

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 1000 FRIENDS OF OREGON and  
5 WASHINGTON COUNTY FARM BUREAU,  
6 *Petitioners,*

7  
8 vs.

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10 METRO,  
11 *Respondent,*

12 and

13  
14 RYLAND HOMES, INC. and SPRINGVILLE  
15 ROAD JOINT VENTURE,  
16 *Intervenors-Respondent.*

17  
18 LUBA No. 2000-002

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20  
21 FINAL OPINION  
22 AND ORDER

23  
24 Appeal from Metro.

25  
26 Mary Kyle McCurdy, Portland, and Steven M. Claussen, Portland, filed the petition  
27 for review and argued on behalf of petitioners. With them on the brief was Williams,  
28 Fredrickson & Littlefield, PC

29  
30 Daniel B. Cooper, Larry S. Shaw, and Kenneth D. Helm, Portland, filed a response  
31 brief on behalf of respondent. Kenneth D. Helm argued on behalf of respondent.

32  
33 Jeff H. Bachrach, Portland, and Dana L. Krawczuk, Portland, filed a response brief  
34 and argued on behalf of intervenors-respondent. With them on the brief was Ramis Crew  
35 Corrigan & Bachrach, LLP

36  
37 BASSHAM, Board Chair; and BRIGGS, Board Member, participated in the decision.

38  
39 REMANDED

09/06/2000

40  
41 You are entitled to judicial review of this Order. Judicial review is governed by the  
42 provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioners appeal the adoption of an ordinance amending the Metro urban growth boundary (UGB) to include 109 acres of land zoned Exclusive Farm Use (EFU).

**MOTION TO INTERVENE**

Ryland Homes, Inc. and Springville Road Joint Venture (intervenors) move to intervene on the side of respondent. There is no opposition to the motion, and it is allowed.

**FACTS**

On March 6, 1997, Metro designated 18,000 acres of land as urban reserves, pursuant to OAR chapter 660, division 21, including 488 acres in urban reserve study area (URSA) 65.<sup>1</sup> URSA 65 is bordered on the south by the UGB and urbanized lands within the Beaverton area, and on the north, east and west by rural lands, mostly in agricultural use. 229 acres of URSA 65 are zoned EFU; the remainder are zoned for rural residential use.

The boundaries of URSA 65 are irregular, and those irregular boundaries result in three distinct areas. The center area, known as “Site 65,” is bordered by Springville Road and the UGB on the south, and on the west by a block of land within the UGB on which is located the Rock Creek Campus of Portland Community College (PCC). Site 65 consists of 109 acres of EFU-zoned land currently in agricultural use, composed of predominantly prime farm land and high-value Class II, III and IV soils. The western area, referred to in the record and here as “exception area 1,” is north and northwest of Site 65, and stretches around the northern borders of the PCC campus. Exception area 1 is almost entirely composed of lands for which an exception has been taken to Statewide Planning Goal 3 (Agricultural Lands). The eastern area, referred to in the record and here as “exception area 2,” is

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<sup>1</sup>In *D.S. Parklane Development, Inc. v. Metro*, 35 Or LUBA 516 (1999) (*Parklane I*), issued February 25, 1999, the Board remanded Metro’s 1997 urban reserve decision. LUBA’s decision was affirmed as modified by the Court of Appeals on January 12, 2000. *D.S. Parklane Development, Inc. v. Metro*, 165 Or App 1, 994 P2d 1205 (2000) (*Parklane II*).

1 bordered on the south by Springville Road and the UGB, and consists mostly of exception  
2 lands grouped around Kaiser road, which runs north from Springville Road.

3 On May 13, 1999, the Metro jurisdictional boundary was amended to include Site 65.  
4 Metro then initiated legislative proceedings and conducted a series of hearings before the  
5 Council Growth Management Committee during October 1999. On October 26, 1999,  
6 Washington County amended its comprehensive plan map and text to facilitate the  
7 urbanization of Site 65.<sup>2</sup> The amendments changed the plan designation from rural to urban,  
8 and adopted a concept plan affecting the development of Site 65. The conceptual plan would  
9 provide for approximately 700 dwelling units on Site 65. On December 9, 1999, the Metro  
10 Council conducted a hearing on the proposal to amend the UGB to include Site 65. On  
11 December 16, 1999, the Metro Council adopted Ordinance 99-812A, which amends the UGB  
12 to include Site 65.

13 This appeal followed.

#### 14 **FIRST ASSIGNMENT OF ERROR**

15 Petitioners argue that Metro misconstrued the applicable law and made a decision not  
16 supported by substantial evidence in determining that the challenged UGB expansion  
17 complies with the “need” criteria of Statewide Planning Goal 14, factors 1 and 2.<sup>3</sup> *See also*

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<sup>2</sup>Washington County’s decision was not appealed to LUBA.

<sup>3</sup>Goal 14 provides in relevant part:

“Urban growth boundaries shall be established to identify and separate urbanizable land from rural land. Establishment and change of the boundaries shall be based upon considerations of the following factors:

- “(1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
- “(2) Need for housing, employment opportunities, and livability;
- “(3) Orderly and economic provision for public facilities and services;
- “(4) Maximum efficiency of land uses within and on the fringe of the existing urban area;

1 Metro Code (MC) 3.01.020(b)(1) and (2). Petitioners explain that Metro primarily based the  
2 challenged UGB expansion on an identified *subregional* need for additional lands for  
3 housing in the Beaverton subregion to redress a local jobs/housing imbalance. In addition,  
4 Metro justified the expansion as part of its efforts to satisfy a *regional* need to expand the  
5 Metro UGB to comply with the requirement, at ORS 197.296 and 197.299, that Metro ensure  
6 that the UGB has sufficient buildable land to accommodate housing needs for 20 years.  
7 Petitioners argue that Metro erred in both identifications of need.

8 Before addressing petitioners' specific challenges to each need identification, we  
9 resolve a dispute common to both. Petitioners argue that Metro failed to give effect to Goal  
10 14, factors 1 and 2, as implemented in the Metro code, because it failed to apply both factors  
11 together to determine a regional need, and *then* derive any subregional need from the  
12 identified regional need.<sup>4</sup> According to petitioners, Metro's findings apply factor 1 as the

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“(5) Environmental, energy, economic and social consequences;

“(6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,

“(7) Compatibility of the proposed urban uses with nearby agricultural activities.”

<sup>4</sup>MC 3.01.020(b)(1) provides in relevant part:

“Factor 1: Demonstrated need to accommodate long-range urban population growth.

“(A) The district shall develop 20-year Regional Forecasts of Population and Employment, which shall include a forecast of net developable land need \* \* \*. After deliberation upon all relevant facts the district shall adopt a forecast. \* \* \* Concurrent with the adoption of the district's growth forecast, the district shall complete an inventory of net developable land, providing the opportunity for review and comment by all cities and counties in the district.

“(B) The forecast and inventory, along with all other appropriate data shall be considered by the district in determining the need for urban developable land. The results of the inventory and forecast shall be compared, and if the net developable land equals or is larger than the need forecast, then the district council shall hold a public hearing, providing the opportunity for comment. \* \* \*

“(C) If the inventory of net developable land is less than the need forecast, the district shall conduct a further analysis of the inventory to determine whether any significant

1 appropriate means to identify *regional* need, and factor 2 as the appropriate means to identify  
2 the *subregional* need. Petitioners argue that Metro thus applied factors 1 and 2 as if it could  
3 independently identify a subregional need under factor 2, without consideration of factor 1  
4 and, conversely, independently identify a regional need under factor 1, without consideration  
5 of factor 2. In *Baker v. Marion County*, 120 Or App 50, 54, 852 P2d 254, *rev den* 317 Or  
6 485 (1993), petitioners point out, the Court of Appeals held that factors 1 and 2 are  
7 interdependent, and that compliance with one factor is insufficient to show need to expand a  
8 UGB, “at least without appropriate consideration of and weight being accorded to the  
9 proposal’s failure to satisfy the other factor.” Because factors 1 and 2 are interdependent,  
10 petitioners argue, Metro must first identify and quantify a regional need after considering  
11 both factors and then, if necessary, derive and quantify a subregional need from that regional  
12 need. Instead, petitioners argue, Metro’s findings indicate that Metro is uncertain of the size  
13 of the regional need or even if further UGB amendments are necessary to satisfy that need.  
14 Petitioners contend that it is inconsistent with Goal 14 to move forward on a subregional  
15 UGB expansion without knowing the actual capacity of the existing UGB, the role the  
16 subregional need plays in the regional need, or whether any regional need exists at all.

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surplus of developable land in one or more land use categories could be suitable to  
address the unmet forecasted need. \* \* \*

“(D) For consideration of a legislative UGB amendment, the district council shall review  
an analysis of land outside the present UGB to determine those areas best suited for  
expansion of the UGB to meet the identified need.

“(E) The district must find that the identified need cannot reasonably be met within the  
UGB \* \* \*.”

MC 3.01.020(b)(2) provides in relevant part:

“Factor 2: Need for housing, employment opportunities and livability may be addressed under  
either subsection (A) or (B) or both, as described below.

“(A) For a proposed amendment to the UGB based upon housing or employment  
opportunities the district must demonstrate that a need based upon an economic  
analysis can only be met through a change in the location of the UGB. For housing,  
the proposed amendment must meet an unmet need according to statewide planning  
Goal 10 and its associated administrative rules. \* \* \*”

1 We agree with petitioners that Metro must apply and consider both factors 1 and 2 in  
2 determining “need” under Goal 14, or at least give the less determinative or unsatisfied factor  
3 “appropriate consideration” and “weight.” *Baker*, 120 Or App at 54. We also agree that it is  
4 inconsistent with Goal 14 to determine that a subregional or geographically-specific need  
5 exists without considering the role played by that need and efforts to meet it in the context of  
6 the entire UGB.<sup>5</sup> However, in this case it is not clear that Metro erred in either respect.  
7 Metro’s factor 1 and 2 considerations appear at Record 37-48. With respect to regional and  
8 subregional need, Metro found in relevant part:

9 “The need justifying the inclusion of Site 65 in the UGB is the demonstrated  
10 need to add more residential land in the Beaverton Regional Center area in  
11 order to begin correcting the jobs-housing imbalance in that area. Improving  
12 the jobs-housing balance in a subregion of the Metro region, particularly when  
13 tied to a specific Growth Concept regional center area, qualifies as a type of  
14 need that can justify a UGB amendment based on factor 2 of the Metro code  
15 [which implements Goal 14, factor 2]. \* \* \*

16 “The Economic Analysis prepared by Hobson Johnson & Associates (August  
17 1999, supplemented October 25, 1999) provides expert evidence  
18 demonstrating that there is an existing jobs-housing imbalance in the  
19 Beaverton Regional Center area, and that the imbalance is likely to continue  
20 during the next 20 years if corrective actions are not taken in a timely manner.  
21 *The report supports the conclusion that the development of approximately 700*  
22 *housing units on Site 65 is needed to help accommodate both the subregion’s*  
23 *projected share of regional growth as well as to address the specific*  
24 *subregional need for more residential land in order to achieve a more*  
25 *favorable ratio of jobs to housing for the area during the next 20 years. \* \* \**”  
26 Record 38 (emphasis added; footnote omitted).

