



Oregon

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TO: Land Conservation and Development Commission (LCDC)

FROM: Richard Whitman, Director, DLCD
Bob Rindy, Senior Policy Analyst, DLCD

SUBJECT: **Agenda Item 9, September 1-2, 2010, LCDC Meeting**

**PUBLIC HEARING AND POSSIBLE ADOPTION OF PROPOSED AMENDMENTS TO
RULES REGARDING USES ALLOWED WITHIN URBAN AND RURAL RESERVES
IN THE PORTLAND METRO REGION**

I. AGENDA ITEM SUMMARY

This agenda item includes a public hearing and the potential adoption of amendments to administrative rules pertaining to the uses allowed within urban and rural reserves in the Portland Metro region. The draft "options" described in this report (Attachments A and B), if adopted, could modify current LCDC rules at OAR 660, division 27, section 0070. These amendments only address the extent to which local governments would be allowed to adopt comprehensive plan amendments to allow new uses of land that were not allowed at the time urban and rural reserves were designated. If adopted by the commission, these rule amendments would be effective upon filing with the Secretary of State (likely in mid September, 2010). Urban and rural reserves were designated by Metro and Metro-area counties in June of this year and that decision is currently under review by the department.

This is the second time this year that LCDC has considered changes to this (limited) aspect of the Metro Reserve rules. In April, LCDC adopted some modifications to these rules (see Attachment C). The changes adopted in April were in response to issues raised in December 2009 concerning the rules' restrictions on future amendments to Metro-area county comprehensive plans to allow new uses of land that were not allowed at the time of the designations of urban and rural reserves. LCDC modified the reserve rules in April in order to allow certain types of plan amendments with respect to uses allowed in county plans. However, at the April hearing, testimony indicated that the proposed (and adopted) rule changes did not resolve all the issues of concern to counties in the Metro region. In response, LCDC directed the department to convene stakeholders in a rules advisory committee, discuss these additional concerns and ideas to resolve them in a rulemaking proceeding, and bring any proposed changes back to the commission for review.

As reported to LCDC at its July meeting, the department re-convened the previously appointed 2007-08 Metro rules advisory committee, with some additions, to discuss these issues. After five

meetings, the committee did not reach consensus on resolving most of the issues under discussion. Nevertheless, the department issued formal notices and published a draft (Attachment A) in early August of possible rule amendment “options” so as to allow LCDC to hear testimony in September and amend the rules if it agrees to act on this matter. Subsequent to publishing the draft in early August, one additional rules advisory committee meeting was held and further input on possible versions of rule changes were received. The draft rule amendments shown in Attachments A to this report are what were published in early August. This does not represent a recommendation from the committee or from the department. The draft was provided only for the purpose of focusing public discussion of the issues.

The department emphasizes that many members of the rules advisory committee have strongly urged that their preferred “option” is that the commission should NOT amend the current Metro reserve rules.

Attachment B is a “new” draft that makes some changes to wording to the options set forth in Attachment A. The changes are intended to clarify the options, or to address technical issues raised by the committee with regard to the options in Attachment A. Recognizing that public comment is focused on Attachment A, nevertheless, the department recommends that the commission use Attachment B as the basis for considering options, in the event the commission chooses to proceed with adoption of amendments to these rules.

For additional information on this item, please contact Bob Rindy at (503) 373-0050 ext. 229; email 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 close the public hearing and deliberate on the testimony received and determine whether to amend these rules. Of the four issues described in Attachment B, the department recommends the commission take action only with respect to Issues 3 and 4, and as described in Attachment B. For the remainder of the issues, and the various options presented under those issues, the department recommends that the commission NOT amend the current rules at this time. However, the department does recommend that the commission adopt the minor clarifications to 660-027-0040 shown on Attachment A, Page 3, Line 20 and Page 4, lines 26 and 31.

III. OVERVIEW

A. April 22, 2010, Amendments to Metro Reserve Rules.

On April 22, 2010, LCDC amended administrative rules that pertain to Urban and Rural Reserves in the Portland metro area. Prior to this, the reserve rules (adopted in January 2008) prohibited comprehensive plan amendments that would allow smaller lot sizes or new uses of land not allowed at the time lands were designated as urban or rural reserves. The April 2010 rule amendments clarified these provisions. Some rural uses of land are expressly allowed by

statute or rule, but only through a plan amendment procedure. The April rule changes by LCDC authorized amendments to local land use plans for lands in reserves, but only provided the amendments pertain to the following uses, AND provided no Goal exception is required in order to authorize the amended use:

1. Amendments to transportation systems, roads and other public facilities,
2. Amendments to inventories of “Goal 5” natural resources,
3. Amendments regarding public parks and public park plans, and
4. Amendments to authorize uses allowed by state statute or rule, but not allowed by local ordinance.

As summarized above, in the course of LCDC’s consideration of these rule changes last April, concerns were raised that the reserve rules continue to restrict certain additional types of plan amendments that should be allowed. These concerns are described below in this report.

B. Rules Advisory Committee Discussion

LCDC asked the department (DLCD) to convene a rules advisory committee to consider further changes to these rules and provide a recommendation to LCDC. The department reconvened the group that originally helped develop the metro-area urban and rural reserve rules (i.e., OAR 660, division 27) in 2007 and 2008. Some of the previous members no longer represent particular organizations or local governments and as such, new members were appointed so that the organization or local government would continue to be represented. LCDC Commissioner Marilyn Worrix, chaired this effort. The membership of the committee is described in Attachment F. Members of the public also were invited to the meetings, and the Chair frequently invited comment from those attending.

The rules advisory committee considered the following issues:

1. Transportation improvements that require adoption of a plan amendment *and* a goal exception,
2. Other new uses of land that require a plan amendment and an exception to a statewide planning goal (such as certain types of residential, commercial, industrial development) on EFU, forest, and other rural land.
3. Comprehensive plan amendments to change from one resource designation to another, such as EFU to Forest or vice versa.
4. Comprehensive plan amendments to implement *new* statutes, rules or judicial interpretations.
5. Whether there should be different standards for comprehensive plan amendments in urban reserves and rural reserves (Discussed in context with each issue above).
6. Comprehensive plan amendment to allow uses already allowed under existing state statutes or rules, but not allowed under local ordinances.

Following discussion over the five meetings, some of these issues were resolved or dropped, either because it was agreed that no rule change was necessary, or because the group agreed not

to pursue them. As a result, the original list of issues was narrowed to the following list, which is reflected in the discussion of Attachments A and B under Section IV of this report:

1. Transportation improvements that require a comprehensive plan amendment *and* adoption of a goal exception,
2. Requests to change or expand uses (not related to transportation) allowed in a currently acknowledged exception area that are not allowed as an alteration or expansion of a non-conforming use (an example is to change from an existing exception area that allows a specific type of commercial use to another type of commercial use, or to a residential use).
3. Requests to amend the county plan from one resource designation to another, such as from EFU to Forest or vice versa.
4. Requests for an exception to Goal 11 to allow extension of sewer service outside a UGB where there is a health hazard that can only be addressed by sewer (this issue arose subsequent to August 2 and so is not reflected in Attachment A, but is reflected in Attachment B).

For each of these issues, this report includes a description of the rules advisory committee discussion, a “sense of the workgroup opinion” on the matter, and a department recommendation.

The rules advisory committee met five times between May 27 and August 12, 2010. Prior to the final meeting, the rules advisory committee had not reached a consensus or made any formal decisions regarding the proposed rule amendments. Many members were still recommending no changes be made to the current rules. The department did, however, publicize a draft rule for comment, and presented options to the rules advisory committee on August 2, prior to the final meeting. The intent of this draft (which included multiple options for each issue) was to clarify the ideas under discussion and provide a draft for broad public comment.

The final meeting on August 12 focused on the “issues” and “options” in the published draft (Attachment A). That discussion provided a clearer picture as to which options were preferred by some members of the rules advisory committee, and resulted in the need for a new draft (Attachment B) in order to reflect the results of that meeting. Attachment B adds a new “Issue 4” that was not part of the published draft, and amends some of the wording in the published draft to better reflect the intent for each of the options.

C. Urban and Rural Reserves in the Metro Area

In 2007, the Oregon Legislature enacted SB 1011 authorizing Metro and the three Metro area counties (Washington County, Multnomah County, and Clackamas County) to designate Urban Reserves and Rural Reserves under a new process and with new requirements different than those applicable in other regions of the state. That statute required LCDC to adopt rules regarding the new reserves process. In January 2008 LCDC adopted the required rules. These rules are under OAR 660, division 27 (See Attachment C and information in Section III D of this report).

Urban Reserves in the Metro area under SB 1011 are adopted by Metro under a different process than that specified in LCDC's (1991) urban reserve rules applicable statewide, OAR 660, division 21. Those rules continue to provide an option for local adoption of urban reserves – not rural reserves – anywhere in the state, including Metro. However, in most respects, urban reserves both in the Metro area under SB 1011 and division 27 (and statewide under division 21) serve the same function. Urban reserves provide for a future urban planning area up to 30 years beyond the 20-year urban growth boundary (UGB). In general, urban reserves could allow up to a 50 year plan for what areas are most likely to be urbanized to the extent that a city continues to expand geographically.¹ 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.” By statute, rural reserves cannot be included within a UGB and cannot be re-designated as *urban* reserves for the same period of time that urban reserves are designated for. In addition, by LCDC rule, a county's authority to allow comprehensive plan amendments that would enable intensification of future uses of land (including allowing smaller lot and parcel sizes) is limited (this applies both in rural and in urban reserve areas).

Designation of urban and rural reserves under SB 1011 is not mandatory - Metro and metro area county governments had the choice of whether or not to designate reserves. However, if Metro and counties proceeded under SB 1011, they were required to establish both rural **and** urban reserves simultaneously. Reserves must be implemented by “an agreement among the county and Metro” 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 adopted by Metro to designate both types of reserves. LCDC's stated objective for reserves “is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries, and protection of the important natural landscape features that define the region for its residents.”

¹ For urban reserves under division 21, local governments are authorized to adopt a 10 to 30 year urban reserve “beyond the 20-year time frame used to establish the urban growth boundary.” For the Metro area under division 27, the 20 to 30 year urban reserve is in addition to “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.”

Once urban and rural reserves are adopted by Metro and Metro area counties, the state 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 recently designated urban and rural reserves. The reserves map, intergovernmental agreements, joint set of findings and other related documents have been submitted to the department for review.

D. Legislative History and Intent of Reserve Rules under OAR 660, Division 27

The “legislative history” of the rules adopted by the commission in 2008 is expressed in the minutes, testimony, staff reports, and other documents considered by the rules advisory committee LCDC appointed in 2007. This history is helpful, but may not be definitive as to the “intent” of the commission regarding these rules. The prohibition on future amendments to county comprehensive plans to allow new uses of land in reserve areas that were not allowed at the time of the designations is not stated in the statute (SB 1011). The department believes this concept derived from understandings reached prior to and during the consideration of SB 1011 by the legislature. It does not, however, appear in the formal legislative history of SB 1011.

The very first drafts of rules implementing SB 1011 that were considered by LCDC’s rules advisory committee in 2007 included almost the identical prohibition on future amendments as is now included in the adopted rules. It is noteworthy that there is no record of discussion of this provision throughout the 2007-2008 committee meetings. Moreover, the two department staff reports to the commission leading to the adoption of Metro reserve rules, issued November 29, 2007 and January 11, 2008, indicate some “intent” for the rule provisions prohibiting future amendments under OAR 660-027-0070, and assert that this intent was “embraced by the work group” and was also “recommended by the “*ad hoc*” group assembled by Metro in the summer of 2007. The brief staff report statement about this provision is 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 work group meetings, but was embraced by the work group.** 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] work group, 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.**” (*Emphasis added*).

IV. SUMMARY AND DISCUSSION OF PROPOSED ADMINISTRATIVE RULE AMENDMENTS

This section of this report describes the various “options” for rule amendment discussed by the workgroup, and also describes the rules advisory committee’s discussion for these various issues.

On August 2, 2010, the department posted a draft of rule amendments showing three main “issues” and providing “options” for each issue (Attachment A). Again, for all but one issue, the department emphasizes that the group did *not* reach consensus or any formal decision regarding amendments to the rules, and many rules advisory committee members recommend no change to the current rules. As such, the options for the commission range from taking no action to considering the alternatives presented in both Attachments A and B.

Based on discussion at the final rules advisory committee meeting (August 12), the department has presented a revised Draft 2 of the rules (Attachment B). The proposal in Attachment A was published and is referenced in any written comments received, and is the draft referenced in the discussion below except where different wording is suggested by the department based on the August 12 discussion. Where additional wording (or new issues) have arisen subsequent to the published draft, the description below will refer to Attachment B.

A. Minor Housekeeping Amendments

The department has suggested some minor changes to this division that are “neutral” with respect to the various “ISSUES” discussed below. These changes pertain to amendments made last April, but would also be desirable if additional amendments are made. Referencing page and line numbers in Attachment A they are as follows:

Page 3, Line 20: Rules at OAR 660-027-0040 (5) provide that “Metro shall not re-designate rural reserves as urban reserves, and a county shall not redesignate land in rural reserves to another use during the period described in section (2) or (3) of this rule, whichever is applicable.” The department is recommending that wording be inserted to clarify that this prohibition is “**except as provided in OAR 660-027-0070**” since the referenced rules do allow certain limited types of plan amendments which could be understood as a “redesignation.”

Page 4, lines 26 and 31: Similar to the concern noted on Page 3, described above, sections (2) and (3) of rules under OAR 660-027-0070 generally protect urban and rural reserves by prohibiting amendments to plans and zoning in place at the time the reserves were designated. However, some amendments to plans and zones are allowed already in section (4), so this prohibition should be “...**except as specified in Sections (4) through (6) of this rule.**”

B. ISSUE 1: Comprehensive Plan Amendments from One Resource Type to Another

The department has labeled as ISSUE 1 (Attachment A, Page 5, lines 9 through 25) three OPTIONS discussed by the rules advisory committee as to whether these rules should allow plan or zoning amendments in reserves changing land from a farm or forest “resource land” designation to another resource designation, such as from exclusive farm use (EFU) to Forest use, or from Forest to EFU. There are three options described in Attachment A, but as previously noted, a fourth option is for the commission to make no amendments at all to the rules on this topic. In fact, a large number, perhaps a majority, of the rules advisory committee favor no action with regard to Issue 1. Attachment B clearly references this additional option as “Option D.”

All three of the options described under ISSUE 1 on page 5 in Attachment A would allow counties to amend plans from one resource category to another, although this authorization could only occur to the extent the proposal meets other applicable laws, goals, and rules.

Under Option A (Page 5, lines 13 through 14) the rules would be amended to authorize counties to amend plans from one resource category to another. Under this option there would be no restrictions on this type of a plan amendment other than the restrictions in current laws, goals, and rules.

Under Option B (Page 5, lines 16 through 20) the rules would be amended to authorize counties to amend plans from one resource category to another, provided “**the number of dwellings and land divisions that could be allowed as a result of the amendment is not increased relative to the number allowed before the amendment.**”

Under Option C (Page 5, lines 22 through 24) an additional restriction would be added to either Option A or Option B: “**and provided the amendment will not adversely effect the protection of important natural landscape features that are the basis for a “rural reserve” designation.**” Note that the department recommends a very slight change to the wording of Option C in Attachment B. The amended wording would not change the intent of this option.

Under Option D (Attachment B) the commission would take no action regarding this issue at this time.

Discussion in the rules advisory committee meetings, and especially the August 12 meeting, clarified that many rules advisory committee members and the interests they represent are concerned that such amendments are often for the purpose of allowing new dwellings that would not otherwise be authorized under the current EFU or Forest (or mixed) zoning. For example, changes from EFU to Forest would typically make it possible to apply for a “Template

Dwelling,” a type of dwelling that may be easier to have approved than dwelling approval on land zoned EFU.

In response to a request from the rules advisory committee, the department researched past plan amendments in the three metro area counties. This research is summarized in Attachment Ht. The report indicates that there have been relatively few plan amendments from one resource category to another in Metro area counties over the past ten years, and that more amendments of this nature have been proposed than approved. It is not clear how many of these amendments have been for the purpose of allowing a dwelling not otherwise available without a plan amendment, such as a forest “template dwelling.” The “intent” of such amendments is not usually stated.

In discussion at the final meeting on August 12, it became clear that Options B and C as drafted would present interpretation problems to local governments. For example, under Option B, local governments may find it very difficult or impossible to clearly determine the number of dwellings “currently allowed” on a particular parcel in a farm or forest resource zone, since laws for uses in these zones do not necessarily provide a set “number” of dwellings allowed outright or conditionally. Option C also presents interpretation problems, since the counties and Metro did not typically provide findings specifying natural landscape features that were the “basis for rural reserve designation” for each parcel designated rural reserve.

After considerable discussion and a show of hands requested by the chair to “take the temperature of the group” on this issue, it was determined that the majority of the rules advisory committee recommends LCDC not adopt OPTION A, B or C. Four members of the 19-member rules advisory committee recommended that the commission amend the rules to allow resource-to-resource amendments (however, some members were absent during the final meeting). Three rules advisory committee members support Option A on Page 5, lines 13 through 14, and one member supports Option B on Page 5, lines 16 through 20. No rules advisory committee members support Option C. However, of those rules advisory committee members opposed to any rule amendments on this topic at this time, many indicated that they agree such amendments may be reasonable in some circumstances, and that as such this issue may merit further discussion at some (unspecified) point in the future. It was suggested that with more time, discussion, data, and opportunity to explore various options, the group may be able to make progress toward a consensus.

Based on the rules advisory committee discussion and recommendations, the department recommends that the commission follow Option D, and take no action on ISSUE 1 at this time; LCDC should not amend ORS 660-027-0070 at this time to authorize plan amendments from one resource category to another resource category.

C. ISSUE 2: Transportation Improvements that Require an Exception

The department has labeled as ISSUE 2 (Attachment A, page 5, line 26 through page 7, line 14) whether the reserve rules should allow new transportation facilities in reserves where such facilities require a plan or zoning amendment and an exception. Many types of transportation facilities may be reviewed and approved on rural lands without requiring an exception, such as

many widening projects, and converting an intersection to an interchange. However, a completely new roadway on rural lands typically would require an exception if it is serving more than a rural function (e.g., if it is providing for travel between cities). Exceptions for new roads and other transportation facilities are typically taken to Goals 3, 4, 11 and 14, as per the TPR (OAR 660-012-0070). The department has made technical changes to options under ISSUE 2 in Draft 2, Attachment B responding to discussion in the last committee meeting. However, the description below generally refers to Attachment A, because the comments received refer to that draft. However, in discussing the various options, the department suggests that Attachment B should be used if the commission chooses to make amendments relating to Issue 2.

The rules advisory committee discussion about amending these rules to accommodate transportation improvements that require an exception was passionate, and it became clear that no consensus will emerge on this matter. Farming, forestry and Natural Features protection advocates on the group are strongly opposed to allowing plan amendments and exceptions for transportation facilities in reserves. This is especially true regarding new highways or arterials where the route would be built in order to serve urban areas. Farming advocates have indicated that the issue of new roads on farm land is of the highest concern, and they state that this concern was one of the primary reasons they agreed to SB 1011.

