um the overall context is important because the overall objective was to create a process that was consensus building and a product that was a balance of protecting farm, forest and natural landscapes at the same time creating livable communities. And while this balancing did require some clear guidelines the path had to be well marked. The workgroup purposely avoided making this process too detailed. We wanted to acknowledge that foundation ag land is the most important for long term viability. And we wanted to say that if Metro designates land as urban reserves for example they have to explain in findings and statements of reasons why they chose it. It was anticipated that that process would end up in a series of packages of alternatives but by the time it got to the final decision making stage and at that point Metro would have to explain very clearly why they chose one package or another or possibly combinations between them. And that analysis would look at various packages or combinations um taken as a whole and would take you back to the objective and say how does this whole package achieve the best overall balance that we highlighted in the objective. I think it's important to recognize that the workgroup never saw that best requirement as being something that would require a detailed parcel to parcel type analysis. And there was real worry that it would even be construed that way because that was the opposite of the kind of fluid creative process we were hoping to be able to create. And that instead of being a process that would require exactitude found in like a parcel to parcel comparison that this best concept is supposed to focus on the collective overall regional ah process. It would be looking for the best fundamental balance between the competing areas. Um it would not require a ranking um best, second best, third best ah it's much more general than that. So we felt it was important to have that in there um it was a strong concern from the agricultural community in particular that there needed to be something that highlighted the importance of foundation land and gave them that little extra bit of scrutiny in the best solution was best was seen to be the best solution for them. So we're comfortable with it. We know that it's loose um but this process was never designed to be did you touch all the basis, did you double check all your maps, did you calculate the right area on this particular parcel. Ah everybody been there, that's not where we wanted to go. We wanted to say how about good rational thinking supported by strong findings that make a reasonable balance between the needs to protect ag, forest and the natural landscapes and the need to create livable communities. So we sort of did it purposely and while we are really open to any comments we worked a long time on this one and I was extremely pleased that not only did the workgroup feel comfortable with the language but I really think the workgroup

saw the language in the same context that I've just outlined and I would invite anybody from the table, because they all listened to this, if they heard anything different now would be the time to say it but that's my background.
John VanLandingham – anybody disagree with her description.
Hanley Jenkins – here here
John VanLandingham – ok thank you. Comments from commissioners.
Margaret Kirkpatrick – Well ah I really let me start out by saying I don't really think we should mess with this um I think it's such a the fact that there is consensus and I think, unless there is further discussion that evidences me otherwise that this is something we should stick with. That I would love to have because it is yesterday so unusual to have a word like best kinda out there I would love to hear Steve or Richard or any of the other very talented lawyers here just explain I mean it looks to like as I read 0040(10) when it talks about the single joint finding and statement of reasons that you're going to be discussing each of the factors in then that there is going to be a discussion about how in the aggregate these meet the best objective best unquote objective in 0005(2). So assuming that people will be coming and arguing to the commission that what Metro and the counties have done is not the best balance how do we what is our role in in that review process and how do we approach it. So that's really my question and if I can get to the point where I feel like I understand that then I'm good.
Steve Shipsey – Metro and the counties who are making the joint submittal to the commission will include that submittal under 0080(4) findings of fact and conclusions regarding how that's best. So what we will be reviewing will be whether or not there determination of this overall package of the balance is the best. Whether it's an adequate factual basis for that, whether it's touched on the goals and considered all the goals whether it has complied with the rules both procedurally and the substantive requirements but it will be a review of a presentation of what has been deemed locally the best. And you won't be I don't think you will be required by objectors to do a new analysis of whether or not this is the best. You'll be reviewing the analysis of whether it's the best to see if that analysis is supported and presented in a way that has a substantial evidence basis and the conclusions of law are consistent with the law that needed to be applied.
Margaret – So this really is a substantial evidence review that we'll be doing and if there is substantial evidence (inaudible). We are good we are not second guessing we're not getting into the details of any of this.
John VanLandingham – Steve you are shaking your head yes.
Steve Shipsey – yes
John VanLandingham – You don't foresee as Mark Greenfield worried that we're going to find ourselves picking this parcel over here and saying no it's not the best without that parcel we want to add that parcel.
Steve Shipsey – I think we will receive objections of that nature and the question will be whether those objections are if we need to sustain those objections where we conclude that Metro and the counties in the submittal showed that what they actually did met the best standard. Could something else also have met the best standard.
John VanLandingham – Richard.
Richard Whitman – So the only think I would add to what Steve said and it's really in response to the comments from Mark Greenfield yesterday is um as a policy practical matter for the department I don't think that we view this objective as creating an

optimization standard that there's only one best outcome. It um because best is used in the context of a balance between designation of urban and rural reserves number 1 and number 2 is as commissioner Worrix said it's a balance that in its entirety looking at the region as a whole number 2 best achieves three different things livable communities, viability and vitality of agricultural and forest industries and protection of important natural landscape features. Those three things are in some tension obviously and so the balancing in between those is going to require a fair amount of judgments. So in addition to the evidentiary issue I think there is because of the context that best is used in here there is substantial discretion initially for Metro and counties to make their decisions and then in terms of the commission's review for the commission's review of that.
Female voice – So would we also be looking at abuse of discretion potentially.
Richard Whitman – Well I don't think legally that's a standard for review um I think the standard is what's articulated here and alls I am saying is I think the words that are articulated here um it probably lead you to something like that ah in terms of how the commission would review this um so while say abuse of discretion I think functionally if there's a range of outcomes that are plausible for the commission in its review role um in effect that may be the review standard.
John VanLandingham – Do you want to say anything about abuse of discretion. Not everybody is a lawyer.
Margaret Kirkpatrick – I'll let a real lawyer talk about it. I'm not one anymore (inaudible)
Richard Whitman – Well I that's a legal standard that should be used in situations that you have a law that creates a range of possible outcomes and the question is whether the decision that was made that you're reviewing is outside that range and so I think that fits with what I just articulated which is that I think this objective creates a range of possible outcomes that Metro and the counties can come to. Ah and um for the commission and its review role I think as long as it's within that range you would ah need to uphold the decision.
John VanLandingham – Any other thoughts from commissioners. Marilyn you want to add anything to the discussion.
Marilyn Worrix – Well on that I've everybody recognizes it's a challenging word from a review perspective but I'm sure the commissioners share the thought that I have prefaced some of my previous votes on other issues by saying well it isn't a best solution but its legally correct and I'm ready to try best.
Male voice – It seems counterintuitive but I'm going to go with the attorneys.
John VanLandingham – So panel any thoughts. Anybody worried about Mark Greenfield's argument. Ok I didn't see anybody that wants to (inaudible). Ok next issue.
Margaret Kirkpatrick – Can I just say one more thing.
John VanLandingham – Yes
Margaret Kirkpatrick – Um is there a way to make sure that the legislative history of this rulemaking includes the discussion there's some guidance for future commissions.
John VanLandingham – Um well I think that <interrupted>
Margaret Kirkpatrick – Actually see but maybe I didn't.
John VanLandingham - Bob is there some in the report isn't there.
Bob Rindy – There's a legislative history of the statute.
Margaret Kirkpatrick – That's different.

Bob Rindy – That um these minutes will be in the history and we have the staff report ah the comments that were made now you could specify that your minutes go into more detail than might typically occur to record those.
John VanLandingham – That would be good. So let's make sure especially make sure that Marilyn's comments are included and I see that at the bottom of page nine of the staff report there's some of that also saying that the first, second, third best in its entirety. Dick
Dick Benner – Dick Benner for Metro, on the legislative history question speaking for myself and we'll see if everybody agrees but I think we do. When we heard Richard, commissioner Worrix and Steve talk about this I thought to myself yes this is the way we understand this test. And I would suggest that if the commission feels that the way they described it is the way you would like it to be understood that you say so um don't necessarily have to have a vote but then I think its more clearly legislative history.
Margaret Kirkpatrick – Yeah if there would be some way actually to almost transcribe the statements of commissioner Worrix, Steve, Richard maybe what Dick just said and have us kinda validate that's our understanding then that would provide the kind of guidance to future commissions that I'm thinking of.
Male voice – (inaudible)
Margaret Kirkpatrick – I think we just did it.
John VanLandingham – Yeah I mean does anybody disagree with that. So that's our understanding we adopt that. So I'm saying that all seven six commissioners agree with that as our interpretation. Ok. Next issue.
2:17:32
##end##

January 11, 2008

TO: Land Conservation and Development Commission

FROM: Bob Rindy, Policy Analyst

SUBJECT: Agenda Items 1 and 6; January 23-25, 2008, LCDC Meeting.