27 “The 1999 Economic Analysis supports the findings discussed below about  
28 the subregional housing needs and the jobs-housing balance in the Beaverton  
29 Regional Center area. The current jobs-housing ratio for that study area is  
30 about 1.65, whereas the optimal, more favorable ratio for the area should be

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<sup>5</sup>As we suggested in the context of the urban reserve rule at OAR 660-021-0030, Metro can identify a subregional “jobs/housing” imbalance and, in order to redress that subregional imbalance, skew the distribution of urban reserves in the Metro region that would otherwise occur after application of the rule’s priority scheme. *Parklane I*, 35 Or LUBA at 608-09. Designation of urban reserves under the “jobs/housing” exception to the rule’s priorities cannot be done in isolation from the regional context. Similarly, a legislative UGB amendment based on a need to redress a subregional jobs/housing imbalance must be adopted in context and after appropriate consideration of regional needs.

1 1.48 jobs to each housing unit. \* \* \* To achieve the optimal jobs-housing  
2 ratio by 2020 would require adding additional land to the UGB in the  
3 Beaverton Regional Center area capable of accommodating about 4,400  
4 households[.] \* \* \* In adopting this UGB amendment, Metro is not adopting a  
5 precise number as ‘the need,’ rather, on balance, the evidence presents a  
6 persuasive demonstration that there is a sufficient need that justifies bringing  
7 some amount of land into the UGB in the subregional area. *Under any*  
8 *analysis of the evidence, adding the approximately 700 units projected for Site*  
9 *65 is a relatively small expansion in terms of addressing either the*  
10 *subregion’s minimal need for more residential land to achieve a more*  
11 *favorable jobs-housing balance and/or the need to accommodate projected*  
12 *housing demand.” Record 41-42 (emphasis added)*

13 “[T]he minimum need for the subregion will be described as the need for  
14 enough land to accommodate at least 4,400 housing units. The approximately  
15 700 units called for in the concept plan being approved as part of this UGB  
16 amendment is well within the range of that minimal need. \* \* \* [In addition]  
17 there is a subregional need to add more land to the Beaverton Regional Center  
18 area in order to be able to accommodate the subregion’s projected share of the  
19 region’s growth. That is an alternative type of subregional need that qualifies  
20 under factor 2 (and is linked to factor 1, as well) of the Metro Code to support  
21 this UGB amendment.” Record 43.

22 Thus, Metro justified the challenged expansion based on an identified subregional  
23 need for additional land to accommodate 4,400 households to redress a jobs/housing  
24 imbalance, and also upon the need for the subregion to accommodate its share of regional  
25 growth. With respect to that regional growth and regional needs, Metro found as follows:

26 “[T]he need to add [Site 65], capable of accommodating about 700 housing  
27 units, based on the subregional needs identified above, is consistent with prior  
28 Metro decisions regarding the region-wide need for more land to assure  
29 Metro’s compliance with the 20-year land supply requirements in  
30 ORS 197.296. Metro’s UGB expansion ordinances adopted in 1998 were  
31 based primarily on the data contained in the Urban Growth Report (UGR)  
32 adopted by the Metro Council in December 1997, which report determines a  
33 need exists to add sufficient land to the UGB for about 32,370 dwelling units  
34 in order to comply with ORS 197.296 and 197.299, and also on the updated  
35 evidence contained in the August 1998 Addendum to the UGR, which was  
36 considered as supportive evidence, although not formally adopted by the  
37 Metro Council as part of the official UGR. Metro added 3,527 acres to the  
38 UGB by ordinances adopted in 1998, which acreage provides capacity for  
39 approximately one-half of the regional need established by the UGR. No  
40 local jurisdiction other than Washington County with [URSA] 65 has yet  
41 amended its comprehensive plan to include zoning and a concept plan for the

1 areas brought into the UGB by the Metro decisions last year. Based on the  
2 region-wide need determination adopted in 1997, Metro would need to add  
3 enough land to the UGB in 1999 to accommodate approximately 16,700  
4 dwelling units to be in compliance with ORS 197.299(2)(b). \* \* \*” Record  
5 46.

6 The foregoing demonstrates that Metro adequately considered need under both  
7 factors 1 and 2, identified and quantified a subregional need, and considered the role that  
8 need plays in the context of the entire UGB and regional need. Although Metro’s findings  
9 discuss subregional need under factor 2, and regional need under factor 1, we see no error in  
10 doing so: the two factors are interdependent, but not identical. While the text of factors 1  
11 and 2 does not compel the dichotomy Metro ascribes to it, it is not inconsistent with that text  
12 to so interpret it. We conclude that Metro properly considered subregional need in the  
13 context of the larger regional need, and in so doing considered and gave appropriate weight  
14 to both factors.

15 We address, below, several specific arguments directed at Metro’s quantifications of  
16 the subregional and regional needs and the sources of those quantifications. For present  
17 purposes it suffices to reject petitioners’ argument that Metro must adopt precise and  
18 conclusive quantifications of those needs to satisfy factors 1 and 2. As the above-quoted  
19 findings explain, Metro did not adopt a precise number as the relevant “need”; instead it  
20 quantified the subregional and regional needs to the extent necessary to determine that  
21 sufficient need exists to justify bringing the proposed amount of land into the UGB at this  
22 time and in this place. Petitioners have not demonstrated that Metro erred in failing to  
23 provide a more definitive quantification.

24 **A. Regional Need**

25 Petitioners explain that Goal 2, Part I requires that Metro’s actions be consistent with  
26 its regional plans, such as the Urban Growth Management (UGM) Functional Plan, and that  
27 such plans shall be the basis for specific implementation measures, which in turn must be

1 consistent with those plans.<sup>6</sup> According to petitioners, Title 1 of the UGM Functional Plan is  
2 Metro’s primary policy expression of how Metro proposes to manage the UGB to  
3 accommodate future growth, consistent with the 2040 Growth Concept.<sup>7</sup> Central to that  
4 policy expression, petitioners argue, are Title 1 requirements that jurisdictions within Metro  
5 increase capacity within the UGB to meet certain “target capacities,” in order to minimize  
6 the necessity for new UGB expansions. By contrast, petitioners explain, the 1997 UGR  
7 estimates that the UGB lacks capacity for approximately 32,370 housing units that will be  
8 needed over the same time period. Petitioners point out that, in *Parklane II*, the Court of  
9 Appeals held that Metro erred in relying upon a draft version of the 1997 UGR rather than  
10 the target capacities in the UGM Functional Plan, for purposes of establishing urban reserves  
11 under OAR chapter 660, division 21. The court held that under Goal 2,

12 “The [draft UGR] is not a plan or a planning document of the kind that Goal 2  
13 contemplates. It is an informal study that, by its own terms, is not related to  
14 the designation of urban reserves and, by its own terms, is not even a ‘final’  
15 document for the purposes at which it is directed. The computation of need  
16 must be based upon the functional plan and/or Metro’s other applicable  
17 planning documents. \* \* \*” 165 Or App at 22.

18 Petitioners argue that the same reasoning applies in the present case and, because the 1997  
19 UGR is still not a planning document of the kind that Goal 2 contemplates, Metro must base  
20 its determination of need on the target capacities in the UGM Functional Plan. Petitioners  
21 concede that Metro adopted a final version of the UGR in 1997, but argue that Metro did so  
22 by resolution and not by ordinance, and thus the 1997 UGR is not a coordinated,  
23 authoritative “planning document.”

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<sup>6</sup>Goal 2 requires in relevant part that:

“City, county, state and federal agency and special district plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties and regional plans adopted under ORS Chapter 268.”

<sup>7</sup>The 2040 Growth Concept is an integrated set of goals and objectives for the Metro region, designed to achieve a desired, and generally denser, urban form by the year 2040. See *Parklane I*, 35 Or LUBA at 536.

1           In *Residents of Rosemont v. Metro*, \_\_\_ Or LUBA \_\_\_ (LUBA Nos. 99-009/010, June  
2 16, 2000), *appeal pending*, we held that Metro erred in relying on the 1997 UGR as a basis  
3 for determining need for a 1998 UGB amendment in the Stafford area of the Metro region.  
4 We rejected the respondents’ argument that Metro’s adoption of the 1997 UGR and the close  
5 relationship between the 1997 UGR and Metro’s efforts to comply with the statutory  
6 mandate to amend the UGB made that document a final “planning document of the kind that  
7 Goal 2 contemplates.” *Id.* at slip op 8-9. Petitioners argue that we should reach the same  
8 conclusion in the present case.