Typically, an exception would be required for a new road that crosses farm or forest land and that requires the creation of a new parcel (for example, a proposal for new arterial streets connecting Interstate 5 to Highway 99). Advocates for amending the rule point out that over the next 50 years it is highly likely that there will be a need for additional roadways, including those that may serve “regional” transportation needs, and that require an exception to Goals 3, 4, 11 and 14.

There are three options described under ISSUE 2 in Attachment A, but as previously noted, a fourth option (listed as Option D in Attachment B) is to make no amendments at this time. Many members of the rules advisory committee favor Option D, no action on this issue.

The first three options for ISSUE 2 would allow counties to amend their comprehensive plans to allow a new transportation use that requires goal exceptions. Attachment G to this report lists the types of transportation uses allowed without a goal exception. Other roads and transportation facilities not listed would require exceptions.

Options A and B, as stated in Attachment A, are very similar (as a result of some confusion in earlier drafting. Attachment B revises Options A and B to provide a clearer choice in response to discussion at the last committee meeting.

Option C is intended to add an additional requirement to either Option A or Option B (not to Options B or C, as misstated in Attachment A, corrected in Attachment B). Option C would raise the bar further regarding an exception to approve a road improvement. This option states that an exception must demonstrate that a proposed road improvement “cannot reasonably be accommodated” by other “road improvements that do not require an exception, or by road improvements to an arterial that would also require an exception but would have a lesser impact on accepted farm and forest practices and on the protection of important natural landscape

features on the subject property or nearby properties.” This is reworded slightly in the second draft, Attachment B, but has the same intent.

Again, the rules advisory committee spent a considerable amount of time discussing Issue 2 but was not able to approach any consensus. At the conclusion of the rules advisory committee, a large block of members of the rules advisory committee strongly suggested that the commission should NOT amend the reserve rules at this time to authorize transportation improvements that can only be approved through the goal exception process. Others on the rules advisory committee, particularly counties, Metro and the City of Hillsboro favor amendment of the rules to authorize counties to consider goal exceptions required for future transportation facilities.

OPTION A (Attachment A, page 5, lines 30 through 36 and page 6, lines 2 through 25) would authorize transportation improvements through an exception, provided the improvement meets a “regional transportation need.” Such a regional need is defined in LCDC’s transportation planning rule (and that definition would be added to this rule, see Attachment A, page 8, lines 7 and 8). The definition of regional needs is as follows: *“needs for movement of people and goods between and through communities and accessibility to regional destinations within a metropolitan area, county or associated group of counties.”*

Option A also provides standards for an exception that is a “higher bar” than the exception process currently required in OAR 660-012-0015: the county would be required to find that “the need cannot reasonably be accommodated by any one or any combination of the following: (A) Improvements to transit; (B) Road improvements to an arterial that would also require an exception but that would have a lesser impact on accepted farm and forest practices; and (C) Transportation system or demand management actions or techniques.”

Again, Option A is worded somewhat differently in Attachment B. The reworded Option A makes it clearer that only a transportation need declared in Metro’s Regional Transportation System Plan (RTSP) may be subject to an exception. In order to clarify the differences between Option A and Option B, this reworded option is stricter than the same option in Attachment A, in that it clearly eliminates the authorization for an exception unless a need is indicated in the RTSP, and does not allow an exception if the need is identified in a future concept plan (which may be adopted by a local government). It is important to note that no members of the rules advisory committee support this option, either as worded in Attachment A or B. Instead, the rules advisory committee either prefers no change to the rules, or prefers a change that provides more local flexibility to identify a regional transportation need as set forth in Option B, described below.

OPTION B differs from OPTION A primarily by relaxing the need to show that a facility subject to an exception is a “regional transportation need” described in the RTSP. A “regional transportation need” is a prerequisite to allowing such exceptions in both option A and B, but for Option B, the “need, function and mode for the facility” may be either be described in Metro’s regional transportation plan (RTSP) or included in the appropriate (county) transportation system plan (Attachment A, page 7, lines 1 – 3). By authorizing a description of the regional needs in a local transportation system plan, this option allows counties to authorize a new road facility that is, for example, the need for an arterial connector route that only the county has identified in its

plan, but not necessarily one described in Metro's RTSP. Metro and the counties have indicated they would agree to Option B, This option is drafted with slightly different wording in Attachment B, but the intent is the same.

Based on a show of hands at the August 12 meeting, no members of the rules advisory committee support **OPTION C**. This option includes wording to ensure an exception considers natural landscape features that were the basis for the "rural reserve" designation of an area. In the August 12 rules advisory committee meeting, even those who have most strongly advocated protection of natural landscape features were not satisfied that this language would effectively conserve such features.

Based on the rules advisory committee discussion and recommendations, the department recommends that the commission follow Option D, and take no action on ISSUE 2 at this time. First, the department notes that most transportation improvements already are authorized under the TPR without an exception (See Attachment G).

Second, it is clear from the rules advisory committee discussion that there is a perception among many interests that rural reserves under SB 1011 were intended to provide a higher level of protection for farm land than generally afforded under Goal 3 in terms of future changes to comprehensive plans that would allow new uses not contemplated at the time of the designation of reserves. Regardless of the difficulty of obtaining a new exception for a transportation facility on farm land, many rules advisory committee members focus on this as a major and inappropriate change to the "understanding" that led to SB 1011. If particular needs for transportation improvements arise in the future, the counties and other interests always have the option of petitioning the commission to change the rules to address a specific problem.

D. ISSUE 3: Alteration or Expansion of Existing (currently acknowledged) Exceptions in Urban or Rural Reserves

ISSUE 3 is whether the reserve rules should be amended to allow counties to alter or expand a currently acknowledged "Goal Exception" on land in urban or rural reserves (Attachment A, Page 7, line 26 through 41). Many exception areas have been included in the adopted urban or rural reserves, and a change in use in these areas may require a new exception (depending on the specifics of the exception and the desired change). An apparent majority of the rules advisory committee appears to favor some action by the commission on this issue.²

The rules advisory committee held its most comprehensive discussion of this issue at the fifth (final) rules advisory committee meeting on August 12, 2010. At the start of that meeting, there had been an understanding that this proposal was not intended to authorize new exception areas, or an expansion of exception area boundaries. The rules advisory committee had previously agreed to confine consideration of this proposal to requests for alteration of exceptions that were already acknowledged at the time reserves were designated. In other words, the proposed Option under Issue 3 would allow alteration or expansion of only of those uses authorized by an existing

² As mentioned previously, there were some members of the rules advisory committee absent at the time the chair asked rules advisory committee members to indicate their preference on this option.

exception, i.e., a currently acknowledged exception in a county plan. The intent of the option in Attachment A was that this authorization would occur without expansion of the boundaries of the exception and without the new use having a greater adverse impact on surrounding lands than the current uses allowed by an existing exception. This proposal was not intended to allow “a new exception area.”

However, in discussion on August 12, at least one reason for expansion of an exception area boundary was presented by Washington County: expansion in order to accommodate a drain field for a failing septic system. As a result of that discussion the department’s Draft 2 under Attachment B provides a new option (Option B) to expand an exception area boundary under those limited circumstances.

Issue 3 derives from the very particular nature of many exceptions in a county plan – typically an exception will authorize only uses already occurring at the time the exception was taken, or (in the case of a “reasons” exception), only the uses requested in response to a particular “need.” In the workgroup discussion, an example was proposed in order to illustrate the problems with prohibiting any change to an acknowledged exception – a small rural store, in business for many years, where the owners want to add parking spaces on the same parcel, but where “parking” is not a “use” allowed as part of the acknowledged exception in the plan and zoning.

At the final meeting, it was noted that the published August 2 draft (Attachment A) proposed wording would allow “alteration or expansion of an existing use” in an exception area. In discussion, Washington County provided an example where an expanded exception area (not simply an expanded use) was needed to accommodate a new drain field, after failure of the existing on site sewage system. It appeared that some members of the rules advisory committee have a higher level of concern if this provision would allow expanded exception areas, new exceptions, and especially “urban” exceptions (i.e., Goal 14 exceptions).

A majority of the rules advisory committee appeared to support Option A under Issue 3, although it should be clear that not all members were present when this question was called. In response to concern that the wording of Option A in Attachment A creates confusion as to whether exception area boundaries could be expanded, and in deference to the likely need to resolve failing on-site systems in the future, the department’s proposed Draft 2, Attachment B, re-words options under Issue 3. The amended wording would make it clearer that the boundaries of an exception area cannot be expanded, even though the uses authorized may be changed. Option B allows exception area boundaries to expand when such expansion is necessary in response to a failing on-site wastewater disposal system.

ISSUE 3, Option A (and Option B in Attachment B), include a requirement that “the alteration or expansion would not have a greater adverse impact on surrounding lands.” Concern was expressed by counties that this standard may be too similar to the standard for alteration of a non-conforming use, and most favored changing this standard to one based on ORS 215.296 (conflicts between non-farm uses and accepted farming practices on surrounding lands). After discussion, there appeared to be a consensus to allow changes to uses in exception areas in the manner described in Option A.

The department also recommends the commission adopt Option B, as set forth in Attachment B, so that failing on-site wastewater disposal systems in exception areas may be dealt with by allowing replacement systems on adjacent lands.

Goal Exceptions to Allow New Uses Generally

The rules advisory committee also discussed whether the rules should allow a new goal exception, rather than simply an alteration or expansion of an existing goal exception (see discussion under ISSUE 3, above). The group did not agree to authorize this, and no proposed wording is provided in Attachments A or B. The department does not recommend that the commission authorize new goal exceptions to allow new uses generally. The primary reason is that the department believes the original rule adopted by the commission in January 2008 was clear that such exceptions would not be allowed once reserves were designated.

V. COMMENTS RECEIVED

The department received a number of written comments prior to the mailing of this report. It is anticipated that additional comments will be submitted subsequent to this report and at the September 2 hearing. The department indicated to the rules advisory committee that comments provided prior to August 20 would be delivered to LCDC in advance of the hearing on September 2. As such, only a few comments on these rules were available at the time this report is final. The department therefore decided to address comments at the time of the hearing, during discussion before the commission, rather than in this report.

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 are based on ORS Chapter 183, the Attorney General's Model Rules of Procedure, and LCDC's "procedural rules" at OAR 660-001-0000. LCDC procedural 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[.]

For the Metro Reserve Rule amendment proposals described in this report, the department issued rulemaking notice on July 15 for publication in the Secretary of State's Bulletin on August 2, 2010. The department also published, mailed, and emailed the required notices to interested parties including: legislators, Metro area cities and counties, members of Metro's Reserve Steering Committee, and other persons who have requested notification of these rule proposals. The notices of housing cost and economic impact were published in the Secretary of State Bulletins described above. Mailed and emailed notices to interested persons and legislators were sent August 2 (see Attachment E).

VII. SUMMARY OF 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 close the public hearing and deliberate on the testimony received and determine whether to amend these rules. Of the three issues described in Attachment A and the additional Issue 4 described in Attachment B, the department recommends the commission take action only with respect to Issues 3 and 4, and as described in Attachment B. For the remainder of the issues, and the various options presented under those issues, the department recommends that the commission not amend the current rules at this time. However, the department does recommend that the commission adopt the minor clarifications on Attachment A, Page 3, Line 20 and Page 4, lines 26 and 31.

VIII. ATTACHMENTS

- A. Draft Rule Amendment Options Published August 2, 2010
- B. Rule Draft 2 August 20, 2010
- C. Current Rules under OAR 660, Division 27, as Amended April 2010
- D. Urban and Rural Reserve Statutes Enacted in 2007 by SB 1011 (ORS 195.137- 195.145)
- E. Administrative Rule Amendment Notices Mailed and Published August 2, 2010
- F. Metro Reserves Rules Advisory Committee 2010 – Membership
- G. Transportation Uses Allowed on Rural Lands
- H. Report on Past Plan Amendments in Metro Area Counties
- I. Comments Received Prior to Mailing of this Report

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 27

URBAN AND RURAL RESERVES IN THE PORTLAND METROPOLITAN AREA

DRAFT - PROPOSED AMENDMENTS

August 2, 2010

For consideration by LCDC at a public hearing on September 2, 2010

*Proposed new words **are underlined in bold**, deletions are [~~struck and bracketed~~]*

1 *[Note: No changes are proposed for the first set of rules in this division, at OAR 660-027-*
2 *0000] ...*

3 **660-027-0010**

4 **Definitions**

5 *[Note: The department provided formal notice indicating that LCDC may consider new*
6 *or changed definitions in OAR 660-027-0000. However, no changes to definitions in this*
7 *rule are proposed at this time. Instead, the department suggests that, if LCDC agrees to*
8 *adopt new or amended definitions for terms used in rules at OAR 660-027-0070, these*
9 *definitions should be adopted as part of 0070 rather than in this (0010) collection of*
10 *definitions that are applicable to the entire division 27]*

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

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

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

22 (3) "Intergovernmental agreement" means an agreement between Metro and a county
23 pursuant to applicable requirements for such agreements in ORS 190.003 to 190.130,
24 195.025 or 197.652 to 197.658, and in accordance with the requirements in this division
25 regarding the designation of urban and rural reserves and the performance of related land
26 use planning and other activities pursuant to such designation.

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

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- 1 (5) "Metro" means a metropolitan service district organized under ORS chapter 268.
- 2 (6) "Important natural landscape features" means landscape features that limit urban
3 development or help define appropriate natural boundaries of urbanization, and that
4 thereby provide for the long-term protection and enhancement of the region's natural
5 resources, public health and safety, and unique sense of place. These features include, but
6 are not limited to, plant, fish and wildlife habitat; corridors important for ecological, scenic
7 and recreational connectivity; steep slopes, floodplains and other natural hazard lands;
8 areas critical to the region's air and water quality; historic and cultural areas; and other
9 landscape features that define and distinguish the region.
- 10 (7) "Public facilities and services" means sanitary sewer, water, transportation, storm water
11 management facilities and public parks.
- 12 (8) "Regional framework plan" means the plan adopted by Metro pursuant to ORS
13 197.015(17).
- 14 (9) "Rural reserve" means lands outside the Metro UGB, and outside any other UGB in a
15 county with which Metro has an agreement pursuant to this division, reserved to provide
16 long-term protection for agriculture, forestry or important natural landscape features.
- 17 (10) "UGB" means an acknowledged urban growth boundary established under Goal 14
18 and as defined in ORS 195.060(2).
- 19 (11) "Urban reserve" means lands outside an urban growth boundary designated to provide
20 for future expansion of the UGB over a long-term period and to facilitate planning for the
21 cost-effective provision of public facilities and services when the lands are included within
22 the urban growth boundary.
- 23 (12) "Walkable" describes a community in which land uses are mixed, built compactly,
24 and designed to provide residents, employees and others safe and convenient pedestrian
25 access to schools, offices, businesses, parks and recreation facilities, libraries and other
26 places that provide goods and services used on a regular basis.

27 *[NOTE: No changes are proposed for rules 0020 and 0030] ...*

28 **660-027-0040**

29 **Designation of Urban and Rural Reserves**

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

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- 1 (2) Urban reserves designated under this division shall be planned to accommodate
2 estimated urban population and employment growth in the Metro area for at least 20 years,
3 and not more than 30 years, beyond the 20-year period for which Metro has demonstrated a
4 buildable land supply inside the UGB in the most recent inventory, determination and
5 analysis performed under ORS 197.296. Metro shall specify the particular number of years
6 for which the urban reserves are intended to provide a supply of land, based on the
7 estimated land supply necessary for urban population and employment growth in the Metro
8 area for that number of years. The 20 to 30-year supply of land specified in this rule shall
9 consist of the combined total supply provided by all lands designated for urban reserves in
10 all counties that have executed an intergovernmental agreement with Metro in accordance
11 with OAR 660-027-0030.
- 12 (3) If Metro designates urban reserves under this division prior to December 31, 2009, it
13 shall plan the reserves to accommodate population and employment growth for at least 20
14 years, and not more than 30 years, beyond 2029. Metro shall specify the particular number
15 of years for which the urban reserves are intended to provide a supply of land.
- 16 (4) Neither Metro nor a local government may amend a UGB to include land designated as
17 rural reserves during the period described in section (2) or (3) of this rule, whichever is
18 applicable.
- 19 (5) Metro shall not re-designate rural reserves as urban reserves, and a county shall not re-
20 designate land in rural reserves to another use **except as provided in OAR 660-027-0070**
21 during the period described in section (2) or (3) of this rule, whichever is applicable.
- 22 (6) If Metro designates urban reserves under this division it shall adopt policies to
23 implement the reserves and must show the reserves on its regional framework plan map. A
24 county in which urban reserves are designated shall adopt policies to implement the
25 reserves and must show the reserves on its comprehensive plan and zone maps
- 26 (7) If a county designates rural reserves under this division it shall adopt policies to
27 implement the reserves and must show the reserves on its comprehensive plan and zone
28 maps. Metro shall adopt policies to implement the rural reserves and show the reserves on
29 its regional framework plan maps.
- 30 (8) When evaluating and designating land for urban reserves, Metro and a county shall
31 apply the factors of OAR 660-027-0050 and shall coordinate with cities, special districts
32 and school districts that might be expected to provide urban services to these reserves
33 when they are added to the UGB, and with state agencies.
- 34 (9) When evaluating and designating land for rural reserves, Metro and a county shall
35 apply the factors of OAR 660-027-0060 and shall coordinate with cities, special districts
36 and school districts in the county, and with state agencies.
- 37 (10) Metro and any county that enters into an agreement with Metro under this division
38 shall apply the factors in OAR 660-027-0050 and 660-027-0060 concurrently and in

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

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

15 *[NOTE: No changes are proposed for rules 0050 and 0060] ...*

16 **660-027-0070**

17 **Planning of Urban and Rural Reserves**

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

21 (2) In order to maintain opportunities for orderly and efficient development of urban uses
22 and provision of urban services when urban reserves are added to the UGB, counties shall
23 not amend comprehensive plan provisions or land use regulations for urban reserves
24 designated under this division to allow uses that were not allowed, or smaller lots or
25 parcels than were allowed, at the time of designation as urban reserves until the reserves
26 are added to the UGB, **except as specified in Sections (4) through (6) of this rule.**

27 (3) Counties that designate rural reserves under this division shall not amend
28 comprehensive plan provisions or land use regulations to allow uses that were not allowed,
29 or smaller lots or parcels than were allowed, at the time of designation as rural reserves
30 unless and until the reserves are re-designated, consistent with this division, as land other
31 than rural reserves, **except as specified in Sections (4) through (6) of this rule.**

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

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

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

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

 - 6 (d) Uses and land divisions that are allowed by state statute or administrative rule at the
 - 7 time of the designation of urban and rural reserves;
 - 8
-

9 **ISSUE 1- Options for discussion regarding plan or zoning amendments from one**

10 **resource designation to another (such as EFU to Forest or vice versa, including**

11 **amendments to or from mixed farm/forest zoning)**

12 **OPTION A**

13 **(e) A comprehensive plan or zoning amendment from one farm or forest designation**

14 **to another farm or forest designation consistent with other applicable law.**

15 **OPTION B**

16 **(e) A comprehensive plan or zoning amendment from one farm or forest designation**

17 **to another farm or forest designation consistent with other applicable law, and**

18 **provided that the number of dwellings and land divisions that could be allowed as a**

19 **result of the amendment is not increased relative to the number allowed before the**

