



# Oregon

Theodore R. Kulongoski, Governor

**Department of Land Conservation and Development**

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Second Floor/Director's Office Fax: (503) 378-5518

<http://www.oregon.gov/LCD>

April 8, 2010

TO: Land Conservation and Development Commission

FROM: Bob Rindy, Senior Policy Analyst

SUBJECT: **Agenda Item 13, April 21-23, 2010, LCDC Meeting**

**PUBLIC HEARING AND POSSIBLE ADOPTION OF PROPOSED AMENDMENTS TO  
RULES REGARDING PLANNING OF URBAN AND RURAL RESERVES IN THE  
PORTLAND METRO AREA (OAR 660, DIVISION 27)**

**I. AGENDA ITEM SUMMARY**

This agenda item includes a public hearing on proposed amendments to administrative rules pertaining to urban and rural reserves in the Portland Metro area and the possible adoption of the proposed rules. The proposed rule changes would modify OAR 660-027-0070, the current prohibition on future amendments to local land use regulations in areas designated as urban or rural reserves. This is the third public hearing on the proposed rule changes. If adopted, the proposed rule amendments will be effective upon filing with the Secretary of State.

The proposed rule amendments are in response to concerns raised to the department by Metro, Metro area counties, and others regarding limitations on uses in proposed urban and rural reserves in the Metro area. At the time of this report Metro, and Metro area counties have agreed on a map of urban and rural reserves, but county and Metro adoption of all necessary local land use regulation amendments to implement the reserves is not complete.

The proposed rule amendments concern two sections under OAR 660-027-0070 that prohibit future amendments to local comprehensive plans and land use regulations to allow new uses of land in areas designated urban and rural reserves (prohibiting new uses that were not allowed at the time the reserves were designated). The issue arises from an ambiguity in current law: some uses are expressly allowed on farm and forest lands, but only through a plan amendment process. The department believes that the commission did not intend its Metro reserves rules to prohibit these uses in urban and rural reserves. Of course, they would still have to be approved through a plan amendment process. The three types of uses that fall into this category are certain transportation facilities, uses in local and regional and state parks under an approved parks plan, and certain uses involving Goal 5 resources.

The proposed rule changes, in Attachment A to this report, would authorize future plan and land use regulation amendments in reserve areas, but only with respect to amendments concerning transportation facilities, local and regional park plans, and Goal 5 resources.

At its March meeting, LCDC held an initial public hearing on this proposal and appointed a hearings officer to hold a second public hearing in Portland on April 15. Testimony to the hearings officer at that hearing will be summarized and provided to the commission following the public hearing (Attachment F to this report is a placeholder for that hearings officer report, which will be provided to LCDC and published on the department's website prior to the April 22 commission hearing).

For additional information on this item, please contact Bob Rindy at (503) 373-0050 ext. 229; email [bob.rindy@state.or.us](mailto:bob.rindy@state.or.us).

## **II. SUMMARY OF RECOMMENDED ACTION**

The department recommends that the commission receive testimony and comments regarding the proposed rule amendments. Following the public hearing, the department recommends the commission adopt the proposed rule amendments.

## **III. OVERVIEW**

### **A. Reasons For The Proposed Rule Amendments**

In December 2009 the department began to hear about concern, expressed by Metro and other interests in the region, with respect to provisions of LCDC administrative rules that prohibit any amendments to land use regulations in urban and rural reserves after reserves are designated. Specifically, sections (2) and (3) of rules under OAR 660-027-0070 prohibit local land use regulation amendments once reserves are designated:

*"(2) In order to maintain opportunities for orderly and efficient development of urban uses and provision of urban services when urban reserves are added to the UGB, counties shall not amend land use regulations for urban reserves designated under this division to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as urban reserves until the reserves are added to the UGB.*

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

The concerns expressed to the department initially referred to three types of regulation amendments that are likely to be needed in the region during the next 50 years, to authorize:

(1) Certain types of transportation improvements;

(2) Many types of public park facilities, which generally require adoption of a parks master plan or amendments to an existing master plan, as well as related land use regulation amendments; and

(3) Designation and “protection” of Goal 5 resources, such as in response to new resource inventories that may be conducted in the future or new information submitted to a local government about resources. Goal 5 concerns a number of “resources,” including: Natural resources, scenic and historic areas, parks or open space, mineral or aggregate sites, energy resources, water areas, and several other categories of “resources” (described by Goal 5 and its interpretive rules in OAR 660, division 23). Under Goal 5, new or amended Goal 5 inventories of “significant resources” and measures to “protect” such significant resources must be adopted as amendments to local plans and land use regulations.

Under ORS 197.015(11), a “land use regulation” means “any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan.” As such, the prohibition on land use regulation amendments under OAR 660-027-0070 (2) and (3) is quite broad, and may not allow county zoning ordinance changes that may be necessary for the three categories of uses described above. While these sections of the rule do not mention amendments to local comprehensive plans, other provisions in this division may leave it unclear as to whether future plan amendments are also disallowed. Moreover, most land use plan amendments also require related land use regulation amendments, and conversely, many land use regulation amendments also require conforming land use plan amendments. As such, in proposing rule amendments to resolve the concerns described in this report, the department intends to authorize future land use regulation amendments and/or plan amendments may be authorized for certain specific uses.

It is the department’s sense that the commission did not intend to prohibit local plan or regulation amendments authorizing the three types of uses described above. Discussion of the potential need for future amendments to authorize new transportation facilities, parks, trails, or resource uses did not occur during the work group meetings or formal hearings held when LCDC adopted the Metro reserve rules in 2008. As such, the commission, the department, other interests, and local governments most likely did not appreciate that a prohibition on future amendments to allow new uses that were not allowed at the time of the designations may prevent future transportation improvements, allowance for new parks and trails, and protection of newly inventoried Goal 5 resources.

The three categories of uses described above are generally allowed on rural lands, including farm and forest lands. For example, certain types of road improvements are permitted outright in rural areas, some require some form of conditional uses review, and some require an exception to a statewide land use planning goal and an accompanying plan amendment. In those instances, the commission’s current rules at OAR 660-027-0070(2) and (3), described here, may be interpreted to prohibit such amendments in urban or rural reserves, and therefore prohibit these uses by preventing the required local land use regulation amendments necessary in order to allow the uses.

The department is not aware of any specific proposals to amend land use regulations pertaining to such uses, either now or in the future. However, as a general matter, the department agrees that it is highly likely during the next 50 years that authorization for such uses will be sought and should be appropriately considered by Metro and/or local governments (generally counties).

Again, the three categories listed above were not specifically discussed by the commission's 2007 workgroup that drafted the reserves rules and such uses were not discussed by the commission in the hearings in 2007 and 2008 leading to adoption of the Metro reserves rules. While the commission clearly did intend to limit most types of new uses in urban and rural reserves, it is not likely that the three categories discussed here were fully considered at the time the rules were adopted. The department believes that the commission most likely did not intend its prohibition to be so sweeping that Metro and local governments are barred – for up to 50 years – from considering or allowing transportation improvements, new regional parks and trails, or protection of newly inventoried Goal 5 resources, in reserve areas. While it is unlikely that there would be a large number of instances where land use regulation changes are necessary to allow these uses, it is almost certain that there will be some instances where these types of land use changes are desirable and can be undertaken by Metro and/or Metro area counties without compromising the urban or rural reserves.

Therefore, the department is recommending that the commission approve minor changes to current reserve rules in order to authorize Metro and local governments in the Metro area to consider and adopt appropriate amendments to local land use regulations where necessary in response to planning or approval of any of the three categories of new proposals or inventories described above.

## **B. History of Metro Reserves**

In 2007, the Oregon Legislature enacted SB 1011 (see Attachment C) authorizing the Metropolitan service district (Metro) and the three Metro area counties to designate Urban Reserves and Rural Reserves under a new process and with new requirements that do not apply to other regions of the state. That statute required LCDC to adopt rules to provide detailed procedures and requirements for designation and planning of Metro area reserves. In response, LCDC adopted Metro reserves rules (OAR 660, division 27) in January 2008.

Urban Reserves in the Metro area under SB 1011 are adopted by Metro and the counties under a different process than the process specified in LCDC's previous (1991) urban reserve rules, OAR 660, division 21 (which provide an option for local adoption of urban reserves anywhere in the state). However, in most respects, urban reserves both in the Metro area under SB 1011 and statewide under division 21 serve the same function: urban reserves provide up to a 30-year future urban planning area beyond the 20-year area for urban growth boundaries (UGBs), i.e., urban reserves are intended to allow 40 to 50 year plan for urbanization. Under ORS 197.298, designated urban reserves are the highest priority of land that local governments (including Metro) must consider when a UGB is amended. SB 1011's preamble indicates that urban reserves are intended to provide "greater certainty 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.” Urban reserves are further protected by rules under OAR 660-027-0070 (the subject of this report) that limit future amendments to land use regulations applied to the reserves “in order to maintain opportunities for orderly and efficient development of urban uses and provision of urban services when urban reserves are added to the UGB.”

Rural Reserves had no precedent in Oregon law prior to SB 1011 and are currently authorized (voluntarily) for Metro area counties only. The statute indicates that rural reserves are intended to provide “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.” Under division 27, rural reserves are further intended “to provide long-term protection of important natural landscape features.” Rural reserves, once designated, cannot be included within an UGB and cannot be re-designated as urban reserves for a period of time equal to the 40 to 50 year time period for urban reserves, described above. Rural reserves are further protected by rules under OAR 660-027-0070 (the subject of this report) that limit future amendments to land use regulations applied to the reserves.

Designation of urban and rural reserves is not mandatory - Metro and metro area county governments may choose whether or not to declare these reserves. However, if reserves are designated (which recently occurred), Metro and counties must consider and establish rural **and** urban reserves simultaneously. Reserves must be designated by “an agreement,” and such agreement “must provide for a coordinated and concurrent process” for adoption of comprehensive plan provisions by the counties, and regional framework plan provisions to implement the agreement adopted by Metro. The stated objective “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.”

Once urban and rural reserves are adopted by Metro and Metro area counties, LCDC must review and approve the designation based on applicable statutes and rules. Under ORS 197.626, a “metropolitan service district that ... amends the district’s regional framework plan or land use regulations implementing the plan to establish urban reserves ... or a county that amends the county’s comprehensive plan or land use regulations implementing the plan to establish rural reserves ... shall submit the amendment or designation to the Land Conservation and Development Commission in the manner provided for periodic review ...”.

As indicated above, Metro and Metro area counties have reached agreement on a map of urban and rural reserves – thus, these reserves are “designated” as of the date of that agreement. Metro area counties have provided notice of their intent to adopt additional corresponding land use regulations designating rural reserves, including policies in local comprehensive plans. Metro has also provided notice of its intent to adopt ordinances designating urban reserves and related policies within its Regional Framework Plan to implement urban and rural reserves. The reserves map, intergovernmental agreements, and joint set of findings will be submitted to LCDC for review sometime this summer (at this point the department cannot provide a more precise estimated submittal date).

**C. Legislative History of OAR 660, division 27**

In the department's January 11, 2008 staff report to the commission proposing the adoption of Metro reserve rules, the "intent" of specific proposed rule provisions under OAR 660-027-0070 is described as follows:

*"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 long-term protection for agriculture, forestry or important natural landscape features." (Emphasis added).*

*"... [T]he 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 [work] group, but was embraced by the [LCDC appointed] 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."*

**IV. SUMMARY OF PROPOSED ADMINISTRATIVE RULE AMENDMENTS**

In response to the concerns described above, the department recommends that the commission amend the Metro urban and rural reserve rule OAR 660-027-0070 to specify that land use regulation amendments and corresponding plan amendments are allowed for three types of uses that may be proposed in the future within urban or rural reserve areas:

- (1) Amendments in response to new or amended "Goal 5 resource inventories," as well as any applicable comprehensive plan amendments necessary to recognize and protect such resources if they are determined to be "significant" under OAR 660, division 23;
- (2) Amendments that may be necessary to authorize park uses, subject to a prior or simultaneous adoption or amendment of a "local (or regional) park master plan," as provided in OAR 660, division 34; and

(3) Amendments that may be necessary to authorize roads, highways, and other transportation and public facilities and improvements, including recreational trails, provided such amendments also meet other applicable requirements of law, such as ORS 215.213, 215.283 and related Goal 3 rules, OAR 660, division 6 (rule regarding uses on forest lands), and OAR 660, division 12, rules regarding transportation (current requirements generally allow some transportation system changes without an exception to statewide goals, but do require an exception or other land use amendments in some instances), and OAR 660, division 11, rules regarding public facilities). The proposed rule amendments in Attachment A are not intended to amend current requirements, including requirements for Goal exceptions, nor are these changes intended to imply that such an exception may be granted in any particular situation. Rather, the intent is to authorize counties or Metro to grant such an exception for a road, highway, or other transportation or public facility or improvement in cases where the applicable exception requirements are met.

On March 1, 2010, the department posted a draft of proposed rule amendments intended to implement the changes described above (Attachment A). This proposal was attached to the department's staff report to the commission for the initial rule hearing on March 18, 2010. As discussed elsewhere in this report, the department also issued formal notices prior to LCDC's initial hearing in accordance with DLCD's notice rules in OAR 660, division 1, and other applicable state laws. However, because the March LCDC meeting was in Bend, and because this rule affects a particular region of the state (the Portland Metro region and the three counties in that region) the department decided to schedule a second public hearing in the Metro area. As such, a second notice was issued concerning that local hearing and the final hearing was scheduled to occur at the April LCDC meeting (in Lincoln City). Also, the department recommended that LCDC appoint a hearings officer to conduct the public hearing in the Portland Metro region (scheduled for April 15, 2010; See Attachment D).

The department's proposed amendments to division 27 in Attachment A, the subject of this report, are in response to the concerns described above regarding restrictions in the current rules with respect to future amendments to local regulations pertaining to urban and rural reserves. In summary, current rules for urban reserves under OAR 660-027-0070 prohibit amendments to land use regulations for urban and rural reserves that would allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as urban reserves. For urban reserves, these restrictions apply until the reserves are added to the UGB. For rural reserves, these restrictions remain so long as the rural reserves are in place (30-50 years, with the precise time period selected by Metro and the counties). Again, the concerns leading to this rulemaking are that this prohibition will prevent future amendments to local plans and regulations in reserve areas that, in the opinion of the department and others, are likely to be necessary (a) in response to new or amended Goal 5 inventories in urban or rural reserves, (b) to authorize new or improved transportation, public facility or trail facilities, or (c) to amend regional park plans in reserve areas.

The department does not believe the commission expressly intended to limit such amendments in reserve areas, given that the uses are allowed under ORS 215.283 and 215.213 and other related laws, and given the very long time frame the reserves will be in effect. For example, road widening or new roads that traverse a reserve area are very likely to be necessary in order to serve populations beyond the immediate rural area. In addition, new road or other public

facilities are often planned well in advance of urbanization and as such, are typically indicated through amendments to long range plans that may include reserve areas. Similarly, it is highly likely that new Goal 5 resources will be identified during the 50-year planning period. Once “significant” resources are identified, LCDC rules require local governments to make appropriate plan and land use regulation amendments to “protect the resource.” New regional parks and trail plans are contemplated, and it is likely that corresponding plan and land use regulation amendments will be necessary in the future to implement these plans. The proposed amendments in Attachment A respond to these concerns.

Attachment A, the department’s proposal for amending division 27, is intended to continue most restrictions on future amendments to urban and rural reserve plans and implementing regulations, but will allow three types of amendments in response to the three issues described above. The department notes that, at the commission’s discretion, authorizations for future amendments to regulations in reserves could be different for urban vs. rural reserves, but the draft rules do not make these distinctions at this time.

It is important to note that land use regulation amendments to authorize any of the above three categories of uses within reserves could only occur to the extent the proposal meets other applicable laws, goals, and rules. Amendments to plans or regulations to allow other uses, for example, new rural residential areas, rural commercial areas, and rural industrial uses (as well as other proposals requiring Goal 3 or 4 exceptions), would continue to be prohibited within both urban and rural reserves. We note that OAR 660-027-0040 requires that “a county shall not re-designate land in rural reserves to another use” during the time period for which the reserves are intended (from 40-50 years).

**Option to limit transportation improvements in rural reserves:** Based on discussions at the department, an option was considered that would be more restrictive regarding transportation facilities in rural reserves. Since the legislative history indicates the commission intended that rural reserves should receive substantially more “protection” than generally applied to rural farm and forest land, the commission may want to consider whether new roads, or improvements such as new interchanges, are appropriate for rural reserves. Major transportation improvements would generally serve urban development, and thus may be inappropriate for rural reserves. Some, but by no means all, transportation facilities in farm and forest zones are allowed only by means of Goal 3 or 4 exceptions. Goal exceptions are plan amendments, and provide considerable opportunity for public input and consideration of alternatives and impacts. However, to the extent that certain transportation system improvements do not require an exception, the department offers the following option for the commission’s consideration, applicable to rural reserves. This option would require an exception in order to allow any future transportation improvements in farm or forest zones in rural reserves, even for instances where such transportation or public facility improvements do not currently require a goal exception:

**OPTIONAL PROPOSED wording for OAR 660-027-0070(4).** Note: this proposal is the same as attachment A, except that section (4) in the attachment would be altered to read as follows (*italics* indicate the wording that would be *different* from attachment A under this option):

**(4) Notwithstanding the prohibitions in sections (2) and (3) of these rules, counties may amend land use regulations applied to urban and rural reserves in order to:**

**(a) Adopt or amend Goal 5 resource inventories and applicable comprehensive plan and land use regulations to protect inventoried Goal 5 resources, as required under OAR 660, division 23;**

**(b) Authorize park uses, subject to adoption or amendment of a park master plan as provided in OAR 660, division 34; or,**

**(c) Amend land use regulations to authorize roads, highways or other transportation or other public facilities or improvements, except for rural reserves, where such facilities and improvements may be authorized only through the adoption of an exception to Goal 3 for areas zoned for exclusive farm use or Goal 4 for areas zoned for forest use, or to Goals 3 and 4 for areas subject to both.**

**V. COMMENTS RECEIVED**

The department received written comments prior to the mailing of this report. It is anticipated that additional comments will be submitted at the April 15 hearing.

**A. Response to comments by Washington County**

Summary: In a March 17, 2010, letter to the commission from Brent Curtis, Washington County Planning Manager, a number of concerns are raised in addition to the three concerns described above (see Attachment E). In summary, the county indicates that the March 1 proposed rule amendments resolve some of the county's concerns with the current rules, but additional concerns remain. The county is concerned that, even if the commission adopts the proposed rule changes, continuing restrictions on future amendments to reserve area land use regulations will prohibit certain amendments of local land use regulations currently in effect for reserve areas. The county provides a list of the types of additional amendments it anticipates will be proposed in the future, and should be authorized by additional changes to the rules. In summary, the county recommends that the rules be further amended to allow future county land use regulation changes that may be proposed in response to:

(1) Land use regulation updates: State or federal statute changes; new land use case law; new LUBA or court interpretations of resource zoning needing codification by ordinance;

(2) Quasi-Judicial Plan Map Amendments: Proposed plan amendments to rezone farm or forest land to other resource uses (for example., rezoning from EFU to mixed farm/forest zoning); amendments to rezone exception area uses to allow different "exception districts" without a new exception; implementing standards for wind or solar facilities, modification of standards for wineries or events on EFU land (such as weddings);

(3) Airport Overlay District Designations: safety zones are currently under consideration for the Hillsboro Airport; and

(4) Authorization of certain special uses on high value farmland: local regulation changes anticipated to be necessary to authorize schools, private parks, and campgrounds on high-value farm land within 3 miles of a UGB.

Response: The department recognizes that additional concerns such as those described by the county may arise over the 50 year planning period, and if so, additional amendments to the urban and rural reserve rules may be necessary. It is not clear whether the additional changes recommended by the county would be consistent with the legislative intent of SB 1011 and LCDC rules. At this time, the department is not recommending that the Metro reserve rules be amended in order to authorize the county's longer list of possible future amendments to local land use regulations.