9           Metro and intervenors (together, respondents) respond that Metro properly relied  
10 upon the 1997 UGR, for the same reasons we rejected in *Residents of Rosemont*. However,  
11 Metro and intervenors make an additional argument not advanced by the parties in that case.  
12 Respondents explain that in December 1997 Metro adopted a Regional Framework Plan  
13 (RFP), which is essentially a master plan that incorporates and coordinates Metro’s various  
14 functional plans, including the UGM Functional Plan. The RFP sets forth and adopts the  
15 same methodology for determining population forecasts and UGB capacity that was  
16 employed in the 1997 UGR. Further, the RFP includes Table 1.1, which replicates the  
17 results of the 1997 UGR. Table 1.1 depicts the demand for residential housing over the  
18 period 1994 to 2017, sets out the current capacity of the UGB, subtracts the latter from the  
19 former, and concludes, as the 1997 UGR does, that there is a need for an additional 32,370  
20 dwelling units beyond the current UGB capacity. Metro and intervenors argue that Table 1.1  
21 represents Metro’s official estimate of demand and UGB capacity for purposes of  
22 considering future regional UGB amendments, and that Metro can rely on that estimate,  
23 because the RFP was adopted by ordinance and is a planning document coordinated and  
24 consistent with Metro’s other planning documents.<sup>8</sup>

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<sup>8</sup>Metro’s position on this point differs slightly from intervenors’. Metro’s response brief emphasizes that it is the RFP’s adoption of the *methodology* used in the 1997 UGR, not the RFP’s adoption of the *conclusions* of

1           Petitioners reply that it is inappropriate to use the 1997 UGR capacity figures, even as  
2 reflected in the RFP, because those figures conflict with the target capacities set forth in the  
3 UGM Functional Plan, which petitioners emphasize is Metro’s policy vehicle for  
4 accommodating growth. To use the UGR capacity figures assumes the failure of Metro’s  
5 policies, petitioners argue, and thus undermines those policies. Basing UGB expansion  
6 decisions on the UGR figures rather than the UGM Functional Plan target capacities,  
7 petitioners argue, undercuts regional efforts to accommodate growth by increasing capacity  
8 within the existing UGB rather than through expansions of the UGB. Finally, petitioners  
9 contend that if Metro wants to use the 1997 UGR figures because those figures give a more  
10 pertinent and accurate estimate of UGB capacity than the UGM Functional Plan target  
11 capacities, then Metro should be required to use the *updated* UGR, which Metro adopted by  
12 resolution in 1999. According to petitioners, the 1999 update shows no remaining deficit in  
13 the UGB’s housing capacity, after taking into account several 1998 UGB amendments and a  
14 recalculation of the buildable lands supply related to different assumptions regarding  
15 mandatory streamside setbacks. Petitioners argue that Metro’s adoption of the 1999 update  
16 acknowledges that the 1997 UGR is a work-in-progress rather than a “final” document as  
17 respondents contend. Petitioners point out that Metro sought and obtained approval from the  
18 Land Conservation and Development Commission (LCDC), based on the adopted 1999  
19 update, to defer compliance with future statutorily-mandated UGB expansions until even  
20 *further* revisions to the 1997 UGR are made. Thus, petitioners argue, even if Metro need not  
21 rely on the UGM Functional Plan, it is error to rely on the 1997 UGR rather than the recent

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the 1997 UGR, that is significant here. We understand Metro to argue that it can rely directly upon the conclusions in the 1997 UGR because that document uses the same methodology for calculating UGB capacity and need authorized by the RFP, and that it need not rely upon the conclusions regarding UGB capacity and need adopted in the RFP. To the extent that is Metro’s position, we reject it. If Metro adopts an estimate of UGB capacity and need in a Goal 2-coordinated planning document, then subsequent Metro UGB decisions must be based on and consistent with that estimate. *Parklane II*, 165 Or App at 22. In any case, if Metro is correct that it can rely upon estimates of UGB capacity and need based on the *methodology* in the RFP, and need not rely upon the *conclusions* in the RFP, it would seem to follow that, as petitioners argue below, Metro must rely upon the most current application of that methodology, *i.e.*, the 1999 update to the UGR.

1 1999 update.

2 Metro's findings in the present case are based on the conclusion in the 1997 UGR  
3 that there is a need for 32,370 housing units over the 20-year planning horizon, and not on  
4 the same conclusion in the RFP. Nonetheless, Metro may respond to challenges to its  
5 findings by citation to the record or advancing arguments in its brief. *Residents of Rosemont*,  
6 slip op 5; *Redland/Viola/Fischer's Mill CPO v. Clackamas County*, 27 Or LUBA 560, 564  
7 (1994). We perceive no reason why Metro cannot cite to the capacity figures in Table 1.1 of  
8 the RFP in support of its need determination, as a response to petitioners' challenge. We  
9 agree with respondents that the RFP is a "planning document of the type contemplated by  
10 Goal 2," and *Parklane II* is not an impediment to Metro's reliance on the capacity figures in  
11 the RFP, more specifically the conclusion that UGB 20-year capacity in 1997 was  
12 insufficient to meet the projected demand by some 32,370 housing units. As we understand  
13 the purpose and function of Table 1.1 and the target capacities in the UGM Functional Plan,  
14 those two sets of figures bear only a tangential relationship to each other. As Metro points  
15 out, the UGM Functional Plan sets *target* capacities for constituent jurisdictions, and does  
16 not purport to establish the actual capacity of the UGB for any purpose or at any given time.  
17 According to Metro, the UGM Functional Plan is not a determination of need for any  
18 purpose, and in fact does not contain or rely upon a population forecast or estimate of future  
19 demand for housing, one of the essential components for calculating need under Goal 14.  
20 See MC 3.07, Table 3.07-1. Finally, for the reasons expressed in *Parklane II*, we disagree  
21 with petitioners that Metro is required to use the 1999 update over the figures in the RFP.

22 In sum, we agree with respondents that to the extent Metro based its Goal 14, factors  
23 1 and 2 need determination on the regional deficiency of 32,370 dwelling units projected in  
24 the 1997 UGR and the RFP, petitioners have not demonstrated that it erred in doing so.

1           **B.       Subregional Need**

2           Metro derived its determination of subregional need from a consultant’s report and a  
3 supplemental memorandum (collectively, the Economic Analysis). Based on the Economic  
4 Analysis, Metro concluded that land capable of accommodating at least 4,400 households  
5 must be added to the UGB to achieve the optimal jobs/housing ratio by 2020.<sup>9</sup> As an  
6 alternative basis, Metro concluded that additional land must be added to the UGB in the  
7 Beaverton Regional Center area, because the UGB in that area lacks sufficient capacity to  
8 accommodate the area’s share of regional growth, as allocated under the UGM Functional  
9 Plan.

10           Petitioners argue that Metro’s determination of subregional need is not supported by  
11 substantial evidence. Petitioners point out that, in addition to quantifying a minimum  
12 subregional need for land capable of accommodating 4,400 additional households, the  
13 Economic Analysis suggests that in fact the actual need may be much greater: the Beaverton  
14 area may require land capable of accommodating an additional 13,500 to 18,000 dwelling  
15 units, in order to achieve the desired jobs/housing balance over the 20-year planning period.  
16 Metro’s findings recite that suggestion, and rely upon it as additional evidence of a  
17 subregional need. However, petitioners argue that Metro erred in so relying upon that  
18 suggestion, because an identified subregional need for land capable of accommodating  
19 13,500 to 18,000 dwelling units is inconsistent with the 1997 UGR. Petitioners explain that,  
20 according to the 1997 UGR, the regional UGB as it existed in 1997 needs an additional  
21 32,370 dwelling units to accommodate the expected 20-year demand. The 1998 UGB  
22 amendments brought in 3,527 acres, sufficient to accommodate approximately half that need,

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<sup>9</sup>Although Metro’s findings do not explain how the Economic Analysis reached the conclusion that an additional 4,400 housing units are necessary to redress the jobs/housing imbalance in the Beaverton area, intervenors inform us, and petitioners do not appear to dispute, that that conclusion is based on the assumption that the Beaverton area achieves the target capacity mandated by the UGM Functional Plan. In other words, the 4,400-housing unit figure takes into account existing and targeted capacity within the current UGB in the Beaverton area.

1 leaving an identified *regional* need for lands capable of accommodating approximately  
2 16,000 dwelling units. Thus, petitioners argue, Metro improperly relies upon a subregional  
3 need for land capable of accommodating 13,500 to 18,000 housing units, because that  
4 subregional need is equal to or greater than the identified need for the entire metropolitan  
5 region. Petitioners submit that an identified subregional need that equals or exceeds the  
6 identified regional need is inconsistent with that regional need.

7 As further evidence of the Economic Analysis' inconsistency with the 1997 UGR,  
8 petitioners point out that two Metro staff reports conclude that the Beaverton Regional  
9 Center area actually has *no* jobs/housing imbalance, based, petitioners argue, on  
10 methodology and geographic analysis consistent with the 1997 UGR. By contrast,  
11 petitioners argue, the Economic Analysis uses a different methodology and geographic scope  
12 inconsistent with the 1997 UGR, to conclude that there *is* a jobs/housing imbalance.  
13 Petitioners acknowledge that the challenged decision repudiates the staff conclusion on that  
14 point, and expressly relies upon the Economic Analysis. However, petitioners argue that the  
15 difference between the Economic Analysis and the staff reports illustrates how inconsistent  
16 the former is with the 1997 UGR.

17 We need not determine whether the Economic Analysis is inconsistent with the 1997  
18 UGR, or the significance of any such inconsistency. Metro's findings identify the  
19 subregional need as land capable of accommodating 4,400 housing units. Record 43.  
20 Petitioners do not advance any focused challenge to that conclusion. Metro's discussion of  
21 or reliance on the Economic Analysis' suggestion that a larger need may actually exist is, as  
22 far as we can tell, nothing more than excess verbiage. We conclude that Metro did not err in  
23 determining a subregional need for the Beaverton Regional Center area for any of the reasons  
24 advanced by petitioners.

25 The first assignment of error is denied.

1 **SECOND ASSIGNMENT OF ERROR**

2 Petitioners argue that Metro’s analysis of alternatives to Site 65 misconstrues the  
3 applicable law, is unsupported by substantial evidence, and fails to demonstrate compliance  
4 with Goal 14, factors 3-7, MC 3.01.020(b)(3)-(7), Goal 2, Part II, OAR 660-004-0010 and  
5 ORS 197.298.

6 **A. Analysis of Alternative Sites**

7 **1. Geographic Scope**

8 Metro limited the geographic scope of alternative sites to those areas that could be  
9 included within the Beaverton Regional Center. Because the Beaverton Regional Center  
10 borders the UGB only on the north and west, Metro’s analysis was limited to lands to the  
11 north within URSA 65, and lands bordering the UGB to the west (the Cooper Mountain  
12 area). Petitioners argue that Metro erred in adopting such a limited scope, and should have  
13 considered other areas in the nearby Hillsboro or Washington Square Regional Centers, or in  
14 Multnomah County, that are close enough to also aid in rectifying the identified jobs/housing  
15 imbalance in the Beaverton Regional Center.

16 We see no error in limiting the geographic scope of Metro’s alternatives analysis to  
17 lands that can satisfy the identified needs. One type of subregional need Metro identified  
18 was a need for additional lands to allow the Beaverton Regional Center to accommodate its  
19 share of regional growth. Obviously that need cannot be satisfied by UGB expansions within  
20 other regional centers. The other type of identified subregional need, to redress the  
21 Beaverton Regional Center’s jobs/housing imbalance, also would not be affected by  
22 development in other centers.<sup>10</sup>

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<sup>10</sup>The policy purpose in redressing the jobs/housing imbalance, we understand, is to reduce transportation impacts caused by commuters living some distance from jobs, by encouraging the proximity and balanced proportion of employment and residential uses. That policy purpose might be served by increasing the supply of residential lands in other centers nearby to the Beaverton Regional Center, but it would do nothing to change the ratio of jobs to housing in that center.