20 **amendment.**

21 **OPTION C**

22 ***Either OPTION A or OPTION B above, but add at the end: ... and provided the***

23 **amendment will not adversely effect the protection of important natural landscape**

24 **features that are the basis for a “rural reserve” designation.**

25

26 **ISSUE 2 - Options for discussion regarding future proposals for transportation**

27 **improvements that require an exception (usually to Goal 3, 4, 11, or 14), in rural or**

28 **urban reserves, or both.**

29 **OPTION A**

30

31

32 **(5) Notwithstanding the prohibitions in subsections (2) through (4) of this rule, a**

33 **county may amend its comprehensive plan or land use regulations as they apply to**

34 **lands in urban reserves, rural reserves or both to allow a transportation facility that**

35 **requires an exception to Goals 3, 4, 11, or 14 provided the amendment meets the**

36 **requirements of subsections (a) through (d) of this section:**

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1
2 **(a) The amendment is consistent with the applicable requirements of OAR 660-012-**
3 **0070;**

4
5 **(b); The transportation facility would meet a regional transportation need, and the**
6 **need for the transportation facility is identified either in:**

7
8 **(A) A concept plan authorized by section (7) of this rule, or**

9
10 **(B) A regional transportation plan described in OAR 660-012-0015;**

11
12 **(c) The need, function and mode for the facility are included in the appropriate**
13 **transportation system plan, with a refinement plan that complies with OAR 660-012-**
14 **0025(3); and**

15
16 **(d) For a proposed road improvement consistent with (a) through (c) of this section,**
17 **the need cannot reasonably be accommodated by any one or any combination of the**
18 **following:**

19
20 **(A) Improvements to transit;**

21
22 **(B) Road improvements to an arterial that would also require an exception but that**
23 **would have a lesser impact on accepted farm and forest practices;**

24
25 **(C) Transportation system or demand management actions or techniques.**

26
27
28 **OPTION B**

29
30 **(5) Notwithstanding the prohibitions in subsections (2) through (4) of this rule, a**
31 **county may amend its comprehensive plan or land use regulations as they apply to**
32 **lands in urban reserves, rural reserves or both to allow a transportation facility that**
33 **requires an exception to Goals 3, 4, 11, or 14 provided the amendment meets the**
34 **requirements of subsections (a) through (c) of this section:**

35
36 **(a) The amendment is consistent with the applicable requirements of OAR 660-012-**
37 **0070;**

38
39 **(b) The transportation facility would meet a regional transportation need and either:**

40
41 **(A) The need for the transportation facility is identified in a concept plan authorized**
42 **by section (7) of this rule or in a regional transportation plan described in OAR 660-**
43 **012-0015; or**

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1 **(B) The need, function and mode for the facility are included in the appropriate**
2 **transportation system plan, with a refinement plan that complies with OAR 660-012-**
3 **0025(3);**

4
5 **(c) For a proposed road improvement, the need cannot reasonably be accommodated**
6 **by any one or any combination of the following:**

7
8 **(A) Improvements to public or private transit;**

9
10 **(B) Road improvements that do not require an exception, or road improvements to**
11 **an arterial that would also require an exception but that would have a lesser impact**
12 **on accepted farm and forest practices;**

13
14 **(C) Transportation system or demand management actions or techniques.**

15
16
17 ***OPTION C: The same as OPTION B or C above, but add an additional requirement to***
18 ***subsection (5)(c) as follows:***

19
20 **(D) Road improvements that do not require an exception, or road improvements to**
21 **an arterial that would also require an exception but that would have a lesser impact**
22 **on accepted farm and forest practices and on the protection of important natural**
23 **landscape features on the subject property or nearby properties;**
24

25

26 **ISSUE 3 – Alteration or expansion of existing (currently acknowledged) exceptions in**
27 **urban or rural reserves.**

28
29 **OPTION A**

30
31 **(6) Notwithstanding the prohibition in subsection (3) of this rule, a county may**
32 **amend its comprehensive plan or land use regulations as they apply to a property**
33 **subject to an exception to Goals 3 or 4 or both that was acknowledged prior to**
34 **designation of the subject property as urban or rural reserves in order to authorize**
35 **an alteration or expansion of an existing use provided:**

36
37 **(a) The alteration or expansion would not have a greater adverse impact on**
38 **surrounding lands, and**

39
40 **(b) The amendment conforms to applicable requirements for amending an exception**
41 **and all other applicable laws.**

42 **(57)** Counties, cities and Metro may adopt and amend conceptual plans for the eventual
43 urbanization of urban reserves designated under this division, including plans for eventual

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1 provision of public facilities and services, roads, highways and other transportation
2 facilities, and may enter into urban service agreements among cities, counties and special
3 districts serving or projected to serve the designated urban reserve area.

4 (~~68~~) Metro shall ensure that lands designated as urban reserves, considered alone or in
5 conjunction with lands already inside the UGB, are ultimately planned to be developed in a
6 manner that is consistent with the factors in OAR 660-027-0050.

7 **(9) In addition to the definitions in OAR 660-027-0010, the definitions in OAR 660-**
8 **012-0005 apply to this rule.**

9

10 **660-027-0080**

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

12 *[Rule 0080 not proposed to change]*

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 27

URBAN AND RURAL RESERVES IN THE PORTLAND METROPOLITAN AREA

DRAFT 2 – OPTIONS FOR RULE AMENDMENTS

August 20, 2010

For consideration by LCDC at a public hearing on September 2, 2010

Proposed new words **are underlined in bold**, deletions are [~~struck and bracketed~~]

1 [Note: No changes are proposed for rules in this division, at OAR 660-027-0000] ...

2 **660-027-0010**

3 **Definitions**

4 [Note: The department provided formal notice indicating that LCDC may consider new
5 or changed definitions in OAR 660-027-0000. However, no changes to definitions in this
6 rule are suggested. Instead, the department suggests that, if LCDC agrees to adopt new
7 or amended definitions for terms used in the options described in OAR 660-027-0070,
8 new definitions should be included as part of the rules at 0070 rather than in this (0010)
9 collection of definition applicable to the entire division 27]

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

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

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

21 (3) "Intergovernmental agreement" means an agreement between Metro and a county
22 pursuant to applicable requirements for such agreements in ORS 190.003 to 190.130,
23 195.025 or 197.652 to 197.658, and in accordance with the requirements in this division
24 regarding the designation of urban and rural reserves and the performance of related land
25 use planning and other activities pursuant to such designation.

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

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

- 1 (6) "Important natural landscape features" means landscape features that limit urban
2 development or help define appropriate natural boundaries of urbanization, and that
3 thereby provide for the long-term protection and enhancement of the region's natural
4 resources, public health and safety, and unique sense of place. These features include, but
5 are not limited to, plant, fish and wildlife habitat; corridors important for ecological, scenic
6 and recreational connectivity; steep slopes, floodplains and other natural hazard lands;
7 areas critical to the region's air and water quality; historic and cultural areas; and other
8 landscape features that define and distinguish the region.
- 9 (7) "Public facilities and services" means sanitary sewer, water, transportation, storm water
10 management facilities and public parks.
- 11 (8) "Regional framework plan" means the plan adopted by Metro pursuant to ORS
12 197.015(17).
- 13 (9) "Rural reserve" means lands outside the Metro UGB, and outside any other UGB in a
14 county with which Metro has an agreement pursuant to this division, reserved to provide
15 long-term protection for agriculture, forestry or important natural landscape features.
- 16 (10) "UGB" means an acknowledged urban growth boundary established under Goal 14
17 and as defined in ORS 195.060(2).
- 18 (11) "Urban reserve" means lands outside an urban growth boundary designated to provide
19 for future expansion of the UGB over a long-term period and to facilitate planning for the
20 cost-effective provision of public facilities and services when the lands are included within
21 the urban growth boundary.
- 22 (12) "Walkable" describes a community in which land uses are mixed, built compactly,
23 and designed to provide residents, employees and others safe and convenient pedestrian
24 access to schools, offices, businesses, parks and recreation facilities, libraries and other
25 places that provide goods and services used on a regular basis.

26 *[NOTE: No changes are proposed for rules in this division at 0020 and 0030] ...*

27 **660-027-0040**

28 **Designation of Urban and Rural Reserves**

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

34 (2) Urban reserves designated under this division shall be planned to accommodate
35 estimated urban population and employment growth in the Metro area for at least 20 years,
36 and not more than 30 years, beyond the 20-year period for which Metro has demonstrated a

- 1 buildable land supply inside the UGB in the most recent inventory, determination and
2 analysis performed under ORS 197.296. Metro shall specify the particular number of years
3 for which the urban reserves are intended to provide a supply of land, based on the
4 estimated land supply necessary for urban population and employment growth in the Metro
5 area for that number of years. The 20 to 30-year supply of land specified in this rule shall
6 consist of the combined total supply provided by all lands designated for urban reserves in
7 all counties that have executed an intergovernmental agreement with Metro in accordance
8 with OAR 660-027-0030.
- 9 (3) If Metro designates urban reserves under this division prior to December 31, 2009, it
10 shall plan the reserves to accommodate population and employment growth for at least 20
11 years, and not more than 30 years, beyond 2029. Metro shall specify the particular number
12 of years for which the urban reserves are intended to provide a supply of land.
- 13 (4) Neither Metro nor a local government may amend a UGB to include land designated as
14 rural reserves during the period described in section (2) or (3) of this rule, whichever is
15 applicable.
- 16 (5) Metro shall not re-designate rural reserves as urban reserves, and a county shall not re-
17 designate land in rural reserves to another use **except as provided in OAR 660-027-0070**
18 during the period described in section (2) or (3) of this rule, whichever is applicable.
- 19 (6) If Metro designates urban reserves under this division it shall adopt policies to
20 implement the reserves and must show the reserves on its regional framework plan map. A
21 county in which urban reserves are designated shall adopt policies to implement the
22 reserves and must show the reserves on its comprehensive plan and zone maps
- 23 (7) If a county designates rural reserves under this division it shall adopt policies to
24 implement the reserves and must show the reserves on its comprehensive plan and zone
25 maps. Metro shall adopt policies to implement the rural reserves and show the reserves on
26 its regional framework plan maps.
- 27 (8) When evaluating and designating land for urban reserves, Metro and a county shall
28 apply the factors of OAR 660-027-0050 and shall coordinate with cities, special districts
29 and school districts that might be expected to provide urban services to these reserves
30 when they are added to the UGB, and with state agencies.
- 31 (9) When evaluating and designating land for rural reserves, Metro and a county shall
32 apply the factors of OAR 660-027-0060 and shall coordinate with cities, special districts
33 and school districts in the county, and with state agencies.
- 34 (10) Metro and any county that enters into an agreement with Metro under this division
35 shall apply the factors in OAR 660-027-0050 and 660-027-0060 concurrently and in
36 coordination with one another. Metro and those counties that lie partially within Metro
37 with which Metro enters into an agreement shall adopt a single, joint set of findings of fact,
38 statements of reasons and conclusions explaining why areas were chosen as urban or rural

1 reserves, how these designations achieve the objective stated in OAR 660-027-0005(2),
2 and the factual and policy basis for the estimated land supply determined under section (2)
3 of this rule.

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

12 *[NOTE: No changes are proposed for rules in this division at 0050 and 0060] ...*

13 **660-027-0070**

14 **Planning of Urban and Rural Reserves**

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

18 (2) In order to maintain opportunities for orderly and efficient development of urban uses
19 and provision of urban services when urban reserves are added to the UGB, counties shall
20 not amend comprehensive plan provisions or land use regulations for urban reserves
21 designated under this division to allow uses that were not allowed, or smaller lots or
22 parcels than were allowed, at the time of designation as urban reserves until the reserves
23 are added to the UGB, **except as specified in Sections (4) through (6) of this rule.**

24 (3) Counties that designate rural reserves under this division shall not amend
25 comprehensive plan provisions or land use regulations to allow uses that were not allowed,
26 or smaller lots or parcels than were allowed, at the time of designation as rural reserves
27 unless and until the reserves are re-designated, consistent with this division, as land other
28 than rural reserves, **except as specified in Sections (4) through (6) of this rule.**

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

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

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

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

4 (d) Uses and land divisions that are allowed by state statute or administrative rule at the
 5 time of the designation of urban and rural reserves;
 6

7 **ISSUE 1- Options regarding plan or zoning amendments from one resource**
 8 **designation to another (such as EFU to Forest or *vice versa*, including amendments to**
 9 **or from mixed farm/forest).**

10 **OPTION A**

11 **(e) A comprehensive plan or zoning amendment from one farm or forest designation**
 12 **to another farm or forest designation consistent with other applicable law.**

13 **OPTION B**

14 **(e) A comprehensive plan or zoning amendment from one farm or forest designation**
 15 **to another farm or forest designation consistent with other applicable law, and**
 16 **provided that the number of dwellings and land divisions that could be allowed as a**
 17 **result of the amendment is not increase relative to the number allowed before the**
 18 **amendment.**

19 **OPTION C**

20 ***Either OPTION B or OPTION C above, but add at the end: ... and provided the***
 21 **amendment will not adversely effect the protection of any important natural**
 22 **landscape features that were the basis for the “rural reserve” designation of the area.**

23 **OPTION D**

24 **Make no change to the rules regarding this issue.**

26 **ISSUE 2 - Options for discussion regarding future proposals for transportation**
 27 **improvements that require an exception (usually to Goal 3, 4, 11, or 14), in rural or**
 28 **urban reserves, or both.**

30 **OPTION A**

31
 32 **(5) Notwithstanding the prohibition on exceptions for transportation uses in**
 33 **subsections (2) through (4) of this rule, a county may amend its comprehensive plan**
 34 **or land use regulations as they apply to lands in urban reserves, rural reserves or**

1 **both to allow a transportation facility that requires an exception to Goals 3, 4, 11, or**
2 **14 provided the amendment meets the requirements of subsections (a) through (d) of**
3 **this subsection:**

4
5 **(a) The amendment is consistent with the applicable requirements of OAR 660-012-**
6 **0070;**

7
8 **(b); The transportation facility would meet a regional transportation need, and the**
9 **need for the transportation facility is identified in the regional transportation system**
10 **plan (RTSP) adopted by Metro as provided in OAR 660-012-0015.**

11
12 **(c) The need, function, mode and general location for the facility are included in the**
13 **appropriate transportation system plan, with a refinement plan that complies with**
14 **OAR 660-012-0025(3); and**

15
16 **(d) For a proposed road improvement consistent with (a) through (c) of this section,**
17 **the need cannot reasonably be accommodated by any one or any combination of the**
18 **following:**

19
20 **(A) Improvements to transit;**

21
22 **(B) Road improvements to an arterial that would also require an exception but that**
23 **would have a lesser impact on accepted farm and forest practices;**

24
25 **(C) Transportation system or demand management actions or techniques.**

26
27 **OPTION B**

28
29 **(5) Notwithstanding the prohibitions in subsections (2) through (4) of this rule, a**
30 **county may amend its comprehensive plan or land use regulations as they apply to**
31 **lands in urban reserves, rural reserves or both to allow a transportation facility that**
32 **requires an exception to Goals 3, 4, 11, or 14 provided the amendment meets the**
33 **requirements of subsections (a) through (c) of this section:**

34
35 **(a) The amendment is consistent with the applicable requirements of OAR 660-012-**
36 **0070;**

37
38 **(b) The transportation facility would meet a regional transportation need and either:**

39
40 **(A) The need for the transportation facility is identified in the regional transportation**
41 **system plan (RTSP) adopted by Metro as provided in OAR 660-012-0015 or in a**
42 **concept plan authorized by section (7) of this rule; or**

43
44 **(B) The need, function, mode and general location for the facility are included in a**
45 **county transportation system plan and a refinement plan that complies with OAR**
46 **660-012-0025(3); and**

(c) For a proposed road improvement, the need cannot reasonably be accommodated by any one or any combination of the following:

(A) Improvements to public or private transit;

(B) Road improvements that do not require an exception, or road improvements to an arterial that would also require an exception but that would have a lesser impact on accepted farm and forest practices;

(C) Transportation system or demand management actions or techniques.

OPTION C: The same as OPTION B or C above, but add a different requirement for subsection (5)(c) paragraph (B) as follows:

(B) Road improvements that do not require an exception, or road improvements to an arterial that would also require an exception but that would have a lesser impact on accepted farm and forest practices and on any important natural landscape features that were the basis for the “rural reserve” designation of the area.

OPTION D

Make no change to the rules regarding this issue.

ISSUE 3 – Alteration of existing (currently acknowledged) exceptions in urban or rural reserves.

OPTION A

(6) Notwithstanding the prohibition in subsections (3) and (4) of this rule a county may amend its comprehensive plan or land use regulations as they apply to land in a rural reserve that is subject to an exception to Goals 3 or 4, or both, acknowledged prior to designation of the subject property as rural reserves, in order to authorize an alteration or expansion of uses allowed on the land under the exception provided:

(a) The alteration would comply with the requirements of ORS 215.296, whether the land is zoned for farm or forest use, and

(b) The amendment conforms to applicable requirements for exceptions and amendments to exceptions under OAR 660, division 004, and all other applicable laws.

OPTION B

1 **The same as OPTION A but also add: ..., and**

2
3 **(c) The amendment would not expand the boundaries of the exception area unless**
4 **such expansion is necessary in response to a failing on-site wastewater disposal**
5 **system.**

6
7 **OPTION C**

8 **Make no change to the rules regarding this issue.**

9

10 **ISSUE 4 – Authorization for a Goal 11 exception in order to allow sewer service to**
11 **rural lands in order to prevent a health hazard.**

12
13 **OPTION A**

14
15 **(6) Notwithstanding the prohibitions in subsections (2) through (4) of this rule, a**
16 **county may amend its comprehensive plan or land use regulations as they apply to**
17 **lands in urban reserves or rural reserves or both in order to allow establishment of a**
18 **new sewer system, the extension of sewer lines, or the extension of sewer systems as**
19 **provided under OAR 660-011-0060.**

20 **(57)** Counties, cities and Metro may adopt and amend conceptual plans for the eventual
21 urbanization of urban reserves designated under this division, including plans for eventual
22 provision of public facilities and services, roads, highways and other transportation
23 facilities, and may enter into urban service agreements among cities, counties and special
24 districts serving or projected to serve the designated urban reserve area.¹

25 **(68)** Metro shall ensure that lands designated as urban reserves, considered alone or in
26 conjunction with lands already inside the UGB, are ultimately planned to be developed in a
27 manner that is consistent with the factors in OAR 660-027-0050.²

28 **(9) In addition to the definitions in OAR 660-027-0010, the definitions in OAR 660-**
29 **012-0005 apply to this rule. NOTE: This provision is proposed only if the commission**
30 **chooses to adopt one of the options under ISSUE 2, above.**

31 **OPTION B**

32 **Make no change to the rules regarding this issue.**

33 *[Rule 0080 not proposed to change]*

¹ Numbering changes may not be needed, or may be different than shown here, depending on whether LCDC amends this rule in response to Issues 1 through 4, above.

² See footnote 1, above

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 195.141 & 197.040

Stats. Implemented: ORS 195.137 - 195.145

Hist.: LCDD 1-2008, f. & cert. ef. 2-13-08; LCDD 3-2010, f. 4-29-10, cert. ef. 4-30-10

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]

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 as urban or rural reserves in the Portland Metro region.