Public Hearing, Work Session, and Possible Adoption of Proposed New and Amended Administrative Rules Regarding Metro Area Urban and Rural Reserves

This report pertains to two agenda items: Item 1is intended for public comment on proposed administrative rules establishing a process and criteria for designation of urban and rural reserves in the Portland Metro region, and Item 6 is intended for the Land Conservation and Development Commission (LCDC) to consider and possibly adopt the proposed new and amended administrative rules. The proposed new rules are Attachment A to this report, and the proposed conforming amendments (and related "housekeeping" amendments") to other existing LCDC rules are Attachment B to this report.

Senate Bill 1011, enacted by the 2007 legislature (see Attachment C, especially sections 3, 6, and 11) requires that LCDC adopt rules to establish a process and criteria for designating Metro area urban and rural reserves. SB 1011, codified as Oregon Laws 2007, chapter 723, took effect immediately upon the Governor's signature last July, and specifies that LCDC must adopt the implementing administrative rules by January 31, 2008.

Under item 1 (scheduled for 1:30 PM on January 23rd) the Commission will receive public testimony regarding the proposed new and amended rules, and may close or continue the public hearing at the conclusion of testimony. Under agenda item 6, scheduled for January 24th (and, if necessary, January 25th), LCDC will consider the oral and written testimony and other information received, deliberate regarding the proposed new and amended rules, and may formally adopt the proposed new and amended rules. If adopted, the new and amended rules will take affect upon filing with the Secretary of State's office.

For additional information on these agenda items, please contact Bob Rindy at 503-373-0050 ext. 229, or by email bob.rindy@state.or.us. Information on these items, including background materials, rule notices, and agendas and minutes from the rulemaking workgroup meetings, are also posted on DLCD's website at http://www.lcd.state.or.us/LCD/metro_urban_and_rural_reserves.shtml.

Advisory Rulemaking Workgroup

LCDC appointed a rule advisory workgroup in August 2007 to assist the department and the Commission in drafting the proposed rules (see Attachment D regarding the membership of the workgroup). The workgroup has met seven times since it was appointed by LCDC in August 2007, including two meetings subsequent to LCDC's first public hearing on the draft rules last November 29, 2007. The workgroup has reached a consensus in recommending the revised draft rules attached for the Commission's consideration. However, it is understood that not all workgroup members necessarily favor all the provisions in these rule proposals, and the workgroup members have been invited to submit testimony to the Commission about the rules.

Background

Urban Reserve Areas were a relatively late addition to the Oregon Land Use Program. This planning tool was created in 1992 through LCDC rules (OAR 660, division 21), several years after the state's initial acknowledgement of all land use plans and urban growth boundaries (UGBs) under the statewide planning goals. Unlike UGBs, designation of urban reserves is optional for local governments.[1]

An "Urban Reserve Area" (SB 1011 shortened this term to "Urban Reserve") is land outside of – but contiguous to – an existing urban growth boundary; it must be shown on a city and county comprehensive plan map and is designated for ultimate urbanization as the city (or region) expands its urban area. LCDC's division 21 rules specified that urban reserves must "include an amount of land estimated to be at least a 10-year supply and no more than a 30-year supply of developable land beyond the 20-year time frame used to establish the urban growth boundary.[2] In other words, by adopting an urban reserve area in conjunction with the 20-year UGB, local governments (including Metro) may designate and plan for a 50-year supply of land for urbanization. However, it is important to note that land in an urban reserve is outside the UGB, and must remain planned and zoned as "rural land" under farm, forest or other rural zoning requirements until such time as it is brought in to the UGB. The designation of urban reserves does not change the rules for UGB expansion except on one vital point: Urban reserves are defined (by statute) as the highest priority for inclusion in the urban growth boundary when the boundary is expanded, regardless of whether the land in the urban reserve is farm or forest resource land.

LCDC authorized local governments to plan for urban reserves for several reasons. First, cities expressed a wish to plan for a longer-term horizon than the 20-year period provided inside a UGB, in part because many public facilities and transportation facilities are typically designed and built to last significantly longer than 20 years. By designating urban reserves, a city gains more certainty with regard to the direction of long-term growth and, for example, may therefore size and position sewer and water lines to ultimately serve a 50-

[1] LCDC's 1992 urban reserve rules authorized LCDC to require some local governments to adopt urban reserves. After modification of the rules by subsequent legislation, only the cities of Sandy and Newberg were required to designate reserves.
[2] Rather than a 10-30 year horizon, SB 1011 specifies a 20-30 year urban reserve horizon.

year growth area beyond the UGB. Second, urban reserves are intended as a tool to manage the parcelization of residential "exception areas" adjacent to many UGBs, areas that would be anticipated to be high priority for eventual expansion of the UGB. The piecemeal division of this potentially urbanizable land would impede efficient urbanization and, in many cases, prevent efficient provision of roads and other facilities within and beyond these areas. The original urban reserve rules required some cities to adopt reserves because of a substantial amount of exception areas surrounding those UGBs.[3] Finally, designation of urban reserves streamlines UGB expansion, since it identifies areas that must be first priority for UGB expansion, and as such may save time and costs for local governments performing the "locational" analysis required for UGB expansion.

As a side note, LCDC's urban reserve rules provided a "hierarchy" for choosing land for the reserves, in order to ensure that non-resource land, exception land and the "least-important" farm or forest resource land is considered first in designating reserves. Shortly after the adoption of these rules, the legislature "barrowed" the hierarchy (almost word-for-word, but not exactly) and placed it in legislation (ORS 197.298) so as to require the hierarchy to UGB amendments, with one significant change: the legislation specifies that the highest priority land (i.e., first considered) for UGB expansion must be land designated as urban reserves. At the same time, the legislature enacted new urban reserve provisions in statute (ORS 195.145) in order to modify LCDC's urban reserve rules (especially to reduce the number of cities required to adopt urban reserves; however, having urban reserves specified in legislation provides a more solid foundation for these rules). As one probably unintended consequence of the new UGB hierarchy, urban reserves include farm and forest land and provide a method to more easily include that land in a UGB. This land might otherwise be unavailable under the statutory UGB hierarchy.

Very few local governments have designated urban reserves. Newberg and Sandy successfully completed this task in the mid-1990's.[4] Metro designated urban reserves about 1998, but these were struck down on appeal (LCDC and ODOT joined in bringing that appeal, arguing that the designation was not in accord with the urban reserve rules). Following that, there was little interest in designating urban reserves statewide, and local governments frequently suggested that LCDC revisit and modify these requirements. However, there has been a recent resurgence in local interest in urban reserves; Redmond, Ontario and Pendleton recently designated reserves[5] and other cities are underway with urban reserve planning, including Newberg (a revision of their current reserve) and all the Rogue Valley RPS jurisdictions.

Senate Bill 1011

Senate Bill 1011, enacted by the 2007 legislature (codified as Chapter 723, Oregon Laws

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[3] Some of the proposed amendments to current rules under OAR 660, division 21 (see Attachment B) propose that the Commission repeal provisions that were intended only for cities required to designate urban reserves – because these cities have completed that task and the requirements are no longer pertinent.

[4] Also, some cities (Bend, Eugene, Salem-Keizer) designated "priority expansion areas beyond the UGB" prior to LCDC's urban reserve rules, but these areas are not "acknowledged" as urban reserves, even though they may function as such, and may not be valid since they probably violate the ORS 107.298 hierarchy.

[5] Redmond officials have praised this process and suggest that other local governments take this step.