1                                   **2.       Legal Standard**

2                   Petitioners next argue that, in evaluating alternative sites, Metro repeatedly applied a  
3 legal standard that measured whether such sites were “better alternatives” for inclusion in  
4 the UGB than Site 65. *E.g.*, Record 52; Record 56 (“the primary purpose for analyzing Site  
5 65 in light of factors 3-7 is to determine whether there are better alternatives for addressing  
6 the identified need for more residential land in the Beaverton Regional Center area”).  
7 However, petitioners argue, the appropriate test under ORS 197.732(1)(c)(B), Goal 2, Part II  
8 and OAR 660-004-0010(1)(c)(B)(ii) (“exception criterion (ii)”) is whether “[a]reas which do  
9 not require a new exception cannot reasonably accommodate the use.” Petitioners thus  
10 contend that Metro applied an incorrect legal standard in determining that inclusion of Site  
11 65 complied with exception criterion (ii).

12                   Intervenors respond that, pursuant to MC 3.01.020(b), the correct standard for  
13 legislative UGB amendments is whether the recommended site is “better than alternative  
14 sites, balancing factors 3 through 7.”<sup>11</sup> Intervenors contend that MC 3.01.020(b) is  
15 acknowledged to comply with applicable statutes, rules and goals, and that exception  
16 criterion (ii) does not directly apply to Metro UGB amendments, because that standard is  
17 implemented in Metro’s code. Moreover, intervenors argue, Metro’s alternative analysis did  
18 address the “reasonably accommodate” standard: intervenors point to findings where the  
19 decision states that Metro’s analysis must determine if other sites outside the UGB “are  
20 better alternatives for inclusion in the UGB than Site 65 or if they can reasonably

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<sup>11</sup>In a prefatory statement to provisions implementing Goal 14, factors 1 through 7, MC 3.01.020(b) states:

“While all of the following Goal 14 factors must be addressed, the factors cannot be evaluated without reference to each other. Rigid separation of the factors ignores obvious overlaps between them. Demonstration of compliance with one factor or subfactor may not constitute a sufficient showing of compliance with the goal, to the exclusion of the other factors when making an overall determination of compliance or conflict with the goal. For legislative amendments, if need has been addressed, the district shall demonstrate that the priorities of ORS 197.298 have been followed and that the recommended site was better than alternative sites, balancing factors 3 through 7.”

1 accommodate the proposed use.” Record 52. Intervenor argues that both standards are part  
2 of the analysis, and that Metro did not err in applying both.

3 We held in *Residents of Rosemont* that Goals 2 and 14 apply directly to Metro’s  
4 legislative UGB amendments and that, furthermore, Metro’s interpretation and application of  
5 its code provisions implementing those goals and associated statutes and rules must be  
6 consistent with those goals, statutes and rules. Slip op 26.<sup>12</sup> OAR 660-004-0010(1)(c)  
7 requires that findings in support of a UGB amendment shall demonstrate compliance with the  
8 seven factors of Goal 14 as well as the Goal 2 exception standards, specifically that “[a]reas  
9 which do not require a new exception cannot reasonably accommodate the use.” OAR 660-  
10 004-0010(1)(c)(B)(ii). MC 3.01.020(b) implements the seven factors of Goal 14 and requires  
11 in relevant part a determination whether the recommended site is “better” than alternative  
12 sites, balancing factors 3 through 7. That standard is consistent with Goal 14, factors 3  
13 through 7, which set forth five considerations that must be balanced in deciding where to  
14 expand an urban growth boundary. The goal of that process is to determine the “best” land  
15 to include within the UGB, based on appropriate consideration and balancing of each factor.  
16 Thus, Metro’s inquiry into whether Site 65 is a “better alternative” to other potential sites is  
17 consistent with MC 3.01.020 and Goal 14, factors 3 through 7. However, as intervenors  
18 recognize, that is not the end of the inquiry. Metro must also determine whether “[a]reas  
19 which do not require a new exception cannot reasonably accommodate the use,” in order to  
20 satisfy exception criterion (ii). That separate and very different inquiry requires that, if the  
21 land Metro is considering for inclusion is resource land for which an exception to Goals 3

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<sup>12</sup>Our conclusion on that point relied in part on the terms of MC 3.01.012(e), which requires a demonstration of compliance with Goals 2 and 14 when approving an urban reserve concept plan. Intervenor point out that MC 3.01.012(e) has since been repealed and does not apply to the decision challenged in this appeal. However, repeal of MC 3.01.012(e) does not affect the other bases for our conclusion that applicable goals, rules and statutes apply to Metro’s legislative UGB amendments, notwithstanding that MC 3.01.020(b) implements those goals, rules and statutes. To the extent intervenors suggest that Goals 2 and 14 and other relevant rules and statutes do not apply to the UGB amendment challenged in this appeal, we reject that suggestion.

1 and 4 has not been taken, Metro must determine whether exception lands can reasonably  
2 accommodate the proposed use. As we stated in *Parklane I* and *Residents of Rosemont*,  
3 exception criterion (ii) is not satisfied by findings that alternative sites to resource lands  
4 cannot accommodate the proposed use “as well as” those resource lands. *Residents of*  
5 *Rosemont*, slip op at 36-37 (findings that exception lands have more topographic and other  
6 constraints on residential development than the preferred site are, without more, inadequate  
7 to demonstrate that such exception lands cannot reasonably accommodate the proposed  
8 residential use). As we also noted in both *Parklane I* and *Residents of Rosemont*, exception  
9 lands almost always have more developmental constraints per given acre than agricultural  
10 lands, which tend to be flat and relatively undeveloped and unparcelized. Exception criterion  
11 (ii) expresses a clear mandate that development be directed to exception lands rather than  
12 resource lands, if those exception lands can “reasonably accommodate” the proposed  
13 development. With that understanding of the applicable standards, we address petitioners’  
14 challenges to Metro’s alternative sites analysis.

### 15 **3. Reliance on Urban Reserve Designation**

16 Petitioners cite to language in the challenged decision that purports to rely on the  
17 urban reserve decision remanded in *Parklane I* and *II* as partial justification for inclusion of  
18 Site 65. Petitioners argue that Metro erred to the extent it relied upon the remanded urban  
19 reserve decision.

20 The challenged decision, issued shortly before *Parklane II* was decided, noted that  
21 URSA 65 was designated as an urban reserve area, and thus qualifies under the first priority  
22 for inclusion under ORS 197.298(1)(a). Record 49. The decision then engages in an  
23 alternative analysis under ORS 197.298 that does not rely upon URSA 65’s urban reserve  
24 designation, in case that designation is overturned, as it ultimately was. That being the case,  
25 petitioners’ arguments directed at Metro’s reliance on the urban reserve designation provide  
26 no basis for reversal or remand.

1                                   **4.       Cooper Mountain Exception Lands**

2                   Petitioners next argue that Metro erred in finding that four exception areas within the  
3 Cooper Mountain area cannot reasonably accommodate the identified need for additional  
4 housing. Those findings are based on several considerations, including (1) the degree of  
5 parcelization and development on those lands, including the recent development pattern of  
6 “hobby farms” with expensive homes; (2) the extent of steep topography on Cooper  
7 Mountain; (3) the predominantly low-density urban development within the adjoining UGB;  
8 and (4) the scarcity of urban services within the UGB near the Cooper Mountain exception  
9 lands, and the difficulty of extending those services.<sup>13</sup> Metro ultimately concluded that these  
10 exception lands cannot reasonably be developed into a compact urban form.<sup>14</sup>

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<sup>13</sup>Metro’s findings with respect to the Cooper Mountain exception lands are found at Record 53-54:

“\* \* \* One aspect of each of those four exception areas which make them not well-suited for urbanization is the extent of parcelization and the large number of dwellings. Parcelization and the presence of many rural dwellings are not the only factors demonstrating that these areas cannot reasonably accommodate urban levels of residential development, but they certainly are important considerations. The greater the extent of parcelization and presence of new dwellings, particularly where there is a trend towards more dwellings and more expensive dwellings being constructed in recent years, the greater the difficulty in creating large enough ownerships to facilitate urban development in an efficient and compact form consistent with [2040] Growth Concept policies and objectives. An area with a lot of parcelizations and rural dwellings, particularly one with an increasing number of expensive hobby farms built in recent years, is not a good candidate for urbanization. Under those circumstances, even if the land were to be brought into the UGB, it is not likely to redevelop during the next twenty years because of the difficulties and expense of redeveloping an area that has so many different ownerships and so many existing dwellings.

“The exception areas to the west of Beaverton have a number of other problems that make efficient urbanization extremely difficult and unlikely in addition to parcelization and number of existing houses. The steep topography makes efficient development difficult and makes it costly to extend urban services, particularly in light of the fact that, unlike with Site 65, urban services and facilities have not already been extended near to the edge of the UGB. \* \* \* As discussed elsewhere in these findings, the Bethany community [within the UGB] adjoining Site 65 has already been developed with densities and design patterns that are generally consistent with 2040 Growth Concept policies and objectives. \* \* \* In contrast, there is no evidence that the urban area in the vicinity of the western Beaverton UGB has had a similar intensity of development or development in accord with Metro growth management policies and objectives.”

<sup>14</sup>Metro’s findings on this point state:

1           Petitioners argue first that Metro’s reliance on the parcelization and development  
2 patterns of the Cooper Mountain exception lands is erroneous, given that Metro’s regulations  
3 have the effect of requiring higher-density redevelopment and in-fill of larger developed  
4 parcels within the UGB. Petitioners contend that there is no reason why hobby farms in the  
5 Cooper Mountain area cannot, like similar parcels within the UGB, be developed at higher  
6 urban densities. Second, petitioners argue that Metro erred in relying upon steep topography  
7 to disqualify the Cooper Mountain exception lands. Petitioners contend that if steep  
8 topography and similar impediments were a valid basis for developing resource lands over  
9 exception lands, resource lands would almost always be chosen ahead of exception lands.