The list of rule changes suggested by the county would authorize a range of new uses in farm and forest zones within the reserves. The department believes the authorization for this wider array of new uses would be counter to the intent for rural reserves expressed by the commission's work group that initially recommended the rules, and may also be counter to the understandings of the *ad hoc* group of interests that initially drafted and recommended passage of SB 1011 in 2007. In the case of urban reserves, the department notes that the primary reason for restrictions on new uses is to maximize the opportunity for future efficient urban development and "great communities." Thus, new uses in urban reserves may hinder future urban development or the efficient provision of roads and public facilities in these areas once they are brought into the UGB.

The legislative history of the rules in question indicate that the commission's workgroup proposing OAR 660, division 27, intended that uses within rural reserves generally be limited to uses allowed at the time of designation. The workgroup's intent is summarized in the January 11, 2008, department staff report to LCDC supporting the initial adoption of division 27, which indicated the restrictions on future land use regulation amendments were intended to "*carry out the primary directive of SB 1011, that rural reserves are intended to "provide long-term protection for agriculture, forestry or important natural landscape features. (Emphasis added).*" (see summary of legislative history, below).

NOTE: Washington County also raised concerns with regard to a different rule in division 27, which states:

*"OAR 660-027-0040(5) Metro shall not re-designate rural reserves as urban reserves, and a county shall not re-designate land in rural reserves to another use, during the period described in section (2) or (3) of this rule, whichever is applicable."*

The department believes this rule does NOT restrict, nor was it intended to restrict, amendment of rural reserve regulations to allow additional uses not allowed at the time reserves were designated. That prohibition is intended, clearly, in OAR 660-027-0070, the subject of this report. The proper interpretation of the OAR 660-027-0040(5) rule is that it prevents the removal

of a county's rural reserve designation from rural reserve lands in the county, once designated, and prevents the redesignation of rural reserves either as urban reserves or as urban land (i.e., placement inside the UGB). As such, the department does not agree that amendment of OAR 660-027-0040(5) is necessary to address the concerns described in this report regarding future land use amendments that may be necessary but are prevented under OAR 660-027-0070.

**B. Response to comments by 1000 Friends of Oregon**

Summary: In a letter to the commission on March 17, 2010, 1000 Friends indicates that it participated in the meetings and workgroups that led to the enactment of SB 1011 in 2007 and to the subsequent reserve rules adopted by LCDC in 2008. 1000 Friends is concerned that the proposed rule amendments "coming before the reserves decision is even final at the Metro level, adds to the anxiety of the organization, and others involved in this process, about just how much 'certainty' we can really expect from the reserves." The letter indicates that "there is no external reason of which we are aware to take on this extensive a revision at this time," and adds that additional comments will be presented at the April 15 hearing.

Response: Because the comments do not raise any specific concerns, the department does not offer a response at this time.

**C. Response to comments by Paul Edgar, Canemah Neighborhood Association Chair, and Cheryl Edwards, Washington County farmland owner.**

Paul Edgar indicates that Oregon City has become a bedroom community and many households are commuting 15-20 miles one way. He suggests that urban and rural reserves will need to be amended in the future to create new jobs and employment. Cheryl Edwards also comments that we need to preserve the right to amend reserves in the future.

Response: The proposed amendments will not affect whether or not the region is allowed to amend urban and rural reserves in the future. Nothing in the rule, and nothing in the proposed amendments, restrict or change the authority granted to Metro and counties to amend reserves in the future.

**VI. LCDC RULEMAKING AUTHORITY AND NOTICE REQUIREMENTS**

The commission's authority to adopt or amend administrative rules is specified under ORS 197.040, as follows:

*"...The Land Conservation and Development Commission shall...adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197, [and] 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.*

The commission's procedures for rulemaking derive from ORS Chapter 183 and are further clarified in LCDC's "procedural rules" at OAR 660-001-0000. These rules require that:

*(1) Prior to the adoption, amendment or repeal of any rule, the agency shall give notice of its intended action ...in the manner established by rule adopted by the agency under ORS 183.341(4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action[.]*

Action: The department issued rulemaking notice for publication in the Secretary of State's Bulletin and has mailed notices to interested parties including: legislators, Metro area cities and counties, members of Metro's Reserve Steering Committee, and other interested persons, large forest land owners and land trusts. The department also published notices of housing cost and economic impact for publication in the Secretary of State Bulletins and published a notice in the Oregonian for the April 15 hearing. Mailed and emailed notices to interested persons and legislators were sent on March 15 (see Attachment D).

The commission has also approved "Citizen Involvement Guidelines for Policy Development" (the "CIG"), intended to guide the commission and department regarding public involvement in the development of land use policy, including new or amended administrative rules. The CIG requires the department to:

*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;*

Action: The department met with CIAC at its regularly scheduled meeting on February 18, 2010, to discuss this project and describe DLCD's efforts to notify and involve citizens and other interested parties.

*Prepare a schedule of policy development activities that clearly indicates opportunities for citizen involvement and comment, including tentative dates of meetings, public hearings and other time-related information, and 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.*

Action: This rulemaking was not scheduled in LCDC's 2009–2011 Policy Agenda. At the time the commission approved its policy agenda in 2009, the department had not been made aware of the concerns described in this report. In response to the expressed concerns from Metro, local governments and others in the region, described above, the department decided to provide this opportunity for LCDC to amend rules outside of the Policy Agenda schedule. The department has posted the information for this rulemaking on its website at the following link: [http://www.oregon.gov/LCD/rulemaking.shtml#2009\\_11\\_Rulemaking\\_Projects](http://www.oregon.gov/LCD/rulemaking.shtml#2009_11_Rulemaking_Projects).

The CIG provides that the commission may: "... Choose to not establish an advisory committee or workgroup, provided LCDC and the department shall explain its reasons for not doing so, either in

*the public notice advertising the start of a goal, rule, or other policy making project or by means of commission minutes.”*

Action: The department suggested to LCDC and CIAC that a rulemaking “work group” should not be appointed for this project due to the narrow scope of the proposed revisions and the timelines necessary for adoption of rule amendments prior to Metro and Metro area counties completing the formal designation of urban and rural reserves and adoption of local ordinances to implement those designations.

## **VII. DEPARTMENT RECOMMENDATION**

The department recommends that the commission receive testimony and comments regarding the proposed rule amendments. Following the public hearing, the department recommends the commission adopt the proposed rule amendments.

## **VIII. ATTACHMENTS**

- A. Proposed Rule Amendments
- B. OAR 660, Division 27
- C. SB 1011 (ORS 195.137- 195.145)
- D. Administrative Rule Amendment Notices
- E. Comments Received Prior to Mailing of this Report
- F. Hearings Officer Report – NOTE: This attachment will be provided to LCDC subsequent to the public hearing scheduled for April 15, 2010, in Portland.

**3/1/2010 DRAFT**  
**PROPOSED AMENDMENTS TO OAR 660-027-0070 REGARDING**  
**URBAN AND RURAL RESERVES IN THE PORTLAND METROPOLITAN AREA**

1 **660-027-0070**

2 **Planning of Urban and Rural Reserves**

3 (1) Urban reserves are the highest priority for inclusion in the urban growth boundary  
4 when Metro expands the UGB, as specified in Goal 14, OAR chapter 660, division 24,  
5 and in ORS 197.298.

6 (2) In order to maintain opportunities for orderly and efficient development of urban uses  
7 and provision of urban services when urban reserves are added to the UGB, counties shall  
8 not amend land use regulations for urban reserves designated under this division to allow  
9 uses that were not allowed, or smaller lots or parcels than were allowed, at the time of  
10 designation as urban reserves until the reserves are added to the UGB.

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

15 **(4) Notwithstanding the prohibitions in sections (2) and (3) of these rules, counties**  
16 **may amend land use regulations applied to urban and rural reserves in order to:**

17 **(a) Adopt or amend Goal 5 resource inventories and applicable comprehensive plan**  
18 **and land use regulations to protect inventoried Goal 5 resources, as required under**  
19 **OAR 660, division 23;**

20 **(b) Authorize park uses, subject to adoption or amendment of a park master plan as**  
21 **provided in OAR 660, division 34; or,**

22 **(c) Authorize roads, highways and other transportation and public facilities and**  
23 **improvements subject to the applicable requirements of ORS 215.213, 215.283 or**  
24 **OAR 660, division 6 (forest lands).**

25 ~~(4)~~**(5)** Counties, cities and Metro may adopt **and amend** conceptual plans for the  
26 eventual urbanization of urban reserves designated under this division, including plans  
27 for eventual provision of public facilities and services, **roads, highways and other**  
28 **transportation or public facilities**, and may enter into urban service agreements among  
29 cities, counties and special districts serving or projected to serve the designated urban  
30 reserve area.

31 ~~(5)~~**(6)** Metro shall ensure that lands designated as urban reserves, considered alone or in  
32 conjunction with lands already inside the UGB, are ultimately planned to be developed in  
33 a manner that is consistent with the factors in OAR 660-027-0050.

The Oregon Administrative Rules  
**LAND CONSERVATION AND DEVELOPMENT DEPARTMENT**

**DIVISION 27**  
**URBAN AND RURAL RESERVES IN THE PORTLAND METROPOLITAN**  
**AREA**

**660-027-0005**

**Purpose and Objective**

(1) This division is intended to implement the provisions of Oregon Laws 2007, chapter 723 regarding the designation of urban reserves and rural reserves in the Portland metropolitan area. This division provides an alternative to the urban reserve designation process described in OAR chapter 660, division 21. This division establishes procedures for the designation of urban and rural reserves in the metropolitan area by agreement between and among local governments in the area and by amendments to the applicable regional framework plan and comprehensive plans. This division also prescribes criteria and factors that a county and Metro must apply when choosing lands for designation as urban or rural reserves.

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

Stat. Auth.: ORS 195.141, 197.040

Stats. Implemented: ORS 195.137 - 195.145

Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08

**660-027-0010**

**Definitions**

The definitions contained in ORS chapters 195 and 197 and the Statewide Planning Goals (OAR chapter 660, division 15) apply to this division, unless the context requires otherwise. In addition, the following definitions apply:

(1) "Foundation Agricultural Lands" means those lands mapped as Foundation Agricultural Lands in the January 2007 Oregon Department of Agriculture report to

Metro entitled "Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands."

(2) "Important Agricultural Lands" means those lands mapped as Important Agricultural Lands in the January 2007 Oregon Department of Agriculture report to Metro entitled "Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands."

(3) "Intergovernmental agreement" means an agreement between Metro and a county pursuant to applicable requirements for such agreements in ORS 190.003 to 190.130, 195.025 or 197.652 to 197.658, and in accordance with the requirements in this division regarding the designation of urban and rural reserves and the performance of related land use planning and other activities pursuant to such designation.

(4) "Livable communities" means communities with development patterns, public services and infrastructure that make them safe, healthy, affordable, sustainable and attractive places to live and work.

(5) "Metro" means a metropolitan service district organized under ORS chapter 268.

(6) "Important natural landscape features" means landscape features that limit urban development or help define appropriate natural boundaries of urbanization, and that thereby provide for the long-term protection and enhancement of the region's natural resources, public health and safety, and unique sense of place. 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 landscape features that define and distinguish the region.

(7) "Public facilities and services" means sanitary sewer, water, transportation, storm water management facilities and public parks.

(8) "Regional framework plan" means the plan adopted by Metro pursuant to ORS 197.015(17).

(9) "Rural reserve" means lands outside the Metro UGB, and outside any other UGB in a county with which Metro has an agreement pursuant to this division, reserved to provide long-term protection for agriculture, forestry or important natural landscape features.

(10) "UGB" means an acknowledged urban growth boundary established under Goal 14 and as defined in ORS 195.060(2).

(11) "Urban reserve" means lands outside an urban growth boundary designated to provide for future expansion of the UGB over a long-term period and to facilitate planning for the cost-effective provision of public facilities and services when the lands are included within the urban growth boundary.

(12) "Walkable" describes a community in which land uses are mixed, built compactly, and designed to provide residents, employees and others safe and convenient pedestrian access to schools, offices, businesses, parks and recreation facilities, libraries and other places that provide goods and services used on a regular basis.

Stat. Auth.: ORS 195.141, 197.040

Stats. Implemented: ORS 195.137 - 195.145

Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08

### **660-027-0020**

#### **Authority to Designate Urban and Rural Reserves**

(1) As an alternative to the authority to designate urban reserve areas granted by OAR chapter 660, division 21, Metro may designate urban reserves through intergovernmental agreements with counties and by amendment of the regional framework plan to implement such agreements in accordance with the requirements of this division.

(2) A county may designate rural reserves through intergovernmental agreement with Metro and by amendment of its comprehensive plan to implement such agreement in accordance with the requirements of this division.

(3) A county and Metro may not enter into an intergovernmental agreement under this division to designate urban reserves in the county unless the county and Metro simultaneously enter into an agreement to designate rural reserves in the county.

Stat. Auth.: ORS 195.141, 197.040

Stats. Implemented: ORS 195.137 - 195.145

Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08

### **660-027-0030**

#### **Urban and Rural Reserve Intergovernmental Agreements**

(1) An intergovernmental agreement between Metro and a county to establish urban reserves and rural reserves under this division shall provide for a coordinated and concurrent process for Metro to adopt regional framework plan provisions, and for the county to adopt comprehensive plan and zoning provisions, to implement the agreement. The agreement shall provide for Metro and the county to concurrently designate urban reserves and rural reserves, as specified in OAR 660-027-0040.

(2) In the development of an intergovernmental agreement described in this division, Metro and a county shall 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. Metro and the county shall provide the State Citizen Involvement Advisory Committee an opportunity to review and comment on the proposed citizen involvement process.

(3) An intergovernmental agreement made under this division shall be deemed a preliminary decision that is a prerequisite to the designation of reserves by amendments to Metro's regional framework plan and amendments to a county's comprehensive plan pursuant to OAR 660-027-0040. Any intergovernmental agreement made under this division shall be submitted to the Commission with amendments to the regional framework plan and county comprehensive plans as provided in OAR 660-027-0080(2) through (4).

Stat. Auth.: ORS 195.141, 197.040

Stats. Implemented: ORS 195.137 - 195.145

Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08

### **660-027-0040**

#### **Designation of Urban and Rural Reserves**

(1) Metro may not designate urban reserves under this division in a county until Metro and applicable counties have entered into an intergovernmental agreement that identifies the lands to be designated by Metro as urban reserves. A county may not designate rural reserves under this division until the county and Metro have entered into an agreement that identifies the lands to be designated by the county as rural reserves.

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

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

(4) Neither Metro nor a local government may amend a UGB to include land designated as rural reserves during the period described in section (2) or (3) of this rule, whichever is applicable.

(5) Metro shall not re-designate rural reserves as urban reserves, and a county shall not re-designate land in rural reserves to another use, during the period described in section (2) or (3) of this rule, whichever is applicable.

(6) If Metro designates urban reserves under this division it shall 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 shall adopt policies to implement the reserves and must show the reserves on its comprehensive plan and zone maps

(7) If a county designates rural reserves under this division it shall adopt policies to implement the reserves and must show the reserves on its comprehensive plan and zone maps. Metro shall adopt policies to implement the rural reserves and show the reserves on its regional framework plan maps.

(8) When evaluating and designating land for urban reserves, Metro and a county shall apply the factors of OAR 660-027-0050 and shall coordinate with cities, special districts and school districts that might be expected to provide urban services to these reserves when they are added to the UGB, and with state agencies.

(9) When evaluating and designating land for rural reserves, Metro and a county shall apply the factors of OAR 660-027-0060 and shall coordinate with cities, special districts and school districts in the county, and with state agencies.

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

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

Stat. Auth.: ORS 195.141, 197.040

Stats. Implemented: ORS 195.137 - 195.145

Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08

### **660-027-0050**

#### **Factors for Designation of Lands as Urban Reserves**

Urban Reserve Factors: When identifying and selecting lands for designation as urban reserves under this division, Metro shall base its decision on consideration of whether

land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB:

- (1) Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments;
- (2) Includes sufficient development capacity to support a healthy economy;
- (3) Can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers;
- (4) Can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers;
- (5) Can be designed to preserve and enhance natural ecological systems;
- (6) Includes sufficient land suitable for a range of needed housing types;
- (7) Can be developed in a way that preserves important natural landscape features included in urban reserves; and
- (8) Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves.

Stat. Auth.: ORS 195.141, 197.040

Stats. Implemented: ORS 195.137 - 195.145

Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08

#### **660-027-0060**

##### **Factors for Designation of Lands as Rural Reserves**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (e) Provide a sense of place for the region, such as buttes, bluffs, islands and extensive wetlands;
  - (f) Can serve as a boundary or buffer, such as rivers, cliffs and floodplains, to reduce conflicts between urban uses and rural uses, or conflicts between urban uses and natural resource uses
  - (g) Provide for separation between cities; and
  - (h) Provide easy access to recreational opportunities in rural areas, such as rural trails and parks.
- (4) Notwithstanding requirements for applying factors in OAR 660-027-0040(9) and section (2) of this rule, a county may deem that Foundation Agricultural Lands or Important Agricultural Lands within three miles of a UGB qualify for designation as rural reserves under section (2) without further explanation under OAR 660-027-0040(10).

Stat. Auth.: ORS 195.141, 197.040

Stats. Implemented: ORS 195.137 - 195.145

Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08

#### **660-027-0070**

#### **Planning of Urban and Rural Reserves**

- (1) Urban reserves are the highest priority for inclusion in the urban growth boundary when Metro expands the UGB, as specified in Goal 14, OAR chapter 660, division 24, and in ORS 197.298.
- (2) In order to maintain opportunities for orderly and efficient development of urban uses and provision of urban services when urban reserves are added to the UGB, counties shall not amend land use regulations for urban reserves designated under this division to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as urban reserves until the reserves are added to the UGB.
- (3) Counties that designate rural reserves under this division shall not amend their land use regulations to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as rural reserves unless and until the reserves are re-designated, consistent with this division, as land other than rural reserves.
- (4) 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.

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

Stat. Auth.: ORS 195.141, 197.040

Stats. Implemented: ORS 195.137 - 195.145

Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08

### **660-027-0080**

#### **Local Adoption and Commission Review of Urban and Rural Reserves**

(1) Metro and county adoption or amendment of plans, policies and other implementing measures to designate urban and rural reserves shall be in accordance with the applicable procedures and requirements of ORS 197.610 to 197.650.

(2) After designation of urban and rural reserves, Metro and applicable counties shall jointly and concurrently submit their adopted or amended plans, policies and land use regulations implementing the designations to the Commission for review and action in the manner provided for periodic review under ORS 197.628 to 197.650.

(3) Metro and applicable counties shall:

(a) Transmit the intergovernmental agreements and the submittal described in section (2) in one or more suitable binders showing on the outside a title indicating the nature of the submittal and identifying the submitting jurisdictions.

(b) Prepare and include an index of the contents of the submittal. Each document comprising the submittal shall be separately indexed, and

(c) Consecutively number pages of the submittal at the bottom of the page, commencing with the first page of the submittal.

(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 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;

(b) Compliance with applicable administrative rules, including but not limited to the objective provided in OAR 660-027-0005(2) and the urban and rural reserve designation standards provided in OAR 660-027-0040; and

(c) Consideration of the factors in OAR 660-027-0050 or 660-027-0060, whichever are applicable.

Stat. Auth.: ORS 195.141, 197.040

Stats. Implemented: ORS 195.137 - 195.145

Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08

## Chapter 195 — Local Government Planning Coordination

### 2009 EDITION

#### URBAN AND RURAL RESERVES

**195.137 Definitions for ORS 195.137 to 195.145.** As used in ORS 195.137 to 195.145:

(1) “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.