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

September 2, 2010	9:00am	635 Capitol Street, Basement Hearing Room Salem, OR 97301	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; 0040; 0070

REPEAL:

Stat. Auth.: ORS 197.040; 195.145.

Other Auth.: Statewide planning goals (OAR 660, div 15) 3, 4, 5, 12 and 14.

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

RULE SUMMARY

The proposed amendments would modify rules under OAR 660, division 27, that currently prohibit counties and Metro from amending the current designations of urban or rural reserves, and from amending the counties' comprehensive plans to allow new uses that were not allowed at the time of the reserves designations. The proposed rule amendments may expand the limited exceptions to these prohibitions to allow:

(1) certain additional types of transportation facilities that are normally only allowed in urban areas; (2) other comprehensive plan amendments to allow new uses, including amendments that require an exception to a statewide planning goal; (3) plan amendments to allow new uses that are authorized by future judicial decisions, statutory changes, or rule changes. In addition, the proposed rules would amend OAR 660-027-0040 to clarify that the rule addresses future changes to the Metro urban growth boundary and to the Metro and county reserve designations, rather than other plan amendments.

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.

September 2, 2010

Last Day for Public Comment

	Richard Whitman	7/15/2010
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

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:** September 2, 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 modify rules under OAR 660-027-0010, 0040, and 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 amendments to rules under OAR 660-027-0010, 0040, and 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 to enable certain uses of land that were not allowed when the reserves designations were made. The uses would still not be allowed unless a county or Metro approved a plan amendment, which amendments are subject to strict state standards.

List of rules amended: OAR 660-027-0010, 0040; 0070

Materials and labor costs increase or savings: The proposed rules may authorize plan amendments that would otherwise be prohibited. Such plan amendments might include amendments to allow additional housing to be developed.

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

Land costs increase or savings: The proposed rules would not be expected to increase 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 at this time based on available information.

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

PREPARERS NAME: Richard Whitman, DLCD

EMAIL ADDRESS: richard.whitmant@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

August 2, 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 Amendments to Rules Concerning Metro Reserves

Enclosed are revised notices announcing that the Land Conservation and Development Commission (LCDC) is considering amendments to administrative rules regarding implementation of urban and rural reserves in the Portland Metro area. The proposed amendments to rules under OAR 660-027-0070 would modify rule provisions that currently prohibit counties from making certain amendments to plans and land use regulations applied to areas designated as urban or rural reserves. The proposed amended rules would continue most restrictions on future amendments to plans and land use regulations in reserves, but would authorize certain future amendments related to:

- Regional roads and other transportation facilities
- Changing farm zoning to forest zoning, or forest zoning to farm zoning, and
- Changing allowed uses on rural parcels currently zoned industrial, residential or commercial under a previously authorized "exception" to farmland and/or forest land protection rules.

LCDC will hold a public hearing to consider the proposed rule amendments in Salem on September 2, 2010. The meeting, which includes other agenda items, will begin at 8:30 a.m. at the Agriculture Building, 635 Capitol Street NE, Salem. Interested persons may address LCDC concerning the proposal at that time, or may provide written comments. Written comments are encouraged, and will be accepted until the close of the hearing. After completion of public testimony, LCDC may amend these rules, and if so, the amendments would become effective upon filing with the Secretary of State approximately September 20, 2010. A draft and other information about the proposed rules is posted on DLCD's website at: <http://www.oregon.gov/LCD/rulemaking.shtml>

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. 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.

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

Copies:

Sen. Dingfelder
Rep. Kreiger
Rep. Jenson
Rep. Bentz

Sen. Atkinson
Rep. Riley
Rep. Smith

Rep. Clem
Rep. Cannon
Rep. Read

Enclosures



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

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

August 2, 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 regarding urban and rural reserves in the Portland Metro area. The proposed amendments to rules under OAR 660-027-0070 would modify provisions that currently prohibit counties from making certain amendments to plans and land use regulations currently applied to areas designated as urban or rural reserves. The proposed amended rules would continue most restrictions on future amendments to plans and land use regulations in reserves, but would authorize certain future amendments related to:

- Regional roads and other transportation facilities
- Changing farm zoning to forest zoning, or forest zoning to farm zoning, and
- Changing allowed uses on rural parcels currently zoned industrial, residential or commercial under a previous "exception" to LCDC's farmland and/or forest land protection requirements.

LCDC will hold a public hearing to consider the proposed rule amendments in Salem on September 2, 2010. The meeting, which includes other agenda items, will begin at 8:30 a.m. at the Agriculture Building, 635 Capitol Street NE, Salem. Interested persons may address LCDC concerning the proposal at that time, or may provide written comments. Written comments in advance are encouraged, and comments received prior to 20 will be attached to the packet of materials mailed to LCDC in advance of the hearing. Written comments will be accepted until the close of the hearing on September 2, 2010.

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. Fax comments to 503-378-5518.

After completion of public testimony on September 2, LCDC may adopt amendments to these rules. If so, the amendments would become effective upon filing with the Secretary of State approximately September 20, 2010. A draft and other information about the proposed rules and the process leading up to the proposal is posted on DLCD's website at: <http://www.oregon.gov/LCD/rulemaking.shtml>

If you have questions about the proposed rule amendments and this rule amendment process, please contact Bob Rindy at (503) 373-0050 Ext. 229; email bob.rindy@state.or.us.

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: Amendments to rules (OAR 660, division 27) regarding land designated urban or rural reserves in the Portland Metro region.

Statutory Authority: ORS 197.040; 195.145

Other Authority: Statewide Planning Goals (OAR 660, div 15) 3, 4, 5, 12 and 14

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

Need for the Rule(s): These rules are necessary to clarify what new uses of land will be allowed in areas designated as urban reserves by Metro, and as rural reserves by Multnomah, Clackamas, or Washington counties. OAR 660, division 27, currently prohibits counties from making amendments to their comprehensive plans to allow new uses of land within areas designated as urban or rural reserves in the Portland Metro area (with limited exceptions). The proposed rule amendments would expand the exceptions somewhat; and also clarify that lands designated as rural reserves must retain that designation over the entire period of the designation (fifty years).

The proposed rule amendments may expand the limited exceptions to these prohibitions to allow: (1) certain additional types of transportation facilities that are normally only allowed in urban areas; (2) other comprehensive plan amendments to allow new uses, including amendments that require an exception to a statewide planning goal; (3) plan amendments to allow new uses that are authorized by future judicial decisions, statutory changes, or rule changes. In addition, the proposed rules would amend OAR 660-027-0040 to clarify that the rule addresses future changes to the Metro urban growth boundary and to the Metro and county reserve designations, rather than other plan amendments.

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, 12, 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.

The proposed amendments 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

STATEMENT OF NEED AND FISCAL IMPACT

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

respect to transportation facilities, the proposed rule amendments may enable additional uses of land designated as urban or rural reserves. At the same time, however, such uses (if approved by local government) could have negative economic impacts on resource uses (agriculture and forestry).

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, particularly lands designated as urban or rural reserves, may be affected by the amended rules. The proposed rules would give counties and Metro somewhat greater authority to allow local plan amendments that could allow new uses. These plan amendments, however, would still be subject to stringent approval standards and may not be allowed by local government. The 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 determined at this time. Economic interests will most likely be affected in a positive way by these new rules, because the amended rules generally increase the range of potential uses of land designated as urban or rural reserves.

Administrative Rule Advisory Committee consulted? Yes.

If not, why?

Signer and Date

Richard Whitman, Director

Printed name



Metro Urban and Rural Reserves Rules Advisory Committee

2010 Participants

<u>Name</u>	<u>Organization</u>
Marilyn Worrix	Land Conservation and Development Commission – Workgroup Chair
Richard Benner	Metro
Brent Curtis	Washington County
Scott Pemble /Dan Chandler	Clackamas County
Chuck Beasley	Multnomah County
Pat Ribellia / Alwin Turiel	City of Hillsboro
Jonathan Harker / Stacy Humphrey	City of Gresham
Bob Clay	City of Portland
Bryan Brown	City of Canby
Jim Johnson	Oregon Department of Agriculture
Mary Kyle McCurdy	1000 Friends of Oregon
Steve Pfeiffer	Metro Homebuilders Association
Dave Van Asche	Washington County Farm Bureau
Kelly Ross	Commercial Real Estate Economic Coalition (CREEC)
Jim Labbe	Audubon Society of Portland
Ann Glaze/Pat Zimmerman	Citizen Involvement Advisory Committee

Jeff Stone	Oregon Association of Nurseries
Elaine Smith	Oregon Department of Transportation
David Morman	Oregon Department of Forestry
Michael Williams	Business Oregon

Staff

Richard Whitman	Director
Bob Rindy	Policy Analyst
Casaria Tuttle	Rules Coordinator
Steve Shipsey	Assistant Attorney General
Jennifer Donnelly	Regional Representative

Attachment G Transportation Facilities Outside UGBs And Exceptions Requirements

This information is intended to provide background for the reserves workgroup with respect to the process and standards for approving transportation facilities and other public facilities outside UGBs. The attached chart lists types of transportation and other public facilities that are allowed by law and by rule, either outright, conditionally, or through a goal exception. Currently, urban and rural reserve rules for the metro region (OAR 660, division 27) prohibit future plan or land use regulation amendments to authorize an exception.

This summary is based on statutes, LCDC rules for farm and forest land and for public facilities, and LCDC's Transportation Planning Rules (the TPR). Metro's Regional Transportation System Plan (RTSP) sets out a near term and long term system of transportation facilities and services to meet identified regional transportation needs. Even when included in that plan, transportation facilities and uses developed outside UGBs must generally be approved by a local government (usually a county) in accordance with state laws and LCDC rules.

LCDC's rules (OAR 660, division 12) state that a "Transportation Facility" means any physical facility that moves or assist in the movement of people or goods, excluding electricity, sewage and water systems. ODOT's rules (OAR 731, division 15) define "Transportation Facility" as "A facility and all of its parts which are used for conveying and managing the transportation of people and goods. It includes all associated structures and alterations that are necessary to protect public safety and mitigate the environmental effects of a transportation facility." In general, transportation facilities include at least the following:

- Highways, intersections and interchanges,
- Arterials and collectors,
- Local streets and street connections,
- Bike and pedestrian facilities,
- Mass transit, bus and passenger rail service lines and terminals,
- Waterway transportation facilities,
- Major regional pipelines and terminals.
- Public use airports,
- Railroad facilities, including mainline and branchline railroads.
- Port facilities.

A "public facility" includes water, sewer, and transportation facilities, but does not include buildings, structures or equipment incidental to the direct operation of those facilities (OAR 660, division 11).

Attachment A is a chart showing the transportation and public facility uses allowed outside UGBs. The additional information below pertains primarily to transportation facilities and improvements. **Attachment B** is LCDC's Transportation Planning Rules (TPR).

I. Transportation Uses outside UGBs allowed without Goal exceptions

Many transportation facilities and uses are allowed outside UGBs (on rural lands) without a goal exception, as follows:

A. Uses allowed by state law in farm zones

ORS 215.213 (1) (for Washington County) and 215.283(1) (for other counties) allow the following as outright uses on EFU land:

- Climbing and passing lanes within the right of way existing as of July 1, 1987
- 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.
- Temporary public road and highway detours that will be abandoned and restored to original condition or use at such time as no longer needed.
- 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 215.213 (2) (for Washington County) and 215.283(2) (for other counties) allow the following as conditional uses on EFU land:

- 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.
- 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.

ORS 215.213 (10) (for Washington County) and 215.283(3) (for other counties) provide that “Roads, highways and other transportation facilities and improvements not allowed [conditionally or outright, as described above] 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) [Compliance with] ORS 215.296.¹

B. Uses allowed on rural lands under the TPR without an exception:

Section 0065 of the TPR lists transportation improvements that may be permitted on rural lands without a goal exception. Under those rules, the following types of transportation

¹ ORS 215.296 requires that a conditional use in an EFU zone may only be approved if it does not force a significant change in farm or forest practices, or significantly increase the cost of farm or forest practices, on surrounding lands devoted to farm or forest use.

facilities may be allowed outside a UGB without goal exceptions²:

- (a) Transportation improvements that are allowed or conditionally allowed on farmland by ORS 215.213, 215.283 or OAR chapter 660, division 6 (Forest Lands);
- (b) Accessory transportation improvements for a use that is allowed or conditionally allowed on EFU by ORS 215.213, 215.283 or on forest land by OAR chapter 660, division 6;³
- (c) Realignment of roads not otherwise allowed under subsection (a) or (b) of this section. In some limited situations, the TPR allows realignments as well as new local roads on rural lands without a goal exception. Realignment occurs when the existing roadway is retained for a minor property access function;⁴
- (d) Replacement of an intersection with an interchange;
- (e) Channelization (in addition to that which may be otherwise allowed under subsections (a) or (b) above);⁵
- (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.⁶;
- (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 branch lines;
- (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

² As noted below, Section 0070 describes how local governments can justify exceptions for transportation facilities. Exceptions are required for any transportation facility or improvement on rural lands that is not allowed under the terms of 0065.

³ "Accessory Transportation Improvements" means "transportation improvements that are incidental to a land use to provide safe and efficient access to the use"

⁴ "Realignment" means rebuilding an existing roadway on a new alignment where the new centerline shifts outside the existing right of way, and where the existing road surface is either removed, maintained as an access road or maintained as a connection between the realigned roadway and a road that intersects the original alignment. The realignment shall maintain the function of the existing road segment being realigned as specified in the acknowledged comprehensive plan

⁵ "Channelization" means the separation or regulation of conflicting traffic movements into definite paths of travel by traffic islands or pavement markings to facilitate the safe and orderly movement of both vehicles and pedestrians. Examples include, but are not limited to, left turn refuges, right turn refuges including the construction of islands at intersections to separate traffic, and raised medians at driveways or intersections to permit only right turns. "Channelization" does not include continuous median turn lanes

⁶ "Access Roads" means low volume public roads that principally provide access to property or as specified in an acknowledged comprehensive plan. "Collectors" means public roads that provide access to property and that collect and distribute traffic between access roads and arterials or as specified in an acknowledged comprehensive plan

- (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.

(5) Alternatives Test for Certain Improvements 0065(5)

Section 0065(5) effectively establishes an “alternatives” test for several of the facilities or improvements that are allowed in 0065. Section 0065(5) requires that local government/counties evaluate “build/design” alternatives. Procedurally, the local governments may apply 0065(5) through a conditional use process. However, these requirements may also be addressed through adoption of a transportation system plan or a refinement plan.

- (5) For transportation uses or improvements listed in subsections (3)(d) to (g) and (o) of this rule within an exclusive farm use (EFU) or forest zone, a jurisdiction shall, in addition to demonstrating compliance with the requirements of ORS 215.296:
- (a) Identify reasonable build design alternatives, such as alternative alignments, that are safe and can be constructed at a reasonable cost, not considering raw land costs, with available technology. The jurisdiction need not consider alternatives that are inconsistent with applicable standards or not approved by a registered professional engineer;
 - (b) Assess the effects of the identified alternatives on farm and forest practices, considering impacts to farm and forest lands, structures and facilities, considering the effects of traffic on the movement of farm and forest vehicles and equipment and considering the effects of access to parcels created on farm and forest lands; and
 - (c) Select from the identified alternatives, the one, or combination of identified alternatives that has the least impact on lands in the immediate vicinity devoted to farm or forest use.

II. Rural Transportation authorized by exception to statewide planning goals

Section 0070 of the TPR outlines requirements for justifying goal exceptions (see attachment). Exceptions for transportation facilities require:

- A showing of “need”. Note, the requirements for Transportation System Plans under the TPR also require a showing of “Transportation Needs”. This is not necessarily the same as or sufficient for the “need” showing under an exceptions.
- A demonstration that there are no “alternatives” – that the transportation need cannot reasonably be met by other measures that do not require a goal exception;
- Consequences: A showing that the impacts from the selected alternative are not significantly more adverse than those associated with other options that also require a goal exception; and
- Mitigation: The exception needs to identify the adverse effects that the proposed use would have on rural lands and uses and include facility design and land use measures to offset these effects – including measures which protect rural lands from conversion to urban use,

B. Transportation Reasons (or “Need”) Exceptions

A basic requirement for a goal exception is a demonstration of reasons why the applicable policy in the goals cannot be applied. Reasons for exceptions for roadway improvements must be based on meeting transportation needs as provided for in Section 0030 of the TPR⁷. Needs relevant might include: state, regional and local transportation needs (0030(1)(a)) and (c) needs for movement of goods and services to support industrial development planned for pursuant to OAR 660-09 (Economic Development.)

Local governments should calculate traffic volumes associated with planned land uses. Data and analysis presented in a transportation system plan should provide a basis for this evaluation. Estimates of state and regional needs should be coordinated with needs identified in the relevant state and regional plans – most likely the Oregon Highway Plan and the Metro Transportation System Plan.

Possible reasons based on transportation needs might include:

- Growth in traffic volume
- High volumes of heavy truck traffic

Estimates of truck traffic based on uses to be located within the UGB need to be consistent with Economic Opportunities Analysis included in the city’s acknowledged comprehensive plan. Alternatively, the region might revise and update that analysis to determine the need for specific uses and their associated traffic generating characteristics in more detail. Fundamentally, assumptions in the traffic analysis about expected trip generation must be consistent with the uses that are planned for in the comprehensive plan. The traffic analysis should, for example, assume a high traffic-generating use only to the extent that such a use is identified as a likely prospect in the Economic Opportunities Analysis and regions’ planning and zoning authorize and reserve sites for such a use.

Assessing Need for a Direct Arterial Connection: One of the arguments in support of a proposed exception may be that it would provide for a direct connection and extension between major highways, such as I-5 to SH 99W. In such a case, the goal exception would need to carefully assess whether there is a need for a continuous high-volume, higher speed arterial-level connection, or, alternatively, whether the identified need could reasonably be met by a slightly less direct route on using lower order streets. The goal exception and supporting transportation analysis should include a careful examination of this question. If through movements are modest, needs may reasonably be met by a slightly less direct route, rather than a direct, continuous arterial connection.

⁷ "Transportation Needs" means estimates of the movement of people and goods consistent with acknowledged comprehensive plan and the requirements of this rule. Needs are typically based on projections of future travel demand resulting from a continuation of current trends as modified by policy objectives, including those expressed in Goal 12 and this rule, especially those for avoiding principal reliance on any one mode of transportation. OAR 660-012-0005(32)

B. Alternatives

To justify a goal exception, the supporting analysis must show that the transportation need cannot reasonably be met by other measures that do not require a goal exception.

To justify an exception, the city/county must show that non-exception alternatives to meeting needs are not reasonable based on cost, operational feasibility, economic dislocation or other relevant factors. In considering these factors, the local government must adopt and justify thresholds for determining whether an alternative is reasonable or unreasonable. For example, if a particular non-exception alternative is judged to be too expensive, the exception must include and explain the basis for assessing what level of cost is “unreasonable”.