2007), authorizes Metro and Metro area counties to designate urban and rural reserves through a new process and criteria to be established by LCDC rules. SB 1011 was supported by a broad coalition of interests in the region, and was based on research conducted under Metro's 2007 "Shape of the Region" study (see Attachment E). Metro joined with Washington, Multnomah, and Clackamas counties, DLCD and the Oregon Department of Agriculture (ODA), to conduct the "Shape of the Region" study "in order to better inform the region's approach to growth management and future urban expansion." The study examined land outside Metro's UGB and asked three broad questions:

- What lands are functionally critical to the region's agricultural economy?
- What natural landscape features are important in terms of ecological function and defining a sense of place for residents of the region?
- What attributes allow lands to most efficiently and effectively be integrated into the urban fabric of the region to create sustainable and complete communities?

The "Shape of the Region" report, "symposium" and related studies are available on Metro's website at the following link:
http://www.metro-region.org/index.cfm/go/by.web/id=25147

A section-by section explanation or "legislative history" of Senate Bill 1011 is provided in Attachment C to this report. In summary, the bill establishes a system under which the region may designate lands outside the regional UGB on which urban expansion will and will not occur over a 40-50-year period. The bill has three main elements:

- Section 3 authorizes the establishment of rural reserves that will be off-limits to urban expansion during the 40-50-year planning period. These lands would be selected based upon their importance to the agriculture and forestry industries and for the protection of natural systems and landscape features.

- Section 6 provides a new pathway for the creation of urban reserves – areas that would be first in line for addition to the UGB – in the Portland metropolitan area. This new pathway would authorize the designation of urban reserves that, in conjunction with land already in the UGB, would provide 40-50 years of "capacity" for urban growth. Designation of these areas would be based upon a set of "factors" that emphasizes suitability for urban development (more explanation of "factors" is provided later in this report).

- Because it is important that urban and rural reserves be addressed as part of an integrated planning process, Section 4 of the statute stipulates that they must be considered concurrently and may be designated only through "intergovernmental agreements" between Metro and participating counties.

There are two fundamental principles regarding the new process for designation of urban and rural reserves: (1) Intergovernmental agreements are a prerequisite to formal designation, and (2) the identification and selection of reserves is requires the consideration of "factors." These issues are discussed in more detail below, in the description of the proposed rules.

Urban reserves authorized under SB 1011 will have the same effect as urban reserves authorized by current LCDC rules at OAR 660, div 21, adopted in 1992 (See attachment F). Urban reserves are also authorized by previous statutes (ORS 195.145 enacted in 1993 and amended by SB 1011). Urban reserves are defined in this statute (the definition was also amended by SB 1011) as "lands outside an urban growth boundary that will provide for (a) future expansion over a long-term period; and (b) the cost-effective provision of public facilities and service within the area when the lands are included within the urban growth boundary." As mentioned above, urban reserves are also declared to be "the highest priority for inclusion in the urban growth boundary when the boundary is expanded." It is important to note that the new SB 1011 urban reserve designation process for Metro is intended as an alternative to the urban reserve designation process provided under current LCDC rules at OAR 660, division 21. However, once designated, urban reserves for Metro designated through division 27 would be functionally equivalent to urban reserves designated under division 21.

SB 1011 provides "factors"[6] for determining urban reserves as follows:

> "... a county and a metropolitan service district shall base the designation on consideration of factors, including, but not limited to, whether land proposed for designation as urban reserves, alone or in conjunction with land inside the urban growth boundary:
> (a) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments;
> (a) Includes sufficient development capacity to support a healthy urban economy;
> (b) Can be served by public schools and other urban-level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers;
> (c) Can be designed to be walkable and served by a well-connected system of streets by appropriate service providers;
> (d) Can be designed to preserve and enhance natural ecological systems; and
> (e) Includes sufficient land suitable for a range of housing types."

These statutory factors for urban reserves are not a closed list; the statute indicates the factors "include, but are not limited to" those specified above. Based on this, the workgroup has recommended that that the rules include additional factors.

Rural reserves authorized under SB 1011 are a new category of rural lands not previously mentioned or authorized in Oregon land use laws. Rural reserves are "rural land" that, once designated, cannot be included within a UGB or re-designated as urban reserves for a period of at least 20 years, but not more than 30 years, beyond "the 20-year period for which the district has demonstrated a buildable land supply in the most recent inventory, determination and analysis" for the Metro UGB. In other words, once designated, rural reserves are required to remain designated as rural reserves for a 40 to 50 year time period. The zoning of land in rural reserves would remain rural; designation of rural reserves does

[6] See pages 15 and 16 of this report for a detailed discussion of factors.

not require a rezoning of the land in the reserves, and prevents the rezoning of such land for certain uses. Also, the statute specifies that designation as rural reserves "does not impair the rights and immunities provided under ORS 30.930 to 30.947" (Oregon's "right to farm" laws).

The statute also provides that designation and protection of these reserves is not a basis for a claim for compensation under Measure 37 "unless the designation and protection of rural reserves or urban reserves imposes a new restriction on the use of private real property." As there would be no change in the zoning of rural reserves, it does not appear that their designation would trigger Measure 49 claims.

Throughout the history of the statewide land use program, Goals 3 and 4 and urban growth boundaries (UGBs) have been the primary tool to protect farm and forest land. UGB expansion, over time, generally consumes (i.e., leads to development of) farm and forest land, especially in the Metro region where, over the next 20 to 30 years, Metro has few options for UGB expansion that would not encroach on farm land. Rural reserves therefore represent an improved farm and forest land protection mechanism, and also protect other natural features. Under SB 1011, "Rural reserves" are defined as "land reserved to provide long-term protection for agriculture, forestry or important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes and floodplains."

SB 1011 provides that rural reserves <u>may</u> be designated (i.e., reserves are not required) through an intergovernmental agreement between a county and Metro. However, as indicated above, if Metro and counties agree to designate urban reserves under the new statute, those counties <u>must</u> also agree to designate rural reserves. At the same time, although not explicitly stated, the statute appears to allow a county to designate rural reserves even if no urban reserves are designated in that county. The statute provides that "A county and a metropolitan service district may not enter into an intergovernmental agreement to designate urban reserves in the county … unless the county and the district also agree to designate rural reserves in the county." However, the statute does not include the converse of this requirement.

When designating rural reserves, a county and Metro are required to select land based on consideration of "factors." For rural reserves for the purpose of protecting the agricultural industry, the statutory factors include:

"…whether land proposed for rural reserves is:

(a) Land situated in an area that is "potentially subject to urbanization" during the urban reserve planning period described above, as indicated by proximity to the urban growth boundary, and as indicated by proximity to "properties with fair market values that significantly exceed agricultural values;"
(b) Land "capable of sustaining long-term agricultural operations;"
(c) Land that "has suitable soils and available water where needed to sustain long-term agricultural operations;
(d) Land suitable to sustain long-term agricultural operations, taking into account:

- The existence of a large block of agricultural or other resource land with a concentration or cluster of farms;
- The adjacent land use pattern, including its location in relation to adjacent nonfarm uses and the existence of buffers between agricultural operations and nonfarm uses;
- The agricultural land use pattern, including parcelization, tenure and ownership patterns; and
- The sufficiency of agricultural infrastructure in the area."

According to Metro and others involved in drafting the legislation, these factors derive from the "Shape of the Region" studies, including studies of agricultural land by the Oregon Department of Agriculture, which were part of the "Shape of the Region" Project (See Attachment E). As such, the rural reserve factors in the statute primarily focus on protection of the agricultural industry. However, the statute also indicates that rural reserves are intended "to provide long-term protection for agriculture, forestry or important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes and floodplains." Also, as discussed above regarding urban reserves, this list of factors is not a "closed list" for LCDC rulemaking. Therefore, the rules recommended by the workgroup also include additional rural reserve factors, i.e., in addition to those in the statute, concerning forest land and important natural landscape features.

The overall statutory intent and general requirements regarding designation of Metro urban and rural reserves are included in this statute. The preamble to SB 1011 provides the reasons and general policy direction underlying the authorization for a new urban and rural reserve process. It declares in part that "Long-range planning for population and employment growth by local governments can offer greater certainty for … the agricultural and forest industries, by offering long-term protection of large blocks of land with the characteristics necessary to maintain their viability; and for … commerce, other industries, other private landowners and providers of public services, by determining the more and less likely locations of future expansion of urban growth boundaries and urban development."