(2) “Urban reserve” means 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 services within the area when the lands are included within the urban growth boundary. [2007 c.723 §1]

**195.139 Legislative findings.** The Legislative Assembly finds that:

(1) Long-range planning for population and employment growth by local governments can offer greater certainty for:

- (a) The agricultural and forest industries, by offering long-term protection of large blocks of land with the characteristics necessary to maintain their viability; and
- (b) 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.

(2) State planning laws must support and facilitate long-range planning to provide this greater certainty. [2007 c.723 §2]

**195.141 Designation of rural reserves and urban reserves pursuant to intergovernmental agreement; rules.** (1) A county and a metropolitan service district established under ORS chapter 268 may enter into an intergovernmental agreement pursuant to ORS 190.003 to 190.130, 195.025 or 197.652 to 197.658 to designate rural reserves pursuant to this section and urban reserves pursuant to ORS 195.145 (1)(b).

(2) Land designated as a rural reserve:

- (a) Must be outside an urban growth boundary.
- (b) May not be designated as an urban reserve during the urban reserve planning period described in ORS 195.145 (4).
- (c) May not be included within an urban growth boundary during the period of time described in paragraph (b) of this subsection.

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

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

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

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

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

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

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

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

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

(4) The Land Conservation and Development Commission shall, after consultation with the State Department of Agriculture, adopt by goal or by rule a process and criteria for designating rural reserves pursuant to this section. [2007 c.723 §3]

**195.143 Coordinated and concurrent process for designation of rural reserves and urban reserves.** (1) A county and a metropolitan service district must consider simultaneously the designation and establishment of:

(a) Rural reserves pursuant to ORS 195.141; and

(b) Urban reserves pursuant to ORS 195.145 (1)(b).

(2) An agreement between a county and a metropolitan service district to establish rural reserves pursuant to ORS 195.141 and urban reserves pursuant to ORS 195.145 (1)(b) 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. A district may not designate urban reserves pursuant to ORS 195.145 (1)(b) in a county until the county and the district have entered into an agreement pursuant to ORS 195.145 (1)(b) that identifies the land to be designated by the district in the district's regional framework plan as urban reserves. A county may not designate rural reserves pursuant to ORS 195.141 until the county and the district have entered into an agreement pursuant to ORS 195.141 that identifies the land to be designated as rural reserves by the county in the county's comprehensive plan.

(3) A county and a metropolitan service district may not enter into an intergovernmental agreement to designate urban reserves in the county pursuant to ORS 195.145 (1)(b) unless the county and the district also agree to designate rural reserves in the county.

(4) Designation and protection of rural reserves pursuant to ORS 195.141 or urban reserves pursuant to ORS 195.145 (1)(b):

(a) Is not a basis for a claim for compensation under ORS 195.305 unless the designation and protection of rural reserves or urban reserves imposes a new restriction on the use of private real property.

(b) Does not impair the rights and immunities provided under ORS 30.930 to 30.947.  
[2007 c.723 §4]

**195.145 Urban reserves; when required; limitation; rules.** (1) To ensure that the supply of land available for urbanization is maintained:

(a) Local governments may cooperatively designate lands outside urban growth boundaries as urban reserves subject to ORS 197.610 to 197.625.

(b) Alternatively, a metropolitan service district established under ORS chapter 268 and a county may enter into a written agreement pursuant to ORS 190.003 to 190.130, 195.025 or 197.652 to 197.658 to designate urban reserves. A process and criteria developed pursuant to this paragraph are an alternative to a process or criteria adopted pursuant to paragraph (a) of this subsection.

(2)(a) The Land Conservation and Development Commission may require a local government to designate an urban reserve pursuant to subsection (1)(a) of this section during its periodic review in accordance with the conditions for periodic review under ORS 197.628.

(b) Notwithstanding paragraph (a) of this subsection, the commission may require a local government to designate an urban reserve pursuant to subsection (1)(a) of this section outside of its periodic review if:

(A) The local government is located inside a Primary Metropolitan Statistical Area or a Metropolitan Statistical Area as designated by the Federal Census Bureau upon November 4, 1993; and

(B) The local government has been required to designate an urban reserve by rule prior to November 4, 1993.

(3) In carrying out subsections (1) and (2) of this section:

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

(b) The commission shall provide to local governments a list of options, rather than prescribing a single planning technique, to ensure the efficient transition from rural to urban use in urban reserves.

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

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

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

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

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

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

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

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

(6) The commission shall adopt by goal or by rule a process and criteria for designating urban reserves pursuant to subsection (1)(b) of this section. [1993 c.804 §19; 1999 c.622 §6; 2007 c.723 §6]



# Oregon

Theodore R. Kulongoski, Governor

**Department of Land Conservation and Development**

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

[www.oregon.gov/LCD](http://www.oregon.gov/LCD)

## **Notice of Proposed Minor Amendments to Administrative Rules Regarding Metro Urban and Rural Reserves**

March 15, 2010

TO: Interested Persons  
FROM: The Department of Land Conservation and Development (DLCD)

The Land Conservation and Development Commission (LCDC) is considering amendments to administrative rules OAR 660-027-0010, 0070 that currently prohibit amendments to land use regulations applied to areas designated as Urban or Rural Reserves in the Portland Metro area. The proposed minor rule amendments would allow such land use regulation amendments with respect to: (1) newly inventoried Goal 5 resources and measures to “protect” significant resources described in such inventories, (2) improvements to roads, highways or other transportation facilities; and (3) new or amended regional park or trail plans and uses authorized in such plans.

Three public hearings are scheduled for public comment regarding the proposed rules:

1. March 18, 2010, LCDC meeting in the Municipal Court Room, Bend Police Department, 555 NE 15<sup>th</sup> Street, Bend, Oregon - this meeting includes other agenda items and is scheduled to begin at 8:30 AM;
2. April 15, 2010, 9:00am – 12:00pm – an appointed hearings Officer will receive comments in the City of Portland Bureau of Planning Building, room 2500, 1900 SW 4th Ave; and
3. April 22, 2010, City Hall Council Chambers, 801 SW Hwy 101, Lincoln City - this LCDC meeting includes other agenda items and is scheduled to begin at 8:30 AM. LCDC intends to adopt the proposed rule amendments at the April 22 meeting. If adopted, the rules would be effective upon filing with the Secretary of State approximately April 30, 2010.

The proposed rules and notices are posted on DLCD’s website at the following link:

[http://www.oregon.gov/LCD/rulemaking.shtml#2009\\_11\\_Rulemaking\\_Projects](http://www.oregon.gov/LCD/rulemaking.shtml#2009_11_Rulemaking_Projects)

The March 18 LCDC meeting agenda and a staff report describing the proposed amendments are posted on the DLCD’s website at the following link:

[http://www.oregon.gov/LCD/lcdc\\_meeting\\_reports\\_031710.shtml](http://www.oregon.gov/LCD/lcdc_meeting_reports_031710.shtml)

Interested persons may address LCDC regarding the proposed rules at any of the hearings listed above, and/or may provide written comments. The agency also requests comments as to other options for achieving the substantive goals of the proposed rules while reducing any negative economic impact on business. Address or fax written comments to the Chair of the Land Conservation and Development Commission, care of Casaria Tuttle at the address or fax number provided on the letterhead, above. Oral and written testimony will be accepted by LCDC until the close of the final hearing on April 22, 2010.

If you have questions about the proposed rules contact Bob Rindy at (503) 373-0050 Ext. 229; cell (503) 881-0433; or email [bob.rindy@state.or.us](mailto:bob.rindy@state.or.us).



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street, Suite 150  
Salem, OR 97301-2540  
(503) 373-0050  
Fax (503) 378-5518  
[www.lcd.state.or.us](http://www.lcd.state.or.us)

March 29, 2010

TO: The Honorable Peter Courtney, President of the Senate  
The Honorable Dave Hunt, Speaker of the House

FROM: Richard Whitman, Director  
Department of Land Conservation and Development (DLCD)

SUBJECT: Notice of Proposed Minor Amendments to Rules Concerning Metro Reserves

Enclosed are revised notices announcing that the Land Conservation and Development Commission (LCDC) is considering minor amendments to administrative rules regarding implementation of urban and rural reserves in the Portland Metro area. The proposed amendments to rules under OAR 660-027-0010 and 660-027-0070 would modify provisions that currently prohibit counties from amending land use regulations applied to areas designated as urban or rural reserves. The proposal would allow future amendments to land use regulations currently applied to reserves in order to authorize (1) road, highways or other transportation facilities improvements; (2) amendments to regional parks or trail plans and related uses, or (3) response to new or amended inventories of Goal 5 resources.

A hearings officer appointed by LCDC will hold a public hearing to receive comments on the proposal on April 15 at 9:00am – 12:00am, at the City of Portland Bureau of Planning Building, room 2500, 1900 SW 4th Ave, Portland. Later, LCDC will hold a public hearing to receive public comment on April 22 in Lincoln City, at the City Hall Council Chambers, 801 SW Hwy 101. This meeting, which includes other agenda items, is scheduled to begin at 8:30 AM. After completion of public testimony on April 22<sup>nd</sup> LCDC may adopt the rules, and if so, they would become effective upon filing with the Secretary of State approximately April 30, 2010. A draft of the proposed rules is posted on DLCD's website at: <http://www.oregon.gov/LCD/rulemaking.shtml>

Interested persons may address the hearings officer and/or LCDC regarding the proposed rules at the hearings described above, and/or may provide written comments. Oral and written testimony will be accepted until the close of the hearing on April 22. Address written comments to the Chair of the Land Conservation and Development Commission, care of Casaria Tuttle at the department's address above, or email comments to [casaria.r.tuttle@state.or.us](mailto:casaria.r.tuttle@state.or.us). Fax comments to 503-378-5518. If you have questions about the proposed rules, contact Bob Rindy at (503) 373-0050 Ext. 229; email [bob.rindy@state.or.us](mailto:bob.rindy@state.or.us).

This notice is also being provided to the chairs of "interim or session committees with authority over the subject matter of the rule," as required by ORS 183.335(15)(b).

Copies: Senator Dingfelder  
Representative Clem  
Representative Cannon

Enclosures

Secretary of State

**NOTICE OF PROPOSED RULEMAKING HEARING\***

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Department of Land Conservation and Development 660  
 Agency and Division Administrative Rules Chapter Number

Casaria Tuttle 635 Capitol St. NE, Suite 150, Salem, OR 97301 503-373-0050 ext. 322  
 Rules Coordinator Address Telephone

**RULE CAPTION**

Uses authorized on land designated urban and rural reserves in the Portland Metro region.

**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

April 15, 2010 9:00am – 12:00am City of Portland Bureau of Planning Building,  
Room 2500, 1900 SW 4th Ave, Portland Hearing Officer

April 22, 2010 Meeting begins at 8:30am City Hall, Council Chambers  
801 SW Hwy 101, Lincoln City LCDC

Hearing Date Time Location Hearings Officer

*Auxiliary aids for persons with disabilities are available upon advance request.*

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:** OAR 660-027-0010; 0070

**REPEAL:**

Stat. Auth.: ORS 197.040

Other Auth.: Statewide planning goals (OAR 660, div 15), especially Goals 3, 4, 5, 8 and 12.

Stats. Implemented: ORS 195.137 – 195.145; Chapter 723, 2007 Laws

**RULE SUMMARY**

The proposed amendments make minor modifications to rules under OAR 660, division 27, that currently prohibit counties and Metro from making any amendments to land use regulations applied to areas designated as urban or rural reserves in the Portland Metro area. The proposed rule amendments would allow only certain land use regulation amendments, pertaining to:

- (1) Newly inventoried Goal 5 resources. Currently Goal 5 and its implementing rules and related statutes require plan amendments and corresponding zone amendments to recognize and protect newly-inventoried significant Goal 5 resources. The proposed rule changes described by this notice would authorize amendments to land use regulations in reserves as necessary to respond to new or amended Goal 5 inventories;
- (2) New roads, highways and other transportation facilities and improvements. Statutes and LCDC rules, including ORS 215.213(10)(a); ORS 215.283(10)(a); and ORS 215.296, require plan and zone amendments, including exceptions to statewide goals, in order to authorize certain new roads, highways and other transportation facilities and improvements. The proposed rule changes described by this notice would authorize amendments to land use regulations in reserves as necessary to authorize new roads, highways and other transportation facilities and improvements; and
- (3) New or amended regional park or trail plans and uses authorized in such plans. The proposed rule changes described by this notice would authorize amendments to land use regulations in reserves as necessary to authorize new or amended regional park or trail plans, including authorization for trails and regional park uses authorized by such plans.

Under ORS 183.335(2)(b)(G), the agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

April 22, 2010

**Last Day for Public Comment**

Casaria Tuttle 3/15/2010

---

Signature Printed name Date

\*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

Secretary of State

## STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

**Agency and Division:** Department of Land Conservation and Development

**Administrative Rules Chapter Number:** OAR 660

**In the Matter of:** Minor amendments to rules (OAR 660, division 27) regarding land designated urban and rural reserves in the Portland Metro region.

**Statutory Authority:** ORS 197.040

**Other Authority:** Statewide Planning Goals (OAR 660, div 15)

**Statutes Implemented:** ORS 195.137 – 195.145, Chapter 723, 2007 Laws

**Need for the Rule(s):** These rules are necessary because rules under OAR 660, division 27, currently prohibit counties and Metro from making any amendments to land use regulations applied to areas designated as urban or rural reserves in the Portland Metro area. The proposed rule amendments would continue to restrict most future amendments to such regulations, but would authorize certain land use regulation amendments, pertaining to:

- (1) Newly inventoried Goal 5 resources. Currently Goal 5 and its implementing rules and related statutes require plan amendments and corresponding zone amendments to recognize and protect newly-inventoried significant Goal 5 resources. The proposed rule changes described by this notice would authorize amendments to land use regulations in reserves as necessary to respond to new or amended Goal 5 inventories;
- (2) New roads, highways and other transportation facilities and improvements. Statutes and LCDC rules, including ORS 215.213(10)(a); ORS 215.283(10)(a); and ORS 215.296, require plan and zone amendments, including exceptions to statewide goals, in order to authorize certain new roads, highways and other transportation facilities and improvements. The proposed rule changes described by this notice would authorize amendments to land use regulations in reserves as necessary to authorize new roads, highways and other transportation facilities and improvements; and
- (3) New or amended regional park or trail plans and uses authorized in such plans. The proposed rule changes described by this notice would authorize amendments to land use regulations in reserves as necessary to authorize new or amended regional park or trail plans, including authorization for trails and regional park uses authorized by such plans.

Chapter 723, 2007 Laws required the Land Conservation and Development Commission (LCDC) to adopt, by goal or by rule, a process and criteria for designating rural reserves pursuant to section 3 of that 2007 Act, and to adopt, by goal or rule, a process and criteria for designating urban reserves pursuant to amendments to ORS 195.145 enacted by section 6 of that 2007 Act.

**Effective date:** Rules will be effective upon filing with the Secretary of State Office, or by a time specified in the adopted rules.

**Documents Relied Upon:** Chapter 723, 2007 Laws; ORS 195.137-195.145; Statewide Planning Goals (OAR 660, division 15); OAR 660, divisions 4, 6, 23, 27, 33 and 34.

**Fiscal and Economic Impact:** Statutory provisions require the agency to consider whether a proposed rule amendment will have any significant economic impact on business and whether options should be considered to reduce any negative impacts of the rule on business.

Secretary of State

## STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

The proposed amendments are intended to be cost neutral, but may have a positive economic impact on business. Prior to designation of urban and rural reserves, the amendments to local land use regulations applied to reserves would have been authorized under state law. To the extent certain amendments would again be authorized, especially with respect to transportation facilities, Goal 5 resources, and regional parks, the proposed rule amendments will offer greater certainty for commerce, other industries, other private landowners and providers of public services, by allowing Metro and local governments to amend and implement transportation plans, to protect any significant Goal 5 resources inventoried subsequent to designation of reserves, and to allow changes to regional park or trail plans.

Statutory provisions (ORS 197.040) also require the agency to "Assess what economic and property interests will be, or are likely to be, affected by the proposed rule; ... assess the likely degree of economic impact on identified property and economic interests; [and] assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact." These requirements "shall not be interpreted as requiring an assessment for each lot or parcel that could be affected by the proposed rule."

Some economic interests and property owners in the Portland Metro region will be affected by the amended rules, but which interests and property owners might be affected, and the degree of such effect, will vary widely among these different interests and properties and cannot be precisely determined at this time. Economic interests will most likely be affected in a positive way by these new rules, because the amended rules will continue to allow improvements to transportation systems in the Metro region, improvements that might otherwise not be allowed under current rules after designation of urban and rural reserves. Furthermore, the rules would allow protection of any newly inventoried Goal 5 resources after designation of urban reserves, and would allow Metro to amend parks and trail plans. It is impossible to determine which interests would be affected by future land use regulation amendments, especially since no particular new resource inventories are known at this time.

**Administrative Rule Advisory Committee consulted?:** No

**If not, why?:** These new rules are minor amendments to the current rules to change certain current restrictions on regulation and use amendments in urban and rural reserves. These amendments would be for uses that, in general, are authorized throughout the state in farm or forest zones, and that reasonably should continue to be authorized in Metro reserves. As such, these amendments are the minimum necessary to clarify how counties are to plan for regional parks and trails, Goal 5 resources and transportation facilities within reserves.

---

Signer and Date

Richard Whitman, Director

---

Printed name

## HOUSING COST IMPACT STATEMENT

FOR ESTIMATING THE EFFECT OF A PROPOSED RULE OR ORDINANCE ON THE COST OF DEVELOPING  
A \*TYPICAL 1,200 SQ FT DETACHED SINGLE FAMILY DWELLING ON A 6,000 SQ FT PARCEL OF LAND.  
(ORS 183.534) FOR ADMINISTRATIVE RULES

\*Typical-Single story 3 bedrooms, 1 ½ bathrooms, attached garage (calculated separately) on land with good soil conditions with no unusual geological hazards.

**AGENCY NAME:** Department of Land Conservation and Development **HEARING DATE:** April 15 and 22, 2010

**ADDRESS:** 635 Capitol Street NE

**CITY/STATE:** Salem, OR 97301

**PHONE:** (503) 373-0050

**PERMANENT:**

**TEMPORARY:**

**EFFECTIVE DATE:** Upon Filing

**BELOW PLEASE PROVIDE A DESCRIPTION OF THE ESTIMATED SAVINGS OR ADDITIONAL COSTS THAT  
WILL RESULT FROM THIS PROPOSED RULE ADOPTION OR CHANGE.**

PROVIDE A BRIEF EXPLANATION OF HOW THE COST OR SAVINGS ESTIMATE WAS DETERMINED.  
IDENTIFY HOW CHANGE IMPACTS COSTS IN CATEGORIES SPECIFIED

**Description of proposed rules:** (Please attach any draft or permanent rule or ordinance)

The proposed amendments would make minor modification to rules under OAR 660-027-0010, 0070 in order to authorize future amendments to land use regulations applied to Metro rural reserves and urban reserves.

**Description of the need for, and objectives of the rule:** The proposed minor amendment to rules under OAR 660-027-0010, 0070 is needed in order allow counties in the Portland Metropolitan area and/or Metro to amend land use regulations for land designated as urban or rural reserves. The proposed rules would allow amendments to land use regulations applied to the reserves, where such amendments concern: (1) improvements to road, highways or other transportation facilities; (2) amendments to regional parks or trail plans and related uses, or (3) amendments in response to new or amended inventories of Goal 5 resources.

**List of rules amended:** OAR 660-027-0010, 0070

**Materials and labor costs increase or savings:** The proposed rules do not concern housing, and will not affect housing materials and labor costs.

**Estimated administrative, construction or other costs increase or savings:** The proposed rules will not change administrative, construction or other costs associated with housing.