10           If petitioners are contending categorically that Metro cannot rely upon such  
11 considerations as parcelization, development patterns, and steep topography in determining  
12 whether alternative sites can “reasonably accommodate” the proposed use, we reject that  
13 contention. Exception criterion (ii) does not place any categorical restrictions on the type of  
14 considerations that can be brought to bear on whether an alternative site can “reasonably  
15 accommodate” the proposed use. Where, as here, the proposed use is for urban residential  
16 development, Metro may legitimately consider factors that bear on the ability of the site to  
17 accommodate that use, including limitations on the amount or quality of buildable lands.

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“\* \* \* Achieving development patterns that will result in a compact urban form is the key concept underlying many of Metro’s growth management policies and provisions. For example, MC 3.01.020(b)(4)(A) describes some of the features that comprise ‘an efficient urban growth form.’ Thus, when analyzing whether a possible alternative site to Site 65 can reasonably accommodate urban-level residential development, it is appropriate to also consider whether the alternative site can be reasonably developed in such a manner as to be consistent with ‘an efficient urban growth form.’ The evidence and analysis in the Alternative Site Report, summarized above, demonstrate that the alternative sites cannot be reasonably developed to achieve an efficient urban form. This is not a situation where urban development on exception lands will be slightly less efficient and slightly more expensive than developing resource land such as Site 65. In such a situation, state laws and Metro provisions that give priority to developing exception lands might result in a conclusion that such alternative exception lands can reasonably accommodate the need for more residential land. In this case, however, there is an enormous and insurmountable gap between the many factors that make urbanization of the alternative exception areas unreasonable and the capability of Site 65 to be developed in full accord with all of Metro’s urban development objectives.” Record 55.

1           Nonetheless, Metro’s findings or record of the decision must be adequate to  
2 demonstrate that alternative nonresource sites cannot reasonably accommodate the proposed  
3 use. As we noted in *Residents of Rosemont*, a finding that the resource land has relatively  
4 fewer developmental constraints or a higher percentage of buildable lands than an alternative  
5 site is not sufficient to satisfy the “reasonably accommodate” standard. However, petitioners  
6 have not articulated any specific challenge to Metro’s findings regarding the Cooper  
7 Mountain exception areas, except to argue that those findings rely fatally on parcelization,  
8 development patterns and steep topography. In particular, petitioners have not challenged  
9 the other bases for those findings: the absence of urban-density development on adjacent  
10 lands within the UGB, and the absence or scarcity of urban facilities and services at the UGB  
11 near the Cooper Mountain exception lands.<sup>15</sup> Nor have petitioners challenged Metro’s  
12 ultimate conclusion that, based on the foregoing considerations, those exception lands cannot  
13 reasonably be developed as a compact urban form.<sup>16</sup>

14           We conclude that Metro’s alternatives analysis with respect to the Cooper Mountain  
15 exception lands is not erroneous for any reason advanced by petitioners.

16           This subassignment of error is denied.

17           **B.     Goal 14, Factors 3 through 7**

18           Petitioners argue that Metro’s decision misconstrues and fails to meet the  
19 requirements of Goal 14, factors 3 through 7.

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<sup>15</sup>On the latter point, intervenors cite to evidence that the closest sewer trunk line within the UGB to the Cooper Mountain exception lands is at a distance of 2,100 feet, and would require extension and upgrades to accommodate development on those lands. Record 2042. By way of contrast, intervenors point to evidence that a sewer line capable of supporting the full development of Site 65 as well as URSA 65 is located 400 feet south of Site 65. Record 4725.

<sup>16</sup>With respect to the ability of the Cooper Mountain exception lands to accommodate an urban level of residential use, intervenors also cite to evidence that much of the rural residential land in the Cooper Mountain area is subject to deed restrictions that effectively prohibit further subdivision or partition, and that due to various factors only 10 percent of that area can be developed further. Record 2024; 2043.

1                   **1.       Goal 14, Factor 3: Public Facilities and Services**

2                   Goal 14, factor 3 requires that Metro consider the “orderly and economic provision  
3 for public facilities and services.” *See also* MC 3.01.020(b)(3).<sup>17</sup> Petitioners contend that  
4 the crux of Metro’s decision to bring Site 65 into the UGB is Metro’s conclusion that Site 65  
5 will be less costly to urbanize and to provide with public facilities than alternative lands.  
6 Petitioners argue, first, that Metro erred in elevating Goal 14, factor 3 above the other Goal  
7 14 factors. Second, petitioners argue that Metro applied the incorrect legal standard in  
8 determining that Site 65 satisfies factor 3 because the costs of urbanization are “relatively  
9 low” in comparison with the costs of urban development in general and the costs of  
10 urbanizing other urban reserve areas in the region. Finally, petitioners contend that Metro  
11 failed to quantify the costs of extending public facilities and services to the Cooper Mountain  
12 exception areas, and thus has no basis for comparison between those areas and Site 65.

13                   Metro’s findings under factor 3 play a large role in its Goal 14 analysis, but  
14 petitioners have not demonstrated that Metro elevated that factor above the others. Metro  
15 made findings against each of the locational factors, and concluded with respect to each one  
16 that it supported inclusion of Site 65. We conclude, below, that Metro’s findings regarding

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<sup>17</sup>MC 3.01.020(b)(3) provides:

“Factor 3: Orderly and economic provision of public facilities and services. An evaluation of this factor shall be based upon the following:

“(A) For the purposes of this section, economic provision shall mean the lowest public cost provision of urban services. When comparing alternative sites with regard to factor 3, the best site shall be that site which has the lowest net increase in the total cost for provision of all urban services. In addition, the comparison may show how the proposal minimizes the cost burden to other areas outside the subject area proposed to be brought into the boundary.

“(B) For the purposes of this section, orderly shall mean the extension of services from existing serviced areas to those areas which are immediately adjacent and which are consistent with the manner of service provision. For the provision of gravity sanitary sewers, this could mean a higher rating for an area within an already served drainage basin. For the provision of transit, this would mean a higher rating for an area which could be served by the extension of an existing route rather than an area which would require an entirely new route.”

1 certain other locational factors are erroneous or inadequate in several respects, but we  
2 disagree with petitioners' general contention that Metro failed to balance and give  
3 appropriate consideration to each of the Goal 14 factors.

4 Further, we disagree with petitioners that Metro applied an incorrect legal standard in  
5 relying upon a determination that the costs of urbanizing Site 65 were "relatively low."  
6 Petitioners cite to language in *Parklane I* for the proposition that relative cost differences  
7 among alternative sites are legally irrelevant under Goal 14, factor 3. In *Parklane I*, the  
8 Board held that, in the absence of defined thresholds of "suitability," Metro erred in using  
9 relatively minor differences in the cost of extending urban facilities to urban reserve study  
10 areas to conclude that some areas were "unsuitable" for inclusion in urban reserves. 35 Or  
11 LUBA at 575.<sup>18</sup> However, we did not say that such cost differences are irrelevant under  
12 Goal 14, factor 3 and, in fact, we noted that "[f]inancial cost is a relevant consideration under  
13 Goal 14, factor 3, given that it is concerned with the 'economic provision' of facilities and  
14 services." 35 Or LUBA at 575; cf. MC 3.01.020(b)(3)(A) ("[w]hen comparing alternative  
15 sites with regard to factor 3, the best site shall be that site which has the lowest net increase  
16 in the total cost for provision of all urban services"). We disagree with petitioners'  
17 categorical argument that Metro erred in considering the relative cost differences in  
18 urbanizing Site 65 as compared to other sites.

19 Finally, petitioners contend that Metro's findings regarding the costs of urbanizing  
20 Site 65 compared to alternative sites are inadequate. Petitioners point out that Metro made  
21 no attempt to quantify development costs for the Cooper Mountain area, concluding instead  
22 that no such analysis was necessary, given the other topographical and locational constraints

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<sup>18</sup>In *Parklane II*, the court rejected our reasoning on this point, to the extent we suggested that Metro could define a threshold for Goal 14, factor 3 and then reject certain lands for failure to meet that defined threshold, without considering and balancing the other Goal 14 locational factors. 165 Or App at 25.

1 on developing that area identified in Metro’s alternative sites analysis.<sup>19</sup> Petitioners argue  
2 that without such quantification of costs, the evidence in the record is inadequate to show  
3 that the cost of providing urban facilities to the Cooper Mountain area is actually higher than  
4 for Site 65. With respect to Site 65, petitioners argue that Metro based its estimates of the  
5 costs of providing urban services to Site 65 on its urban reserve studies, which examined the  
6 costs of providing services to the entirety of URSA 65. Petitioners submit that there is no  
7 basis in the record to assume that the per-dwelling cost of providing urban services to Site 65  
8 in isolation from the rest of URSA 65 will remain the same.

9 Intervenor respond, and we agree, that petitioners have neither challenged Metro’s  
10 explanation for why no quantification of costs was made for the Cooper Mountain area, nor  
11 demonstrated why, given that explanation, such quantification is nonetheless necessary to  
12 comply with Goal 14, factor 3. With respect to the cost estimate for providing services to  
13 Site 65, petitioners’ point appears to be that the per-dwelling cost of urbanizing URSA 65 is  
14 not a reliable basis to determine the per-dwelling cost of urbanizing Site 65, and therefore  
15 Metro must conduct additional studies to determine the cost of urbanizing Site 65, in  
16 isolation from URSA 65. However, petitioners do not explain why that is so. The urban  
17 reserve data regarding the costs of urbanizing URSA 65 are relevant evidence regarding the

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<sup>19</sup>Metro’s findings on this point state:

“As discussed above as part of the alternative site analysis and findings, the exception sites and surrounding area located west of the Beaverton UGB [*i.e.*, the Cooper Mountain area] cannot reasonably accommodate urban levels of residential development and that area is a far less appropriate area for urbanization and inclusion in the UGB than is Site 65. Although no specific analysis has been done regarding what the costs would be to extend urban services and facilities to that area, in this case, such a cost analysis was not necessary in order to support the conclusion that Site 65 is a more desirable location for urbanization both because of the better economic efficiencies of providing urban services and facilit[ies] and because of the other development feasibility issues discussed as part of the alternative sites analysis and discussed in response to factors 3 and 4. In light of the numerous constraints on urban development discussed in the alternative site analysis, there would have been no substantive purpose served by attempting to quantify the costs to extend urban services and facilities to an area that cannot reasonably accommodate urban development due to all of the topographical and locational constraints and other reasons discussed as part of the alternative site analysis.” Record 58.