This preamble also declares that "State planning laws must support and facilitate long-range planning to provide this greater certainty." To this end (as noted above) Section 11 of the legislation directs that the Land Conservation and Development Commission shall adopt the goals or rules required by section 3 and section 6 of the Act "not later than January 31, 2008." Those sections of the act specifically require LCDC to adopt new goals or rules regarding the "process and criteria" for designation of Metro area urban reserves and rural reserves.

Because Section 3 of SB 1011 provides that Metro's and counties' designation of urban and rural reserves is not mandatory, as discussed above, Metro and Metro area county governments are authorized to choose whether or not to declare these reserves, and by implication, may also choose instead to follow the current urban reserve process in OAR 660, division 21, which does not require the simultaneous designation of rural reserves. Again, if a county and Metro choose to designate urban reserves under this statute, the

county and Metro must designate rural reserves simultaneously. The statute indicates that urban and rural reserves must be designated in accordance with an intergovernmental agreement between Metro and a county, and "such agreement must provide for a coordinated and concurrent process for adoption by the county of comprehensive plan provisions and by the district of regional framework plan provisions to implement the agreement."

LCDC Approval and Judicial Review: The statute amends current statutory provisions under ORS 197 so as to reference the new urban and rural reserve process, and to require LCDC review and approval of a Metro amendment of "the district's regional framework plan or land use regulations implementing the plan to establish urban reserves …", and simultaneous LCDC review and approval regarding "amendment of the county's [or counties'] comprehensive plan or land use regulations implementing the plan to establish rural reserves …".

Related to this, the statute provides an expedited process for judicial review of a Land Conservation and Development Commission order concerning the designation of urban reserves or rural reserves under the new process provided in SB 1011. Jurisdiction for judicial review is conferred upon the Court of Appeals, notwithstanding other laws regarding LUBA review of land use decisions (ORS 197.650). SB 1011 provides timelines for LUBA and Court review, and indicates that review of the Commission's order is confined to the record. Furthermore, the court "may not substitute its judgment for that of the Land Conservation and Development Commission as to an issue of fact." The Court of Appeals may affirm, reverse or remand" the Commission's order, but may reverse or remand the order only if the court finds the order is:

> "(a) Unlawful in substance or procedure. However, error in procedure is not cause for reversal or remand unless the Court of Appeals determines that substantial rights of the petitioner were prejudiced.
> (b) Unconstitutional. [or,]
> (c) Not supported by substantial evidence in the whole record as to facts found by the commission."

Furthermore, the statute provides that "the Court of Appeals shall issue a final order on the petition for judicial review with the greatest possible expediency. … If the order of the commission is remanded by the Court of Appeals or the Supreme Court, the commission shall respond to the court's appellate judgment within 30 days."

Summary and Explanation of Proposed Rules

After seven meetings, the workgroup has recommended that the Commission consider the attached new rules providing criteria and procedures for adoption of both Urban Reserves and Rural Reserves (Attachment A). The new rules would be codified in OAR 660 as a new "division 27." The department has also recommended conforming amendments and related

"housekeeping amendments" to several existing rules (Attachment B).[7]

The proposed new division 27 under OAR 660 is organized as nine different sets of rules, as follows:

660-027-0005 Purpose

The proposed introduction to the new rules does two things. First, it generally describes the intent of the rules, not only by indicating that they implement SB 1011 (2007 Oregon Laws Chapter 723) and paraphrasing the statutory intent, but also by announcing that they prescribe "criteria and factors" that counties and Metro must apply when choosing lands for designation as urban or rural reserves. Second, the purpose section, and especially the "objective" declared at the end of section (2), anchors the "findings" that local governments must make in designating urban and rural reserves (see OAR 660-027-0080(10)). In that regard, this purpose statement also provides a yardstick that the Commission will use in evaluating the designation once it is submitted by Metro and counties for Commission review (see OAR 660-027-0080).

The proposed purpose statement clarifies that the urban reserve process described by these rules is intended to provide Metro with "an alternative process" to LCDC's current urban reserve designation process under OAR 660, division 21. Metro and counties have the opportunity to designate urban reserves under these new rules, but may instead choose instead to designate urban reserves through the existing process under division 21, or may choose to NOT designate any reserves.

Section (2) of the purpose statement was the subject of a great deal of workgroup discussion, including a "subgroup" appointed by the workgroup after the first LCDC hearing in order to consider and propose alternative language to resolve disagreement among the workgroup. The final sentence in that section is somewhat different than the wording provided in the November 8 draft, and now indicates that "The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents."[8] The workgroup spent a substantial amount of time on this provision, since it was agreed that the words "best achieve" and "balance" are intended to "raise the bar" with respect to the rule's standards – the required "factors" – for designating reserves. It was also agreed that the "best" standard applies to the designation "in its entirety," rather than to individual areas or parcels. The workgroup also agreed that the addition of this objective is not intended to necessitate a numeric "ranking" of alternatives for reserve designation in order to determine the highest ranked, and therefore "the best," alternative.

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[7] The department provided the proposed amendments to existing rules to the workgroup, but while there was no particular objection raised, there was little discussion of these proposals. As such, it may not be accurate to describe the amendments to other rules as "recommended by the workgroup."

[8] It has been suggested that the grammar of this provision could be improved if changed to "The objective of this division is a balanced designation …"

660-027-0010 Definitions

The proposal includes definitions for terms used throughout the division. Definitions currently in state land use laws (ORS 195 and 197) and definitions adopted as part of the Statewide Planning Goals also apply to terms used in the proposed new rules (there are a number of terms in the proposed new rules that are already defined by law or by the Commission, and the workgroup agreed we do not need to repeat each of these definitions for purposes of this rule. However, there are probably some terms in the proposed rules that are not defined here or elsewhere.) Also, there are some terms considered so basic to these rules that, even though they are defined elsewhere, they are also defined here in order to make the rules more user friendly (e.g., UGB). Finally, there is at least one term – "public facilities" – that is intentionally defined more narrowly than in other rules or goals. Although most of the definitions are straightforward, it may be helpful to further explain the intent of some definitions:

Definitions (1) and (2) refer to two categories of land mapped in the 2007 Department of Agriculture (ODA) report to Metro entitled "*Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands.*" That report (provided to LCDC for its November 2007 meeting) mapped land throughout the region in three categories, and was an important basis of the region's proposal for the enactment of SB 1011. According to Metro and others who proposed SB 1011, the criteria that ODA used in mapping agricultural lands in the region are reflected in that SB 1011 "factors" for the selection of rural reserves. Two of the mapped categories of farmland are specifically mentioned in the proposed rules, as discussed below, and as such those terms are by referring to the ODA report (the ODA report itself is available online at Metro's website and through a link on DLCD's website). The reference in the rule intends to refer to the 2007 report; any later amendments to the report or mapping in that report would <u>not</u> replace the report referred to in this definition. There is more discussion about this term under rules at 0040, below.

Definition (3) concerns the "intergovernmental agreements," between Metro and each participating county, that are a prerequisite to adopting urban and rural reserves in the metro area. SB 1011 defines these agreements by citing some general statutes about agreements (such as the statute describing intergovernmental agreements for Regional Problem Solving). The department notes that many provisions of the particular statutes referenced in SB 1011 appear unrelated to the agreements contemplated with respect to Metro reserves. Furthermore, the statute definition for agreements does not include citizen involvement requirements for an intergovernmental agreement process. Because the agreement process is central and is the first step with regard designating urban and rural reserves, and because the agreements are expected to include maps of the reserves, the workgroup decided to add requirements that are not in statute regarding citizen involvement, discussed under Rule 0030, below. As such, the definition indicates that an agreement must also meet "requirements in this division," in recognition that the referenced statutes referenced in SB 1011 do not include all the requirements that the workgroup believes are necessary for these particular agreements. We noted that Metro and counties have indicated they anticipate that the agreements will also include a map of the areas to be

designated as urban or rural reserves. This statutory and rule definition does not require that an intergovernmental agreement include a map of the proposed reserve areas, but it does not preclude such a map.