**Land costs increase or savings:** The proposed rules would not be expected to increase or save land costs for land intended for housing, in general, although land costs might change for specific properties in the Metro area as a result of future land use regulation amendments authorized by these proposed rule amendments. Specific properties and any associated costs or savings cannot be determined in advance.

**Other costs increase or savings:** None, for the reasons specified above.

**PREPARERS NAME:** Bob Rindy, DLCD

**EMAIL ADDRESS:** bob.rindy@state.or.us

Attachment E  
Comments Received Prior to Mailing of This Report

Item 4



534 SW Third Avenue, Suite 300 • Portland, OR 97204 • (503) 497-1000 • fax (503) 223-0073 • www.friends.org  
Southern Oregon Office • PO Box 2442 • Grants Pass, OR 97528 • (541) 474-1155 • fax (541) 474-9389  
Mid-Willamette Valley Office • 189 Liberty Street NE, Suite 307A • Salem, OR 97301 • (503) 371-7261 • fax (503) 371-7596  
Willamette Valley Office • 220 East 11<sup>th</sup> Avenue, Suite 5 • Eugene, OR 97401 • (541) 520-3763 • fax (503)-575-2416

March 17, 2010

Land Conservation and Development Commission  
635 Capitol St. NE, Suite 150  
Salem 97301-2540

EXHIBIT: 5 AGENDA ITEM: 4  
LAND CONSERVATION & DEVELOPMENT  
COMMISSION  
DATE: 3-18-10  
PAGES: 1  
SUBMITTED BY: 1000 Friends

Re: Proposed Amendments to Urban and Rural Reserves Rules, OAR 660, division 27  
Agenda Item 4

Dear Commissioners:

1000 Friends of Oregon participated in the development of the legislation that became SB 1011, authorizing the designation of urban and rural reserves in the Portland metropolitan area, and in the administrative rules that implement that legislation. Both were the products of many meetings with many and diverse stakeholders, and the current rule integrates those many interests.

The proposal to amend the administrative rule regarding the uses allowed in the two types of reserve areas, and in particular the extensive proposal from Washington County (which has changed since the version relied upon in your staff report), coming before the reserves decision is even final at the Metro level, adds to the anxiety of our organization, and others involved in this process, about just how much "certainty" we can really expect from the reserves.

1000 Friends will review the proposal that has just come in, and present full comments at the Hearings Officer's hearing on April 15, but we wanted to let the Commission know of our concern, and our general recommendation that there is no external reason of which we are aware to take on this extensive a revision at this time.

Sincerely

Mary Kyle McCurdy  
Policy Director



Celebrating Thirty-five Years of Innovation



# WASHINGTON COUNTY OREGON

March 17, 2010

EXHIBIT: 4 AGENDA ITEM: 4  
LAND CONSERVATION & DEVELOPMENT  
COMMISSION  
DATE: 3-18-10  
PAGES: 9  
SUBMITTED BY: Brent Curtis

Land Conservation and Development Commission  
635 Capitol Street NE, Suite 150  
Salem OR 97301-2540

RE: Proposed Amendments to OAR 660-027, Urban and Rural Reserves in the Portland Metro Area

Dear Commissioners,

Thank you for the opportunity to provide comments on the proposed amendments to the Metro Urban and Rural Reserves administrative rule. The county has tracked the process of the proposed changes and notes that some of the county's concerns appear to have been incorporated into the latest version of the proposed amendments. However, several issues remain unresolved. The county remains concerned about the prohibition on plan amendments to incorporate statute or rule changes, to clarify current allowed uses within reserves, applying airport overlays and making map amendments. These issues are described in more detail below. Please enter these comments into the record of proceedings for the OAR 660-027 rulemaking process.

The proposed amendments to OAR 660-027 resolve three significant issues: the siting of roads and other transportation facilities within areas designated as reserves; the county's ability to apply overlay district designations to land that meets the Goal 5 criteria; and applying overlay districts associated with park master plans.

However, neither the current rule language nor the proposed changes explicitly allow for metro-area counties to make conforming amendments for certain policy, rule or statute changes that are made at the state or federal level. Washington County's legal counsel believes that the ability to make conforming amendments for certain compulsory changes will be preserved through the preemption process (e.g. constitutional law interpretations and mandatory state statute changes). However, once in effect, the reserves rule will take away the county's ability to make policy decisions about whether to implement discretionary changes (e.g. types of uses that counties *may* allow on resource land and certain Statewide Planning Goal exceptions). The county would like additional clarification from the state regarding the ability to make these types of changes.

Described below are several situations that would not be allowed by the rule, even following the adoption of changes proposed by the Department of Land Conservation and Development.

### Land Use Regulation Updates

The amendments proposed by DLCDC to OAR 660-027-0070 do not provide for the following types of changes to county land use regulations:

**Department of Land Use & Transportation • Long Range Planning Division**  
155 N. First Avenue, Suite 350-14, Hillsboro, OR 97124-3072  
phone: (503) 846-3519 • fax: (503) 846-4412

- *State/Federal rule or statute changes* - the county often adopts land use regulations for both resource and non-resource land use districts. Typically, changes to uses allowed in resource districts are made by the state to ORS 215.213 (farm land) or OAR 660-006 (forest land), and the county adopts conforming amendments. It is unclear whether these conforming amendments would still be authorized under OAR 660-027.
- *Case law updates* – for example, *Young v. Jackson County*, which deemed the ORS 215.213 restriction on churches within three miles of an urban growth boundary ran afoul of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The restriction is currently in place both in statute and the county's Community Development Code. Conforming the county's Code to reflect this case law would require land use regulation amendments. County counsel believes that constitutional law issues such as this would preempt the reserves rule, but it is unclear whether case law unrelated to constitutional issues would also preempt the rule.
- *Amendments to special use standards* - there are certain interpretations regarding allowed uses in land use districts other than the three resource districts of EFU, AF-20 and EFC that have been codified by the county's Board. An example is Ordinance No. 719, adopted last year, which clarified the types of farm- and forest-related items that could be sold, stored or distributed in R-COM and R-IND districts.

OAR 660-027-0070's restriction on amending land use regulations within reserves also prevents the county from accommodating requests for changes from other agencies and members of the public. As part of the 2010 Land Use Ordinance Work Program, the county has received several requests for comprehensive plan amendments, some of which would require land use regulation changes. These requests are:

- Implementing standards for wind and solar energy facilities
- Modifying standards for wineries
- Defining the extent and associated activities for farmstand and community supported agriculture uses, and developing standards to mitigate impacts to surrounding properties resulting from these uses

### **Quasi-Judicial Plan Map Amendments**

Currently, property owners have the ability to submit requests for plan map amendments for a variety of situations. The reserves rule prohibits plan amendments, which means that applicants would no longer have the opportunity to request plan map changes, which typically fall into one of the following three general categories:

- *Plan amendments between resource districts* that will not result in additional density, such as exclusive farm use land to exclusive forest land. These resource districts typically require an 80 acre minimum to create new parcels, and occasionally property owners pursue these applications to conform their land use designation to match the current use of the land and tax deferral status. These types of plan amendments often easily meet the criteria for a plan amendment with sufficient evidence to demonstrate that one resource designation is appropriate over another.
- *Plan amendments between exception districts* that do not require new exceptions such as those between rural residential districts or from rural commercial to rural industrial designations. DLCD changed the criteria for these types of plan amendments to no longer require new goal exceptions for a change of use between properties that have previously qualified for a Goal 3 or 4 exception. Rather than taking a new exception for new use on the property, these requests must demonstrate that they meet the criteria for

the desired land use district. Approval of these types of requests is very dependent upon the site and the specific use proposed.

- *Plan amendments that require exceptions to Statewide Planning Goals*, such as committed exceptions (the county has three pending plan amendments for committed exceptions) and Reasons exceptions (one application for a Reasons exception has been filed to locate a replacement septic drainfield on a site adjacent to a existing rural commercial site). Plan amendments that require goal exceptions are often exceptionally difficult to justify, and must demonstrate compliance with both statutory and administrative rule requirements.

#### **Airport Overlay District Designations**

The application or removal of an overlay designation is processed through a legislative plan amendment. Overlay designations for airports include both land use and safety overlays. The county expected to adopt these overlay designations for the Hillsboro Airport in 2011; however, OAR 660-027 would prohibit this type of plan amendment.

- *Airport safety zones and use overlays* -- the county's airport overlays affect both private and public airports. The county designates public and private airport land use overlays that authorize uses such as hangars, taxiways and pilot lounges. Additionally, both types of airports include safety overlays that can range from limiting height of structures on adjacent properties (near private airports) to ensuring land use compatibility by imposing standards for noise, outdoor lighting, glare and restricting some uses around public use airports. These uses can include athletic fields, landfills, mining sites and water impoundment areas

#### **Authorization of Certain Special Uses on High Value Farmland**

OAR 660-033 and the county's Community Development Code prohibit certain special uses on high value farmland within three miles of the UGB unless an exception has been granted. Exceptions must be taken in order to locate schools, private parks and campgrounds within three miles of an urban growth boundary. These exceptions must include a request to change the underlying land use designation to a district that allows the requested use, which may be considered a change in land use regulations for the property, which is prohibited by OAR 660-027-0070.

Again, thank you for the opportunity to provide comments regarding these amendments.

Sincerely,



Brent Curtis  
Planning Manager

S:\PLNG\WPSHARE\Plan Amendments\Criteria & Issues for PAs\RuralReserves\LCDC\_Comments\_031710.doc

**Attachment: Reserves Rule Impacts in Washington County Matrix**

### Reserves Rule Impacts in Washington County

Proposed Use/Activity	Allowed Within Reserves?	Allowed Within Reserves if DLCD Adopts Proposed Changes?
<b>New or realigned roads</b> requires amendment to the TSP	No	Yes
<b>Quarry District A &amp; B designation</b> requires amendment of the Goal 5 map	No	Yes
<b>Raising of Scoggins Valley Dam at Hagg Lake</b> requires amendment to the county's Goal 5 map	No	Yes
<b>Airport overlays</b> requires amendment to the county's Comprehensive Plan to add/change airport locations, land use and safety overlays and land use regulations (future designation of overlay districts is expected for the Hillsboro Airport)	No	No
<b>Other Goal 5 resources</b> (e.g. wetlands, upland habitat) requires amendment of the Goal 5 map	No	Yes
<b>State and Regional Park Overlays</b> requires amendment to the Rural/Natural Resource Plan	No	Yes
<b>Special Uses on Farmland w/in 3 miles of UGB</b> requires Reasons exception and redesignation to a land use district that allows the use (these include schools, public parks and campgrounds)	No	No
<b>Historic/Cultural/Scenic resources</b> requires amendment of the Goal 5 map	No	Yes
<b>Trails</b> Requires TSP amendment	No	Yes
<b>Case law updates</b> typically requires Code or Plan text amendments (i.e. RLUIPA/constitutionality fixes)	Yes if Federal or State preempts the reserves rule, unclear if no preemption	Yes if Federal or State preempts the reserves rule, unclear if no preemption
<b>Statute/Rule updates</b> requires conforming amendments to the Code or Plan elements (e.g. changes to the sub-1 <i>mandatory</i> or sub-2 <i>discretionary</i> uses on farm land)	Unclear if conforming changes can be made for mandatory uses - No changes for discretionary uses	Unclear if conforming changes can be made for mandatory uses - No changes for discretionary uses
<b>Resource district plan amendments</b> such as AF-20 to EFC plan amendments, which do not increase density	No	No
<b>Exception area plan amendments</b> such as rural residential to rural commercial or rural industrial (e.g. AF-5 to R-COM or R-COM to R-IND)	No	No
<b>Goal Exception plan amendments</b> required to take Developed, Committed or Reasons exceptions to the goals - often used to expand existing exception land uses in the rural area (e.g. septic drainfield replacements, parking lot expansions for Helvetia Tavern and Midway Pub)	No	No

# WASHINGTON COUNTY

*Inter-Office Memorandum*

March 2, 2010

To: Washington County Board of Commissioners

From: Brent Curtis, Planning Manager

Re: Reserves Rule Impacts in Washington County

---

A review of the current language in Oregon Administrative Rule (OAR) 660-027, Urban and Rural Reserves in the Portland Metropolitan Area, revealed several potential conflicts for land use planning in Washington County. Section 0040 of the OAR prohibits the re-designation of land within rural reserves to another use (or plan designation). Section 0070 bans amendments to land use regulations that would allow new uses or smaller lots and parcels than were allowed prior to designation as an urban or rural reserve.

Oregon Administrative Rule 660-027-0040(5) states: *Metro shall not re-designate rural reserves as urban reserves, and a county shall not re-designate land in rural reserves to another use during the period the reserves areas are in effect.*

Subsections 2 (relating to urban reserves) and 3 (relating to rural reserves) of OAR 660-027-0070 state that counties *shall not amend their land use regulations to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as urban or rural reserves.*

The Department of Land Conservation and Development (DLCD) has proposed amendments to OAR 660-027-0010 and 660-027-0070 that would allow for plan amendments to do the following:

1. Authorize roads, highways, or other transportation facilities and improvements;
2. Authorize amendments to Goal 5 resource inventories and applicable comprehensive plan and land use regulations to protect inventoried Goal 5 resources (Natural Resources, Scenic and Historic Areas, and Open Spaces) resources;
3. Authorize park uses, subject to adoption or amendment of a park master plan.

DLCD's proposed amendments resolve three significant issues: the siting of roads within areas designated as reserves, the county's ability to apply overlay district designations to land that meets the Goal 5 criteria, as well as applying overlay districts associated with a park master plan.

However, the proposed changes include only amendments to Section 0070, and do not address the prohibition on plan amendments listed in Section 0040. The county processes plan map and text amendments for various types of uses and facilities within the rural area that could be potentially affected by OAR 660-027's prohibition on re-designation of land (Section 0040) and land use regulation changes (Section 0070). Certain policy, rule or statute changes that are

made at the state or federal level are compulsory, and county counsel believes that the ability to make conforming amendments for these changes will be preserved through the preemption process (i.e. constitutional law interpretations and mandatory state statute changes). However, the reserves rule takes away the county's ability to make policy decisions about whether to implement discretionary changes (i.e. types of uses that counties *may* allow on resource land and certain Statewide Planning Goal exceptions).

Described below are several situations that would not be allowed by the rule, even once the Land Conservation and Development Commission adopts DLCD's amendments.

### **Changes in Land Use Regulations**

The restriction on amending land use regulations in urban and rural reserves may affect all rural land use districts, which includes **EFU/AF-20** (exclusive farm use), **EFC** (exclusive forest use), **AF-10**, **AF-5** and **RR-5** (rural residential), **R-COM** (rural commercial), **R-IND** and **MAE** (rural industrial).

The amendments proposed by DLCD to OAR 660-027-0070 do not provide for the following types of changes to county land use regulations:

- *State/Federal rule or statute changes* - the county often adopts land use regulations for both resource and non-resource land use districts. Typically, changes to uses allowed in resource districts are made by the state to ORS 215.213 (farm land) or OAR 660-006 (forest land), and the county adopts conforming amendments. It is unclear whether these conforming amendments would still be authorized under OAR 660-027.
- *Case law updates* – for example, *Young v. Jackson County*, which deemed the ORS 215.213 restriction on churches within three miles of an urban growth boundary ran afoul of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The restriction is currently in place both in statute and the county's Community Development Code. Conforming the county's Code to reflect this case law would require land use regulation amendments. County counsel believes that constitutional law issues such as this would pre-empt the reserves rule, but it is unclear whether case law unrelated to constitutional issues would also pre-empt the rule.
- *Amendments to special use standards* - there are certain interpretations regarding allowed uses in land use districts other than the three resource districts of EFU, AF-20 and EFC that have been codified by the county's Board. An example is Ordinance No. 719, adopted last year, which clarified the types of farm- and forest-related items that could be sold, stored or distributed in R-COM and R-IND districts.

OAR 660-027-0070's restriction on amending land use regulations within reserves also prevents the county from accommodating requests for changes from other agencies and members of the public. As part of the 2010 Land Use Ordinance Work Program, the county has received several requests for comprehensive plan amendments, some of which would require land use regulation changes. These requests are:

- Implementing standards for wind and solar energy facilities
- Modifying standards for wineries
- Defining the extent and associated activities for farmstand and community supported agriculture uses, and developing standards to mitigate impacts to surrounding properties resulting from these uses

### Quasi-Judicial Plan Amendments

Currently, property owners have the ability to submit requests for plan map amendments for a variety of situations. The reserves rule prohibits plan amendments, which means that applicants would no longer have the opportunity to request plan map changes, which typically fall into one of the following three general categories:

- *Resource-to-resource district plan amendments* that will not result in additional density, such as exclusive farm use land to exclusive forest land. These resource districts all have an 80 acre minimum to create new parcels, and occasionally property owners pursue these applications to conform their land use designation to match the current use of the land and tax deferral status. Resource-to-resource plan amendments, such as those between agricultural and forest districts often easily meet the criteria for a plan amendment with sufficient evidence to demonstrate that one resource designation is appropriate over another.
- *Exception district-to-exception district plan amendments* that do not require new exceptions such as those between rural residential districts or from rural commercial to rural industrial designations. DLCDC changed the criteria for these types of plan amendments to no longer require new goal exceptions for a change of use between properties that have previously qualified for a Goal 3 or 4 exception. Rather than taking a new exception for new use on the property, these requests must demonstrate that they meet the criteria for the desired land use district. The approval of these types of requests is very dependent upon the site and the specific use proposed.
- *Plan amendments that require exceptions to Statewide Planning Goals*, such as committed exceptions (the county has three pending plan amendments for committed exceptions) and Reasons exceptions (one application for a Reasons exception has been filed to locate a replacement septic drainfield on a site adjacent to an existing rural commercial site). Plan amendments that require goal exceptions are often exceptionally difficult to justify, and must demonstrate compliance with both statutory and administrative rule requirements.

### Airport Overlay District Designations

The application or removal of an overlay designation is processed through a legislative plan amendment. Overlay designations for airports include both land use and safety overlays. The county expected to adopt these overlay designations for the Hillsboro Airport in 2011; however, OAR 660-027 would prohibit this type of plan amendment.

- *Airport safety zones and use overlays* – the county's airport overlays affect both private and public airports. The county designates a public and private airport land use overlays that authorize uses such as hangars, taxiways and pilot lounges. Additionally, both types of airports include safety overlays that can range from limiting height of structures on adjacent properties (near private airports) to ensuring land use compatibility by imposing standards for noise, outdoor lighting, glare and restricting some uses around public use airports. These uses can include athletic fields, landfills, mining sites and water impoundment areas (example: see the two rural public and private use airports maps)

Reserves Rule Impacts in Washington County  
March 2, 2010

**Authorization of Certain Special Uses on High Value Farmland**

OAR 660-033 and the county's Community Development Code prohibit certain special uses on high value farmland within three miles of the UGB unless an exception has been granted. Exceptions must be taken in order to locate schools, private parks and campgrounds within three miles of an urban growth boundary. These exceptions must include a request to change the underlying land use designation to a district that allows the requested use, which may be considered a change in land use regulations for the property, which is prohibited by OAR 660-027-0070.