The Department has the following observations and recommendations for conducting this analysis:

- It should be understood that non-exception alternatives, by their nature, generally do not perform as well as exception alternatives. It is generally less expensive and more expeditious to build a new road across farmland than to either widen an existing roadway or make improvements to the street system within an urban growth boundary. The fact that exception alternatives perform better though, is not the standard for approving goal exceptions. Non-exception alternatives are preferred if they perform reasonably well in meeting the identified need.
- Non-exception alternatives must be described with sufficient specificity to allow a general understanding of where they would be located, how they would operate and what impacts they could create. The evaluation of non-exception alternatives should seek to make each of the alternatives as workable and reasonable as possible. As noted above, making roadway improvements through developed areas involves a degree of impact to affected homes and businesses. A broad-brush analysis of a road widening alternative can create the appearance of potentially significant impacts. However, when road improvements are made in urban areas, they are typically carefully aligned and designed to minimize impacts and complement rather than harm adjoining homes and businesses.
- In assessing non-exception alternatives, the city/county should take care to incorporate reasonable design and mitigation measures that would make non-exception alternatives as workable as possible. As a practical matter this is an iterative process: the city/county should outline major alternatives, then identify their apparent deficiencies or shortcomings, and then assess what modifications to design or alignment (or addition of mitigating measures) might lessen or offset the perceived disadvantages while trying to maintain most or all of its fundamental functionality.
- In evaluating what measures are reasonable as options, the city/county should consult with ODOT about experience with similar roadway or highway improvement projects in communities around Oregon. Other built projects effectively provide on-the-ground evidence of what constitutes a reasonable practice in terms of acceptable cost, community dislocation, or compromises to optimal transportation access or mobility. (For example, ODOT regularly grants itself “design exceptions” to its preferred

Specific Factors DLCD suggests each of these factors should be considered in developing a goal exception.

- Impacts on farm or forest land and uses
- Impacts on existing development and neighborhoods along the route
- Parcelization of Land, including farmland, forest land, industrial land.

C. Consequences

Once reasons are established and non-exception alternatives are determined to be unreasonable, the exception must assess and compare alternative locations for the proposed highway improvement that would require a goal exception. Approval of an exception requires a showing that the impacts from the selected alternative are not significantly more adverse than those associated with other options that also require a goal exception.

To meet this test, the exception should identify a range of reasonable corridors or alignments for the proposed roadway and then identify any apparent differences in terms of economic, social, environmental or energy consequences. Factors typically included in this analysis include: impact on farm operations (including dividing a farm operation or removing farm buildings or improvements, or altering drainage or access), impacts on higher value wetlands, loss of high value soils, likely indirect or secondary impacts in terms of pressure for conversion of rural lands to more intense use.

Detailed analysis is only needed to the extent that there are potentially significant differences between the options. Again, the standard for approval is not selection of an alternative with the least impacts, but only an alternative that does not have “significantly more adverse” effects than other alternatives also requiring an exception. To the extent that all of the individual options are comparable, detailed analysis to satisfy this requirement is not needed.

D. Compatibility Measures

Where the preceding tests are met (i.e. reasons, non-exception alternatives, and consequences) the exception needs to include measures which protect rural lands from conversion to urban use. The exception needs to identify the adverse effects that the proposed use would have on rural lands and uses and include facility design and land use measures to offset these effects.

⁸ Local governments should also consider that transportation practice nationally is evolving to favor “context sensitive” design for highway improvements, which recognizes that roadway design should be varied to address and support the surrounding land uses. Applying context sensitive design principles to farming areas suggests that roadway design should strongly favor elements that support and encourage continued farm use of adjoining lands and safe movement of farm vehicles and equipment.

Adverse effects that should be considered include:

- Direct loss/displacement of farmland to road right of way
- Division of farm operations – increasing need to move equipment across or along roadways
- Division of farm fields into shapes or sizes that are difficult to efficiently manage
- Creating conflicts with movement of farm vehicles or equipment – by increasing speed or volume of nonfarm traffic on a rural road or highway
- Increasing accessibility of farm land to nearby urban areas, increasing the potential and pressure for conversion of farm land to nonfarm uses that are allowed in EFU zones.

Conversion of farmland to more intense uses due to accessibility provided by new facilities or improvements is a major concern. These concerns can be addressed through a combination of access management controls or land use controls (such as overlay zones) that preclude more intense uses on farmland. For new local roads, accessibility impacts can generally be accomplished with through purchase of access rights or easements limiting access to adjoining roadways to access for “farm use” only as that term is defined in statute. For new arterials or state highways, access control should include complete access control – without intermediate roadway connections to adjoining rural lands.

	Transportation Facilities on Farmland
<p>ORS 215.283(1) (permitted transportation uses)</p>	<ul style="list-style-type: none"> • (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.
<p>ORS 215 283(2) (conditional transportation uses)</p>	<ul style="list-style-type: none"> • (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.
<p>ORS 215.283(3) & OAR 660-012-0065(3) (permitted subject to additional requirements of TPR)</p>	<p>(3) The following transportation improvements are consistent with Goals 3, 4, 11, and 14 but also subject to the requirements of LCDC's Transportation Planning Rules (TPR):</p> <ul style="list-style-type: none"> • (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) (see first two boxes above); • (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

	<p>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.</p> <ul style="list-style-type: none">• (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;• (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 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. <p>(5) For transportation uses or improvements listed in subsections (3)(d) to (g) and (o) of this rule within an exclusive farm use (EFU) or forest zone, a jurisdiction shall, in addition to demonstrating compliance with the requirements of ORS 215.296:</p> <ul style="list-style-type: none">• (a) Identify reasonable build design alternatives, such as alternative alignments, that are safe and can be constructed at a reasonable cost, not considering raw land costs, with available technology. The jurisdiction need not consider alternatives that are inconsistent with applicable standards or not approved by a registered professional engineer;• (b) Assess the effects of the identified alternatives on farm and forest practices, considering impacts to farm and forest lands, structures and facilities, considering the effects of traffic on the movement of farm and forest vehicles and equipment and considering the effects of access to parcels created on farm and forest lands; and• (c) Select from the identified alternatives, the one, or combination of identified alternatives that has the least impact on lands in the immediate vicinity devoted to farm or forest use.

	Transportation Facilities on Forestland (see OAR 660-012-065 (above))
<p>660-006-0025 (Forest land Uses Conditionally allowed)</p>	<p>(2) (c) Physical alterations to the land auxiliary to forest practices including, but not limited to, those made for purposes of exploration, mining, commercial gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities ("auxiliary" means a use or alteration of a structure or land which provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.)</p>
<p>Allowed outright</p>	<p>(3)c) Local distribution lines (e.g., electric, telephone, natural gas) and accessory equipment (e.g., electric distribution transformers, poles, meter cabinets, terminal boxes, pedestals), or equipment which provides service hookups, including water service hookups; (d) Temporary portable facility for the primary processing of forest products; (4)(l) Water intake facilities, related treatment facilities, pumping stations, and distribution lines; (m) Reservoirs and water impoundments; (u) Expansion of existing airports; (v) Public road and highway projects as described in ORS 215.213(2)(q) through (s) and (10) and 215.283(2)(p) through (r) and (3);</p>
<p>Allowed subject to the review standards in section (5)</p>	<p>(5) A use authorized by section (4) of this rule may be allowed provided the following requirements or their equivalent are met. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands: (a) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands; (b) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and (c) A written statement recorded with the deed or written contract with the county or its equivalent is obtained from the land owner which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules for uses authorized in subsections (4)(e), (m), (s), (t) and (w) of this rule. (6) Nothing in this rule relieves governing bodies from complying with other requirement contained in</p>

	the comprehensive plan or implementing ordinances such as the requirements addressing other resource values (e.g., Goal 5) which exist on forest lands.	
Transportation facilities that require an exception		
OAR 660-012-0070	(1) Transportation facilities and improvements which do not meet the requirements of OAR 660-012-0065 require an exception to be sited on rural lands.	



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August 8, 2006

TO: Joint OTC-LCDC Transportation Subcommittee

FROM: Robert Cortright, Transportation Planning Coordinator

SUBJECT: ADDITIONAL GUIDANCE ON THRESHOLDS FOR GOAL EXCEPTIONS

Summary

The recent Court of Appeals and LUBA decisions regarding the Newberg Dundee Bypass interpret Section 0070 of the TPR to give local governments' broad discretion to set thresholds. They also effectively allow the volume to capacity (v/c) standards in the Oregon Highway Plan (OHP) to be used as a 'safe harbor' threshold for goal exceptions for state highway projects. The department believes that these decisions allow local governments to adopt thresholds that would result in rejecting potentially reasonable alternatives. Consequently, the department recommends that Section 0070 be amended to provide additional guidance on setting thresholds to assure that thresholds more accurately define situations where non-exception alternatives are unreasonable.

Additional amendments to the TPR to address this issue are warranted for several reasons:

- There is significant potential for additional goal exceptions. Many local governments considered projects requiring goal exceptions as part of their TSPs. Local interest in these projects continues and is likely to result in pressure to consider exceptions as TSPs are updated. The court cases are significant because they will be viewed as making it easier to get exceptions approved.
- The OHP v/c standards are, in some situations, not a good measure of whether non-exception alternatives "reasonably" meet identified transportation needs.
- While other policies in the Oregon Highway Plan (such as the major improvements policy and the bypass policy) and funding constraints affect planning for goal exceptions, they are in some situations unlikely to prevent inappropriate exceptions from being approved.
- Allowing additional goal exceptions where there are potentially reasonable alternatives would have undermine sound land use and transportation planning because it would (1) allow conversion of resource land; (2) discourage or preclude implementation of reasonable alternatives to meet transportation needs; (3) result in pressure for additional land use changes that take advantage of capacity provided by planned exception improvements.

Background Information

Background information on this issue is included in two attachments to this memo.

Attachment 1 is relevant portions of the department's staff report on proposed TPR amendments for the February 2006 meeting. The report responds to a request from the Commission at its December 2005 meeting asking that the department assess the implications of the LUBA and Court of Appeals decisions in *1000 Friends of Oregon v. Yamhill County*. Key points about the exceptions process, thresholds and the court decisions are summarized in this memo.

Attachment 2 is a summary and listing of adopted and proposed goal exceptions for transportation facilities compiled by the department. The department conducted a review of draft and adopted transportation system plans, and post-acknowledgement plan amendments to identify situations where exceptions for transportation improvements have been either adopted or considered for adoption.

Key Points on the Exceptions Process, Thresholds, and *Yamhill County* Decisions

Goal 2 Exceptions Process

- The exceptions process is intended as a balancing test to guide decisions to authorize uses that are not otherwise allowed by the applicable statewide planning goals. For exceptions for transportation improvements on rural lands, an exception involves weighing transportation needs against state policies in Goals 3, 4, 11 and 14 to protect resource land and promote efficient urban development.
- A key test in the exceptions process is to demonstrate that non-exception options for meeting the identified transportation need are unreasonable.
- In general, the "reasonableness" standard recognizes that non-exception alternatives may not perform as well or may cost more than alternatives that require exceptions. Consequently, the test is not whether or not a non-exception alternative costs more or performs worse, but whether or not it "reasonably" meets the identified need.
- Applied to transportation projects, the reasonableness test recognizes that meeting transportation needs by building roads and other improvements in urban areas will be more expensive than building new roads on farmland and that the resulting improvements may perform less well but nonetheless "reasonably" meet the identified transportation need.

Exceptions Thresholds

- Thresholds are yardsticks for measuring whether non-exception alternatives are reasonable or unreasonable.
- The TPR calls for setting thresholds for three factors: operational feasibility, cost and economic dislocation. Local governments may also set thresholds for other relevant

- Failure to meet any adopted threshold allows an alternative to be considered "unreasonable". For example, if an alternative meets two thresholds but fails a third, it may be rejected as unreasonable.
- While local governments must "justify" thresholds, the rule provides little if any guidance on how local governments are to justify thresholds.

LUBA and Court of Appeals Decisions

- The outcome of the LUBA and Court cases is that local governments have broad discretion to set thresholds. While thresholds must be "justified", there are no clear limits or standards on what level of justification is required.
- In particular, the LUBA and court decisions upheld use of the OHP v/c standards as a threshold. DOJ's advice is that local governments will fairly interpret these decisions as making use of OHP v/c standards essentially a safe harbor threshold for goal exceptions for improvements to state highways.

Possible Additional Guidance on Justifying Goal Exception Thresholds

DLCD suggests that the TPR be amended to clarify how goal exception thresholds should be justified. As noted above, thresholds are, in essence, used to measure whether a transportation solution is reasonable or unreasonable. Additional guidance in the rule would more clearly tie setting of thresholds to the reasonableness standard in Goal 2 and describe factors to be considered as thresholds are justified. Possible rule amendments to accomplish this objective are outlined below.

Amend 0070(6) as follows:

- (6) To determine the reasonableness of alternatives to an exception under sections (4) and (5) of this rule, cost, operational feasibility, economic dislocation and other relevant factors shall be addressed. The thresholds chosen to judge whether an alternative method or location cannot reasonably accommodate the proposed transportation need or facility must be justified in the exception. The purpose of thresholds required by this section is to define levels of performance or impact that make a non-exception alternative "unreasonable" for purposes of Goal 2 and 197.712.

Add a new Subsection 0070(6)(d) as follows:

- (d) In justifying thresholds local governments shall:
 - (A) recognize that the exceptions process is intended to give preference to non-exception alternatives that would reasonably meet identified transportation needs and that such alternatives generally include a combination of measures not requiring goal exceptions,

including improvements to existing roads and streets, new roadways not requiring a goal exception and other measures including transportation demand management and transportation system management measures;

- (B) recognize that non-exception transportation solutions that perform less well and cost more or have greater impacts than exception alternatives are nonetheless reasonable except where the difference in performance, cost or other impact is clearly excessive or disproportionate to the long-term impacts of the proposed exception on farm and forest lands and compact urban development;
- (C) recognize that anticipated funding for transportation improvements falls significantly short of needs identified in TSPs and, that projected transportation needs in many areas of the state will not be fully met, and consequently, that alternatives that do not fully meet adopted performance or operational standards will be necessary and reasonable to address transportation needs for many communities for the foreseeable future;
- (D) consider as “potentially reasonable”, non-exception alternatives that are allowable under the Oregon Highway Plan, including adoption of alternative mobility standards and approval of deviations to adopted design or operational standards;
- (E) consider as "reasonable" levels of cost, economic dislocation and other factors that have been incurred in comparable situations and for comparable projects in other communities in the state;
- (F) give preference to implementation of cost-effective minor improvements and other improvements not requiring a goal exception consistent with the Oregon Highway Plan major improvement policy; and,
- (G) for projects in the vicinity of metropolitan areas, give preference to non-exception alternatives that include integrated land use and transportation plans that support compact mixed use development patterns.

Reasons Additional Guidance is Needed

DLCD believes additional guidance is needed for several reasons:

1. There is significant potential for additional goal exceptions.

There are a large number of projects where local governments have in the past expressed interest in goal exceptions. DLCD identified more than 40 projects that were considered in TSPs but not adopted that would require goal exceptions. (See Attachment 2). Several factors make it likely local governments will reconsider these or similar projects:

- *Communities will be updating their TSPs.* Local governments that adopted TSPs before 2000 will be extending the planning period out another 5 to 10 years – i.e. to 2025 or 2030. As TSPs are updated more roadway and highway segments will be projected to approach or exceed v/c standards, rekindling interest in projects requiring goal exceptions.

- *Projects requiring exceptions often have significant local support.* For the affected communities, major roadway improvements are seen as effective ways to increase economic development opportunities or to remedy growing traffic congestion or safety problems. And, as traffic volumes grow and congestion worsens, interest in pursuing these projects is likely to increase.
 - *There is a perception that major highway improvements will be paid for by state or federal funds, for example, through Congressional earmarks.* This creates pressure for exceptions because getting a project “in the plan” is a key step in getting in line for funding for both detailed environmental studies and project construction.
 - *Non-exception options are often difficult or controversial.* Options to a new road or highway across rural land generally involve a combination of smaller actions such as widening existing roads, extending or connecting local streets, changing land use, and in larger communities, promoting alternatives through land use changes, transit, and transportation demand management measures. These measures are often controversial because of neighborhood or community impacts or because they must be paid for by local taxpayers.
2. In some situations, the v/c standards in the Oregon Highway Plan OHP are not a good measure of whether non-exception alternatives are unreasonable

As noted above, the LUBA and court decisions effectively make the OHP v/c standards a ‘safe harbor’ threshold for goal exceptions. For several reasons, the OHP v/c standards are not always a good measure of whether non-exception alternatives are unreasonable.

- *Use of the OHP v/c standards as a threshold allows solutions that come close but do not quite meet v/c standards to be rejected as unreasonable.* Non-exception alternatives to major highway improvements usually involve a combination of lesser improvements within urban growth boundaries –such as widening existing highways and streets, improved traffic management, land use, transit and alternative modes, etc.) The nature of these solutions is that they meet some but not all of the identified transportation need.
- *In many situations it won’t be possible to meet the OHP v/c standards because we won’t have sufficient funding to build needed improvements.* In short, funding constraints will make it increasingly necessary to accept as “reasonable” solutions that don’t fully meet the OHP v/c standards.¹ This is especially likely in and around metropolitan and other large urban areas where there is also pressure for bypasses, new roads and new interchanges.
- *The OHP mobility policy allows for solutions that do not meet v/c standards.* The v/c standards are part of the OHP mobility policy. The policy recognizes that v/c standards are not always attainable and should be compromised when there are other valid public

¹ A major concern expressed by stakeholders in the TPR evaluation was that v/c standards in the OHP are not attainable, have unintended and undesired effects on land use planning and need to be changed to be made more realistic. (See Attachment 1, February 2006 LCDC Report, page 16-17)

policy considerations.² In effect, the OHP recognizes that there are situations where v/c standards are not an appropriate minimum standard for defining whether transportation needs are reasonably met. It seems logical that state land use policies to avoid impacts on farmland or urban growth containment should receive the same consideration. ODOT has in some situations adopted solutions that do not meet the mobility standards in the OHP.³

3. Other policies, including the Oregon Highway Plan major improvements policy and the bypass policy and funding constraints, are unlikely to prevent inappropriate projects from moving forward.

ODOT staff have suggested that amendments to the TPR are unnecessary because other policies in the OHP, funding constraints, and other factors make it unlikely that unjustified exceptions will move forward. The table below outlines other policies that apply to transportation projects

Other Policies that would Potentially Limit Goal Exceptions	
<i>Other Policies</i>	<i>DLCD Comment</i>
1. In 2005, the OTC relaxed its OHP mobility standards for most urban highway segments with speeds of 35 mph or less.	This is a positive change. However, it is not clear that this would make a significant difference in whether non-exception alternatives are more likely to be considered. (Reviewed in Attachment 1)
2. OHP mobility standards include provisions for designation of Special Transportation Areas (STA) that operate at higher congestion levels.	These provisions <u>allow</u> STA designations.
3. The OHP includes provisions for local governments to ask the Oregon Transportation Commission for alternative mobility standards. The OTC has approved these alternative mobility standards in the Portland Metro area and in Medford. They have also been discussed as an option in the Eugene/Springfield area, though no formal request has been made to the OTC.	DLCD agrees that adoption of alternative mobility standards should be considered as potentially reasonable alternative to a goal exception. However, the OHP does not local government to consider or use alternative standards. Local governments are often unsupportive, especially where they perceive that alternative standards would reduce the likelihood that a desired major improvement will be planned. In the setting criteria for evaluating alternatives for the Highway 97/20 project in Bend, ODOT staff declined to consider alternative mobility standards as a possible threshold for meeting needs.
4. Even where local governments might justify an exception using OHP mobility standards, and even where funding was potentially available, other OHP policies may prevent local governments from including bypasses or new interchanges in their TSPs. a. OHP Policy G directs ODOT to improve system efficiency before adding more capacity or new facilities. b. OHP Policy H requires that new bypasses be consistent with Policy G and include management	DLCD supports the identified policies. Fundamentally department does not believe either policy is intended as a substitute for the goal exception process to assess whether there are “reasonable” alternatives. Our experience is that neither the Major Improvements Policy (1G) nor the Bypass policy (1H) have been applied in a way to preclude or dissuade a local government from pursuing or approving a goal exception. In planning for the Highway 97/20 project in Bend ODOT staff have applied neither the major

² For example, Action 1F.3 of the OHP mobility policy specifically allows for solutions that do not meet its identified standards - where cost, environmental impact or community impact would be too great.