Definition (4) regarding "livable communities" is provided because that term is used as part of the intent statement (see discussion under Rules 0005, above). There is no precedent in LCDC rules for this term. As such, Metro proposed the definition to the workgroup and it is included in the recommended rules.

Definition (6) regarding "important natural landscape features" is provided because this term occurs in several of the proposed rules in the division; by providing a definition we avoid the statute's expanded explanation of the term each time it is used. However, members of the workgroup discussed a preference to further expand and clarify the statutory "definition" of the term (actually, the statute does not define "important natural landscape features," but does define "rural reserves" as "land reserved to provide long-term protection for … important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes and floodplains."). The expanded definition in the rule provides that rural reserves, by "limiting"[9] urban development, "provide long-term protection and enhancement of the region's natural resources, public health and safety, and unique sense of place." This wording may also serve as an expanded "purpose statement" regarding the protection of important natural landscape features addressed later in the rule.

The expanded definition of "important natural landscape features" further provides that "these features include, but are not limited to, plant, fish and wildlife habitat; corridors important for ecological, scenic and recreational connectivity; steep slopes, floodplains and other natural hazard lands; areas critical to the region's air and water quality; historic and cultural areas; and other geographic features that define and distinguish the region." The individuals who proposed this definition, including at least one workgroup member (Jim Labbe), the Department of Fish and Wildlife, and other interested parties such as Audubon, based the expanded definition on the SB1011 wording and "work that was the basis of the statute itself performed by 'The Greenspaces Policy Advisory Committee' and an associated 'Ecological Elements Charette' used in developing a 'Natural Landscape Features Inventory' for Metro's 'Shape of the Region Project'."[10]

The intent of the expanded definition "is to be inclusive enough in the specific examples listed to capture the component elements of the Natural Features Inventory." (NOTE: DLCD's website for this rulemaking includes a link to Metro's "Shape the Region Symposium," which links to several studies, including the "Natural Features Inventory" mentioned here. The department believes the additional words in this definition would not

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[9] The workgroup discussed the word "limit" and expressed some concern as to which of at least two possible meanings may have been intended by the statute. For example, the word may mean something that bounds or confines, i.e., by setting a line or boundary, but it may instead connote something that restricts or hampers development within boundaries. Discussion among staff and workgroup members seemed to conclude that the former meaning is the intent here.

[10] According to an October 30 email from Jim Labbe to the Department, forwarded to workgroup members.

conflict with the statute because, by prefacing the examples with the word "including," the statute does not intend to provide a closed set of examples.

However, the department also notes that workgroup member Jim Labbe has suggested one further refinement to this definition, in an email exchange with the department and some other workgroup members after the workgroup concluded its work. Jim suggests that we simply drop the word "geographic" because "this would be more in keeping with the statute which repeatedly refers to 'natural boundaries' instead of specifically 'geographic boundaries'."

Finally, definition (12), for the term "walkable," was suggested by staff from DLCD and ODOT's Transportation and Growth Management Program based on several studies and sources concerning walkable neighborhoods. Staff was unable to locate a formal definition in state law or other agency rules. The term is used in Section 6(4)(d) of SB 1011, but is not defined there, and is used in 660-027-0050(1)(d) of the proposed rules.

660-027-0020 Authority to Designate Urban and Rural Reserves

This section is intended to establish which entity – Metro or counties or both – has authority to designate reserves, and to make it clear that this division is "an alternative" to the authority to designate urban reserve areas granted by LCDC's current urban reserve rules under OAR 660, division 021. As explained above, one very important difference between the SB 1011 urban reserve process and the current division 21 urban reserve process is that, under the proposed new rules, an intergovernmental agreement is a prerequisite for designating reserves.

The rules proposed under 0020 specify that Metro alone has authority to designate urban reserves provided Metro first adopts an intergovernmental agreement with each county where urban reserves are designated, and provided the agreements are implemented by amendment of the regional framework plan and the county comprehensive plan in accordance with the process and criteria in the proposed new division. The statute and proposed rule also grants counties – rather than Metro – the authority to designate rural reserves, provided there is an intergovernmental agreement concerning these reserves, between the county and metro for each county where the reserves are designated, and provided the county amends its plan and zoning to implement the agreement.

Finally, this rule makes it clear that a county and Metro may not enter into an intergovernmental agreement to designate urban reserves in the county under the SB 1011 process unless the county and Metro simultaneously agree to designate rural reserves in the county.

660-027-0030 Urban and Rural Reserve Intergovernmental Agreements

This rule is intended to provide criteria for the intergovernmental agreements that are prerequisite to urban and rural reserve designation. First, this rule specifies that an intergovernmental agreement between Metro and a county to establish urban reserves and

rural reserves must provide for a "coordinated and concurrent process" for adoption (by Metro) of regional framework plan provisions and (by the county) of comprehensive plan and zoning provisions to implement the agreement. SB 1011 also requires that Metro and counties designate reserves in a manner that is "coordinated and concurrent." It is expected that a county and Metro would do their "considering" and "evaluating" together, in the same meeting or meetings, and Metro and each county would simultaneously adopt (or sign) the agreement. The formal "designation," however, would be the adoption of implementing plan provisions, which cannot legally or practically be done "concurrently" by a county and Metro, or by all the counties and Metro, i.e., at the identical moment in time. However, "concurrently" probably means that Metro and the local governments would schedule the formal plan and/ordinance adoptions to occur in approximately the same time frame, and in a coordinated manner. The rules under 0080 require submittal to LCDC "jointly."

The second provision of this rule provides for citizen involvement in the development of an intergovernmental agreement. For plan amendments that implement agreements, Goal 1, the acknowledged local plans and state laws provide for broad notice and citizen involvement. However, intergovernmental agreements are not necessarily covered by these laws or local plans. Because the agreements to designate reserves will probably include maps of reserve areas, the workgroup suggested that it is very important for citizen involvement and broad notice during the development of the agreements, rather than later, after the agreements have been signed, when formal amendments are proposed to implement the agreements. As such, the proposed rules require Metro and counties to follow a coordinated citizen involvement process that provides for broad public notice and opportunities for public comment regarding lands proposed for designation as urban and rural reserves under the agreement. Furthermore, the rules require that the State Citizen Involvement Advisory Committee (CIAC) be provided an opportunity to review and comment on the proposed citizen involvement process.

Finally, the proposed rules would clarify that an intergovernmental agreement made under this division is not a final land use decision under ORS 197.015(11). The department sought DOJ legal counsel advice on this provision and it was suggested that the proposed rules should clarify that "an intergovernmental agreement made under this division shall be deemed a <u>preliminary</u> decision that is a <u>prerequisite</u> to the designation of reserves by amendments to Metro's regional framework plan and to a county's comprehensive plan" (emphasis added). Because an agreement is not a final land use decision, LUBA review would not be appropriate. Rather, the Commission will be required to determine whether statutory and rule requirements have been followed with respect to such agreements, since, by law, the agreements are a <u>prerequisite</u> to the designation of reserves. The rule provides that an intergovernmental agreement must be submitted to LCDC, along with adopted amendments to the regional framework plan and county comprehensive plans.