*S:\PLNG\WPSHARE\Plan Amendments\Criteria & Issues for PAs\RuralReserves\OAR660\_027\_BCmemo\_030210.doc*

**Attachment: Reserves Rule Impacts in Washington County Matrix**

### Reserves Rule Impacts in Washington County

Proposed Use/Activity	Allowed Within Reserves?	Allowed Within Reserves if DLCD Adopts Proposed Changes?
<b>New or realigned roads</b> requires amendment to the TSP	No	Yes
<b>Quarry District A &amp; B designation</b> requires amendment of the Goal 5 map	No	Yes
<b>Raising of Scoggins Valley Dam at Hagg Lake</b> requires amendment to the county's Goal 5 map	No	Yes
<b>Airport overlays</b> requires amendment to the county's Comprehensive Plan to add/change airport locations, land use and safety overlays and land use regulations (future designation of overlay districts is expected for the Hillsboro Airport)	No	No
<b>Other Goal 5 resources</b> (e.g. wetlands, upland habitat) requires amendment of the Goal 5 map	No	Yes
<b>State and Regional Park Overlays</b> requires amendment to the Rural/Natural Resource Plan	No	Yes
<b>Special Uses on Farmland w/in 3 miles of UGB</b> requires Reasons exception and redesignation to a land use district that allows the use (these include schools, public parks and campgrounds)	No	No
<b>Historic/Cultural/Scenic resources</b> requires amendment of the Goal 5 map	No	Yes
<b>Trails</b> Requires TSP amendment	No	Yes
<b>Case law updates</b> typically requires Code or Plan text amendments (i.e. RLUIPA/constitutionality fixes)	Yes if Federal or State preempts the reserves rule, unclear if no preemption	Yes if Federal or State preempts the reserves rule, unclear if no preemption
<b>Statute/Rule updates</b> requires conforming amendments to the Code or Plan elements (e.g. changes to the sub-1 <i>mandatory</i> or sub-2 <i>discretionary</i> uses on farm land)	Unclear if conforming changes can be made for mandatory uses - No changes for discretionary uses	Unclear if conforming changes can be made for mandatory uses - No changes for discretionary uses
<b>Resource district plan amendments</b> such as AF-20 to EFC plan amendments, which do not increase density	No	No
<b>Exception area plan amendments</b> such as rural residential to rural commercial or rural industrial (e.g. AF-5 to R-COM or R-COM to R-IND)	No	No
<b>Goal Exception plan amendments</b> required to take Developed, Committed or Reasons exceptions to the goals - often used to expand existing exception land uses in the rural area (e.g. septic drainfield replacements, parking lot expansions for Helvetia Tavern and Midway Pub)	No	No

---

**From:** Brian Wegener [mailto:brian@tualatinriverkeepers.org]  
**Sent:** Tuesday, March 16, 2010 3:17 PM  
**To:** bob.rindy@state.or.us  
**Subject:** Re: Notice of Proposed Minor Amendments to Administrative Rules]

**Mr Rindy,**

**Tualatin Riverkeepers requests that a hearing on Proposed Minor Amendments to Administrative Rules Regarding Metro Urban and Rural Reserves be held in Washington County.**

**Public interest in Urban and Rural Reserves has been keen in Washington County. Holding hearings in Lincoln City and Bend, outside the area where these rules apply does not support Oregon's Land Use Planning Goal 1: Public Participation.**

**Thank you for consideration of this request.**

**Brian Wegener  
Watershed Watch Coordinator  
Tualatin Riverkeepers  
Office: 503-620-7507  
Cell: 503-936-7612  
[www.tualatinriverkeepers.org](http://www.tualatinriverkeepers.org)**

**Rindy, Bob**

---

**From:** Rindy, Bob [bob.rindy@state.or.us]  
**Sent:** Monday, March 22, 2010 8:43 AM  
**To:** Tuttle, Casaria R.  
**Subject:** RE: LCDC meeting

Correspondence re the div 27 rulemaking

Bob Rindy

---

**From:** CAEGo@aol.com [mailto:CAEGo@aol.com]  
**Sent:** Wednesday, March 17, 2010 12:13 PM  
**To:** bob.rindy@state.or.us  
**Subject:** Re: LCDC meeting

Bob,  
Thanks so much for the info.  
Cheryl

In a message dated 3/16/2010 3:35:33 P.M. Pacific Daylight Time, bob.rindy@state.or.us writes:

Cheryl, the attached notice includes information on the hearing in the Portland area and other hearings. It also indicates how you can provide testimony, which will be accepted until the final hearing on April 22.

**Bob Rindy** | Senior Policy Analyst  
Oregon Dept. of Land Conservation and Development  
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540  
Office: (503) 373-0050 ext. 229 | Cell: (503) 881-0433  
[www.oregon.gov/LCD/](http://www.oregon.gov/LCD/)

---

**From:** CAEGo@aol.com [mailto:CAEGo@aol.com]  
**Sent:** Tuesday, March 16, 2010 12:22 PM  
**To:** bob.rindy@state.or.us  
**Subject:** LCDC meeting

04/06/2010

Hello Bob,

Can you tell me how to submit something to the Commission in regards to the

\*4. Public Hearing and Appointment of Hearings Officer on Proposed Amendments to

Rules Regarding Planning of Urban and Rural Reserves in the Portland Metro Area

(OAR 660, division 27). The proposed rule amendments would modify the current

prohibition of future amendments to land use regulations applied to lands designated as urban or rural reserves

I have been in close contact with Washington County for some time on the importance to protect the rights of farmland owners that exists today. This is crucial to many of us surrounded by development as we do not desire to be "stuck" here for 50 years. We are trying to farm as efficiently as possible, but changes will have to be made to make this viable. We also need very much to preserve the hard work we accomplished with House Bill 2229 from the Big Look Committee. In light of this, and our unstable economy, we need our rights for amendments preserved. Please let me know if there is anything I can do and also, when are the public meetings being held with LCDC in the Portland area?

Thank you,  
Cheryl Edwards  
caego@aol.com

## **Rindy, Bob**

---

**From:** Rindy, Bob [bob.rindy@state.or.us]  
**Sent:** Monday, March 22, 2010 8:40 AM  
**To:** Tuttle, Casaria R.  
**Subject:** FW: Urban and Rural Reserves need the ability to be amended

Comment on Div 27 rule amendment.

Bob Rindy

-----Original Message-----

**From:** Paul Edgar [mailto:pauloedgar@qwest.net]  
**Sent:** Wednesday, March 17, 2010 1:56 PM  
**To:** bob.rindy@state.or.us  
**Cc:** Carlotta Collette; Rep Bill Kennemer; Rep. Dave Hunt; Rep. Scott Bruun; Rex Burkholder; Rocky Smith, Jr.; James Nicita; Board of Clackamas County Commissioners  
**Subject:** Urban and Rural Reserves need the ability to be amended

My name is Paul Edgar, 211 5th Avenue, Oregon City, OR. 97045. I am the Land Use Chair of an officially approved Canemah Neighborhood Association, in Oregon City.

In Oregon City, we are on an un-sustainable plan, where we have become a bedroom community with limited local family wage jobs. Every work day 80% of all new families that have come to Oregon City and the surrounding community have at least one member of these new households commuting between 15 to 20-miles one way to find and/or have a job that earns them enough money to make the payments on these new houses.

Oregon City grew by approximately 8 to 10,000-citizens in this last 10-years. In the immediate surrounding community around Oregon City, it grew by approximately another 60,000-citizens in the last 10-years.

Unless we create some new job/employment land, in and around Oregon City, we are a burden to everything, that the people of the State of Oregon want.

We clog the highways, we burn more carbon fuel then we should, we take critical family time away from families, we have disproportionate high levels of property tax, because we do not have local businesses to tax and also as a result our governmental service have little or not enough monies to fund critical service our society needs and expects.

We need the ability to amend the Urban and Rural Reserves when it come to "creating new job/employment lands". We must be smart and have some flexibility. We must keep all options open to creating more local family wage jobs. I would not want any loop-holds for creating more lands for shopping centers with minimum wage jobs. But if we lock down our ability to make smart and more sustainable decisions in out years without the ability to respond to changing needs by eliminating the ability to amend the Urban and Rural Reserves, we will have made a critical mistake.

Oregon City has a lot of adjoining land not in the City limits but in the Urban Growth Boundary that are not suitable as Employment Lands. Some lands have been identified for Commercial and Industrial uses and some zoned for those purposes. But in all reality they will not meet the needs and requirements of job creators and developers because they do not satisfy the basics. To far from critical transportation hubs, difficult transportation considerations, little or NO mass transit options and out of sight and out of mind locations. We have to get smarter and that requires changes in thinking.

**Rindy, Bob**

---

**From:** Rindy, Bob  
**Sent:** Tuesday, April 06, 2010 12:42 PM  
**To:** 'Tuttle, Casaria R.'  
**Subject:** FW: Question regarding consideration of minor amendments to rules for implementation of Metro reserves

---

**From:** Rindy, Bob  
**Sent:** Tuesday, April 06, 2010 12:42 PM  
**To:** 'Tracey Erway'  
**Subject:** RE: Question regarding consideration of minor amendments to rules for implementation of Metro reserves

The department has not adopted written definitions of the terms “major” or “minor” with respect to proposed amendments to administrative rules. The term was “applied” by this department to notices in order to describe the intended scope of the proposed amendments, and reflecting our view that the proposals are not likely to have a significant effect “on the ground” when applied by local governments. We predict the proposed changes will not result in a large number of amendments to local regulations over the time period for reserves, and where such regulation amendments are adopted by local governments under the narrow rule amendments we propose, it is unlikely they will have a significant effect on urban or rural reserves.

The department is proposing (or “requesting”) these rule amendments, although we did so after conversations we had with Metro in late December of 2009 at which time concerns about the rules were first brought to our attention. I don’t know “who” first raised the concerns that led to these rules, but apparently there had been some discussion and questions raised to Metro and counties, possibly as part of the Steering Committee on reserves, prior to this department’s involvement in the issue.

The department will be posting a staff report to LCDC on our website in the very near future. It includes more description and history of this issue.

**Bob Rindy** | Senior Policy Analyst  
Oregon Dept. of Land Conservation and Development  
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540  
Office: (503) 373-0050 ext. 229 | Cell: (503) 881-0433  
[www.oregon.gov/LCD/](http://www.oregon.gov/LCD/)

---

**From:** Tracey Erway [mailto:tracey@erway.com]  
**Sent:** Wednesday, March 17, 2010 3:14 PM  
**To:** bob.rindy@state.or.us

04/06/2010

**Cc:** tracey@erway.com

**Subject:** Question regarding consideration of minor ammendments to rules for implementation of Metro reserves

Mr. Rindy,

1. Please point me to the LCDC's written definition for "minor amendments", or please explain to me what a "minor amendment" is versus as "major amendment", which I would assume would be the converse.
2. Please tell me who applied the term "minor ammendment" to the mailing of and posted notification of March 2, 2010.
3. Please tell me who requested the "minor amendment" be considered by the LCDC.

Thank you,

Tracey Erway  
26810 SW McConnell Rd  
Sherwood, OR 97140

503-709-1221

tracey@erway.com

**Rindy, Bob**

---

**From:** Rindy, Bob [bob.rindy@state.or.us]  
**Sent:** Monday, March 22, 2010 8:41 AM  
**To:** Tuttle, Casaria R.  
**Subject:** FW: FW: Notice of Proposed Minor Amendments to Administrative Rules

Comment on Division 27 rulemaking

Bob Rindy

---

**From:** Scott & Dawn Stoddard [mailto:dbkstodd@wildblue.net]  
**Sent:** Wednesday, March 17, 2010 10:30 AM  
**To:** bob.rindy@state.or.us  
**Subject:** Fwd: FW: Notice of Proposed Minor Amendments to Administrative Rules

What is this for? It is hard to sort through these emails. I live south of Sherwood and east of Wilsonville. These meetings are never easy to go to.

Dawn Perazzo

----- Forwarded message -----

**From:** **Laura Dawson-Bodner** <Laura.Dawson-Bodner@oregonmetro.gov>  
**Date:** Wed, Mar 17, 2010 at 9:21 AM  
**Subject:** FW: Notice of Proposed Minor Amendments to Administrative Rules  
**To:** Laura Dawson-Bodner <Laura.Dawson-Bodner@oregonmetro.gov>

Reserves Interested Parties,  
If you have any questions or concerns regarding this forwarded email and the attached information, please contact Bob Rindy at [rindyb@dlcd.state.or.us](mailto:rindyb@dlcd.state.or.us)

Thank you,  
Laura

*Laura Dawson Bodner  
Program Assistant  
Urban and Rural Reserves  
Metro  
600 NE Grand  
Portland OR 97232  
(503) 813-7577*

---

**From:** Palmer, Tammy [mailto:tammy.palmer@state.or.us]  
**Sent:** Tuesday, March 16, 2010 1:12 PM

04/06/2010

**Please find attached Notice of Proposed Minor Amendments to Administrative Rules Regarding Metro Urban and Rural Reserves dated March 15, 2010.**

**Tammy Palmer** | Administrative Assistant  
Oregon Dept. of Land Conservation & Development  
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540  
Office: (503) 373-0050 ext. 221 | Fax: (503) 378-603



# Oregon

Theodore R. Kulongoski, Governor

**Department of Land Conservation and Development**

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

[www.oregon.gov/LCD](http://www.oregon.gov/LCD)



April 19, 2010

TO: Land Conservation and Development Commission (LCDC)

FROM: Richard Whitman, Director

SUBJECT: **Agenda Item 13, Attachment F, April 21-23, 2010, LCDC Meeting**

## **HEARING OFFICER'S REPORT**

### **PROPOSED AMENDMENTS TO RULES REGARDING PLANNING OF URBAN AND RURAL RESERVES IN THE PORTLAND METRO AREA**

#### **I. BACKGROUND**

The Department's Director, acting as hearing officer for the commission, held a public hearing in Portland on April 15, 2010 to receive testimony about the proposed amendments to OAR 660, division 27. Commissioner Greg MacPherson also attended the hearing and asked questions of those who testified. This memorandum summarizes the testimony, and provides an updated recommendation in response to the testimony. This was the second of three hearings on these rules.

#### **II. SUMMARY OF TESTIMONY**

The following individuals testified at the hearing. Their testimony is summarized below:

##### **A. Jeannine Rustad, City of Hillsboro\***

The City of Hillsboro concurs with the proposed rule amendments, but suggests additional provisions. The city is concerned that by authorizing amendments in only the three subject categories provided by the draft rule amendments, there may be an implication that other provisions authorized by statute and implemented by county codes are not authorized. Ms. Rustad pointed out that current county codes may not have authorized all the uses currently allowed by statute. The city suggests adding language that would clearly authorize all uses "authorized by statute and county code at the time of adoption of reserves." Short of that, the city recommends that this authorization is clearly articulated in the record at the time of the rule amendments.

The city also indicated its concerns regarding the more restrictive option suggested in the department's staff report (page 8 and 9), which would require a goal exception for any

amendments to land use regulations in rural reserves related to transportation facilities. The city believes this provision goes beyond the intent of the legislature with regard to rural reserves.

Director Whitman asked Ms. Rustad whether she was aware of specific uses allowed in the county codes that are not authorized by statute. She replied that she is not aware of such uses, but rather is concerned that county codes do not currently list all uses authorized by statute. As such, in the future, counties should be authorized to allow uses that are allowed by statute, but not currently allowed by county codes.

**B. Lainie Smith, ODOT\***

Ms. Smith indicated that ODOT agrees with the staff recommended rules, but does not support the department's alternative more-restrictive rule option for roads in reserve areas. She indicated that most of the improvements that would be limited by this option are minor changes such as road widening, shoulder widening, or other improvements primarily intended for safety purposes.

**C. Chuck Beasley, Multnomah County\***

The county referred to an earlier letter (April 10) in the record regarding the rule amendment proposal. Mr. Beasley noted that the long-running process for Metro reserves has evolved and changed along the way (such as adding landscape features and forest lands), but overall the objective has remained the same. However, he feels the current rules restricting future changes in codes in reserves "goes beyond" the intent to protect resource lands from urbanization. He indicated that his letter expresses three areas of concern (see letter), but that he has a couple others to note. He is concerned about the inability (under current or proposed rules) to adopt corresponding local code amendments for prior state enactments, such as the recent statutory provision that allows for smaller parcels in EFU areas when the remainder of the parcel is intended for open space. He also mentioned examples of changes that were not foreseen until recently, such as the bridge to Sauvie Island and Park and Ride lots. Finally, Mr. Beasley cited examples where the county changed zoning from one resource category to another, and changes to reduce restrictions where county requirements are more stringent than state requirements. Mr. Beasley suggested this rule making process is the best time to make these additional changes rather than postpone consideration until a later, indefinite time.

Mr. Whitman asked whether Mr. Beasley is essentially asking that all the uses and changes to uses allowed on other rural lands (i.e., not reserves), including new exceptions, should be allowed for lands in reserves. He answered "yes," the county believes that the exception process provides enough safeguards. In response as to whether this also included authorization for Goal 14 exceptions, Mr. Beasley indicated that he also thinks counties should be able to consider such requests, especially because the standards are rigorous.

**D. Doug McClain, Clackamas County\***

Mr. McClain is representing the county in this particular case. The county is “generally supportive” of the changes proposed by the department in the draft rule. However, the county suggests the commission not “rush to judgment,” but instead take more time to allow further discussion and evaluation of policy options. However, he clarified that the topic should stay on the front burner, but simply be given more time. If the commission chooses to proceed at this time, the county indicated it has one specific request: The rules should clarify that counties may update the plans and regulations for reserves in response to future statutory amendments concerning farm, forest and other rural lands. Specific wording to this effect is proposed by the county. The county believes it places undue burden on the legislative process to have each new piece of legislation “in the next 4 or 5 decades” address the reserves specifically. The county believes that not allowing reserve regulations to change in response to future legislation adds “another layer” to an already complex process.

In response to questions from the hearings officer, the county confirmed that it does not object to current restrictions that prevent more intensive uses, such as changes from a ten-acre rural lot size to a five-acre lot size. In response to further questions, he indicated he thinks it is within the original “intent” of reserves to restrict more intensive (for example) new or more intensive commercial uses.

**E. Stephan Lashbrook, City of Wilsonville\***

The City of Wilsonville suggested that the commission should “not rush this” amendment, given the amount of time spent on the overall effort so far. The city is concerned that “poorly chosen” words in the proposal “could lead to unintended consequences.”

If the commission chooses to proceed, the city recommends the commission divide the proposals into three categories, and provided a series of “arguments” in support of these recommended divisions:

First, identify the major highways in the region and exempt them from restrictions regarding roadway widening project in or through reserves. The city suggests a list of the major arterial highways in the region.

Second, for urban reserves: (a) require goal exceptions before approving changes (except for major arterial highways) to uses in farm, forest, or Goal 5 resource areas; and (b) do not allow changes of use, smaller lots, or new or expanded roads prior to adoption of urban reserve concept plans.

Third, the city suggested that goal exceptions be required for changes of use or smaller parcels, except with respect to major arterials as described above. The goal exception requirements should be further strengthened in rural reserves, to make sure such exceptions cannot be approved unless there is no alternative location inside the UGB or that would have a less adverse impact on farm, forest or resource lands.

The city suggested that these would be easily understood provisions, but if the commission determines more complex rules are needed, LCDC should take more time and seek input and consensus from the various parties in the region

**F. Carol Chesarek, Forest Park Neighborhood\***

Ms. Chesarek indicated that she had been involved in the process to develop legislation and rules since the beginning, testified on the original bill and on the rules, and served on Multnomah County’s reserve CIAC. She noted that the current rules were “very carefully crafted, including particular words and particular punctuation.” She noted that the Forest Park neighborhood includes regional significant natural features that are unsuitable for urban development. She is especially concerned about the harm from new or improved roads to these features. She listed a number of ways in which roads would adversely impact natural features, wildlife habitat, and other resources protected under rural reserves, and strongly suggests that roads “through rural reserves” should be strictly limited. She is especially concerned about discussions she has heard indicating some in the region would rather send roads outside the urban areas of the region in order to avoid congestion, etc.

She indicated support for the comments from the City of Wilsonville (above) that had been delivered earlier in the hearing. Ms. Chesarek suggested goal exceptions before allowing any changes to uses in rural reserves, including additional exception standards similar to those suggested by the City of Wilsonville. She further indicated that “if they are necessary,” she has no objection to the proposed rule changes to allow new Goal 5 inventories and park facilities, provided those do no harm to farms, forests, or natural landscapes. She does not propose the additional authorizations suggested by Washington County (see below). However, she suggested that the commission take more time with this consideration, and she does not think changes to the current rules are necessary.