³ For example, ODOT is currently planning major improvements to I-5 in the Delta Park area in Portland. Meeting v/c standards is not a minimum standard for meeting transportation needs. In that situation, a solution that does not meet v/c standards will presumably otherwise “reasonably” meet transportation needs. ODOT policy and practice also allow for exceptions to other adopted standards for operational feasibility - such as interchange spacing standards.

plans for interchange areas that include land use measures to protect the regional and statewide mobility function of the bypass and interchanges.	improvements policy nor the bypass policy in developing or evaluating possible alternatives.
5. ODOT has not supported bypasses in several communities.	ODOTs lack of support does not prevent locals from proposing bypass or adopting a goal exception ODOT needs policy basis in plans for opposing bypasses. Current policy in form of v/c standards appears to allow locals to justify exceptions.
6. Lack of funding for major improvements also would cause exceptions relying on OHP mobility standards not to be approved.	This should be the case, but has not been to date. Funding limitations have not been a factor in justifying exceptions. Most planning efforts consider funding an implementation issue to be addressed after a decision about the needed project has been determined.
7. ODOT and DLCD participate in the development and adoption of local Transportation System Plans and have the opportunity to object to or appeal facility decisions that do not comply with state planning goals at the system planning stage.	ODOT and DLCD can and do participate, but objections must be based on goal compliance issues. Without rules clarifying how thresholds are to be set, ODOT and DLCD would generally not have a basis for arguing an exception does not comply with the statewide planning goals.

4. Allowing additional goal exceptions where there are potentially reasonable alternatives would have undesirable effects on land use and transportation planning in Oregon.

The direct impact of a lower standard for approval of goal exceptions is that more farm land and other resource land will be converted to non-resource use.

Additional exceptions will also have adverse effects on land use and transportation planning:

- More planning efforts and resources will be invested in projects that require goal exceptions. Resources devoted to these projects will be diverted from other important planning work.
- Reasonable and potentially reasonable alternatives to meet transportation needs will be rejected or not implemented. In particular, non-exception alternatives that would substantially but not completely meet projected transportation needs – including improvements to local streets, changes to land use plans, transportation demand management measures, transportation system management and other measures, will not be implemented.
- Adopted exceptions will result in pressure for additional plan and zone changes to take advantage of the capacity and accessibility that would be provided by the planned improvement.
- Additional goal exceptions would further widen the gap between planned projects and available funding. Adopted TSPs already include planned projects that significantly exceed likely transportation funding. Goal exceptions tend to be for larger, more expensive projects.

Attachments

1. DLCD Staff Report to LCDC for the February 2, 2006 LCDC Meeting, pp 16-25
2. DLCD Memo, August 8, 2006, Summary of Proposed and Adopted Goal Exceptions

Memo

TO: Metro Reserve Work Group

FROM: Katherine

SUBJECT: Proposed and Adopted Rezonings from Resource Lands in Metro Counties between 2000 and 2010

DATE: June 25, 2010

On June 9, 2010, Bob Rindy provided initial data to the work group on resource land rezonings in the three-county Metro area from 2007 to the present. In the table below, additional and more detailed data is provided on resource land rezonings, included proposed and adopted rezonings and the acreages involved, both from resource to resource use and from resource to non-resource use. Notes: the adoption data is a sub-group of proposal data. Some proposals may be missing from the table, though data on adoptions should be complete. Rezonings to industrial include mineral and aggregate overlay zones.

County	Resource to Resource Rezonings						Resource to Non-Resource Rezonings					Totals
	EFU to F	FF to F	EFU to FF	F to FF	FF to EFU	F to EFU	EFU to RR	FF to RR	F to RR	EFU/F/FF to I	EFU/F/FF to C	
Clackamas												
Proposals (acreage)	5 (216)	-	1 (75)	-	-	-	12 (600)	2 (33)	9 (297)	5 (520)	-	34 (1741)
Adoptions (acreage)	1 (15)	-	1 (75)	-	-	-	10 (563)	0	6 (205)	2 (139)	-	20 (997)
Multnomah												
Proposals (acreage)	1 (9)	-	-	-	-	-	-	-	-	-	-	1 (9)
Adoptions (acreage)	1 (9)	-	-	-	-	-	-	-	-	-	-	1 (9)
Washington												
Proposals (acreage)	4 (568)	6 (276)	-	-	3 (270)	3 (62)	1 (29)	2 (108)	-	-	-	19 (1313)
Adoptions (acreage)	3 (139)	6 (276)	-	-	3 (270)	3 (62)	0	0	-	-	-	15 (747)
Totals												
Proposals (acreage)	10 (793)	6 (276)	1 (75)	-	3 (270)	3 (62)	13 (629)	4 (141)	9 (297)	5 (520)	-	54 (3063)
Adoptions (acreage)	5 (163)	6 (276)	1 (75)	-	3 (270)	3 (62)	10 (563)	0	6 (205)	2 (139)	-	36 (1753)

Resource to Resource Rezoning Conclusions

Between 2000 and 2010, the data show 16 proposed rezonings involving 1069 acres from EFU or Farm-Forest zones to Forest Zones, 11 of which, involving 439 acres, were approved. The likeliest reason for most of these rezoning proposals was to allow for the approval of template dwellings, which are easier to approve in areas that have some development already than are non-farm dwellings. The number of template dwelling approvals compared to acreage in forest zones in 2006 and 2007 in Oregon was 62% higher than the number of non-farm dwellings approved compared to EFU and Farm-Forest zoned acreage. The rate of template dwelling approvals for the three Metro counties in 2006 and 2007 was almost 10 times what it was for non-farm dwellings, whereas the numbers approved for these two uses statewide was almost the same. The Metro numbers show the potential significance of the rezoning of EFU and Farm-Forest land to Forest.

The smaller acreages of Forest and Farm-Forest lands that were rezoned to EFU were most likely intended to facilitate the approval of uses allowed in farm but not Forest zones.

Resource to Non-Resource Rezoning Conclusions

Between 2000 and 2010, the data show 26 proposed rezonings involving 1067 acres from EFU, Farm-Forest and Forest zones to Rural Residential, of which 16 proposals involving 768 acres were approved. Five proposed rezonings of mostly EFU land to Industrial resulted in two approvals totalling 139 acres.

**Public Comment Received as of
Wednesday, August 18, 2010**

**Public Hearing and Possible Adoption: Proposed
Amendments to Rules Regarding Urban and Rural
Reserves in the Portland Metro Area (OAR 660,
division 027)**

Tuttle, Casaria R.

From: Jim Labbe [jlabbe@urbanfauna.org]
Sent: Monday, June 07, 2010 2:38 PM
To: Marilyn Worrix; Rindy, Bob
Cc: Tuttle, Casaria R.; Whitman, Richard; Donnelly, Jennifer; bragdond@metro.dst.or.us; burkholderr@metro.dst.or.us; collettec@metro.dst.or.us; harringtonk@metro.dst.or.us; hostickac@metro.dst.or.us; jordanm@metro.dst.or.us; libertyr@metro.dst.or.us; parkr@metro.dst.or.us
Subject: Portland Audubon comments on Reserve Rule changes

To: Marilyn Worrix and Metro Urban and Rural Reserves Rules Advisory Committee
From: Jim Labbe, Audubon Society of Portland
Re: Recent and potential changes to Reserves Rule

I was unable to attend the May 27 Metro Urban and Rural Reserves Rules Advisory Committee meeting on behalf of Portland Audubon. Unfortunately, I will not be able to attend the meeting now scheduled for June 10.

Therefore, I want to communicate our concerns with recent and potential changes to the reserves rules before the discussion advances further. I have summarized our concerns in four points below.

1. We share the general and specific concerns outlined by 1000 Friends in their April 15 letter to LCDC regarding the legal, policy, and practical reasons for not amending the reserves rule. Changes to the rule undermine the integrity of the recent urban and rural reserve designation process.

We request that the LCDC not make changes to the OARs adopted in 2008 unless they come with a broad consensus of stakeholders. Recent amendments requested by Washington County and adopted by LCDC also need to be revisited and revised to ensure that they do not undermine long-term protection of forestland, farmland, and important natural landscape features in rural reserves.

2. Any amendments to the reserves rules must consider the potential impacts to the long-term protection of important natural landscape features in addition to those related to the long-term protection of forest and farmland. The potential impacts of allowed uses to all three within rural reserves are similar but not identical and existing state law primarily deals with protection of forest and farm uses.

3. The recent amendments related to Goal 5 resources under 660-027-0070 are unnecessary and potentially harmful to the long-term protection of important natural landscape features in rural reserves. The changes do not appear to have been proposed to inventory and protect of natural features since nothing in the previous rule prevented Counties from doing either.

However, the changes adopted by LCDC in April appear to allow new or new Goal 5 aggregate resource mines in rural reserves. We do not believe this is consistent with long-term protection of important natural landscape features. Rural reserves designated for the protection of important natural landscape features (defined under 660-027-0010 (6)) must consider Metro's February 2007 'Natural Landscape Features Inventory' and factors identified in 660-027-0060(3). Neither the definition of important natural landscape features, Metro's 'Natural Landscape Features Inventory,' or the factors 660-027-0060(3) reference aggregate mines or extractive natural resources. We see no need to change the rule to provide for the programs to protect significant Goal 5 resources that are consistent with the long-term protection of rural reserves. Section 4(a) should be removed from the rule.

4. We are concerned that recent amendments pertaining to roads, highways, and other transportation and public facilities improvements under 660-027-0070 did not adequately consider the impacts to important natural resource features. Other administrative rules may consider the potential impacts to agricultural lands and forestlands, this rule change does not address the potential impacts jeopardizing the long-term protection of important natural landscape features. Roads and highways can have significant environmental impacts to the natural features that Metro and the Counties

designated as rural reserves in order to protect as the ecological and geographic boundaries of the region. These impacts from habitat fragmentation of habitat, invasive species, scenic resources. We believe the language adopted by LCDC on April 22 is too broad and needs to be reconsidered and narrowed in order to ensure the long-term protection of important natural landscape features in rural reserves.

We hope the Metro Urban and Rural Reserves Rules Advisory Working Group will be focus on reviewing and proposing changes to the recent rule changes by LCDC. In our view these changes were not minor with respect to how they impact the long-term protection of important natural landscape features.

Respectfully,

Jim Labbe

Jim Labbe
Urban Conservationist
Audubon Society of Portland
5151 NW Cornell
Portland, OR 97210
971-222-6112

Pledge me for Birdathon 2010 and help raise funds for Portland Audubon's Conservation, Education, and Wildlife Care Programs!

<http://audubonportland.dojiggy.com/LABBE>

Tuttle, Casaria R.

From: Jim Labbe [jlabbe@urbanfauna.org]
Sent: Monday, June 28, 2010 9:27 AM
To: Rindy, Bob
Cc: Marilyn Worrix; Tuttle, Casaria R.; Donnelly, Jennifer; Whitman, Richard
Subject: Re: FW: Portland Audubon comments on Reserve Rule changes (fwd)

Bob and Marilyn,

I would like to request that the Reserve Rule Making committee to discuss our specific concern #3 below at Thursdays meeting. Key question include:

Why was the Goal 5 language proposed by Washington County and why did LCDC deem it necessary to add to the administrative rules?

What exactly could it change with respect to zoning and allowed uses in rural reserves?

What are the implications for the long-term protection of natural landscape features as well as forest and farmland?

Jim

On Wed, 9 Jun 2010, Rindy, Bob wrote:

>
>
> Bob Rindy
>
> -----Original Message-----
> From: Jim Labbe [mailto:jlabbe@urbanfauna.org]
> Sent: Wednesday, June 09, 2010 7:35 AM
> To: bob.rindy@state.or.us
> Subject: Portland Audubon comments on Reserve Rule changes (fwd)
>
>
> To: Marilyn Worrix and Metro Urban and Rural Reserves Rules Advisory
> Committee
> From: Jim Labbe, Audubon Society of Portland
> Re: Recent and potential changes to Reserves Rule
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> I was unable to attend the May 27 Metro Urban and Rural Reserves Rules
> Advisory Committee meeting on behalf of Portland Audubon.
> Unfortunately, I will not be able to attend the meeting now scheduled for June 10.
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> Therefore, I want to communicate our concerns with recent and
> potential changes to the reserves rules before the discussion advances
> further. I have summarized our concerns in four points below.
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> 1. We share the general and specific concerns outlined by 1000 Friends
> in their April 15 letter to LCDC regarding the legal, policy, and
> practical reasons for no amending the reserves rule. Changes to the
> rule undermine the integrity of the recent urban and rural reserve designation process.
> We request that the LCDC not make changes to the OARs adopted in 2008
> unless they come with a broad consensus of stakeholders. Recent
> amendments requested by Washington County and adopted by LCDC also
> need to be revisited and revised to ensure that they do not undermine
> long-term protection of forestland, farmland, and important natural
> landscape features in rural reserves.
>
> 2. Any amendments to the reserves rules must consider the potential
> impacts to the long-term protection of important natural landscape
> features in addition to those related to the long-term protection of

> forest and farmland. The potential impacts of allowed uses to all
> three within rural reserves are similar but not identical and existing
> state law primarily deals with protection of forest and farm uses.
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> 3. The recent amendments related to Goal 5 resources under
> 660-027-0070 are unnecessary and potentially harmful to the long-term
> protection of important natural landscape features in rural reserves.
> The changes do not appear to have been proposed to inventory and
> protect of natural features since nothing in the previous rule prevented Counties from
> doing either.
> However, the changes adopted by LCDC in April appear to allow new Goal
> 5 aggregate resource mines in rural reserves. We do not believe this
> is consistent with long-term protection of important natural landscape
> features. Rural reserves designated for the protection of important
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> consider Metro's February 2007 'Natural Landscape Features Inventory'
> and factors identified in 660-027-0060(3). Neither the definition of
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> change the rule to provide for the programs to protect significant
> Goal 5 resources that are consistent with the long-term protection of
> rural reserves. Section 4(a) should be removed from the rule.
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> 4. We are concerned that recent amendments pertaining to roads,
> highways, and other transportation and public facilities improvements
> under 660-027-0070 did not adequately consider the impacts to
> important natural resource features. Other administrative rules may
> consider the potential impacts to agricultural lands and forestlands,
> this rule change does not address the potential impacts jeopardizing
> the long-term protection of important natural landscape features.
> Roads and highways can have significant environmental impacts to the
> natural features that Metro and the Counties designated as rural
> reserves in order to protect as the ecological and geographic
> boundaries of the region. These impacts from habitat fragmentation of
> habitat, invasive species, scenic resources. We believe the language
> adopted by LCDC on April 22 is too broad and needs to be reconsidered
> and narrowed in order to ensure the long-term protection of important natural landscape
> features in rural reserves.
>
> We hope the Metro Urban and Rural Reserves Rules Advisory Working
> Group will be focus on reviewing and proposing changes to the recent
> rule changes by LCDC. In our view these changes were not minor with
> respect to how they impact the long-term protection of important
> natural landscape features.
>
> Respectfully,
>
> Jim Labbe
>
> _____
> Jim Labbe
> Urban Conservationist
> Audubon Society of Portland
> 5151 NW Cornell
> Portland, OR 97210
> 971-222-6112
>
> Pledge me for Birdathon 2010 and help raise funds for Portland
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> <http://audubonportland.dojiggy.com/LABBE>
>
>



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

June 29, 2010

Marilyn Worrix, Chair
Reserve Rulemaking Work Group

Re: Proposed Rules for Transportation and other Public Facilities – Reserves

In preparing for Thursday's work group meeting, please consider the following comments in response to language proposed by Dick Benner on June 28, 2010:

#2 – Amendments to TPR (OAR 660-012-0070) improve the current text. The City of Wilsonville supports this proposed language.

#1 – Amendments to Reserves Rule. The City of Wilsonville has several concerns, including that the proposed language:

- Generally denigrates rural land uses by promoting the notion that urban development, and the infrastructure to support urban development, should take priority over rural land uses (farming) or natural resource protection. Natural resources (and natural landscape features) are not mentioned in the proposed language.
- Allows counties to take Goal exceptions for roads to serve a "local need" and Metro to take Goal exceptions for roads to serve a "regional need." This does nothing to protect farms and resource lands. Local or regional needs could be found for roads connecting Newberg to Hillsboro, Hillsboro to Helvetia, Helvetia to Sauvie Island, Sauvie Island to Vancouver, Forest Grove to North Plains, Sherwood to Wilsonville, Canby to Beavercreek, Beavercreek to Boring, Boring to Washougal, etc. If a local or regional need is found for any of those roads, there will always be a push to build them through the least expensive lands. Even if there is no money to fund the construction of such roads, having them appear in local TSPs or the Metro RTP could have a chilling effect on agricultural investments.
- Fails to distinguish the standards for urban reserves from those for rural reserves. Much has been said about setting a "higher bar" for exceptions in rural reserves, but Mr. Benner's proposal does not move in that direction at all. Wilsonville continues to object to any new roads through rural reserves that are intended to primarily serve urban needs. If the work group opts for the "higher bar" approach, however, we suggest that the

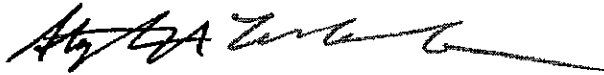


standard of review for rural reserve Goal exceptions be changed from “substantial evidence” to “clear and convincing evidence.”

Goal exceptions may be difficult, but many of us do not feel that they are difficult enough when it comes to building roads through farmlands and significant natural resource areas.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephan A. Lashbrook', with a long horizontal flourish extending to the right.

Stephan A. Lashbrook, AICP
Assistant Community Development Director
City of Wilsonville

Copies: Wilsonville Mayor Knapp and City Council

Proposed Amendments to Allow Exceptions for Roads in Reserves
(Benner 6/28/10)

1. Amend Reserves Rule 0070 as follows:

“Notwithstanding the prohibitions in subsections (2) and (3) of this rule, following a determination in a concept plan authorized by subsection (5) of this rule that a local need exists, or in a regional transportation plan described in OAR 660-012-0015 that a regional need exists, counties may amend their transportation system plans, at the time of updates pursuant to OAR 660-012-0055, as they apply to lands in urban reserves, rural reserves or both in order to allow highways or arterials by exception to Goals 3, 4, 11 or 14.”