1 costs of urbanizing constituent lands within URSA 65. Petitioners do not cite to any  
2 evidence contradicting those data, nor explain why it is unreasonable for Metro to assume  
3 that the cost of urbanizing URSA 65 is an indicator of the cost of urbanizing Site 65.<sup>20</sup>

4 This subassignment of error is denied.

5 **2. Goal 14, Factor 4: Maximum Efficiency of Land Uses**

6 Goal 14, factor 4 requires that Metro consider “maximum efficiency of land uses  
7 within and on the fringes of the existing urban area.” *See also* MC 3.01.020(b)(4).<sup>21</sup>  
8 According to petitioners, Metro interpreted factor 4 to allow it to consider “whether the  
9 elements of a compact development form ‘can be accommodated more readily in one area  
10 than others.’” Record 59 (*quoting* MC 3.01.020(b)(4)(A)). Petitioners argue that Metro  
11 erred in considering the ability of Site 65 to accommodate a compact urban form, and cite to  
12 language in *Parklane I* for the proposition that Goal 14, factor 4 can be applied to include

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<sup>20</sup>Petitioners’ point may be that the per-dwelling costs from the URSA 65 study are based on amortization of infrastructure costs over a larger residential development, and thus the per-dwelling costs of urbanizing Site 65 in isolation may be different. If that is petitioners’ point, it is insufficiently developed and substantiated.

<sup>21</sup>MC 3.01.020(b)(4) provides:

“Factor 4: Maximum efficiency of land uses within and on the fringe of the existing urban area. An evaluation of this factor shall be based on at least the following:

“(A) The subject area can be developed with features of an efficient urban growth form including residential and employment densities capable of supporting transit service; residential and employment development patterns capable of encouraging pedestrian, bicycle, and transit use; and the ability to provide for a mix of land uses to meet the needs of residents and employees. If it can be shown that the above factors of compact form can be accommodated more readily in one area than others, the area shall be more favorably considered.

“(B) The proposed UGB amendment will facilitate achieving an efficient urban growth form on adjacent urban land, consistent with local comprehensive plan policies and regional functional plans, by assisting with achieving residential and employment densities capable of supporting transit service; supporting the evolution of residential and employment development patterns capable of encouraging pedestrian, bicycle, and transit use; and improving the likelihood of realizing a mix of land uses to meet the needs of residents and employees.”

1 lower priority resource land only where doing so is required in order to include higher  
2 priority lands or provide urban services to those higher priority lands. 35 Or LUBA at 617.

3 However, the cited passage in *Parklane I* reflects our analysis of the priority scheme  
4 at OAR 660-021-0030(4)(c), not Goal 14, factor 4.<sup>22</sup> Although we noted the relationship  
5 between Goal 14, factor 4 and OAR 660-021-0030(4)(c) in determining the meaning of the  
6 latter, we did not state that Goal 14, factor 4 does not allow consideration of the ability of a  
7 site to accommodate a compact urban form. On the contrary, we held that the term  
8 “maximum efficiency of land uses” under Goal 14, factor 4 invokes a concern for “avoiding  
9 leapfrog or sprawling development inconsistent with the density and connectivity associated  
10 with urban development.” 35 Or LUBA at 617 (citing to *1000 Friends of Oregon v. City of*  
11 *North Plains*, 27 Or LUBA 372, 390, *aff’d* 130 Or App 406, 882 P2d 1130 (1994)).  
12 Petitioners have not established that Metro misconstrued Goal 14, factor 4 in considering the  
13 ability of Site 65 or other sites to accommodate a compact form of urban development.

14 This subassignment of error is denied.

### 15 3. Goal 14, Factor 5: ESEE Consequences

16 Goal 14, factor 5 requires Metro to consider the environmental, social, energy, and  
17 economic (ESEE) consequences of expanding the UGB at the preferred site, compared to  
18 alternative sites.<sup>23</sup> *See also* MC 3.01.020(b)(5).<sup>24</sup> Petitioners contend that Metro’s findings

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<sup>22</sup>OAR 660-021-0030(4)(c) was renumbered in March, 2000, to 660-021-0030(4)(b). The text was unchanged. OAR 660-021-0030(4)(b) allows lower priority lands to be included in urban reserves over higher priority lands, where:

“Maximum efficiency of land uses within a proposed urban reserve area requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.”

<sup>23</sup>ORS 197.732(1)(c)(C) similarly requires a determination that:

“The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site.”

1 under Goal 14, factor 5 are inadequate, because Metro merely analyzed the environmental,  
2 economic and social consequences of expanding onto Site 65, and then, without any analysis  
3 or findings as to the consequences of expansion onto alternative sites, concluded that  
4 “adverse impacts would not be significantly lessened by expanding elsewhere in the region.”  
5 Record 61.

6 Intervenor’s respond that Metro’s findings, taken as a whole, adequately address the  
7 ESEE consequences of expanding the UGB to include Site 65, as compared to alternative  
8 sites. However, intervenors do not direct us to any findings that address the ESEE  
9 consequences of expanding the UGB to include alternative sites. In *Residents of Rosemont*,  
10 we sustained an assignment of error arguing that Metro erred in assuming that similar types  
11 of residential development would have similar types of adverse ESEE consequences no  
12 matter where the UGB is expanded, and thus no analysis of the ESEE consequences of  
13 expanding the UGB to include alternative sites was necessary. Slip op 18. We held that  
14 MC 3.01.020(b)(5) requires a comparison of the ESEE consequences between the proposed  
15 expansion area and other potential alternative sites, and that until Metro actually examines  
16 the ESEE consequences of expanding the UGB at those alternative sites, Metro is in no

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<sup>24</sup>MC 3.01.020(b)(5) provides:

“Factor 5: Environmental, energy, economic and social consequences. An evaluation of this factor shall be based upon consideration of at least the following:

“(A) If the subject property contains any resources or hazards subject to special protection identified in the local comprehensive plan and implemented by appropriate land use regulations, findings shall address how urbanization is likely to occur in a manner consistent with these regulations.

“(B) Complementary and adverse economic impacts shall be identified through review of a regional economic opportunity analysis, if one has been completed. If there is no regional economic opportunity analysis, one may be completed for the subject land.

“(C) The long-term environmental, energy, economic, and social consequences resulting from the use at the proposed site. Adverse impacts shall not be significantly more adverse than would typically result from the needed lands being located in other areas requiring an amendment of the UGB.”

1 position to conclude that the ESEE consequences of urbanizing the proposed expansion area  
2 are not significantly more adverse than for alternative sites. *Id.* We reach the same  
3 conclusion here with respect to Goal 14, factor 5.

4 This subassignment of error is sustained.

5 **4. Goal 14, Factor 6: Retention of Agricultural Land**

6 Goal 14, factor 6 requires that Metro consider “[r]etention of agricultural land as  
7 defined, with Class I being the highest priority for retention and Class VI the lowest  
8 priority[.]” *See also* MC 3.01.020(b)(6).<sup>25</sup> Petitioners contend that Metro erred in entirely

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<sup>25</sup>MC 3.01.020(b)(6) provides:

“Factor 6: Retention of agricultural land. This factor shall be addressed through the following:

“(A) Prior to the designation of urban reserves, the following hierarchy shall be used for identifying priority sites for urban expansion to meet a demonstrated need for urban land:

“(i) Expansion on rural lands excepted from statewide planning Goals 3 and 4 in adopted and acknowledged county comprehensive plans. Small amounts of rural resource land adjacent to or surrounded by those ‘exception lands’ may be included with them to improve the efficiency of the boundary amendment. The smallest amount of resource land necessary to achieve improved efficiency shall be included;

“(ii) If there is not enough land as described in (i) above to meet demonstrated need, secondary or equivalent lands, as defined by the state, should be considered;

“(iii) If there is not enough land as described in either (i) or (ii) above, to meet demonstrated need, secondary agricultural resource lands, as defined by the state, should be considered;

“(iv) If there is not enough land as described in either (i), (ii) or (iii) above, to meet demonstrated need, primary forest resource lands, as defined by the state, should be considered;

“(v) If there is not enough land as described in either (i), (ii), (iii) or (iv) above, to meet demonstrated need, primary agricultural lands, as defined by the state, may be considered.

“(B) After urban reserves are designated and adopted, consideration of factor 6 shall be considered satisfied if the proposed amendment is wholly within an area designated as an urban reserve.

1 subsuming the Goal 14, factor 6 analysis into its application of an *exception* to the  
2 ORS 197.298 priority scheme, and that Metro failed to conduct any analysis of the effect of  
3 including Site 65 in the UGB on the retention of agricultural land, as compared to the effect  
4 of including alternative sites. Petitioners argue both here and in their third assignment of  
5 error, discussed below, that there is no evidence in the record that Metro examined any  
6 resource sites of lower-capability soils.

7 Metro’s findings state, in relevant part:

8 “The considerations called for under MC 3.01.020(b)(6) are, for all practical  
9 purposes, identical to the considerations and requirements addressed under  
10 ORS 197.298. The primary response to factor 6 of the Metro Code is that it is  
11 not applicable to this UGB amendment because the subject property is already  
12 designated an urban reserve. In the alternative, the same priority analysis  
13 undertaken for ORS 197.298(3)(a) provides an adequate consideration of and  
14 demonstrates compliance with [MC 3.01.020(b)(6)(A)(i) to (v)]. It should be  
15 noted that the record includes evidence that the only marginal lands, as  
16 designated by Washington County, are in areas far removed from the  
17 Beaverton Regional Center area UGB. These designated marginal lands are  
18 the only type of ‘secondary or equivalent lands’ as referenced in [MC  
19 3.01.020(b)(6)(A)(ii) and (iii)]. As discussed in the alternative site analysis,  
20 there is a small amount of primary forest resource land in the area to the west  
21 of the Beaverton UGB, but for the reasons discussed in the alternative site  
22 analysis, that is not an appropriate area or location for urbanization.  
23 Therefore, amending the UGB to include Site 65 is consistent with [MC  
24 3.01.020(b)(6)(A)(iv)] as demonstrated in the findings adopted herein in  
25 response to ORS 197.298(3)(a). \* \* \*” Record 61-62.

26 We agree with petitioners that Metro’s application of the ORS 197.298(3)(a)  
27 exception to the statutory priority scheme, which we discuss below, does not obviate  
28 consideration of Goal 14, factor 6, or render it unnecessary to consider retention of  
29 agricultural land. MC 3.01.020(b)(6) implements Goal 14, factor 6, at least in part, by  
30 replicating elements of the priority scheme at ORS 197.298(1). As we discuss in addressing  
31 the third assignment of error, that priority scheme requires that Metro evaluate potential

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“(C) After urban reserves are designated and adopted, a proposed amendment for land not wholly within an urban reserve must also demonstrate that the need cannot be satisfied within urban reserves.”