In response to a question from the hearings officer, Ms Chesarek indicated she does not support allowing changes to current county regulations (such as exceptions) in order to provide urban levels of public facilities, such as sewer lines.

**G. Mary Kyle McCurdy, 1000 Friends of Oregon\***

Ms. McCurdy emphasized that the intent of the statute is clearly to offer greater protection than currently provided by EFU statutes and the statewide program. She noted particular provisions of statute, and suggested that the intent of reserves is not simply to keep the rural areas from becoming urbanized, but instead is to offer more protection of resource uses, as provided by the current rules. She noted there is an affirmative obligation for counties to adopt additional policies to implement reserves and protect resource uses. She indicated 1000 Friends is not necessarily opposed to some of the proposed amendments regarding Goal 5 and parks, but additional safeguards should be provided so these proposals are evaluated with regard to their impact on the purpose of reserves. She especially emphasized her concern about additional roads or improved roads allowed by the proposal. She noted that the kinds of road improvements often

contemplated for safety reasons may decrease the safety of farmers. She further indicated that the proposed rule changes seem rushed, and more time should be taken.

In response to questions, Ms. McCurdy indicated she thinks that new uses that may be allowed but are not currently (such as road improvements) should go through exceptions procedures to make sure the changes do not impact the resources. She also indicated that “it is worth a shot” to try and convene a group of stakeholders to consider and work on the narrow list of changes proposed by the staff, but not the broader list proposed by Washington County and others.

#### **H. Brent Curtis, Washington County\***

The county provided an additional (April 15) letter to the record (a previous letter was submitted). Mr. Curtis described the “grand experiment” of reserves in order to illustrate how it has evolved and achieved a “delicate balance” that has a “broad acceptance in the region” at this point. He further indicated that his board strongly believes the rulemaking to clarify that plan amendments are allowed in the future is very important. The county agrees with the staff proposal so far as it goes, but strongly encourages the commission consider authorizing the additional provisions suggested in the county’s letters. He indicated that this has been a learning process, and this rulemaking is in that vein. He also pointed out that, from the beginning, the county entered into this discussion in the context of Measures 37 and 49, with the intent that uses allowed today would be continued to be allowed.

With respect to roads, the county believes that the legislature and the commission have satisfactorily “wrestled to the ground” a series of issues regarding allowance for transportation facilities in rural areas, and he believes they should be allowed to continue in the context of reserves.

Washington County has a “one-map system,” such that every change in a zoning map is also a plan amendment. As such, the county’s letter clearly explains why many of the types of amendments authorized by statute cannot happen without a formal plan amendment. There are very few plan amendments (23 in a ten year time frame). See letters for a list of the types of additional changes to the rules the county suggests. He noted that new “reasons exceptions” are a very high bar, and that therefore it is appropriate, but such amendments at least are available for consideration.

He especially wants the commission to recognize that the county is in the process of adopting a plan amendment relating to the Hillsboro airport, and the county wants to be sure that its amendment is authorized. The county is to adopt this when it is complete, about a year from now.

In response to questions, Mr. Curtis indicated that there are not currently problems that need exceptions for rural sewer lines, such as occur in Deschutes County.

**I. Jim Johnson, Dept. of Agriculture**

Mr. Johnson indicated that the Department of Agriculture has not yet provided formal written comments on the rule, but he is testifying today to point out that the Farm Bureau and OEM “are not here.” He has heard from these groups and they are very concerned about this, but they don’t understand why this is happening and feel “a deal is being reneged on.” He further noted that even state agencies have not been consulted, and it would seem that more time for consideration of this proposal is necessary. Some of the changes under consideration involve some of the uses that are of highest concern to the farm community, including aggregate, parks, and roads, all of which can have major impacts on farming.

**J. Laura Masterson**

Ms. Masterson indicated that she is a member of the agriculture community, a small organic farmer who has been involved in this process from the beginning. She noted that many groups that were not previously involved in land use all came to the table as part of this process. She echoed the concerns expressed by Jim Johnson with respect to the way this proposal has come up at the end of the process to designate reserves. She believes many of these groups are concerned, don’t understand, and don’t know how to participate in this rule amendment process. She strongly urged a slow down in the process to allow these groups to participate.

**K. Cherry Amabisca**

Ms. Amabisca indicated she does not have written material but can email it after today. She pointed out that, even though few exceptions for more intensive development uses have been approved (as per Brent Curtis’ comments), there are a few that have recently come forward. Citizens are very concerned about these, and believe the recent impetus for these proposals to develop land that has been previously farmed is intent to build houses before the reserves are designated. As such, such exceptions may be more common in the future. She believes many of her neighbors cannot be here today because they are busy farming, but they are very concerned about the proliferation of roads in farm areas.

**L. Richard Benner, Metro**

Mr. Benner indicated that his board has been apprised of the proposed rule amendments and supports them, but does recommend one additional provision not discussed so far. Specifically, Metro recommends the rules be amended to mention uses authorized by recent legislation with respect to land divisions for the purpose of open space by not-for-profit organizations (ORS 215-263 or 215.783).

He indicated the Metro Council is most concerned that the department takes actions to help the reserves process, but not hinder it. In that vein, the Metro Council appreciates the commission’s effort to take this on, and believes it will help alleviate concerns that otherwise may hinder the completion of the process.

### III. ANALYSIS AND RECOMMENDATION

OAR 660-027-0070 is the rule that the commission adopted concerning how counties are to plan areas designated as urban and rural reserves.<sup>1</sup> In the case of both urban and rural reserves, the rules prohibit amendments to a county's land use regulations<sup>2</sup> to allow uses that were not allowed when the reserves were designated. In land use planning, uses typically are allowed outright (also known as permitted uses) (the use is allowed with no discretion, although there may be some limits on specific aspects of the use), or allowed as conditional uses (the use may be allowed if specified standards are met). However, under state law and the commission's rules some uses also are allowed, but only if a comprehensive plan amendment process or an exception process is followed.

Road improvements are a good example of the manner in which a use is "allowed" under state law. Depending on the exact type of improvement proposed, the use may be allowed "outright," allowed "conditionally," or allowed through a plan amendment process. ORS 215.283(1) allows the following types of road improvements as an outright (permitted) use; counties *must* allow these uses on land zoned for exclusive farm use:

"(h) Climbing and passing lanes within the right of way existing as of July 1, 1987.

(i) Reconstruction or modification of public roads and highways, including the placement of utility facilities overhead and in the subsurface of public roads and highways along the public right of way, but not including the addition of travel lanes, where no removal or displacement of buildings would occur, or no new land parcels result.

(j) Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.

(k) Minor betterment of existing public road and highway related facilities such as maintenance yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous public-owned property utilized to support the operation and maintenance of public roads and highways."

ORS 215.283(2) allows additional types of road improvements, but as a conditional use, that counties may allow on land zoned for exclusive farm use:

---

<sup>1</sup> OAR 660-027-0070(2) provides that:

"In order to maintain opportunities for orderly and efficient development of urban uses and provision of urban services when urban reserves are added to the UGB, counties shall not amend land use regulations for urban reserves designated under this division to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as urban reserves until the reserves are added to the UGB."

<sup>2</sup> The term "land use regulation" is defined in ORS 197.015 as "\* \* \* any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan."

"(q) Construction of additional passing and travel lanes requiring the acquisition of right of way but not resulting in the creation of new land parcels.

(r) Reconstruction or modification of public roads and highways involving the removal or displacement of buildings but not resulting in the creation of new land parcels.

(s) Improvement of public road and highway related facilities, such as maintenance yards, weigh stations and rest areas, where additional property or right of way is required but not resulting in the creation of new land parcels."

Finally, ORS 215.283(3) and OAR 660-012-0065 allow yet other types of road improvements, but only if the county approves an exception, or the type of improvement is authorized by commission rule (OAR 660-012-0065)<sup>3</sup> and the county finds that the proposed use will not conflict with farm or forest practices under ORS 215.296.

---

<sup>3</sup> OAR 660-012-0065(3) specifies what transportation uses are allowed on rural lands, in addition to those listed in ORS 215.283(1) and (2). It provides that:

"(3) The following transportation improvements are consistent with Goals 3, 4, 11, and 14 subject to the requirements of this rule:

(a) Accessory transportation improvements for a use that is allowed or conditionally allowed by ORS 215.213, 215.283 or OAR chapter 660, division 6 (Forest Lands);

(b) Transportation improvements that are allowed or conditionally allowed by ORS 215.213, 215.283 or OAR chapter 660, division 6 (Forest Lands);

(c) Channelization not otherwise allowed under subsections (a) or (b) of this section;

(d) Realignment of roads not otherwise allowed under subsection (a) or (b) of this section;

(e) Replacement of an intersection with an interchange;

(f) Continuous median turn lane;

(g) New access roads and collectors within a built or committed exception area, or in other areas where the function of the road is to reduce local access to or local traffic on a state highway. These roads shall be limited to two travel lanes. Private access and intersections shall be limited to rural needs or to provide adequate emergency access.

(h) Bikeways, footpaths and recreation trails not otherwise allowed as a modification or part of an existing road;

(i) Park and ride lots;

(j) Railroad mainlines and branchlines;

(k) Pipelines;

(l) Navigation channels;

(m) Replacement of docks and other facilities without significantly increasing the capacity of those facilities;

(n) Expansions or alterations of public use airports that do not permit service to a larger class of airplanes; and

(o) Transportation facilities, services and improvements other than those listed in this rule that serve local travel needs. The travel capacity and performance standards of facilities and improvements serving local travel needs shall be limited to that necessary to support rural land uses identified in the acknowledged comprehensive plan or to provide adequate emergency access.

OAR 660-012-0035(10) also governs transportation improvements on rural lands near a UGB (in the "urban fringe"). That rule provides that:

"(3) Roads, highways and other transportation facilities and improvements not allowed under subsections (1) and (2) of this section may be established, subject to the approval of the governing body or its designee, in areas zoned for exclusive farm use subject to:

- (a) Adoption of an exception to the goal related to agricultural lands and to any other applicable goal with which the facility or improvement does not comply; or
- (b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development Commission as provided in section 3, chapter 529, Oregon Laws 1993."

In sum, transportation improvements on lands zoned for exclusive farm use are allowed outright, allowed conditionally, or allowed through a process requiring a comprehensive plan amendment -- depending on the specific type of improvement. Generally, transportation-related uses that support or do not conflict with agricultural uses are allowed outright, while those that conflict require at least a conditional use permit if not a comprehensive plan amendment. The department believes that the commission intended to allow these uses in the same manner after designation of urban and rural reserves that they are "allowed" before. The factor distinguishing transportation uses (and Goal 5 uses) from other uses that also require a plan amendment, is that the statutes and rules expressly contemplate the former uses can be allowed on EFU-zoned lands but only *if* they meet the stringent standards for a goal exception.

Transportation uses are not the only ones that are expressly allowed on EFU land, but that require a plan amendment. The same is true of aggregate mining and processing. ORS 215.283(2)(d) provides that counties may allow "operations conducted for:

\* \* \*

(B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface resources subject to ORS 215.298\* \* \*."

Under ORS 215.298:

"(1) For purposes of ORS 215.213 (2) and 215.283 (2), a land use permit is required for mining more than 1,000 cubic yards of material or excavation preparatory to mining of a surface area of more than one acre. A county may set standards for a lower volume or smaller surface area than that set forth in this subsection.

---

"Transportation uses or improvements listed in OAR 660-012-0065(3)(d) to (g) and (o) and located in an urban fringe may be included in a TSP only if the improvement project identified in the Transportation System Plan as described in section (12) of this rule, will not significantly reduce peak hour travel time for the route as determined pursuant to section (11) of this rule, or the jurisdiction determines that the following alternatives can not reasonably satisfy the purpose of the improvement project:

- (a) Improvements to transportation facilities and services within the urban growth boundary;
- (b) Transportation system management measures that do not significantly increase capacity; or
- (c) Transportation demand management measures. The jurisdiction needs only to consider alternatives that are safe and effective, consistent with applicable standards and that can be implemented at a reasonable cost using available technology.

(2) A permit for mining of aggregate shall be issued only for a site included on an inventory in an acknowledged comprehensive plan."

In other words, smaller aggregate sites are allowed without a permit, but larger ones require a conditional use permit, *and* must be in a site in a county's Goal 5 aggregate inventory. If a site is not already on a county's inventory, the county must amend its comprehensive plan to add it. Similarly, certain public park uses also are "allowed," but only through a master plan process that requires an amendment to the local government's comprehensive plan.

The Hearings Officer recommends that the commission hear further testimony at its hearing on April 22nd and proceed with adoption of the proposed rule, with several minor amendments in response to the testimony. Although several persons testifying recommended delaying adoption to allow more time for outreach, the department believes the proposed changes are clarifications that do not substantively alter the direction or balance reflected in the urban and rural reserve concept. The department also believes that it is important for Metro and the three metro-area counties as well as the Oregon Department of Transportation to have a clear understanding of the effect of their designations in terms of the uses that will be "allowed" within urban and rural reserves.

Several persons testified in support of rule amendments that would substantively broaden the uses that are allowed in reserves, particularly rural reserves, so that they parallel other agricultural and forest lands. The Hearings Officer does not recommend broadening the scope of what is "allowed" in this rulemaking beyond the proposed rule, however. As noted by a number of the parties who testified, the urban and rural reserve concept is intended not only to protect rural reserves from urbanization, it also is intended to provide a greater degree of protection of resource uses in rural reserves relative to other resource lands in order to encourage long-term investment in farm and forest uses and conservation of important natural resources. While the uses listed in the proposed rule as "allowed" are all expressly allowed in some form by statute or rule, the other uses described in the testimony are not. Any consideration of this broader set of uses should occur in a rulemaking with a full rules advisory committee.

Similarly, the proposal to include uses that may be allowed on farm or forest lands in the *future* by statute or by rule should be deferred. The legislature is always free to preempt a commission rule and allow new uses within reserves, but (given the purposes of reserves) that should not be done in a vacuum, before the commission has any idea of what such uses might be. Conversely, expressly providing that "allowed uses" include uses that are currently allowed by state statute, commission rule, or local ordinance is a useful (although perhaps unnecessary) clarification.

## **ATTACHMENTS**

- A. Revised proposed rule.**
- B. Written comments received after April 8.**

---

\* Indicates that the person testifying also submitted written comments

~~4/19/2010 DRAFT~~

**PROPOSED AMENDMENTS TO OAR 660-027-0070 REGARDING  
URBAN AND RURAL RESERVES IN THE PORTLAND METROPOLITAN AREA**

Deleted: 3

Deleted: 1

1 **660-027-0070**

2 **Planning of Urban and Rural Reserves**

3 (1) Urban reserves are the highest priority for inclusion in the urban growth boundary  
4 when Metro expands the UGB, as specified in Goal 14, OAR chapter 660, division 24,  
5 and in ORS 197.298.

6 (2) In order to maintain opportunities for orderly and efficient development of urban uses  
7 and provision of urban services when urban reserves are added to the UGB, counties shall  
8 not amend land use regulations for urban reserves designated under this division to allow  
9 uses that were not allowed, or smaller lots or parcels than were allowed, at the time of  
10 designation as urban reserves until the reserves are added to the UGB.

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

15 **(4) Notwithstanding the prohibitions in sections (2) and (3) of these rules, counties**  
16 **may adopt or amend comprehensive plan provisions and land use regulations as**  
17 **they apply to lands in urban and rural reserves in order to:**

Deleted: ied

18 **(a) Allow uses that the county inventories as significant Goal 5 resources, including**  
19 **programs to protect inventoried Goal 5 resources, as provided under OAR 660,**  
20 **division 23;**

Deleted: Adopt or amend

Deleted: inventories and applicable  
comprehensive plan and land use  
regulations

21 **(b) Allow public park uses, subject to adoption or amendment of a park master plan**  
22 **as provided in OAR 660, division 34;**

Deleted: required

Deleted: Authorize

23 **(c) Allow roads, highways and other transportation and public facilities and**  
24 **improvements as provided in ORS 215.213 and 215.283 and OAR 660-012-0065 and**  
25 **OAR 660-033-0130 (agricultural lands) or OAR 660, division 6 (forest lands); and**

Deleted: or,

Deleted: Authorize

26 **(d) Allow uses and land divisions that are allowed by state statute or administrative**  
27 **rule at the time of the designation of urban and rural reserves.**

Deleted: subject to the applicable  
requirements of

Deleted: ;

Deleted: ;

28 ~~(4)~~**(5)** Counties, cities and Metro may adopt **and amend** conceptual plans for the  
29 eventual urbanization of urban reserves designated under this division, including plans  
30 for eventual provision of public facilities and services, **roads, highways and other**  
31 **transportation or public facilities,** and may enter into urban service agreements among  
32 cities, counties and special districts serving or projected to serve the designated urban  
33 reserve area.

34 ~~(5)~~**(6)** Metro shall ensure that lands designated as urban reserves, considered alone or in  
35 conjunction with lands already inside the UGB, are ultimately planned to be developed in  
36 a manner that is consistent with the factors in OAR 660-027-0050.



April 15, 2010

Richard Whitman, Director and Hearings Officer  
Land Conservation and Development Commission  
635 Capitol Street NE, Suite 150  
Salem, OR 97301-2540

Re: Proposed Rulemaking – Urban and Rural Reserves

1000 Friends of Oregon has been involved with the urban and rural reserves issue since its inception, both as a member of the Commission’s work group and as a member of the *ad hoc* group of interests that originally crafted the concept that became SB 1011. We recommend that the Commission not amend the reserves rule at this time, for legal, policy, and practical reasons.

In adopting the reserves statute and rule, it was clear that any changes to state or federal law would of course pre-empt existing rules, which your staff report notes and thus should not be considered at issue in these proceedings.

#### Legal and Policy Reasons

The language of the statute and rule reflect clearly that the purpose of rural reserves is *not* merely to protect those areas from potential UGB expansions. Rather, rural reserves are to be both selected and protected to maintain large blocks of farm and forest land in long-term production. As the Legislative Assembly found, the purpose of reserves is to:

“[O]ffer greater certainty for \* \* \* [t]he agricultural and forest industries, by offering long-term protection of large blocks of land with the characteristics necessary to maintain their viability.” ORS 195.139(1)

The statute goes on to describe those “characteristics” of viability for selecting rural reserves, including whether the land is capable of sustaining long-term agricultural operations, taking into account existing land use patterns, adjacent uses, the location of the land relative to other farm uses, and the sufficiency of agricultural infrastructure in the area. ORS 195.141(3)

Thus, the designation of rural reserves must offer that “long-term protection” of these characteristics. The Commission’s current rules do that. They recognize the purpose of the statute is to “achieve...the viability and vitality of the agricultural and forest industries.” (OAR 660-027-0005(2))

The rule accurately provide that rural reserves shall not be re-designated as urban reserves or added to a UGB during the planning period. (660-027-0040(4),(5)) But the rule does more than



that, consistent with the statute. It states that rural reserves cannot be re-designated to another use during the period. (660-027-0040(5)) The rule provides that no uses not allowed at the time of rural reserves designation, or smaller lots or parcels, shall be allowed. (660-027-0070.)

And, the rule provides that *in addition to* designating land as rural reserves on their maps, counties and Metro “shall adopt policies to implement” the rural reserves. (660-027-0040(7)) This is an affirmative obligation going beyond merely protecting the rural reserves from UGB expansions, consistent with the statute. As the staff report notes, the legislative history also supports this. (March 4, 2010 DLCD staff report, p. 6)

The reserves statute and rule are designed to protect rural reserves *more than* land that is in urban reserves, or is undesignated and remains with only its underlying EFU, forestry, or other zoning.

To the extent that the proposed rule changes would allow land uses that are not currently allowed on rural lands, through intensifying a use or allowing a non-rural use on these lands, they are inconsistent with the reserves statute.