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and

2. Amend Transportation Planning Rule 660-012-0070 as follows:

“(4) To address Goal 2, Part II(c)(1), the exception shall provide reasons justifying why the state policy in the applicable goals should not apply. Further, the exception shall demonstrate that there is a transportation need identified consistent with the requirements of OAR 660-012-0030 which cannot reasonably be accommodated through one or a combination of the following measures not requiring an exception:

- (a) Alternative modes of transportation, including public or private transit;
- (b) Transportation system and transportation demand management measures; and
- (c) Improvements to existing transportation facilities.

Deleted: Traffic

(5) To address Goal 2, Part II(c)(2), the exception shall demonstrate that non-exception locations, or improvements in other locations that do not require an exception, cannot reasonably accommodate the need to be met by the proposed transportation improvement or facility. The exception shall set forth the facts and assumptions used as the basis for determining why the use requires a location on resource land subject to Goals 3 or 4.

Tuttle, Casaria R.

From: Dave Vanasche [vanaschefarm@earthlink.net]
Sent: Wednesday, June 30, 2010 9:44 PM
To: Tuttle, Casaria R.; Tuttle, Casaria R.
Subject: RE: FW: Reserves Rulemaking language

Dear Chairperson Marryn Worrix and Rule making committee Persons:

Due to my farming schedule (Spraying fungicide on grass seed) I will be unable to attend Thursday's meeting; however I do have some comments. I do not believe we should be changing the urban- rural reserve rule at this 11th hour. These considerations should have been discussed at the original rule making committee.

I believe in no transportation exceptions in either the rural or urban reserves. Rural reserves were supposed to get added protection through this process. We're aware that using rural farm land for urban infrastructure has been a constant problem in the past. I also agree with the City of Wilsonville on this issue.

Regarding request for amending the county plan from one resource designation to another: I am not in favor.

Regarding the issue of pre-existing, non-conforming uses, such as Brent's concern about the Helvieva Tavern, schools, churches ,etc : Allow those pre-existing uses to continue as they have under current law.

If there's any questions, please give me a call at 503-969-5977.

Sincerely, Dave Vanasche

Casaria Tuttle | Rules, Records & Policy Coordinator/Asst to Deputy Director
Oregon Dept. of Land Conservation and Development
635 Capitol Street NE, Suite 150 | Salem, OR 97301-2540
Office: (503) 373-0050 ext. 322 | Fax: (503) 378-5518
casaria.r.tuttle@state.or.us | www.oregon.gov/LCD

From: Lashbrook, Stephan [mailto:lashbrook@ci.wilsonville.or.us]
Sent: Tuesday, June 29, 2010 3:05 PM
To: 'Tuttle, Casaria R.'
Cc: 'Rindy, Bob'; Richard Whitman (richard.whitman@state.or.us)
Subject: Reserves Rulemaking language

Casaria:

If possible, please circulate to work group members. I would do it myself, but I do not have all of their email addresses.

Thank you.

Stephan A. Lashbrook
AICP, LEED AP

Assistant CD Director
City of Wilsonville
Community Development
(503) 570-1560
lashbrook@ci.wilsonville.or.us

Disclosure Notice: Messages to and from this e-mail address may be subject to the Oregon Public Records Law.

Casaria Tuttle
Department of Land Conservation and Development
635 Capital Street NE
Salem, Oregon 97301

July 30, 2010

DEPT OF

AUG 06 2010

LAND CONSERVATION
AND DEVELOPMENT

Dear Ms. Tuttle;

We are adversely and dramatically impacted by the State's current interpretation of the Division 27 interpretation of State law. We have been assured by State, County, and METRO agencies that the application of Rural Reserve to our property would not restrict the rights that we now enjoy. Yet recently, we were informed that the Urban/Rural Reserve rule prohibits the granting of exceptions. While, we do not see the prohibition embodied in the law; this issue is of such great concern that it demands immediate clarification

Multnomah County, by their approved and acknowledged Comprehensive Plan encourages and directs the development of houseboats to the Multnomah Channel. This area was declared an Urban Reserve which is consistent with the County's policy and land use. However, two years ago the DLCDC came to the determination that a Marina expansion requires two State goals exceptions. The additional of houseboats requires an exception to Goal 14; Urbanization and the expansion or even the modification of the sewer system requires an exception to Goal 11; Public facilities and Services.

Rocky Pointe Marina recently acquired and agreed to comply with three goal exceptions. All other marinas will be required to follow that precedent. Yet, the state's current opinion is that goal exceptions are not possible in Rural Reserves. The consequence is the prohibition of expansion and even the upgrade of current and future marinas to meet current State and environmental standards. These marinas are in the very location the County's acknowledge plan dictates. I was involved in all the meetings and discussions of the Urban Reserve and never was there an awareness that the enactment of Rural Reserves on the marina area would result in a moratorium on marina growth and improvement.

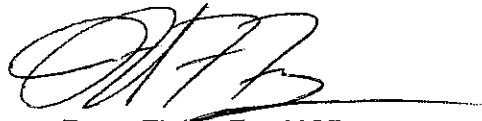
These consequences are not acceptable. Policy directs us to be here on the Multnomah Channel. The State's requirements are vague if not practical. We need to be released from this bind. Oregon State Department of Environmental Quality insists and requires that we improve our sewer systems, apparently in violation of a State land use goal. Clean rivers are an important objective for the State and our citizens. A sewer system is the only way to maintain clean rivers.

We would appreciate an opportunity to meeting with you in advance of the August 16th Working Group meeting. Please help us to resolve this situation

Sincerely,



Jan Hamer
River Bend Marina



Peter Finley Fry AICP
Consultant

Cc Bob Rindy



August 11, 2010

Ms. Casaria Tuttle
Department of Land Conservation and Development
State of Oregon
635 Capital Street NE
Salem, OR 97301

Dear Ms. Tuttle:

The Waterfront Organization of Oregon is concerned because marinas will be dramatically impacted by the DLCD current interpretation of State law. We have been assured, in the past, by State, County and Metro agencies that the application of Rural Reserve to these properties would not restrict the rights we now enjoy. However, we were recently informed that the Urban / Rural Reserve rule prohibits the granting of exceptions. Although we do not see the prohibition embodied in the law; we believe that this issue is of such great concern that it demands immediate clarification.

Multnomah County, by their approval and acknowledged Comprehensive Plan encourages and directs the development of water related facilities to specific zoned areas within county waterways. These areas were declared Urban Reserves, which is consistent with the County's policy and land use. However, two years ago the DLCD came to the determination that marina expansion requires two state goal exceptions. The addition of houseboats requires an exception to Goal 14; Urbanization, and the expansion, or even modification of a sewer, requires an exception to Goal 11; Public Facilities and Services.

Rocky Pointe Marina recently acquired and agreed to comply with three goal exceptions. All other marinas will be required to follow that precedent. However, the State's current opinion is that goal exceptions are not possible in Rural Reserves. The consequence of this position is the prohibition of expansion and even upgrade of current and future marinas to meet current State and environmental standards. These marinas are in the very location the County's acknowledged plan dictates. Our membership has been closely involved in all the meetings and discussions of the Urban Reserve and we were never made to understand that the enactment of Rural Reserves on the marina areas would result in a moratorium on marina growth and improvement.

We feel these consequences are not acceptable. Current policy clearly dictates limited usage for marina development and improvements including moorage for boats, boathouses and houseboats.

We would be happy to meet with you to explain our position and to discuss an equitable solution. Please carefully consider our concerns.

Sincerely,

Robert H. Wilson
President

Waterfront Organizations of Oregon
9626 SW 50th Street
Portland, OR 97219
503-260-2443



Memorandum

Urban Design & Planning

To: Bob Rindy, Senior Policy Analyst, DLCDC
DLCDC Metro Urban and Rural Reserves Rule Workgroup

From: Jonathan Harker, AICP, Principal Planner, Urban Design & Planning
Stacy Humphrey, AICP, Associate Planner, Urban Design & Planning

Date: August 11, 2010

Subject: Draft – Proposed Amendments August 2, 2010

What follows are our comments on the three issues in the Draft Proposed Rule Amendments dated August 2, 2010.

ISSUE 1

We favor Option A with Option C. We favor Option C because the “important natural landscape features” was a key reason for the rural reserves and should be assessed when considering any change.

While we agree with the premise of no increase in residences of Option B we think this will be very challenging to do in practice. A plan map amendment may be pursued for reasons other than a dwelling. While it may be easy to predict the likelihood of land divisions in farm or forest lands, it is more difficult to predict the likelihood of establishing a dwelling. Dwellings are not allowed outright in either farm or forest lands. The tests for establishing a dwelling don’t guarantee one. It seems like – in order to grant the PMA, the applicant would have to demonstrate through every test on farm and forest land whether or not a dwelling is likely. That is a lot of work, especially when some of the tests are dependent on the productivity of the land and the income derived from it. It may be an impossible task. The data collected by DLCDC for PMAs over the past decade show very few parcels have pursued and achieved the zone change so this likely has a relatively small impact.

ISSUE 2

We favor Option B with Option C. We favor Option C because the “important natural landscape features” was a key reason for the rural reserves and should be assessed when considering any change. However (D) should replace the language in Option B (5)(c)(B) [or Option A (5)(c)(B)] rather than being an addition to it.

We favor Option B in part because it provides more flexibility by recognizing that a needed transportation facility may be less than an arterial classification and therefore may be found in a local TSP. An example of the need for this flexibility is a collector outside the Bethany area that needs improvements to connect to Highway 26. It is on a local TSP but not the RTP. We favor the language is Option B (B) regarding road improvements "that do not require an exception" but note that similar language of Option C (D) would replace this section of Option B. We are not entirely clear about distinction of "public or private transit" in Option B. Is this to allow a high speed rail project at a federal project level as private transit? If so, could this be clarified in the rule?

ISSUE 3

We note that there is only one option which seems OK but we note that the "not have a greater adverse impact" in (a) is quite subjective. Workgroup members voiced this concern at the last meeting but with no language in the proposed rule about how this will be measured, the concern remains.

With do favor adding definitions as proposed in the draft.

Peter Finley Fry AICP Ph.D.

(503) 274-2744

2153 SW Main Street, #105, Portland, Oregon USA 97205 • Fax (503) 274-1415 • pfinleyfry@aol.com

August 12, 2010

Casaria Tuttle
Department of Land Conservation and Development
635 Capital Street NE
Salem, Oregon 97301

Dear Ms. Tuttle;

We are adversely and dramatically impacted by the State's current interpretation of the Division 27 interpretation of State law. We have been assured by State, County, and METRO agencies that the application of Rural Reserve to our property would not restrict the rights that we now enjoy. Yet recently, we were informed that the Urban/Rural Reserve rule prohibits the granting of exceptions. While, we do not see the prohibition embodied in the law; this issue is of such great concern that it demands immediate clarification

Multnomah County, by their approved and acknowledged Comprehensive Plan encourages and directs the development of houseboats to the Multnomah Channel. This area was declared Rural Reserve which is consistent with the County's policy and land use. However, two years ago the DLCDC came to the determination that a Marina expansion requires two State goals exceptions. The additional of houseboats requires an exception to Goal 14; Urbanization and the expansion or even the modification of the sewer system requires an exception to Goal 11; Public facilities and Services.

Rocky Pointe Marina recently acquired and agreed to comply with three goal exceptions. All other marinas will be required to follow that precedent. Yet, the state's current opinion is that goal exceptions are not possible in Rural Reserves. The consequence is the prohibition of expansion and even the upgrade of current and future marinas to meet current State and environmental standards. These marinas are in the very location the County's acknowledge plan dictates. We were involved in all the meetings and discussions of the Urban Reserve and never was there an awareness that the enactment of Rural Reserves on the marina area would result in a moratorium on marina growth and improvement.

These consequences are not acceptable. Policy directs us to be here on the Multnomah Channel. We need to be released from this bind. Oregon State Department of Environmental Quality insists and requires that we improve our sewer systems, apparently in violation of a State land use goal. Clean rivers are an important objective for the State and our citizens. A sewer system is the only way to maintain clean rivers.

Please help us to resolve this situation

Sincerely,

Jan Hamer
River Bend Marina

Peter Finley Fry AICP
Consultant

Cc Bob Rindy



Home of the Tualatin River National Wildlife Refuge

City of Sherwood
22560 SW Pine St.
Sherwood, OR 97140
Tel 503-625-5522
Fax 503-625-5524
www.ci.sherwood.or.us

Mayor
Keith Mays

Councillors
Dave Heironimus
Dave Grant
Linda Henderson
Leo Weislogel
Robyn Folsom
Del Clark

City Manager
Jim Patterson



2009 Top Ten Selection



2007 18th Best Place to Live



August 13, 2010

Chair of the Land Conservation and Development Commission
635 Capitol Street, Suite 150,
Salem, Oregon 97301

Re: proposed permanent rules for Metro Urban and Rural Reserves

Dear Chair and Commission members,

The City of Sherwood has been an active participant in the urban and rural reserves process. We have been monitoring the discussions of the urban and rural reserves rule work group and are writing to share our thoughts and concerns.

First, Sherwood completely respects the need to minimize impacts to natural areas and farm and forest lands. We helped establish the Tualatin River National Wildlife Refuge, provide on-going support of the non-profit organization raindrops to refuge, and have worked hard to ensure that as development occurs, floodplains are not developed and are dedicated to the public to ensure they are maintained for the public and wildlife to enjoy. That said, we also have seen the impact traffic congestion and the lack of connectivity has had on our residents and on our economic viability.

To that end, Sherwood is an active participant in regional transportation discussions, including the I-5 to 99W connector project to identify the location and type of facility to connect 99W to I-5. The recommendation from the I-5 to 99W project was to spread the traffic out among three arterials and improvements to existing intersections and transportation facilities. One of the key reasons for this recommendation, as opposed to one new limited access highway, was the concern for impacts to the resource lands. It is the southernmost element of this three arterial system that is of concern if the rules do not allow for some flexibility. While the connector process did consider impacts to resources, it is likely that some element of the entire system will require an exception. It is critical that exceptions be an option. The City accepts and supports strict limits and higher standards for an exception through rural reserves or undesignated lands but a strict prohibition has the possibility of derailing the solutions identified through the connector process.

We attended the 7/11/10 reserves rules work group and heard some say that transportation connections were not contemplated during the reserves discussion; however the connector project was started before the reserves process, was discussed concurrent with the reserves process and is included in the regional transportation plan. It is impossible to accept that people were unaware that this connection would be a possibility.

We also heard that some believe that this rule does not need to be amended at this time and can be addressed when a need is identified. We disagree. If during the course of moving the connector projects forward, it is determined that an exception is needed, the time and uncertainty added to the overall process is exponential if the rules must first be amended. The purpose of the reserves process was to provide more certainty and to allow local governments and the region to better plan for the future rather than planning through piecemeal and knee jerk reactions.

We strongly urge you to adopt the proposed updated rules to allow transportation improvements that require an exception.

Sincerely,



Julia Hajduk
Planning Manager

CC: Keith Mays, Mayor
Jim Patterson, City Manager
Tom Pessemier, Community Development Director

August 13, 2010

Christopher H. Foster
15400 NW McNamee Rd.
Portland, Or. 97231

Chairman of the Land Conservation and Development Commission
c/o Casaria Tuttle (for the Sept. 2 Hearing)

Re: Consideration of Amendments to the Urban/Rural Reserves Rules

Dear Chairman and LCDC Members,

I am prompted to write to you after reading what I see as a tremendously inaccurate piece offered to you by Peter Finley Fry and clients dated July 30. Although the letter does not specifically address the proposals before you, it treads close to the discussion of Issue #3 option A which I think needs clarification. The views expressed here are entirely my own; I represent only myself and have no financial interest nor do I live nearby.

The Peter Fry Letter

To my knowledge, there have been no public assurances that landowners will be able to continue to add urban densities to the public waterway of the Multnomah Channel after the Rural Reserve takes effect. Your commission interpreted the statute correctly earlier this year to clearly disallow new Goal 11 & 14 amendments in Rural Reserves. As a Multnomah County Planning Commissioner, I voted on August 10, 2009 to designate the lands in question Rural Reserve with that same interpretation in mind. The record will show that the Goal 11 & 14 affect was discussed publicly. The Goal exceptions are a requirement of expanding floating homes at urban density only. Other typical marina activities and maintenance of existing facilities are not affected. Mr. Fry would have you believe otherwise.

My understanding of Multnomah County policy is that we "allow" floating homes as a conditional use rather than "encouraging and directing" them. To my knowledge, nothing in the county code has ever declared the area an "urban reserve" as Mr. Fry contends. Land based dwellings are allowed a 1 per 20 acres in this zone. To a great degree, the floating home policies came out of many years where the lawful siting of floating homes was flagrantly and widely violated by marina owners. Over 15 years ago, the Board wrote policies legalizing many marinas rather than forcing innocent mortgage holding homeowners to seek new moorage where none existed.

In my view, the county's policy is woefully outdated. It precedes the 1994 clarifications to Goal 11 and the 2001 clarifications to Goal 14. Only recently have those rules been enforced. The county policies are in conflict with ESA salmon listings, policies of the Oregon Fish & Wildlife Dept on non-water dependent uses and their understanding of the Oregon Conservation Strategy. A considerable body of science has come forward in recent years regarding the negative impacts of floating homes. There was a time when periodic review would have rectified the situation. In Washington state, the Dept. of Ecology has recently gone as far as ordering the City of Seattle to ban new floating homes or show cause. The concern is largely ESA listed salmon stocks, but other wildlife resource is negatively affected too. I believe they are on the road to compliance. I also believe problems are very similar to our local situation. As a Planning Commissioner, I heartily recommended the Multnomah Channel for Rural Reserve based upon it's landscape & natural resource value and the obvious threat of a persistent and disconcerting type of urbanization on the public waterway; all in a rural area.

Issue #3 Option A

In reading the minutes of the working group, there seems to be consensus regarding the intention of Option A, though I believe the proposed wording does not clearly capture it's limitations or restrictions. The group proposes to allow amendments within the borders of existing Goal 3 & 4 exceptions areas, but not allow new ones be they Goal 3, 4 ,11 or 14. It's a far cry from what Mr. Fry and clients advocate. Their view would have you disrupt or change the statute itself, severely diminishing the meaning of a Rural Reserve. The proposal before you states:

29 *OPTION A*

30

31 *(6) Notwithstanding the prohibition in subsection (3) of this rule, a county may*
32 *amend its comprehensive plan or land use regulations as they apply to a property*
33 *subject to an exception to Goals 3 or 4 or both that was acknowledged prior to*
34 *designation of the subject property as urban or rural reserves in order to authorize*
35 *an alteration or expansion of an existing use provided:*

36

37 *(a) The alteration or expansion would not have a greater adverse impact on*
38 *surrounding lands, and*

39

40 *(b) The amendment conforms to applicable requirements for amending an exception*
41 *and all other applicable laws.*

I would propose that it be clarified to show there is no intention by the working group consensus to allow new or expanded exception areas. That means no new Goal 11 & 14 exceptions where the logic is built upon by previously acknowledged Goal 3 or Goal 4 exceptions. (6) above merely states that a county may "amend" it's plan on property subject to a previously acknowledged Goal 3 or 4 exceptions. I don't believe subsection (3) captures the problem either. The meaning of "amending it's plan" seems to leave open the possibility of adding or overlaying a new Goal 11 or 14 exception.

I propose that 6(a) be expanded to restrict the meaning of "amend" or either 6(a) be written to address the restriction specifically, reordering the current 6(a) and 6(b) to 6(b) and 6(c).