1 expansion sites and assign them priority for inclusion in the UGB, with higher priority being  
2 given to land of lower soil capability. ORS 197.298(1), (2). However, MC 3.01.020(b)(6)  
3 does not incorporate the exceptions to that priority scheme at ORS 197.298(3), or otherwise  
4 purport to waive the obligation to consider retention of agricultural land, as Goal 14, factor 6  
5 requires.

6           In *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA at 391, we held that  
7 Goal 14, factor 6 requires consideration of whether less valuable agricultural lands than the  
8 land under consideration could accommodate the proposed UGB amendment; *see also DLCD*  
9 *v. Douglas County*, 36 Or LUBA 26, 37 (1999) (both ORS 197.298(2) and Goal 14, factor 6  
10 require that suitable agricultural lands of lower-quality soils be included in the UGB before  
11 agricultural lands of higher-quality soils). In the present case, petitioners argue that Metro  
12 failed to consider whether agricultural lands of lower-capability soils could accommodate the  
13 identified need. Intervenors respond in part by citing to Metro’s alternatives study at Record  
14 1608-1609, which Metro incorporated into its findings. Record 53. The alternatives study  
15 discusses the resource sites adjacent to or near the UGB in the Beaverton Regional Center  
16 area, which consist of several sites in the Cooper Mountain area and one in Multnomah  
17 County, and concludes for various reasons, including soil quality, that these resource lands  
18 are not appropriate for urbanization. Petitioners do not challenge those findings, and have  
19 not demonstrated that Metro failed to consider those lands to the extent required by Goal 14,  
20 factor 6. However, we also understand petitioners to argue, here and in the third assignment  
21 of error, that Metro failed to consider agricultural lands within URSA 65 other than those in  
22 Site 65. There are, apparently, approximately 120 acres of EFU-zoned lands in URSA 65  
23 other than the subject 109 acres of EFU-zoned land in Site 65. Neither the alternatives study  
24 that intervenors cite, nor Metro’s findings, appear to evaluate those agricultural lands for  
25 inclusion under Goal 14, factors 3-7 or ORS 197.298. For that reason, we agree with

1 petitioners that Metro misconstrued Goal 14, factor 6, and erred in failing to evaluate  
2 agricultural lands within URSA 65 other than those within Site 65.

3 This subassignment of error is sustained, in part.

4 **5. Goal 14, Factor 7: Compatibility with Agricultural Activities**

5 Goal 14, factor 7 requires that Metro consider the “[c]ompatibility of the proposed  
6 urban uses with nearby agricultural activities.” *See also* MC 3.01.020(b)(7).<sup>26</sup> Petitioners  
7 argue, first, that Metro’s Goal 14, factor 7 analysis is inadequate, because it does not address  
8 the compatibility of the proposed urban uses on the agricultural activities presently occurring  
9 on Site 65. Second, petitioners contend that Metro failed to address compatibility with  
10 agricultural activities on nearby lands. Finally, petitioners argue that Metro failed to make  
11 any comparison between the impact that bringing Site 65 into the UGB will have on nearby  
12 agriculture and the impact that bringing alternative sites into the UGB would have on  
13 agricultural activities.

14 Metro’s Goal 14, factor 7 findings incorporate and discuss a “farming” report, which  
15 “includes a description of the number, location and types of agricultural  
16 activities occurring within one mile of Site 65, and it contains an analysis of  
17 the potential impacts on nearby agricultural activities that could result from  
18 the urbanization of Site 65. [The conclusions of the report] demonstrate that

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<sup>26</sup>MC 3.01.020(b)(7) provides:

“Factor 7: Compatibility of proposed urban development with nearby agricultural activities.

“The record shall include an analysis of the potential impact on nearby agricultural activities including the following:

“(i) A description of the number, location and types of agricultural activities occurring within one mile of the subject site;

“(ii) An analysis of the potential impacts, if any, on nearby agricultural activities taking place on lands designated for agricultural use in the applicable adopted county or city comprehensive plan, and mitigation efforts, if any impacts are identified. Impacts to be considered shall include consideration of land and water resources which may be critical to agricultural activities, consideration of the impact on the farming practices of urbanization of the subject land, as well as the impact on the local agricultural economy.”

1 [URSA] 65 is a small and topographically isolated portion of agricultural land  
2 that is no longer a viable commercial farming area due to heavy urbanization  
3 and the lack of water for irrigation. \* \* \* The report, as supported by  
4 testimony at the Metro hearings, supports the conclusion that the development  
5 of Site 65 will not have any tangible impacts [on] any existing agricultural  
6 activities or on any resource lands within one mile of the site. The  
7 agricultural activities and income that will be lost by the development of Site  
8 65 constitute a minimally negative impact, that is balanced by the benefits to  
9 the environment and the other benefits and need for urbanization discussed  
10 elsewhere in these findings.” Record 62.

11 It is not clear to us that, as petitioners’ first argument presumes, Goal 14, factor 7  
12 requires consideration of compatibility of the proposed urban uses on Site 65 with  
13 agricultural activities *on Site 65*. Even if such consideration is required, Metro’s findings  
14 consider that issue, and petitioners do not challenge Metro’s conclusion that the agricultural  
15 activities on Site 65 lost by urbanization of that site are balanced by other benefits and needs.  
16 As the above-quoted findings and the incorporated farming report indicate, petitioners are  
17 incorrect that Metro failed to address impacts of urbanizing Site 65 on nearby agricultural  
18 activities.

19 With respect to petitioners’ final argument that Metro failed to compare such impacts  
20 with the impacts of urbanizing alternative sites, intervenors concede that no such comparison  
21 was made, but argue that Goal 14, factor 7 does not require such comparisons. Further,  
22 intervenors argue that that comparison would be meaningless in any case, because there is no  
23 distinguishable difference, in terms of impacts on agriculture, between urbanizing Site 65  
24 and urbanizing alternative sites within URSA 65. We disagree with intervenors that no  
25 alternative sites comparison is required by Goal 14, factor 7. Metro’s consideration and  
26 balancing of that factor would have little context or meaning if the only analysis was of the  
27 impacts of urbanizing the proposed expansion area and not alternative sites. It may be, as  
28 intervenors suggest, that in the present case that comparison would demonstrate only that  
29 urbanizing Site 65 is no more adverse to agricultural activities than urbanizing other sites  
30 within URSA 65. However, Metro’s findings do not make that comparison, and we agree

1 with petitioners that those findings are inadequate in that respect.

2 This subassignment of error is sustained, in part.

3 The second assignment of error is sustained, in part.

4 **THIRD ASSIGNMENT OF ERROR**

5 Petitioners contend that Metro misconstrued the applicable law and made a decision  
6 not supported by substantial evidence in determining that the inclusion of Site 65 complied  
7 with ORS 197.298.<sup>27</sup>

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<sup>27</sup>ORS 197.298 provides:

- “(1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:
  - “(a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.
  - “(b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.
  - “(c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247 (1991 Edition).
  - “(d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both.
- “(2) Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.
- “(3) Land of lower priority under subsection (1) of this section may be included in an urban growth boundary if land of higher priority is found to be inadequate to accommodate the amount of land estimated in subsection (1) of this section for one or more of the following reasons:
  - “(a) Specific types of identified land needs cannot be reasonably accommodated on higher priority lands;

1 In particular, petitioners argue that (1) Metro erred to the extent it relied upon URSA  
2 65’s status as an urban reserve to include Site 65 under ORS 197.298(1)(a); (2) Metro erred  
3 in excluding a number of exception areas from its application of the ORS 197.298(1) priority  
4 scheme; (3) Metro erred in failing to consider the cumulative contribution that alternative  
5 exception areas could make to redressing the identified subregional housing need; (4) Metro  
6 erred in failing to examine alternative sites zoned for agriculture or forestry with lower  
7 capability soils; and (5) Metro erred in including Site 65 under the exceptions to the statutory  
8 priority scheme at ORS 197.298(3)(a) and (3)(c).

9 **A. Urban Reserve Status**

10 As discussed under the second assignment of error, Metro adopted alternative  
11 findings not based upon the urban reserve status of URSA 65, and petitioners’ arguments that  
12 Metro erred in relying on that status do not provide a basis for reversal or remand. However,  
13 here we address and reject a suggestion in intervenors’ brief that Metro was entitled to rely  
14 upon the urban reserve status of URSA 65 at the time it adopted the decision challenged in  
15 this appeal, and therefore it was sufficient to prioritize Site 65 under ORS 197.298(1)(a)  
16 notwithstanding the effect of *Parklane I* and *II*. Intervenors argue that

17 “designation [of URSA 65] was in effect at the time Metro approved the  
18 subject UGB amendment. The subsequent remand of the urban reserve  
19 decision by the Court of Appeals does not alter the fact that it was in effect at  
20 the time of the Site 65 UGB decision and, therefore, the Metro determination  
21 that it did not need to address [Goal 14,] factor 6 and ORS 197.298 is  
22 correct.” Intervenors-Respondents’ Response Brief 48.

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“(b) Future urban services could not reasonably be provided to the higher  
priority lands due to topographical or other physical constraints; or

“(c) Maximum efficiency of land uses within a proposed urban growth  
boundary requires inclusion of lower priority lands in order to include or to  
provide services to higher priority lands.”

1 By virtue of the appeals to LUBA in *Parklane I*, Metro’s urban reserve decision was  
2 effective but not acknowledged. ORS 197.625.<sup>28</sup> Any land use decision subject to that  
3 unacknowledged designation of urban reserves must include findings of compliance with  
4 applicable land use goals. ORS 197.625(3)(b). Metro was thus required to find compliance  
5 with applicable land use goals, notwithstanding its designation of urban reserves. It would  
6 be inconsistent with ORS 197.625 to allow Metro to rely on an unacknowledged urban  
7 reserve designation, as a means to avoid the necessity of finding compliance with Goal 14  
8 and other applicable criteria.