Thus, the proposed rule changes to allow new or amended Goal 5 inventories appear to be consistent with statute, because one purpose of rural reserves is to “protect[] \* \* \* important natural landscape features...” (OAR 660-027-0005(2)) An inventory is not a “use,” and protection of Goal 5 resources is probably not a more intensive use. Authorization of new park uses and a new or amended parks master plan may allow more intensive or new uses. Therefore, if the Commission decides it must amend the reserve rule at this time for these two issues, we recommend that they be allowed only through a plan amendment, and only through showing that the Goal 5 action or park use will not adversely impact the purposes of the rural reserve.

The proposed rule change to authorize roads, highway, or other transportation facilities or improvements in rural reserves is clearly contrary to the statutory purpose of rural reserves. Throughout the reserves hearings, the county commission and the Metro Council heard repeated testimony as to the severe adverse impact that roads which attract urban commuter traffic have on farming operations. The Commission has also heard about these conflicts from farmers, ranchers, and foresters throughout the state and from the Department of Agriculture, for decades. They cost lives and money. More roads, and roads that are attractive to urban drivers, in rural areas are probably the single most harmful urban/rural conflict there is. This is particularly severe in the Metro area, where a growing urban population is near the state’s most productive farm lands.

If these rural reserves are really to be protected for 50 years from urbanization, there should no reason to make any “improvements” to them beyond routine maintenance. And certainly no new roads should be needed in rural reserve areas.

New or improved roads in **urban** reserves should be allowed only through a goal exception, and as part of the required concept planning for urban reserves.

Practical

A great deal of time from many individuals, organizations, local governments, and state agencies went into developing Senate Bill 1011 and the Commission's subsequent rules. The urban and rural reserve concept is one that has required much trust. The statutory language and rules reflect that interwoven nature of compromises and built-in checks and balances that were made to buttress that trust. As the Commission is aware, the implementation of the reserves law in the Metro area has been contentious and its outcome is not clear. However, we do not even have a final decision yet at the local level, and already changes to the reserves rule are being proposed.

This has at least two significant impacts. First, it feels like a bait and switch. It undermines any remaining faith in this particular reserves process. Second, it will ensure that the agriculture and natural resource communities will not enter again into the crafting of any similar kind of legislation in the future. Why should we trust that anything agreed to will last for a meaningful period of time?

There does not appear to be anything in the proposed rule changes, or in the much longer list of changes proposed by Washington County, that should not have been apparent when the statute and rule were passed.

There are some issues potentially on the horizon that may require new statutes and/or rule-making that were not contemplated when the reserves statutes and rules were passed; for example, wind turbines and solar panel array siting. If the legislature or LCDC considers laws or rules on these or other things, *that* is the time to specify whether and how they should apply to rural and urban reserves – on an issue-by-issue basis.

Thank you for consideration of our comments. If you must change the reserves rules, we recommend that you do so in only a limited way, regarding parks and Goal 5. There is no compelling reason to open up the remainder of the reserves rule at this time.

Sincerely,



Mary Kyle McCurdy  
Policy Director and Staff Attorney

Carol Chesarek  
13300 NW Germantown Road  
Portland, Oregon 97231

April 15, 2010

Richard Whitman, Hearings Officer and Director, Dept. of Land Conservation and Development  
Land Conservation and Development Commission  
635 Capitol Street NE, Suite 150  
Salem, OR 97301

Re: Proposed Rule Changes – Urban and Rural Reserves

Director Whitman,

I appreciate the opportunity to share some comments about the proposed rule changes.

Portland's Forest Park Neighborhood includes regionally significant natural features on hills that are unsuitable for efficient urban development. We were early supporters for Urban and Rural Reserves because the rural portions of the neighborhood are mostly surrounded by the UGB, and we were tired of fighting the same UGB expansion battles every 5 years. We wanted a more permanent form of protection, and we are pleased that our natural features are proposed for Rural Reserves.

I've been actively participating in the Reserves process on behalf of Forest Park Neighborhood Association since I testified in support of SB 1011 at the first Senate hearing. I attended all of the workgroup meetings as the Administrative Rules were developed, and I testified at all of the LCDC Rules hearings.

Two striking characteristics of those processes were the collaboration between the three Counties and Metro, and the careful crafting of the wording of the Administrative Rules by the workgroup.

Later, I was privileged to serve on Multnomah County's Reserves Citizen Advisory Committee, where we considered how the Administrative Rules applied to the landscape.

The harm that roads can cause to farm and forestry lands is well documented, but I want to remind you that natural features can also be degraded by roads. Wildlife habitat is replaced by pavement, streams are affected by bridges, impervious road surfaces result in polluted stormwater runoff, wildlife is killed trying to cross roads, wildlife movement corridors may be blocked or restricted, and the lights and noise from vehicles degrades adjacent habitat. Roads also help spread invasive species into natural areas.

Rural Reserves for Natural Landscape Features are likely to contain lands subject to natural disasters or hazards, important fish, plant, or wildlife habitat, and/or are necessary to protect water quality or quantity such as streams, wetlands, and riparian areas. Such areas are clearly less suitable and desirable locations for new or expanded roads.

Busy roads may diminish the value of a natural feature that provides sense of place. Roads crossing an area serving as a boundary or buffer between urban and rural uses may reduce the value of that boundary or buffer. Roads may also reduce the value of rural recreational opportunities if they make trail crossings and parks less safe and less attractive.

Clearly new and expanded roads in rural reserves are not compatible with the intent of rural reserves, which is to provide long-term protection of agriculture, forestry or important natural landscape features

Another problem with new or expanded roads through rural reserves is that these road facilities then become an excuse for future urban expansion in these areas because the road degrades the rural resource, and because the road becomes existing infrastructure that can contribute to more efficient development of a new Urban area. Both of these results are also incompatible with the long term protection that rural reserves are supposed to provide.

So any new or expanded roads through rural reserves should be strictly limited. I support the thoughtful recommendations from City of Wilsonville, especially the section on rural reserves (including the exemption for the named existing major arterial highways):

"3) For rural reserves --

Require a Goal exception before approving changes of use, smaller lots or parcels, new roads or expanded roads (except as noted in #1, above) in or through EFU, Forest or identified Goal 5 resource areas and increase the standard of review from "substantial evidence" to "clear and convincing evidence."

Further, the following findings should be required before approving changes of use, smaller lots or parcels, new roads or expanded roads (other than those major arterial highways listed in #1, above) in or through EFU, Forest or identified Goal 5 resource areas:

- a) That there is no alternative location inside the UGB; and
- b) That there is no location that would have less adverse impact on farm lands, forest lands and natural resources."

If they are necessary, I have no objection to the proposed rule changes for Rural Reserves that allow plan or regulation amendments in response to new or amended Goal 5 inventories, or for public park facilities, as long as those park facilities do not harm farm or forestry operations or natural landscape features.

Development of SB 1011 and these Administrative Rules required thoughtful negotiations. It is not clear to me that any Rule changes are necessary at this time. While the first urban and rural reserve designations are still being finalized, we should be especially cautious about making any rule changes. If the Commission decides that minor clarifications are advisable, those changes should be limited to the minimum necessary.

I do NOT support any rule changes to accommodate concerns expressed by Washington County's memos.

Any significant rule changes now or in the future should only follow public consultation between the three counties and Metro with other interested parties, such as were included in the workgroup that developed the original Administrative Rules for Urban and Rural Reserves, to ensure that the careful balancing of competing needs is maintained.

Thank you.

Sincerely,



Carol Chesarek

## CITY OF HILLSBORO

---



April 14, 2010

Honorable John VanLandingham,  
Chairman  
Land Conservation and Development Commission  
c/o Casaria Tuttle  
635 Capitol Street NE  
Suite 150  
Salem, OR 97301-2540

Re: ***Proposed Minor Amendments to Administrative Rules Regarding Metro Urban and Rural Reserves (April 21-23, 2010, LCDC Meeting)***

Dear Honorable Chair VanLandingham and Commissioners:

Thank you for the opportunity to provide comments regarding the above-referenced rulemaking. In general, we support the proposed amendments and encourage their adoption by the Commission. However, we have two issues that we request the Commission address:

***Intent of the Amendment.*** The proposed amendment to the rule is intended to recognize that affected counties may still amend their land use regulations to authorize 3 types of land uses that are currently allowed on rural lands. Those are (1) certain transportation improvements; (2) many public park facilities; and (3) plan or regulation amendments in response to new or amended Goal 5 inventories. We concur with your staff that under the existing rule, there is ambiguity as to whether uses that are specifically allowed by state statutes and rules will be permitted in rural reserves. While we support clarifying that the three itemized uses will be allowed, we are concerned that identifying only this limited list in the text of the rule may create unintended confusion. Specifically, by apparently only authorizing amendments for the three enumerated categories of uses, other potential uses otherwise authorized by state statutes (such as ORS 215.213 or 215.283), as implemented by county codes, are called into question. For example, we are concerned about the ability to construct necessary public facilities, such as water treatment and transmission facilities, in rural reserves. DLCD staff has indicated that it is not the intent of the amended rule to prohibit uses otherwise allowed by statute. The City of Hillsboro would like to see this intent made clear with the addition of the following language as subsection 4(d) to the rule:

**(d) Nothing in this section shall be construed to prohibit uses authorized by statute and county code at the time of the adoption of reserves.**

At a minimum, the Commission should articulate its intent in adopting the rule amendment so that it is clearly identifiable in the record.

***More Restrictive Option Regarding Transportation.*** The staff report at pages 8-9 discusses a more restrictive option for transportation that would require a goal exception in order to allow *any* future transportation improvements in rural reserve farm or forestland. Current state statute already permits certain road improvements without a goal exception. The staff's proposal impermissibly adds

Honorable John VanLandingham  
April 14, 2010  
April 21-23, 2010, LCDC Meeting

the requirement for a goal exception even where those improvements do not currently require a goal exception. Under this proposal, maintenance and safety improvements would require an exception and be unduly burdensome to transportation providers.

Staff indicates as the basis for this recommendation that “the legislative history indicates the commission intended that rural reserves should receive substantially more protection than generally applied to rural farm and forest land . . .”

With regard to intent, the Rule itself states that

Rural reserves under this division are intended to provide long-term protection for large blocks of agricultural land and forest land, and for important natural landscape features that limit urban development or define natural boundaries of urbanization (OAR 660-027-0050(2)).

The Rule provides for this long-term protection by:

- (1) Prohibiting the inclusion of rural reserves in a UGB during the proscribed time period (OAR 660-027-0040(4)); and
- (2) Prohibiting re-designating rural reserves as urban reserves or other use during the proscribed time period (OAR 660-027-0040(5)).

The restrictive language proposed by staff goes beyond the clear intent of the rule and, more importantly, the objective of SB 1011. The objective of SB 1011 was to protect large swaths of resource land (farm, forest and/or natural features). Specifically, Section 2 of SB 1011 provides that reserves could 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” (SB 1011, Sec. 2(1)(a)). To make allowed uses on such resources more stringent goes beyond the objective of SB 1011 and, as such, should be left to the legislature.

We understand that Washington County will be submitting testimony in opposition to this recommendation and we join them in urging the Commission *not* to adopt the more restrictive language contained in the staff report.

We are happy to answer any questions the Commission may have.

Thank you for consideration of this important matter.

Sincerely,

CITY OF HILLSBORO PLANNING DEPARTMENT:



---

Patrick A. Ribellia  
Planning Director

cc: Brent Curtis, Washington County  
Bob Rindy, DLCD  
Elaine Smith, ODOT



29799 SW Town Center Loop E  
Wilsonville, Oregon 97070  
(503) 682-1011  
(503) 682-1015 Fax Administration  
(503) 682-7025 Fax Community Development

April 15, 2010

Richard Whitman, Hearings Officer and  
John VanLandingham, Chair  
Land Conservation and Development Commission  
635 Capitol Street NE  
Suite 150  
Salem, OR 97301-2540

Re: Proposed Rulemaking – Urban and Rural Reserves

Mr. Whitman, Chair VanLandingham and members of the Commission:

Thank you for your consideration of the following testimony on behalf of the City of Wilsonville. Please note that Wilsonville is directly involved in and affected by decisions concerning the reserves. Wilsonville is located in both Clackamas and Washington Counties and we have both urban and rural reserves adjacent to our city limits.

Given the huge amount of time and effort that has gone into establishing reserves in the Metro area, we believe that the rulemaking process should not be rushed. As you are well aware, a poorly chosen word in the rules could lead to significant unintended consequences. We feel that delaying action on the proposed rulemaking would be more prudent than adopting the wrong rules for either urban or rural reserves.

If your Commission determines that the rulemaking needs to go forward at this time, the City of Wilsonville proposes the following concepts for your consideration in this rulemaking:

1) Exempt only existing major arterial highways –

Exempt only I-5, I-205, I-405, I-84, 99W, 99E, Highway 30, Highway 26, and Highway 217 from the criteria listed below for roadway widening projects in or through urban or rural reserves.

2) For urban reserves –

- a) Require a Goal exception before approving changes of use, smaller lots or parcels, new roads or expanded roads (except as noted in #1, above) in or through



April 15, 2010  
Page 2 of 3

EFU, Forest or identified Goal 5 resource areas, until such lands are brought into the UGB.

b) Make such Goal exceptions part of the required concept planning for urban reserves and do not allow changes of use, smaller lots or parcels, new roads or expanded roads prior to the completion and adoption of concept plans.

3) For rural reserves --

Require a Goal exception before approving changes of use, smaller lots or parcels, new roads or expanded roads (except as noted in #1, above) in or through EFU, Forest or identified Goal 5 resource areas and increase the standard of review from “substantial evidence” to “clear and convincing evidence.”

Further, the following findings should be required before approving changes of use, smaller lots or parcels, new roads or expanded roads (other than those major arterial highways listed in #1, above) in or through EFU, Forest or identified Goal 5 resource areas:

- a) That there is no alternative location inside the UGB; and
- b) That there is no location that would have less adverse impact on farm lands, forest lands and natural resources.

Arguments in support of these recommendations:

- a. *Factions are dividing on these issues between those who are saying “don’t change any rules applying to the reserves” and those advocating to “relax the rules for reserves.”* The former is too limiting and the latter makes a mockery of the reserves process. Our approach recognizes that units of government and land owners need to do certain things inside the reserves that cannot all be predicted over a 50-year period. On the other hand, these changes should not be easy and should not happen without considerable public scrutiny.
- b. We just can’t predict all of the reasonable things that might need to happen on reserve lands over the next 50 years. We have to provide a means of dealing with this without blowing up the process. This will at least create a set of standards with which to work. If more significant changes to the rules are needed, they can be considered through a more deliberative process – perhaps with the formation of a rulemaking work group.
- c. These proposals are relatively simple and easy to understand. If more complicated rules are needed, LCDC should conduct more outreach and make a broader effort to seek the input of interested parties from throughout the region.

April 15, 2010  
Page 3 of 3

- d. It makes sense to differentiate between the standards for urban reserves and those for rural reserves. In the former, we have to assume that the region is gradually moving towards urbanization, but that those lands are not yet committed to urban development. In the case of the rural reserves, the standards need to be extremely rigorous, or they cease to have any importance. As noted in Mr. Rindy's staff report, the primary directive of Senate Bill 1011 was that rural reserves are intended to "*provide long-term protection of agriculture, forestry or important natural landscape features.*"

Thank you for your consideration of these comments and recommendations.

Sincerely,



Tim Knapp  
Mayor  
City of Wilsonville

Copies: Richard Whitman, Director and Hearings Officer, DLCDC  
Bob Rindy, DLCDC Senior Policy Analyst  
Arlene Loble, City Manager  
Mike Kohlhoff, City Attorney  
Michael Bowers, Community Development Director  
Chris Neamtzu, Planning Director  
Stephan Lashbrook, Assistant C D Director



Commissioners  
**Bob Austin**  
**Jim Bernard**  
**Charlotte Lehan**  
**Ann Lininger**

**BOARD OF COUNTY COMMISSIONERS**

**PUBLIC SERVICES BUILDING**  
2051 KAEN ROAD | OREGON CITY, OR 97045

April 15, 2010

John VanLandingham, Chair  
Land Conservation and Development Commission  
635 Capitol Street NE  
Suite 150  
Salem, Oregon 97301-2540

Subject: Proposed Rulemaking – Urban and Rural Reserves

Dear Chair VanLandingham and members of the Commission:

Thank you for this opportunity to comment on the proposed amendments to OAR 660-027-0070, the Metro Urban/Rural Reserves Rule.

In our conversations with planning staff and our partner jurisdictions, we have identified a few policy areas that may deserve further discussion before the rule amendments are adopted. It may be appropriate to continue the process for a short time to allow further discussion and evaluation of policy options.

In the event the Commission intends to proceed toward adoption of amendments on the 22<sup>nd</sup>, Clackamas County has one specific request. The current version of the rule precludes counties from allowing new uses in reserve areas after the reserves designations are adopted. The proposed amendments slightly relax this rule to allow the designation of new Goal 5 resources, and transportation facilities and parks after the reserve designations.

Clackamas County believes that, in addition to the above changes, the Urban/Rural Reserves Rule should clarify that counties may update their comprehensive plans and regulations for reserves in response to future amendments to the Oregon Revised Statutes or Oregon Administrative Rules. This could be accomplished by simply adding a new subsection (d) to OAR 660-027-0070(4) as follows:

*(d) Authorize uses allowed by amendments to the Oregon Revised Statutes or Oregon Administrative Rules, adopted after the designation of urban and/or rural reserves.*

John VanLandingham, Chair  
April 15, 2010  
Page 2 of 2

Because the Urban and Rural reserves will have such a long life, the uses allowed by statute or administrative rule outside of urban growth boundaries are certain to change. When the legislative body chooses to allow additional uses, counties should be free to amend their comprehensive plans accordingly.

It places an undue burden on the legislative process to require that each new piece of land use legislation for the next 4 or 5 decades must specify whether or not it applies to urban and rural reserves, which exist in only 3 counties. Similarly, absent our proposed amendment, any future decision by LCDC to change the rules for high value farm land will also require separate consideration of the effect on urban and rural reserves.

Given the rapid action that sometimes happens in the legislative process, it is likely that bills will pass without reference to reserves. This will invite litigation regarding whether or not the legislature intended to preempt the Urban/Rural Reserve Rule. Affected local governments and property owners could be left with years of uncertainty. This concern is particularly true for statutory changes made through the initiative process, which occur without the benefit of legislative counsel. Counties are still litigating the meaning of certain provisions of Measure 37 six years after it passed.

Finally, if counties are prohibited from amending their regulations to reflect new uses allowed by statute, there will be another layer added to the already complex situation created by the differences between the statutorily allowed uses in Chapter 215 and the high-value farmland rules of OAR 660 Division 33.

Clackamas County appreciates the Commission's consideration of these comments.

Sincerely,

**CLACKAMAS COUNTY BOARD OF COMMISSIONERS**



Lynn Peterson, Chair  
On Behalf of the Clackamas County Board of Commissioners

Company Name Here

[Click [here](#) and type return address]

April 14, 2010

Hoodview Heights Homeowners Association  
26930 SW Kame Ter  
Sherwood, OR 97140

The Department of Land Conservation and Development

Dear Sir or Madam:

We would like to provide this written testimony regarding the proposed amendments to rules OAR 660-027-0010 and 660-027-0070. We believe adding an amendment that allows roads to be added in Rural Reserves defeats the purpose of a rural reserve.

We believe that this change request has been made at the last minute to avoid scrutiny by the public. This appears to be an attempt to legitimize the creation of new roads in areas designated as rural reserves, especially as it relates to the I-5 to 99 Connector road. This proposed "minor" amendment is actually quite substantial and should not be occurring at this late stage in the game. We oppose the adoption of these amendments into the plan.

Rural reserves are intended to provide long-term protection of important natural landscape features, as stated in your own documents, and this amendment is counter-intuitive to that intent.

Sincerely,

A handwritten signature in cursive script that reads "Tanya Stricker".