660-027-0040 Designation of Urban and Rural Reserves

The new statutes pertaining to Metro reserves specify that the reserves are "designated." The department, on advice from legal counsel, believes the term "designate" means the formal "adoption" of the reserves by adoption or amendment of Metro framework plan

provisions for Urban Reserves, and by adoption or amendment of County land use plan and zoning provisions for Rural Reserves. The proposed rules under 0040 provide several requirements that pertain to the designation of urban and rural reserves. These include rules for designating urban reserves, as follows:

- Metro may not designate urban reserves until Metro and applicable counties have entered into an intergovernmental agreement that identifies the land to be designated by Metro as urban reserves.
- Urban reserves must be based on an amount of land estimated as necessary for urban population and employment growth in the Metro area for a 20 to 30 year period, and must be planned to accommodate urban population and employment growth for that time period. These amounts refer to the combined total of all the urban reserve land designated in the participating counties.
- Metro is required to specify the particular number of years (e.g., 25 years) for which the urban reserves are intended.
- If Metro designates urban reserves prior to December 31, 2009, the 20 to 30 year period is to begin on the year 2029.
- Metro must adopt policies to implement the reserves and must show the reserves on its regional framework plan map.
- A county in which urban reserves are designated must adopt policies to implement the reserves and show the reserves on its comprehensive plan and zone maps.
- Designation of urban reserves must be "coordinated" with the cities in any county where such reserves are considered, and with local governments, state agencies, special districts and school districts that may provide services to the urban reserves when they are added to the UGB.[11]

The rules under 0040 include designation requirements for Rural Reserves, as follows:

- Neither Metro nor a local government may amend a UGB to include land designated as rural reserves during the 20-30 year period described above. Since this period is in addition to the 20-year UGB period, rural reserves may not be included in <u>any</u> UGB (i.e., the Metro UGB as well as any other UGB in counties that have designated rural reserves) for a 40-50 year period.
- Also, Metro may not re-designate rural reserves as urban reserves, and a county may not re-designate land in rural reserves to any other land use, during the 40-50 year period.
- Metro and counties must adopt policies to implement the rural reserves. Counties must show the reserves on their comprehensive plan and zone maps, and Metro must show the reserves on its regional framework plan maps.

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[11] The term "coordinated" is defined in ORS 197.015(6) as "when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible." although in that context it refers to the coordination of a comprehensive plan, that definition seems applicable to this process since the designation of reserves involves adoption of a plan.

- Designation rural reserves must be "coordinated" with the cities in any county where such reserves are considered.

Sections (9) and (10) of the proposed designation rules specify the "factors" that must be considered in the Metro and County decisions to "simultaneously identify, select and designate both urban and rural reserves." The "factors" are specified in rules under 0050 and 0060, described below in this report, and the rule derived these factors from the factors that are included in SB 1011.

Factors: It is important to note that the intent is for the rule to include and, where necessary, clarify the factors in SB 1011, but also to expand the list of factors (as allowed by that statute) in order to address additional concerns discussed by the workgroup (see rules 0050 and 0060 below for more detailed discussion of the particular additional factors proposed as part of these rules by the workgroup).

The workgroup discussed the term "consideration of factors." The proposed rules are based on the understanding that "factors" are a special type of "criteria" similar to the "factors" proscribed for UGB location under Goal 14. As such, a general principle for Goal 14 factors applies here: factors are not "independent criteria" – every parcel or area considered for urban or rural reserves would not be required to meet each and every factor. Instead, the factors are applied, weighed and balanced to select and evaluate areas for designation as urban or rural reserves. Metro and the counties must apply all the factors, not merely "consider" them, and must use the factors to compare alternative locations for the reserves. The group decided that the requirement to "consider" the factors in the statute is not meant to imply that any factor may be simply "considered but then disregarded" – all the factors must be considered, applied together (which also implies they must be "balanced" in the manner of Goal 14), and Metro and counties must demonstrate that they have done this.

The term "consideration of factors" was previously adopted by LCDC in specifying the evaluation and selection of land for a UGB under Goal 14. Thus, there is precedent set by both LCDC and the courts regarding the interpretation and employment of "factors." As indicated above, there was considerable discussion of the term "factors" by the workgroup, including advice from LCDC legal counsel, and the group has concluded that "factors" under SB 1011 are intended to be employed and interpreted in the same manner as the UGB factors in Goal 14.[12] According to legal counsel, while the courts have not been entirely consistent in their interpretation of "factors," some legal precedent is worth noting in order to clarify the intent of "factors" under the proposed reserve rules.

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

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[12] Much of the case law on factors discussed here is derived from Goal 14 prior to its amendment by LCDC in 2004. However, although the amended goal includes fewer factors than the original, the intent and operation of factors was not intended to change under the amended goal.

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

Finally, some examples are provided below regarding prior legal interpretations concerning the "consideration of factors." Although these examples concern Goal 14 factors and the selection of land for a UGB, the factors in the proposed reserve rules also concern the selection of land and use the term "consideration of factors." As such, the following examples may further clarify the intent of the proposed rules regarding "factors":[13]

- Even if one of the factors is not fully satisfied, or is less determinative, that factor must still be considered and addressed. Rosemont II, 173 Or App at 328; Baker v. Marion County, 120 Or App 50, 54, 852 P2d 254, rev den 317 Or 485 (1993).
- "Locational" factors 3 through 7 of Goal 14 are not independent approval criteria. It is not required that a designated level of satisfaction for each factor be met in order to approve a UGB amendment. Rather, a local government must show that the factors were "considered" and balanced in determining whether a UGB amendment is justified. 1000 Friends of Oregon v. Metro, 174 Or App 406, 409-10 (2001)
- The goal of the consideration under factors 3 through 7 is to determine the "best" land to add to the UGB, after considering each factor. ARLU, slip op at 13. In carrying out such consideration, each factor must be addressed. That a potential UGB expansion site failed a "test" established by the local government for compliance with one locational factor is not a sufficient basis for excluding it from consideration under the other locational factors. 1000 Friends II, 174 Or App at 414-15.

It was indicated in the department's November 15, 2007, staff report that there was a consensus to strengthen the factors by modifying 0040 (10) to require findings and a statement of reasons that explain how the adopted reserves **BEST** achieve the objectives set forth in the purpose statement. Alternatively, it was proposed that the purpose statement itself be modified to explain how the designation of urban and rural reserves **BEST** ensure livable communities, the viability and vitality of the agricultural and forest industries and protection of the natural landscape features that define the region for its residents. While there was a strong workgroup consensus to add the word "best" in one of the two places listed above, there was no consensus as to WHICH of these two places should include that word. In the November hearing it was recommended that LCDC provide further direction to the workgroup regarding whether to add the term "best" to the findings requirements, as described above, and if so, where should the term be added in the rules. LCDC did not

[13] These examples are cited in a paper provided to LCDC's 2006 UGB workgroup titled: "Urban Growth Boundary Amendments and Goal 14 – A Legal Perspective", by Corinne C. Sherton, Johnson & Sherton PC.

direct the group regarding this term, but suggested that the workgroup continue with its deliberation and attempt to resolve this issue prior to the January hearing.

As discussed under the explanation of rules under 0050, above, the workgroup did eventually agree to add the term "best" to the purpose statement under OAR 660-027-0005(2). Also, subsequent to the Commission's November hearing on these proposed rules, the wording in (10) was amended; that proposed rule now requires that Metro and participating counties shall identify, consider, evaluate and designate proposed urban and rural reserves "concurrently and in coordination with one another," and adopt a single, joint set of "findings and statement of reasons" that demonstrates how they applied the factors. Finally, "the findings and statement of reasons shall explain why the local governments selected the areas designated as urban and rural reserves and how the designated reserves achieve the objective set forth in OAR 660-027-0005(2)."

In a related matter, there was further discussion in the workgroup and at the November Commission hearing as to whether the proposed factors set a sufficiently "high bar" for determination of rural reserves with regard to protection of the most important agricultural land. Workgroup members, including members representing various agricultural land interests, ODA, the Oregon Association of Nurseries, the City of Portland, and 1000 Friends of Oregon, urged that the proposed rules should provide stronger assurance that the most important farmland will be designated as rural reserves. Several ideas to strengthen the factors were proposed, including adding additional factors, criteria, or other measures, as follows:

- Providing a "safe harbor" that deems Foundation Agricultural Land or Important Agricultural Land (mapped in the ODA report to Metro) as qualifying for designation as rural reserves under the factors without further explanation. (see discussion under 0060, below).
- Adding an additional factor that refers to the ODA mapped lands, especially the two categories Foundation Agricultural Land and Important Agricultural Land.
- Adding additional criteria that require counties to designate, as rural reserves, Foundation Agricultural Land, and possibly Important Agricultural Land also, unless the land is demonstrated to be needed for special mixed-use transit-connected development in the Metro area.
- Requiring that Metro cannot include Foundation Agricultural Land or Important Agricultural Land in urban reserves unless it demonstrates that it has first evaluated all other lands and demonstrate that these other lands are unable to serve particular purposes for urban reserves.