Sincerely,

Christopher H. Foster

attachments: Peter Finely Fry letter of July 30.

Peter Finley Fry AICP Ph.D.

(503) 274-2744

2153 SW Main Street, #105, Portland, Oregon USA 97205 • Fax (503) 274-1415 • pfinleyfry@aol.com

Casaria Tuttle
Department of Land Conservation and Development
635 Capital Street NE
Salem, Oregon 97301

July 30, 2010

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LAND CONSERVATION
AND DEVELOPMENT

Dear Ms. Tuttle;

We are adversely and dramatically impacted by the State's current interpretation of the Division 27 interpretation of State law. We have been assured by State, County, and METRO agencies that the application of Rural Reserve to our property would not restrict the rights that we now enjoy. Yet recently, we were informed that the Urban/Rural Reserve rule prohibits the granting of exceptions. While, we do not see the prohibition embodied in the law; this issue is of such great concern that it demands immediate clarification


Multnomah County, by their approved and acknowledged Comprehensive Plan encourages and directs the development of houseboats to the Multnomah Channel. This area was declared an Urban Reserve which is consistent with the County's policy and land use. However, two years ago the DLCD came to the determination that a Marina expansion requires two State goals exceptions. The additional of houseboats requires an exception to Goal 14; Urbanization and the expansion or even the modification of the sewer system requires an exception to Goal 11; Public facilities and Services.

Rocky Pointe Marina recently acquired and agreed to comply with three goal exceptions. All other marinas will be required to follow that precedent. Yet, the state's current opinion is that goal exceptions are not possible in Rural Reserves. The consequence is the prohibition of expansion and even the upgrade of current and future marinas to meet current State and environmental standards. These marinas are in the very location the County's acknowledge plan dictates. I was involved in all the meetings and discussions of the Urban Reserve and never was there an awareness that the enactment of Rural Reserves on the marina area would result in a moratorium on marina growth and improvement.

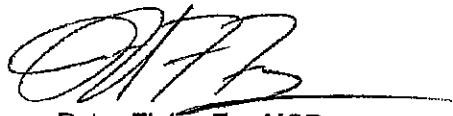
These consequences are not acceptable. Policy directs us to be here on the Multnomah Channel. The State's requirements are vague if not practical. We need to be released from this bind. Oregon State Department of Environmental Quality insists and requires that we improve our sewer systems, apparently in violation of a State land use goal. Clean rivers are an important objective for the State and our citizens. A sewer system is the only way to maintain clean rivers.

We would appreciate an opportunity to meeting with you in advance of the August 16th Working Group meeting. Please help us to resolve this situation

Sincerely,



Jan Hamer
River Bend Marina



Peter Finley Fry AICP
Consultant

Cc Bob Rindy



STEVE C. MORASCH

Admitted in Oregon and Washington

Direct Line: 360-905-1433

E-Mail: smorasch@schwabe.com

August 17, 2010

Lisa Howard
Dept. of Land Conservation and Development
635 Capital Street NE, Ste. 150
Salem, OR 97301-2540

Re: DLCD Metro Urban and Rural Reserves
Our File No.: 100730/176211

Dear Ms. Howard:

We represent Jan Hamer in his plans to redevelop the River's Bend Marina. We are submitting these comments regarding the proposed amendments to Division 27 rule regarding urban and rural reserves. After reviewing the situation, we no longer believe changes to the rule are necessary because our client's proposed marina development is allowed under the existing rule. However, we do request that no changes to the rule be made that would further limit goal exceptions on rural residential land.

1. Current Division 27 does not prohibit plan amendments *per se*. Only plan amendments that allow new uses or smaller lot sizes are prohibited.

Multnomah County implemented Division 27 by adopting Policy 6-A(6) of the County's comprehensive framework plan, which states in pertinent part: "In order to comply with applicable state rules, the county will not amend the zoning to allow new uses or increased density in rural and urban reserve areas."

The applicable state rule is OAR 660-027-0070(3), which states in pertinent part: "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."

Thus, both the state administrative rule in OAR 660-027-0070(3) and the Multnomah County Urban/Rural Reserves Ordinance Policy 6-A(6) prevent plan amendments that would allow new uses and or that would allow increasing density through smaller lot sizes. This is an

important point. The prohibition is not on plan amendments *per se*. Only plan amendments that allow new uses or smaller lot sizes are prohibited.

2. The proposed marina redevelopment is not a new use.

The proposed River's Bend marina redevelopment is not a "new use." It is an existing marina seeking to redevelop. Additionally, the acknowledged Multnomah County comprehensive plan and land use regulations allow marinas under the existing code.

The River's Bend marina property is zoned MUA-20, which is not a resource zone. Rather it is a rural residential zone. See MCC 34.2800 (one of the purposes of the MUA-20 zone is "low density residential development and appropriate conditional uses"). Residential use is a permitted outright use in the MUA-20 zone. MCC 34.2820(C).

Marinas for houseboats and boathouses are allowed as a conditional use. MCC 34.2830(B)(9). Additional criteria for approving marinas are found in MCC 34.6750-6765 and the Sauvie Island/Multnomah Channel Rural Area Plan.

Since a marina is allowed as a conditional use under the existing and acknowledged Multnomah County Comprehensive Plan and land use regulations, any goal exceptions that may be required for a particular application for a marina redevelopment would not be a goal exception that "allows new uses" and therefore would not be prohibited by Division 27.

Additionally, an applicant may apply for a Special Plan Area for a marina under the Sauvie Island/Multnomah Channel Rural Area Plan. A Special Plan Area is not required for a marina, but it is an option under the existing acknowledged plan and land use regulations to allow more flexibility for a marina redevelopment. Under MCC Section 34.5000, "The general purposes of the Special Plan Area Subdistricts are to implement the various provisions of the Comprehensive Plan . . ." This clarifies that the Special Plan Area process is a process under the existing land use regulations and zoning and does not allow "new uses."

Any plan amendments or goal exceptions filed for an application for a marina redevelopment in Multnomah County pursuant to the land use regulations and plan provisions discussed above would not be for a "new use" within the meaning of the current Division 27.

3. The proposed River's Bend marina redevelopment does not increase densities through smaller lot sizes.

Pursuant to Sauvie Island/Multnomah Channel Rural Area Plan Policy 14, the Special Plan Area for a marina shall not allow the overall density for each existing moorage/marina to exceed the existing levels. Since Sauvie Island/Multnomah Channel Rural Area Plan Policy 14 requires overall density for each existing moorage/marina that chooses to go through the Special Plan Area process to not exceed the existing levels is measured by factors such as area and length of docks and number of slips, the Special Plan Area process does not increase density through smaller lot sizes.



Lisa Howard
August 17, 2010
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The proposed redevelopment of the River's Bend Marina will occur within the existing footprint of the marina and will comply with Sauvie Island/Multnomah Channel Rural Area Plan Policy 14. Therefore, the proposed River's Bend marina redevelopment does not increase densities through smaller lot sizes.

4. Conclusion.

The proposed River's Bend marina redevelopment is not a new use that was not previously allowed, nor does it increase densities through smaller lot sizes. It is a redevelopment of an existing marina on non-resource land occurring within the existing footprint and maintaining overall densities.

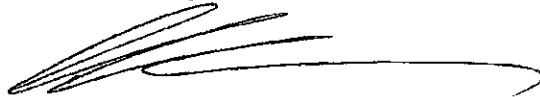
Therefore, even if the application for the River's Bend marina redevelopment requires a plan amendment, it is not the type of plan amendment that is prohibited under the current Division 27 rule.

We are not requesting any changes to the Division 27 rule, unless LCDC/DLCD disagrees with this analysis, in which case, we request that the issue be addressed as outlined in the memorandum submitted by Peter Fry.

Thank you for your consideration of this matter.

Respectfully,

SCHWABE, WILLIAMSON & WYATT, P.C.



Steve C. Morasch

SCM:dlm

cc: Mr. Jan Hamer
Peter Finley Fry, PhD AICP MUP

Wendie L. Kellington
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August 18, 2010

Via Electronic Mail
Chair Land Conservation and Development Commission
c/o Cassaria Tuttle
casaria.r.tuttle@state.or.us

Re: Proposed Amendments to Administrative Rules Regarding Metro Urban and Rural Reserves for LCDC September 2, 2010 Hearing (OAR 660-027 Amendments)

Dear Commission Chair:

This firm represents now and has represented for many years clients throughout the Portland Metro area in a variety of land use matters. We request a modest amendment to OAR 660-027-0070(4)(d) in order to clarify an ambiguity in the rule. In this regard, we suggest the following change to the existing rule as reflected in the below underlined language:

(4)(d) Uses and land divisions that are allowed or allowable through an approval process, by local land use regulations or plan provisions, state statute or administrative rule at the time of the designation of urban and rural reserves;”

Here are some compelling reasons to make this modest adjustment.

OAR 660-027-0070(2) and (3) and OAR 660-027-0070(4)(d) are unclear; no one can say with any certainty what the italicized language below in OAR 660-027-0070(2), (3) and (4) means:

- (2) In order to maintain opportunities for orderly and efficient development of urban uses and provision of urban services when urban reserves are added to the UGB, counties shall not amend comprehensive plan provisions or land use regulations for urban reserves designated under this division to allow uses *that were not allowed*, or smaller lots or parcels *than were allowed*, at the time of designation as urban reserves until the reserves are added to the UGB, **except as specified in Sections (4) through (6) of this rule.**
- (3) Counties that designate rural reserves under this division shall not amend comprehensive plan provisions or land use regulations to allow uses *that were not allowed*, or smaller lots or parcels *than were allowed*, at the time of designation as

rural reserves unless and until the reserves are re-designated, consistent with this division, as land other than rural reserves, **except as specified in Sections (4) through (6) of this rule.**”

- (4) Notwithstanding the prohibitions in sections (2) and (3) of these rules, counties may adopt or amend comprehensive plan provisions or land use regulations as they apply to lands in urban reserves, rural reserves or both, unless an exception * * * is required, in order to allow:
 - (d) Uses and land divisions *that are allowed* by state statute or administrative rule at the time of the designation of urban and rural reserves;

Many smart people think that (4)(d), above quoted, means that a use must be allowed outright to come within the exception. Others (including some within DLCD) say that “allowed” means allowed *or* allowable -- *either* allowed as of right *or* allowable through an approval process such as certain partitions, alterations or expansions of nonconforming uses, or conditional or special use permits. As it now stands, the meaning of the rule will be revealed only after expensive and time consuming litigation that is a drain for agencies, local governments and private property owners and which leaves the matter for courts to ultimately decide. However, we think that the meaning of LCDC’s own administrative rule is uniquely land use baseball well within the charge, expertise and responsibility of LCDC to clarify, not courts. Accordingly, we strongly suggest that this language should be clarified by the commission as we have suggested.

Without the suggested clarification, we feel that the proposed amendments perpetuate ambiguity rather than resolve it by specifically listing some amendments that will be allowed but excluding others. We fear that the rule as written (and as proposed), hamstring local government’s ability to amend plans and codes to comply, or otherwise deal with, new or amended statutes and rules as well as case law development for uses that are allowable but not allowed outright. We also worry that LCDC failing to act now to resolve this ambiguity, risks undermining public confidence in the land use system. Here, the media -- presumably from government sponsored press releases -- as well as governmental people -- have represented that being designated rural reserve does not forfeit a property owner’s ability to do with their property that which they could do before the rural reserve designation. Given the significant risk this is not so, there is the potential for a very large number of very unhappy citizens who

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accepted those representations as true. Thank you for the opportunity to comment.


Very truly yours,

Wendie

Wendie L. Kellington

WLK:wlk
Enclosures

CC: Richard Whitman (Via electronic mail richard.whitman@state.or.us)
Bob Rindy (Via electronic mail bob.rindy@state.or.us)

 Metro | Office of Metro Attorney

Richard P. Benner
Phone: 503-797-1532
Fax: 503-797-1792

Richard.Benner@oregonmetro.gov

August 13, 2010

Casaria Tuttle
Rules Coordinator
Department of Land Conservation & Development
635 Capitol St. NE, Suite 150
Salem, OR 97301

Subject: Rulemaking Action Reserves, 660-027-0040; 0070

Dear Ms. Tuttle:

Please accept the following comments on the proposed amendments to the reserves rules on behalf of Metro.

Exceptions for Transportation Improvements

Metro is principally interested in transportation improvements due to the pendency of two significant projects – the Sunrise Corridor and the I-5/99W Connector – each with portions that would likely lie outside the regional urban growth boundary. Neither of these projects is fully incorporated into the recently-adopted 2035 Regional Transportation Plan (RTP). Both were partially acknowledged by LCDC, however (need, mode, function), as part of the 2000 RTP and are still under consideration. A re-configuration of the Connector project that would reduce its scope to a series of arterial improvement (including a “south arterial” that would pass through reserves) is nearing consensus in the region. Both projects would require exceptions for location outside the UGB.

In addition, given the 50-year reserves period and the likelihood of significant growth in the region during those years, Metro believes it is wise to provide for the opportunity to seek an exception for regional transportation facilities not yet planned or contemplated, such as high-speed rail. For these reasons, Metro supports an amendment to the reserves rules to allow an opportunity to take an exception for these purposes.

The department’s report offers options to address exceptions for transportation improvements. Metro supports Option B (as enumerated in the August 2, 2010, draft) for the following reasons. First, it would allow an opportunity to take an exception for new regional transportation improvements. Yet, it would limit the opportunity to new facilities that serve a “regional transportation need.” Under the TPR, “regional transportation needs” are distinguished from “local transportation needs” and are characterized as follows: “needs for movement of people and goods between and through communities and accessibility to regional destinations within a

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AND DEVELOPMENT**

Ms. Casaria Tuttle
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metropolitan area, county or associated groups of counties.”¹ Second, it would require identification of such needs either in a “concept plan” for an urban reserve that may be added to the UGB, or in Metro’s RTP or a county TSP. Third, it would require that the need, mode and function of the facility be adopted as part of the RTP or TSP with a planned “refinement plan” that complies with the TPR. These provisions ensure that the exception is available only for improvements that have regional significance. Finally, it expressly requires the sponsor of the proposed facility to demonstrate why the need cannot be accommodated by an improvement to an existing facility even if that improvement would, itself, require an exception, to reduce adverse impacts to rural resources.

Sincerely,



Richard Benner
Senior Attorney

¹ OAR 660-012-0005(34)

Casaria Tuttle
Department of Land Conservation and Development
635 Capital Street NE
Salem, Oregon 97301

August 16, 2010

DEPT OF

AUG 18 2010

**LAND CONSERVATION
AND DEVELOPMENT**

RE: DLCD Metro Urban and Rural Reserves.

POSITION

Marinas are required to go through a conditional use process for the creation, substantial improvement or expansion. The DLCD determined that goal exceptions to Goal 11 (infrastructure) and 14 (urbanization). Therefore the Rural Reserve places a moratorium on any change to an existing Marina or new Marina. The reason existing Marinas do not have goal exceptions is because in 1997 when they were legalized as conditional uses through Multnomah County Policy 10; an acknowledged, by LCDC, amendment to Multnomah County's Comprehensive Plan, DLCD had not interpreted the State Law to require exceptions.

We need a narrow change that would allow water based communities to request goal exception in the Rural Reserve.

1) Work group's decision on this issue was based on procedure not substances; I.E. the issue was discovered and presented to late in the process.

Response: The affected areas proposed for Rural Reserves were not proposed until the very end of the process at the eleventh hour. Throughout the process the marinas were informed through official contact and by written METRO documents that the Rural Reserve would not affect entitled rights.

2) New, Redevelopment/Reconfiguration, or Expansion.

Response: We primarily care about Redevelopment/Reconfiguration or Expansion of the Marinas that were inventoried by Multnomah County to confirmed existing use as of July 1, 1997 and given Conditional Use approval by Multnomah County's acknowledged Comprehensive Plan amendment in 1997. The 1997 approval would require goal exceptions under the current interpretation of State law. We would agree that any changes would need to be done within the existing site.

3) Goal 11 (infrastructure).

Response: Clean water is of critical importance to our community. Septic tanks leach into the channel. All Marina's now have sewer systems not septic tanks. We serve our marinas and the traveling public. The Oregon Department of Environmental Quality requires that our sewer system are approved and upgraded to new and more stringent

August 16, 2010

requirements. Prohibition of even the right to request a goal expansion to Goal 11 creates a legal conflict between two state laws.

4) Goal 14 (urbanization).

Response: Many of these Marinas have been established for many years; some as long as fifty years. The current owners desire to improve the outdated and in some cases severely neglected Marina's to current standards. In doing so, the Marinas will comply with current and best environmental practices through review by State and Federal agencies. The local conditional use review also ensures compliance to best practices and eliminates any adverse impact to surrounding land uses.

5) DLCD Director's comment that the prohibition of requests for Goal Exceptions do not apply to existing legally established uses.

Response: We agree.

6) Applicability

Response: In the unique case of Marinas, the result of approved goal amendment is a conditional use process not a request for the amendment of a Comprehensive Plan.

OUTCOME - One of three:

1. Determination that the 1993 Multnomah County acknowledged Comprehensive Plan amendment that established all existing Marinas as conditional uses also established granted them goal exceptions to Goal 11 and 14. Or;
2. Determination that in this unique case the successful goal exception's outcome is a conditional use process not a change from one category of the Comprehensive Plan to another through an amendment. Or;
3. Rule making that allows water based uses – Marinas the right to request goal exceptions to Goals 11 and 14.

Sincerely,



Peter Finley Fry AICP

Cc Bob Rindy, DLCD



DEPT OF

August 16, 2010

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Chair, Land Conservation and Development Commission
C/O Casaria Tuttle, Rules Coordinator
635 Capital Street NE, Suite 150
Salem, OR 97301-2540

LAND CONSERVATION
AND DEVELOPMENT

Thank you for the opportunity to comment on the Draft Proposed Rule Amendments to OAR 660-027 dated August 2, 2010. In general, the City of Forest Grove supports Option B under the heading of Issue 2: "options for discussion regarding future proposals for transportation improvements that require an exception (usually to Goal 3, 4, 11, or 14), in rural or urban reserves, or both." Forest Grove supports Issue 2 Option B for the following reasons:

First, given Forest Grove's location in the Portland Region a road improvement within an urban or rural reserve could arise independent of a concept plan. The City's current TSP projects a substantial amount of traffic (5,800 ADT) from existing and future development on the west side of the community within the current UGB. It's possible that during the next 50 years the need for a transportation improvement to handle future traffic increases and avoid impacts on an existing rural community, independent of a concept plan, could arise to address a traffic circulation need. Option B comes closest out of the three options identified in addressing this concern.

Second, as noted in my previous letter dated July 28, 2010, the rules for transportation improvements in reserve areas should recognize that the Metro Regional Transportation Plan (RTP) primarily addresses areas within the urban growth boundary. Lands surrounding the Forest Grove portion of the regional growth boundary do not fall within the scope of the Metro RTP but rather the Northwest Area Commission on Transportation. As a result, a necessary road improvement to serve Forest Grove may not be identified in the Metro RTP. Option B seems to come closest to addressing this concern.

I appreciate the efforts of the Department's staff and LCDC work group in crafting a proposal intended to balance the needs of a divergent set of stakeholders.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Holan".

Jon Holan
Community Development Director