Tanya & Mike Stricker, on behalf of the Hoodview Heights HOA

**Proposed Revision to OAR 660-027-0070**

Richard Benner, Metro

April 15, 2010

"(4) Notwithstanding the prohibitions in sections (3) and (4) of these rules, counties may amend land use regulations applied to urban and rural reserves in order to:

- (a) Adopt or amend Goal 5 resource inventories and applicable comprehensive plan and land use regulations to protect inventoried Goal 5 resources, as required under OAR 660, division 23;
- (b) Authorize park uses, subject to adoption or amendment of a park master plan as provided in OAR 660, division 34; or
- (c) Authorize roads, highways and other transportation facilities and improvements subject to the applicable requirements of ORS 215.213, 215.283 or OAR 660, division 6 (forest lands); or
- ~~(e)~~(d) Authorize a use allowed by ORS 215.213(2) or 215.283(2), or a division allowed by ORS 215.263 or 215.783, on June 30, 2010.

Option:

- ~~(d)~~(e) Authorize a division of land that is for the purpose of allowing a provider of public parks or open space, or a not-for-profit land conservation organization, to purchase at least one of the resulting parcels pursuant to ORS 215.263(10(a) or 215.783.



**Department of Community Services**  
**MULTNOMAH COUNTY OREGON**

---

**Land Use and Transportation Program**  
**1600 SE 190<sup>th</sup> Avenue**  
**Portland, Oregon 97233-5910**  
**PH. (503) 988-3043 Fax (503) 988-3389**  
**[www.co.multnomah.or.us/landuse](http://www.co.multnomah.or.us/landuse)**

April 2, 2010

Land Conservation and Development Commission  
635 Capitol Street NE, Suite 150  
Salem, OR 97301-2540

Subject: Amendments to OAR 660-027 Urban and Rural Reserve Rule

Dear Commissioners:

Thank you for the opportunity to provide our views on amending the “reserves” rule, and for agreeing to engage in this process of refinement. Given that land designated as reserves will be subject to the limitations of the subject rules for a 50 year planning horizon, and that a very large land area is proposed to be designated as rural reserve, taking the time to examine expected outcomes is worthwhile.

We have worked in partnership with Clackamas and Washington Counties and Metro over the past nearly 2.5 years to apply the existing rules to approximately 400,000 acres in the Portland Metro area. Two recurring themes have emerged during this effort. One is that the process of arriving at reserves has been an iterative, “screening” approach to refining the reserves map. The second is that the approach to growth management in the reserves rule is new. At this point in the process, we have a better understanding about application of the rule, and are looking forward with some concern to its effects after implementation.

The current rule provisions in OAR 660-027-0070 do not clearly allow counties to consider making amendments to rural land use regulations that are allowed by state enactments. Because uses on land outside of the UGB are already limited by state statutes to those that are rural, it is not clear that further limits are necessary to carry out the objectives of the reserves program in 660-027-0050. Three areas of concern are outlined below.

Ability to Implement Prior State Enactments. The regulatory framework that applies to rural lands in Oregon is substantially based on state rules. Prior state enactments have included regulations that counties must adopt, and others that allow counties discretion to implement. Counties should retain the ability to make these policy choices in reserve areas. An example is our ability to consider whether the county now wants to provide for land divisions in EFU zones that would allow dividing a dwelling from a larger parcel to allow public acquisition by a provider of open space or parks. The county adopted the provisions in ORS 215.263(10) for Goal 3 areas, but not for Goal 4 land. Our

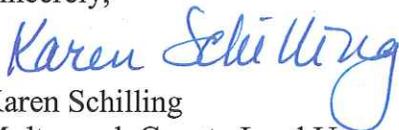
understanding of the rule is that amending our zoning ordinance to provide for this opportunity would violate 660-027-0070(3).

Future State Enactments that Authorize New Uses on Rural Land. Given the relatively long 50 year time horizon for the reserves, we should expect new uses to be defined and allowed by the state in rural areas. Counties should be able to consider amending regulations to allow new uses in rural areas as long as those uses are consistent with statewide planning goals. Our current work program includes zoning code amendments to allow and provide standards for alternative energy facilities on rural land. This is an example of a public policy choice that may not be available for reserves areas under the current rule.

Ability to Apply for an Exception to the Reserves Rule for Uses Not Allowed. Because goal exceptions are plan amendments, the rule could preclude processing of exceptions otherwise allowed in OAR Division 4 in reserves areas. The County has a number of floating home moorages along Multnomah Channel that, because of their density and other facilities, are inconsistent with state rules. Changes to allow expansion on these properties currently requires a goal exception. Clarification that the exceptions procedure is not prevented by the reserves rules would preserve our ability to evaluate in the future whether changes for these facilities are appropriate.

Thank you again for the opportunity to provide our testimony about the amendments to the rule that would be most helpful to our administration of rural land in Multnomah County under the Reserves Rule.

Sincerely,



Karen Schilling  
Multnomah County Land Use and Transportation Program Manager



Oregon

Theodore R. Kulongoski, Governor

April 14, 2010

Chair John VanLandingham  
Land Conservation and Development Commission  
635 Capitol Street NE  
Suite 150  
Salem, OR 97301-2540

Dear Chair VanLandingham:

ODOT Region 1 appreciates DLCD's proposal to clarify that amendments for certain types of transportation improvements can be made in urban and rural reserves areas. We support the original staff proposal to, "Authorize roads, highways, and other transportation facilities and improvements" subject to the requirements of existing statute and rules.

We are concerned, however, about the alternate proposal suggested in the March 4, 2010 staff report that would require an exception for roads and transportation improvements in rural reserves. We believe that this is unnecessary for protection of rural reserve lands and, especially in the case of a minor improvement, a needless and costly burden. An exception is presently required for any new road serving urban uses and traveling through a rural area, regardless of the zoning of the area or designation as a rural reserve. This is appropriate and the original DLCD rule proposal would not change that.

Many transportation improvements are made for safety reasons. Some of these, such as channelization, are quite minor and changes in regulations to allow them should not require an exception. Plans for more significant improvements, such as replacement of an intersection with an interchange, are also done for safety reasons and do not serve urban uses. OAR 660-012-0065 requires consideration of alternatives and selection of the alternative that has the least impact on farm and forest lands, but, appropriately, an exception is not required. An example of this is ODOT's current effort to develop an interchange plan for Staley's Junction, the intersection of US 26 and OR 47. There are current safety issues that will get worse in the future as more traffic uses US 26 and there is more attendance of the new L. L. Stub Stewart State Park, located north of this junction. At certain times, high traffic volumes make the at-grade left turn movements potentially unsafe. This improvement will not serve urban uses and, with current provisions under state law and regulations, will not encourage urban development in its vicinity.

We appreciate your consideration of this matter and would be glad to respond to any question you may have.

Sincerely,

Elaine Smith, AICP  
Planning Manager ODOT Region 1

Cc: Jason Tell  
Rian Windsheimer  
Jeri Bohard  
Barbara Fraser



# WASHINGTON COUNTY

---

## OREGON

April 15, 2010

Land Conservation and Development Commission  
635 Capitol Street NE, Suite 150  
Salem OR 97301-2540

RE: Proposed Amendments to OAR 660-027, Urban and Rural Reserves in the Portland Metro Area

Dear Commissioners,

This letter provides additional comments regarding proposed amendments to the Metro Urban and Rural Reserves administrative rule. The proposed changes were discussed with the Washington County Board of County Commissioners at a worksession on April 6, 2010. The comments provided below are offered on behalf of and at the direction of the Board. Please enter these comments into the record of proceedings for the OAR 660-027 rulemaking process and add Washington County to the list of parties receiving correspondence regarding these planning efforts.

The county supports the proposed amendments regarding roads, Goal 5 resources and park master planning, but remains concerned that certain plan amendments and land use regulation updates will not be adequately provided for when reserves are adopted in the Portland metro area. The fundamental objective of the reserves planning process is the development of strong protections for agricultural and forest uses by eliminating the threat of urbanization. Designation as Rural Reserves eliminates this threat.

The county's primary concern is the ability to maintain a stable land use system that responds to specific issues. These issues may be revealed through a variety of avenues including quasi-judicial plan amendment requests, new land use case law and new legislation. The county is concerned that not enough specificity or clarity has been provided through this rulemaking process to implement necessary changes made through the decisions described above. In addition, the county objects to the inclusion of the revised language described in the "Optional Proposal for OAR 660-027-0070(4)" shown on page 8 of the March 4, 2010 staff report for the March 17-19, 2010 Land Conservation and Development Commission hearing. Detailed information regarding these concerns is provided below.

### **Rural Reserves Designation Achieves Intended Purposes**

OAR 660-027-0005 clearly articulates the purpose of Rural Reserves:

*"Rural Reserves under this division are intended to provide long-term protection for large blocks of agricultural land and forest land, and for important natural landscape features..."*

There are many factors which assist in the identification of Rural Reserves. A very important factor is OAR 660-027-0060(2)(a):

Rural Reserves "(a) Are situated in an area that is otherwise potentially subject to urbanization..."

Rural Reserves lands, identified through application of the factors is then subject to the long-term restrictions of OAR 660-027-0040(5):

*"Metro shall not re-designate rural reserves as urban reserves..."*

It is this provision which provides the long-term protection required by the rule. The Oregon Planning Program has long recognized that the threat of urbanization or actual urbanization of farm land is the chief detrimental action which damages the long-term protection of agricultural and forest lands.

Once Rural Reserves are identified and adopted, long-term protection has been achieved. What remains are sanctioned, compliant land uses that the legislature and/or LCDC has defined as allowable rural uses, which are consistent with LCDC Goals 3, 4, 5 or original exemptions. Since these uses have been determined to be compliant with non-urban planning objectives, it is difficult to understand why changes from one rural use to another rural use through a plan amendment undermines the objective of long-term protection. Similarly, it is hard to understand how the legislature's adjustment of EFU uses or a court's interpretation of rural uses undermine long-term protection when such uses are per se rural land uses.

The fundamental intended purposes of Rural Reserves are achieved through designation of Rural Reserves and the operation of provisions which preclude redesignation over the very long term. Changes in use through plan amendments from one valid rural use to another valid rural use does not in any fashion undermine long-term protection nor does prohibition enhance long-term protection except perhaps in very de minimis ways.

### **Plan Amendments**

Plan amendments have typically provided the primary means to respond to specific land use issues. Plan amendments provide a safety valve for existing rural uses, and are sometimes the last available option for solving expansion needs for long-term established uses. As mentioned above, one of the fundamental ideals embodied in the reserves designation process is the certainty of a property owner's long-term rural or urban status. In the case of Rural Reserves, the overarching priority is to preserve the resource land base. Included within that land base are rural commercial and rural industrial uses that have existed for decades to support people living and working on farm and forest lands within the county. Over time, these uses may need to be modified or expanded in small increments in order to survive – the plan amendment process has been the vehicle for these changes. Plan amendments have provided property owners this needed certainty that their businesses will continue over time.

Of particular concern to the county is the ability to continue processing two types of plan amendments – those taking Statewide Planning Goal exceptions and requests to change between exclusive farm and forest use districts. As shown on the table below, within the past ten years the county has processed two goal exception requests. Both requests involved land designated rural commercial by the county in 1983 to recognize existing uses as developed and committed exceptions – the Midway Pub and Helvetia Tavern. Both uses required additional land for parking to alleviate safety concerns. These property owners availed themselves of the process to request statewide planning goal exceptions and provided arguments for a "Reasons" exception to explain why their parking lot expansions should be permitted.

A new Reasons exception request for another rural commercial property in Washington County has been scheduled for hearings this spring. This request involves the South Store, a decades-old eatery in the Scholls area of rural Washington County. The on-site septic system supporting the store is failing and needs to be replaced. However, the small size of the parcel and the presence of adjacent small-lot exception lands means that the only available land to accommodate the replacement drainfield is nearby agricultural land. The South Store will not be able to continue operations without a new drainfield, and has asked to site the drainfield on the adjacent farm property. This request must involve Reasons exception request due to case law embodied in Roth v. Jackson County 38 OR LUBA 894 (905), which stated that land serving a rural commercial use must be zoned to allow the use. In the case of the South Store, the replacement drainfield must be designated as rural commercial as well.

The remaining pending exceptions plan amendments involve farmland-to-rural residential requests. These plan amendments are being processed as "Committed" exceptions to Goal 3. The criteria for Committed exceptions set a high bar for applicants, and since the adoption of the Rural/Natural Resource Plan and the county's Exceptions Document in 1983, the county has not approved these types of exceptions. However, preserving the option for property owners to request exceptions to the goals helps to support a stable land use system that responds to specific or developing issues.

In addition to plan amendments taking goal exceptions, resource to resource district plan amendments, which make a case for why a farm use designation is more appropriate than a forest resource designation (or visa-versa), are the majority of requests within the rural portion of the county. Since 2000, 13 plan amendment requests have been processed between properties with resource designations. The minimum lot size requirements between farm (EFU and AF-20) and forest (EFC) districts are the same – 80 acres. The impacts under either designation are similar and do not facilitate the conversion of resource land to other uses not authorized under Statewide Planning Goals 3 or 4. To no longer allow these types of plan amendments may present an equity issue, because it is not clear why uses allowed under Goals 3 and 4 are incompatible with the Rural Reserve designation.

Plan Amendment Requests	2000-2009	Pending 2010
<b>Resource-to-Resource</b> (farm to forest)	13	2
<b>Exception area-to-exception area</b> (rural residential to rural commercial or rural industrial)	8	3
<b>Goal Exceptions</b> (resource land to exception land)	2	4
<b>New Urban Area Designation</b> (rural to urban designations)	3	0
<b>Urban</b> (urban commercial to residential or institutional)	12	4

With regard to plan amendments in the rural area, the county anticipates that requests within the Urban Reserve areas would be infrequent and often in response to other statewide planning efforts (e.g. applying airport land use and imaginary surface overlays) and within Rural Reserves, these plan amendments would often feature de minimis impacts (e.g. changes between resource land districts or expansion of long-established commercial or industrial uses).

The county asks that these plan amendment requests be added to the list of accepted land use changes within Urban and Rural Reserves.

### **Airport Overlay Designation**

The March 4<sup>th</sup> DLCDC staff report states “In the case of Urban Reserves, the department notes that the primary reasons for restrictions on new uses is to maximize the opportunity for future urban development and ‘great communities.’ Thus, new uses in Urban Reserves may hinder future urban development or the efficient provision of roads and public facilities in these areas once they are brought into the UGB.” The county does not disagree with this statement, but wishes to clarify that in one case – the designation of airport use overlays – plan amendments serve to protect lives and can preserve lands in Urban Reserves by restricting certain types of development.

There is one pending plan amendment process in Washington County centered on airport planning work done for the Portland-Hillsboro Airport (airport code HIO). In 2003, the county adopted an airport planning program in accordance with the Airport Planning Rule for nine (9) Department of Aviation-recognized airports. HIO, owned by the Port of Portland, is located within the city limits of Hillsboro. However, land use and noise impact areas associated with the airport affect county lands. The county’s 2003 planning efforts did not include HIO due to the fact that the city of Hillsboro was spearheading a separate effort to develop a master plan. The county participated in the master planning process for HIO and expected to adopt conforming amendments to its Comprehensive Plan to reflect overlay and imaginary surface (runway protection zone, vertical surfaces, noise impact boundaries) areas. Unless plan amendments are authorized for airport overlays, the county will not be able to implement the master planning work done by city of Hillsboro to comply with the Airport Planning Rule.

### **Land Use Regulation Updates**

As described in the letter submitted by Brent Curtis on March 18, 2010 for the initial rulemaking hearing by LCDC, the county is concerned about the ability for metro-area counties to make conforming amendments for certain policy, rule or statute changes that are made at the state or federal level. Once in effect, the reserves rule will take away the county’s ability to make policy decisions about whether to implement certain land use regulation changes (e.g. types of uses that counties *may* allow on resource land). The county would like additional clarification from the state regarding the ability to make these types of changes.

Described below are several situations that would not be allowed by the rule once reserves are designated:

- *State/Federal rule or statute changes* - the county often adopts land use regulations for both resource and non-resource land use districts. Typically, changes to uses allowed in resource districts are made by the state to ORS 215.213 (farm land) or OAR 660-006 (forest land), and the county adopts conforming amendments. It is unclear whether these conforming amendments would still be authorized under OAR 660-027.
- *Case law updates* – for example, *Young v. Jackson County*, which deemed the ORS 215.213 restriction on churches within three miles of an urban growth boundary ran afoul of the Religious Land Use and Institutionalized Persons Act (RLUIPA). The restriction is currently in place both in statute and the county’s Community Development Code. Conforming the county’s Code to reflect this case law would require land use regulation amendments. County counsel believes that constitutional law issues such as this would preempt the reserves rule, but it is unclear whether case law unrelated to constitutional issues would also preempt the rule.

- *Amendments to special use standards* - there are certain interpretations regarding allowed uses in land use districts other than the three resource districts of EFU, AF-20 and EFC that have been codified by the county's Board. An example is Ordinance No. 719, adopted last year, which clarified the types of farm- and forest-related items that could be sold, stored or distributed in R-COM and R-IND districts.

### **Optional Language Requiring Exceptions for Roads in Rural Reserves**

The March 4<sup>th</sup> staff report included proposed alternate language for inclusion in OAR 660-027-0070(4) that would require a goal exception for all new transportation facilities and improvements on exclusive farm and forest lands located within Rural Reserves. The county objects to the inclusion of this language for the following reasons:

- The TPR (Section 0065) allows specific transportation uses on rural lands. These uses were carefully considered before their inclusion in the TPR based on their importance and with recognition of potential adverse impacts. Consequently, there are specific requirements that limit the rural transportation uses so that impacts to resource lands are mitigated or eliminated. There is a need for these uses to continue to be allowed, without requiring an exception. Rural uses and the rural/natural resource economy RELY on the transportation system. Providing an efficient means to permit needed improvements is essential to public safety, continued viability of the rural/natural resource economy and public funding.
- Reasons for requiring exceptions for previously allowed transportation facilities are not articulated, nor obvious. There has not been a demonstrated problem of rural transportation improvements, as permitted under Section 0065 of the TPR, resulting in urbanization or conversion of land to non-resource use. There are numerous examples in Washington County and elsewhere of rural transportation improvements that did not result in adverse impacts to resource lands. What public policy interest is there in making such improvements much more difficult, time consuming and expensive to implement?
- Rural transportation improvements are necessary to public health, welfare and safety as well as the rural/natural resource economy. Requiring an exception to the goals for transportation facilities that support the rural population, economy and welfare adds time and expense to what are typically publicly funded projects. This is unneeded and unnecessary and does not accomplish a rational public policy objective. The idea of making transportation improvements on rural land more costly and difficult is especially perplexing under current economic and budgetary circumstances.
- If anything, the land use regulations should allow for more flexibility in planning for future transportation needs on urban or non-reserve lands while leaving the Rural Reserves' transportation planning requirements as they are presently allowed under Section 0065. The provisions of Section 0065 ensure that the level of transportation facilities allowed on rural lands will be consistent with rural/natural resource land use policy and objectives. There is no policy imperative to change these provisions.
- Again, transportation facilities are critical to the functioning of the rural economy. Farmers must move equipment and transport crops and supplies. Forests must be accessed for thinning, harvesting, planting and maintaining forest health. Making transportation improvements only allowable with an exception does not make sense considering the stated purposes of Goals 3 and 4.

The county welcomes the opportunity to participate in the development of criteria for Urban and Rural Reserves that protects both the agricultural and forestry resource base and future urban expansion areas, while also providing necessary safety valves for addressing the needs of specific properties and providing long-term certainty for property owners. Thank you for considering these comments as part of the reserves rulemaking process.

Sincerely,

A handwritten signature in black ink that reads "Brent Curtis". The signature is written in a cursive, flowing style.

Brent Curtis  
Planning Manager