In all the proposals above, ODA suggested that the new criteria should refer to Foundation Agricultural Land and Important Agricultural Land within three miles of a UGB.

In discussing the above proposals, the workgroup initially agreed only to add the first bullet, the "safe harbor" (see section 0060(4)); this was provided in the November 8 draft. Subsequent to the LCDC public hearing on that draft, and in response to the testimony on this topic, the workgroup appointed a "subgroup" to propose wording for resolution of this

issue. In response, the subgroup proposed, and the workgroup agreed to, the following new section (11) under 0040:

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

The workgroup chair, Commissioner Worrix, attended the subgroup meeting and may further discuss the intent of the above wording at the Commission's January meeting.

660-027-0050 Identification, Selection and Designation of Lands for Urban Reserves

While the rules under 0040 provide a set of general rules for designation of both urban and rural reserves, the rules under 0050 provide the factors for determining which land to designate as urban reserves. According to Metro, these factors are derived from the "great communities" factors developed as part of Metro's agriculture/urban study (that study is linked to DLCD's website on this rulemaking, at http://www.metro-region.org/index.cfm/go/by.web/id=25147.

Metro's "*ad hoc* group" that met in the summer of 2007 recommended some modifications to these factors, and the Commission's workgroup also agreed to some modifications. In general, these modifications are minor edits to statute factors and additional factors not in the statute, such as factors (g) and (h).

The term "walkable" was not defined by the statute; as noted above, the department has proposed a definition. Also, "a well-connected system of streets" is not defined currently by Goal 12 or related rules. A definition of this phrase has not been provided for these rules. Metro's *ad hoc* group suggested the language referring to "pedestrian and bicycle facilities," and suggested that it be phrased consistent with the Transportation Planning rule.

Again, SB 1011 provided that the factors for urban reserves listed in that bill were "not limited to" those listed. As discussed previously, the workgroup agreed that this provision should be interpreted to mean that LCDC may add additional factors, through this rule, but that this language does not authorize Metro to add factors to those listed in the rule.

660-027-0060 Identification, Selection and Designation of Lands for Rural Reserves

These proposed rules provide factors that would be applied to designate rural reserves in order to protect farm land, forest land, and natural landscape features. The statute (SB 1011) provided only one set of factors – for farm land. However, the statute is also clear that "rural reserve" means "land reserved to provide long-term protection for

agriculture, forestry or important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes and floodplains."

As such, the workgroup agreed to add additional factors for those rural reserves that are designated to protect forest land and natural landscape features. The factors proposed to determine whether rural reserves should be designated to protect natural features are significantly different than those in the statute for farm land, and therefore the rules provide these factors as a separate rule section (section 3). The factors for forest land are woven into the factors for farm land.

Because rural reserves are likely to be designated for all three of the purposes described above, section (1) indicates that metro shall specify which areas designated for rural reserves are intended for which purpose. This will determine which factors to apply. However, it is conceivable that some areas will be included in rural reserves for a combination of "purposes," rather than for farm, forest or natural features alone. We also note that the factors do not specifically describe how to treat land that is both farm and forest land. The workgroup had noted this, but did not provide further discussion or recommendation.

As was noted in the November report, subsection (2)(a) changes the word "and" in the statute to "or". The workgroup believes the intent of this requirement in the statute is to consider proximity to a UGB or proximity to land with fair market values that significantly exceed agricultural values – but it is not necessary that a particular property must be considered with regard to both.

Finally, subsequent to LCDC's November hearing on the proposed rules, the workgroup agreed to modify 0060(3) as follows:

(3) When identifying and selecting land for designation as rural reserves intended to protect important natural landscape features, a county must **consider those areas identified in Metro's February 2007 "*Natural Landscape Features Inventory*," and other pertinent information, and shall** base its decision on … [the factors for natural landcape features]."

This wording was added in recognition that, similar to agricultural lands discussed above, Metro had also mapped natural landscape features, and the rules should reference those maps to ensure attention to this mapping. The department also notes that the Department of Forestry has completed mapping of significant forest lands. However, this mapping was not provided to the workgroup until its final meeting, and the Department of Forestry did not suggest that the rules reference the mapping.

660-027-0070 Planning of Urban and Rural Reserves

This set of rules begins by describing one of the most significant planning ramifications in designating urban reserves: such areas are the highest priority for inclusion in the urban

growth boundary when the boundary is expanded, as specified in Goal 14, OAR 660, division 24, and ORS 197.298. That fact is not mentioned in SB 1011, but was certainly well-understood by the various interests that drafted the legislation. It should be noted that urban reserves calculated to provide a 20-30 year supply of land in the Metro area are likely to include farmland, forest land, exception areas, and other features. There are no rules or statutes that require Metro to indicate **which** land in urban reserves might be the first or highest priority land considered when the UGB is expanded. However, ORS 197.298 may bear on this question.

The second section of the 0070 rules ensures that land in urban reserves is maintained in larger parcel sizes (unless it was previously parcelized), so as to preserve opportunities for orderly and efficient development of urban uses and provision of urban services when urban reserves are added to the UGB.

The proposed rules also direct counties to maintain the zoning for uses on rural reserves allowed at the time they were designated, and to not allow smaller lots or parcels on land designated as rural reserves. This provision was recommended by Metro's *ad hoc* group that met in the Summer of 2007 prior to LCDC's workgroup meetings, but was embraced by the workgroup. It provides a powerful protection for rural reserves that is in addition to other protection already provided in statute and in 660-027-0040 (4) and (5). These provisions together carry out the primary directive of SB 1011, that rural reserves are intended to "provide <u>long-term protection</u> for agriculture, forestry or important natural landscape features." (Emphasis added).

Finally, the proposed urban reserve "planning" rules provide that "counties, cities and Metro may adopt conceptual plans for the eventual urbanization of urban reserves designated under this division, including plans for eventual provision of public facilities and services for these lands, and may enter into urban service agreements among cities, counties and special districts serving or projected to serve the designated urban reserve area." Part of this provision was recommended by Metro's ad hoc group, but was embraced by the workgroup, and augmented by the department, to include some of the provisions currently in rules for urban reserves under OAR 660, division 21, that clarify the ability to plan for services in urban reserves.

660-027-0080 Adoption and LCDC Review of Urban and Rural Reserves

While these proposed rules repeat statutory requirements for LCDC review of reserves, it is important to note that those requirements have been augmented. Furthermore, this section has been further amended since the Commission's November hearing, at the recommendation of the workgroup and on advice of legal counsel (Section (4) is the additional language added since the November 8 draft).

Section (1) makes it clear that plan amendments and other land use actions to implement the designation of urban reserves must be in accordance with current laws for plan amendments (ORS 197.610 to 197.650). This assures public notice requirements, among other things, and makes sure that statewide planning goals apply.

Section (3) was suggested by DOJ rather than the workgroup. This provision anticipates that the submittal to LCDC will very likely be large and complex, and will be subject to multiple comments based on LCDC's previous experience with UGB decisions in the Metro area. Furthermore, while appeals may not necessarily occur, they are a possibility, and section (3) will facilitate the department's required "records" work in responding to an appeal.

The new section (4) is intended to specify the Commission's scope and standard of review, specifically referencing the rule's purpose statement and designation standards.

Suggested Amendments to Current Rules in Other Divisions under OAR 660

The department has proposed "conforming amendments" and other "housekeeping amendments" to other LCDC rules related to urban reserves, including the repeal of some existing rules. The proposed amendments are Attachment B to this report.

Amendments to OAR 660, division 4

Only some sections of rules under OAR 660-004-0040 are proposed for amendment. These are rules adopted by LCDC in 2000 in response to the 1986 Supreme Court decision regarding 1000 Friends of Oregon v. LCDC et al. 301 Or. 447 (1986). Those rules established minimum lot sizes in rural areas that ensured rural lands did not authorize "urban uses" outside UGBs.

First, the version of the rules currently on file with the Secretary of State italicizes the words "minimum lot size" under section (7)(e)(F). This may emphasize these words, but there appears to be no reason to emphasize these words, and as such, this is probably a formatting error in the filing of a previous amendment of this rule. The amended rule would eliminate the italics.

The proposed amendment to Section (8)(b)(B) is also non-substantive; it is suggested that the word "reserve" be preceded by the word "urban", since the intent here is to refer to an urban reserve. A correction to sentence structure (adding the word "or") at the end of that paragraph is for grammatical purposes and for clarity.

Proposed amendments to subsection (8)(d) and (e) are both for clarity and substance. First, Metro's legal counsel suggested that "Metro" should be substituted for "the Portland metropolitan service district" because "Metro is a term that is defined and is more widely understood in the region." Substantively, this subsection should be amended to also reference the new division 27 urban reserve process, in addition to the division 21 process. Also, section (d) refers to a Metro "urban reserve ordinance." Metro's regional framework plan (RFP) does not apply outside the UGB, so this section should instead refer to county comprehensive plan and zoning provisions adopted to implement the reserves. The remaining proposed amendments to that subsection are for clarity and to recognize the new

statutory term "urban reserve" rather than "urban reserve area".

Proposed amendments to subsection (7)(f) are at the suggestion of Metro's legal counsel, Dick Benner, who indicated to the department that "there is no such thing as 'the Metro 2040 Plan' – there is a '2040 Growth Concept' which is not regulatory. It recommends densities for specific land use designations, but they have no legal effect. I recommend that the rule say **10 units per net developable acre** because Metro's code says that is the lowest density that can be assigned to any land inside the UGB zoned to allow residential use. It is a good minimum criterion for determining whether an area is suitable for urbanization."

Finally, amendments to paragraph (G) of subsection (7)(g) would ensure that, on land designated as urban reserve under the new division 27 rules, new parcels less than the minimums established by these rules cannot by created without a goal exception. As noted above in describing the purpose for urban reserves, parcelization of these lands would impede efficient provision of urban services and urban scale development.

Amendments to OAR 660, division 11

The department is recommending changes to rules under OAR 660-011-0060, specifically paragraph (C) of subsection (4)(b). These amendments are non-substantive and pertain to conditions under which sewer systems may be provided outside UGBs without an exception, for health hazard areas. This rule currently references urban reserves under division 21 – the proposed amendment would reference urban reserves established under the new rules in division 27 as well. The proposed amendments also intend to clarify what is meant by the current provision of that rule in limiting the "capacity" of a sewer system designed for a health hazard area. The clarifying language does not change the current intent; it clarifies that in urban reserve areas, the capacity of a sewer system could be designed to provide for the projected future level of service planned for an area within the boundaries of an urban reserve.

Amendments to OAR 660, division 21

These amendments conform division 21 urban reserve rules to the statutes for urban reserves (ORS 195,) amended by SB 1011, including:

- An amended definition to conform to the amended statutory definition
- Authorization for Metro to designate urban reserves for the Portland Metropolitan area urban growth boundary under OAR 660, division 027.
- Removal of the word "area" after "urban reserve" throughout the division.
- Correction of the word "rule" in 0020(1): this should refer to the "division" rather than the "rule."
- Elimination of "applicability provisions" that refer to previous urban reserve designations by Metro which were remanded by the courts and were not re-adopted by Metro.

Finally, as described at the beginning of this report, urban reserve rules under division 21

initially mandated that certain jurisdictions adopt urban reserves. These cities long ago completed this requirement. As such, it is suggested that the Commission repeal rules under OAR 660-021-0090 and OAR 660-021-0100 that establish specific urban reserve requirements and deadlines for these local governments to follow in meeting this mandate.

Amendments to OAR 660, division 25

The proposed amendments to the rules under OAR 660-025-0040 are in recognition of the Commission's exclusive authority to review urban reserves designated under OAR 660, division 27, in addition to reserves designated under OAR 660, division 21.

Required LCDC Rulemaking Criteria and Procedures

The Commission's procedures for rulemaking derive from ORS Chapter 183 and are specified in LCDC's procedural rules at OAR 660-001-0000. In general, prior to adoption of a rule, the Commission must hold a public hearing and provide an opportunity for interested parties to testify on the proposed rule. The Commission must deliberate in public and, if the commission makes a decision to adopt any or all of the proposals, a majority of the commission must affirm the motion to adopt.

The Commission is also guided by ORS 197.040, as follows:

"197.040 Duties of commission; rules.
(1) The Land Conservation and Development Commission shall:

....

(b) In accordance with the provisions of ORS 183.310 to 183.550, adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197. Except as provided in subsection (3) of this section, in designing its administrative requirements, the commission shall:

(A) Allow for the diverse administrative and planning capabilities of local governments;
(B) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;
(C) Assess the likely degree of economic impact on identified property and economic interests; and
(D) Assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.

(c)(A) Adopt by rule in accordance with ORS 183.310 to 183.550 or by goal under ORS chapters 195, 196 and 197 any statewide land use policies that it considers necessary to carry out ORS chapters 195, 196 and 19, [and]

(B) Adopt by rule in accordance with ORS 183.310 to 183.550 any procedures necessary to carry out ORS 215.402 (4)(b) and 227.160 (2)(b). . .

...

(3) The requirements of subsection (1)(b) of this section shall not be interpreted as requiring an assessment for each lot or parcel that could be affected by the proposed rule."

The department issued formal rulemaking notice for publication in the November 2007 Secretary of State's Bulletin, and again in the January 2008 Secretary of State's Bulletin and has mailed notices to interested parties, including legislators (See Attachment G).

The Commission has also adopted "Citizen Involvement Guidelines for Policy Development" (the "CIG") in order *"... to provide and promote clear procedures for public involvement in the development of Commission policy on land use," which LCDC has committed to follow "to the extent practicable in the development of new or amended statewide planning goals and related administrative rules."* CIAC member Ann Glaze was appointed as a member of the Metro Reserves workgroup.

The CIG recommends that the Commission *"consult with the CIAC on the scope of the proposed process or procedure to be followed in the development of any new or amended goal, rule or policy."* On October 11, 2007, workgroup member Ann Glaze gave the CIAC a general overview of the process and progress of, and handed out a paragraph of the draft rule that spoke to citizen involvement. According to the minutes of that meeting, "CIAC was pleased with the inclusion of 'citizen involvement' requirements in the rules."

The CIG recommends that, as part of a rulemaking process, the department *"shall, to the extent practicable:*

- *Prepare a schedule that clearly indicates opportunities for citizen involvement and comment, including tentative dates of meetings, public hearings and other time-related information;*
- *Post the schedule, and any subsequent meeting or notice announcements of public participation opportunities on the Department's website, and provide copies via paper mail upon request; and*
- *Send notice of the website posting via an e-mail list of interested or potentially affected parties and media outlets statewide, and via paper mail upon request;*
- *Provide background information on the policy issues under discussion via posting on the Department's website and, upon request, via paper mail. Such information may, as appropriate, include staff reports, an issue summary, statutory references, administrative rules, case law, or articles of interest relevant to the policy issue."*

The department has followed these guidelines with regard to this rulemaking. The workgroup determined its schedule at its first meeting, and announced revisions to the schedule, and the department established a website and a list of interested parties to receive notices of this workgroup, in the manner outlined by the CIG. The website includes agendas and minutes for each workgroup meeting, background information, draft rules under consideration by the workgroup, and copies of formal notices. The department has sent notice of meetings to the public and interested parties, including notice of the LCDC hearings, by electronic and regular mail.

Conclusion and Recommendation

The department recommends that the Commission receive public testimony on the proposed new and amended rules. Following testimony, the department recommends that the commission close the public hearing, consider the testimony and other information provided, and adopt the proposed new and amended rules.

Attachments

A. Proposed new rules for Urban and Rural Reserves
B. Proposed conforming amendments to other existing LCDC rules
   - OAR 660, division 4
   - OAR 660, division 11
   - OAR 660, division 21
   - OAR 660, division 25
C. Senate Bill 1011, including legislative history
D. Appointed rulemaking advisory workgroup
E. The "Shape of the Region" summary report
F. Urban Reserve Rules under OAR 660, division 21
G. Rulemaking notices
H. Written Comments received by DLCD prior to mailing of this report