9 This subassignment of error is denied.

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<sup>28</sup>ORS 197.625 provides in relevant part:

- “(1) If no notice of intent to appeal is filed within the 21-day period set out in ORS 197.830(9), the amendment to the acknowledged comprehensive plan or land use regulation or the new land use regulation shall be considered acknowledged upon the expiration of the 21-day period. An amendment to an acknowledged comprehensive plan or land use regulation is not acknowledged unless the adopted amendment has been submitted to the Director of the Department of Land Conservation and Development as required by ORS 197.610 to 197.625 and the 21-day appeal period has expired, the board affirms the decision or the appellate courts affirm the decision.
- “(2) If the decision adopting an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation is affirmed on appeal under ORS 197.830 to 197.855, the amendment or new regulation shall be considered acknowledged upon the date the appellate decision becomes final.
- “(3)(a) Prior to its acknowledgment, the adoption of a new comprehensive plan provision or land use regulation or an amendment to a comprehensive plan or land use regulation is effective at the time specified by local government charter or ordinance and is applicable to land use decisions, expedited land divisions and limited land use decisions if the amendment was adopted in accordance with ORS 197.610 and 197.615 unless a stay is granted under ORS 197.845.
  - “(b) Any approval of a land use decision, expedited land division or limited land use decision subject to an unacknowledged amendment to a comprehensive plan or land use regulation shall include findings of compliance with those land use goals applicable to the amendment.
  - “(c) The issuance of a permit under an effective but unacknowledged comprehensive plan or land use regulation shall not be relied upon to justify retention of improvements so permitted if the comprehensive plan provision or land use regulation does not gain acknowledgment.”

1           **B.       Exclusion of Exception Areas**

2           Petitioners argue that Metro improperly excluded unspecified exception areas from  
3 consideration based on factors or criteria that are extrinsic to the criteria imposed by Metro’s  
4 code and applicable goals, rules and statutes. Petitioners explain that an alternative sites  
5 study submitted by intervenors discusses the suitability of a number of alternative sites based  
6 on such considerations as “proximity to major transit arterials,” “proximity to centers,”  
7 “proximity to light rail and other forms of transportation,” “separation of communities” and  
8 “ability of parcels to be master planned on a cost effective basis.” Record 4887. Petitioners  
9 note that in *Parklane I* we rejected similar efforts to rely on factors such as “separation of  
10 communities” that are extrinsic to the criteria imposed by the urban reserve rule to exclude  
11 from consideration exception lands that otherwise complied with those criteria. 35 Or LUBA  
12 at 581-84. Petitioners contend there is no basis in ORS 197.298 or other criteria applicable  
13 to the instant UGB amendment to reject otherwise suitable exception lands from further  
14 consideration, merely because those lands do not satisfy Metro’s preferences for “proximity  
15 to light rail” or “separation of communities.”

16           We agree with petitioners that our reasoning in *Parklane I* on this point is applicable  
17 to Metro’s decision to expand the UGB pursuant to applicable code, goal, rule and statutory  
18 provisions, and that Metro erred to the extent it relied on policy considerations or other  
19 criteria extrinsic to those provisions. However, it is not clear that Metro has done so in this  
20 case. The alternative site study commencing at Record 4885 is different from the alternative  
21 site study, at Record 1602, that Metro discusses and expressly incorporates into that portion  
22 of its findings discussing alternative sites. The study at Record 4885 examines a number of  
23 exception lands in Washington and Multnomah Counties, but does not discuss the Cooper  
24 Mountain exception lands. The study at Record 1602 discusses the Cooper Mountain  
25 exception lands, and the only exception lands Metro’s findings discuss are the Cooper  
26 Mountain exception lands and the lands within URSA 65. In short, it is not clear to us that

1 Metro’s alternative sites analysis relies upon the study at Record 4885. It appears that Metro  
2 chose as part of its alternative sites analysis to consider only those alternative sites that were  
3 adjacent to or near the UGB in the Beaverton Regional Center area. As we explained earlier  
4 in this opinion, Metro did not err in limiting the geographic scope of its alternatives analysis  
5 to those lands adjacent to the Beaverton Regional Center area UGB that can satisfy the  
6 identified subregional need. Neither the alternative sites study at Record 1602 nor Metro’s  
7 findings appear to rely on policy preferences such as “separation of communities” that are  
8 extrinsic to the UGB amendment criteria. We conclude that petitioners’ arguments under  
9 this subassignment do not provide a basis for reversal or remand.

10 This subassignment of error is denied.

11 **C. Cumulative Evaluation of Alternative Sites**

12 Petitioners argue that “there is no evidence Metro looked at the cumulative  
13 contribution alternative exception areas could make to rectifying the alleged subregional  
14 housing need.” Petition for Review 47.

15 In *Parklane I*, we held that Metro erred in including resource lands in urban reserves  
16 over certain exception lands in the area simply because, considered individually, those  
17 exception areas could not be developed as efficiently or provide the same amount of housing  
18 as the preferred resource parcel. 35 Or LUBA at 608-09. We concluded that remedying an  
19 identified jobs/housing imbalance in the Hillsboro subregion for purposes of OAR 660-021-  
20 0030(4)(a) was a matter of increasing the quantity of housing units in that subregion. *Id.*  
21 Therefore, we concluded, Metro must determine whether higher priority exception lands in  
22 the subregion, considered cumulatively, can satisfy that identified need for more housing  
23 units. Petitioners argue, and we agree, that the same principle is applicable in the present  
24 case and that, in attempting to remedy the identified jobs/housing imbalance in the Beaverton  
25 subregion, Metro must determine whether exception lands in the area, considered

1 cumulatively, can satisfy the identified need for more housing units.<sup>29</sup> Stated differently, it  
2 would be error for Metro to conclude in this case that a certain exception area need not be  
3 considered for inclusion in the UGB, simply because by itself that exception area is too small  
4 or too constrained to support all of the proposed 700 housing units that could be developed  
5 on Site 65, if that exception area in combination with others could reasonably accommodate  
6 the urban development of those 700 housing units.

7 However, petitioners have not demonstrated that Metro’s decision in this case errs in  
8 that fashion. As explained above, the only exception areas that Metro considered in its  
9 alternative sites analysis are the Cooper Mountain exception lands and exception lands  
10 within URSA 65. With respect to the exception lands within URSA 65, as we discuss below,  
11 Metro found that those lands *can* reasonably accommodate the proposed use, although it  
12 chose to include Site 65 in the UGB over those lands, pursuant to ORS 197.298(3)(a) and (c).  
13 With respect to the Cooper Mountain lands, Metro did not attempt to calculate the number of  
14 housing units those lands could support, because it had concluded for several reasons that  
15 those lands cannot reasonably accommodate the proposed urban use.<sup>30</sup> Those reasons

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<sup>29</sup>We note in passing at least one particular in which application of that principle may differ from the urban reserve context to the UGB amendment context. One of the reasons Metro rejected a number of exception areas as reasonable alternatives in *Parklane I* was that existing development patterns made it difficult to aggregate sufficient large blocks of land to accommodate urban levels of development. The primary function of urban reserve designations is to identify rural lands suitable for future urbanization over a 30 to 50-year planning horizon and preserve them from interim development inconsistent with that future urbanization. Given a 30 to 50 year planning horizon, the relative difficulty of aggregating large blocks of land in exception areas is not a sufficient reason to exclude those lands from inclusion in urban reserves. However, a UGB amendment is designed to alleviate a more immediate need. In that context, difficulty in aggregating large blocks of land in time to satisfy that need could play a legitimate role in concluding that exception lands so constrained cannot reasonably accommodate the proposed urban development.

<sup>30</sup>Metro stated on this point:

“Metro has not attempted to calculate the theoretical number of housing units that could theoretically be constructed on the exception area to the west of the Beaverton UGB and those to the north of [URSA] 65. In this case, Metro does not believe such a calculation is necessary in order to satisfy the considerations necessary to the alternative site analysis. The evidence is sufficient to demonstrate that the entire area to the west of the Beaverton UGB is not a suitable location to accommodate urban-level development for a number of reasons.  
\* \* \*” Record 54.

1 include considerations independent of the ability of those exception lands to accommodate  
2 700 housing units. In effect, Metro concluded, based on those considerations, that even if a  
3 sufficient number of housing units could theoretically be developed on those exception lands  
4 as a whole, such development would be so dispersed and fragmented that it could not exhibit  
5 the density, transit, mixed use and other attributes essential to urban development. *See*  
6 MC 3.01.020(b)(4)(A). In short, Metro appears to have considered and rejected the ability of  
7 the Cooper Mountain exception lands, taken as a whole, to accommodate the proposed urban  
8 use. As we concluded in our discussion of the second assignment of error, the reasons for  
9 rejecting the Cooper Mountain exception lands do not rest on the individual inability of those  
10 lands to accommodate the requisite number of housing units. For those same reasons, we  
11 conclude here that Metro did not err in failing to determine the cumulative number of  
12 housing units that could be developed on the Cooper Mountain exception lands.

13 This subassignment of error is denied.

14 **D. Evaluation of Resource Lands**

15 Petitioners repeat their argument, in the second assignment of error, that Metro failed  
16 to examine alternative sites zoned for resource use, but with lower-capability soils, and to  
17 consider those sites for inclusion under ORS 197.298. As discussed earlier, petitioners are  
18 correct to the extent that Metro failed to examine resource lands within URSA 65 other than  
19 those within Site 65, and consequently failed to consider inclusion of those lands under  
20 ORS 197.298(1) and (2).<sup>31</sup>

21 This subassignment of error is sustained, in part.

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<sup>31</sup>Metro found that Site 65 has agricultural soils with capability classifications of II, III and IV, with slightly more than half of the site in classes III and/or IV. Record 49. The findings then state that “non-exceptions areas within the full [URSA] 65 consist solely of Class III and/or IV soils.” *Id.* However, Metro’s findings do not assign priority to these “non-exceptions areas” or discuss whether they can reasonably accommodate the proposed use.

1           **E.       Application of ORS 197.298 Priority Scheme**

2                   **1.       ORS 197.298(3)(a)**

3           Petitioners argue that Metro erred in including Site 65 under ORS 197.298(3)(a),  
4 because the identified needs to redress a subregional jobs/housing imbalance and to meet the  
5 subregion’s share of regional needs are not “specific types of identified land needs.” Further,  
6 petitioners argue, even if those identified needs fall within the scope of ORS 197.298(3)(a),  
7 Metro has not demonstrated that higher priority lands cannot accommodate those needs.

8           At the outset, we emphasize the conceptual difficulty of treating the subregional  
9 needs identified here under Goal 14, factors 1 and 2, *i.e.*, a need for additional residential  
10 lands to redress a subregional jobs/housing imbalance and to meet the subregional share of  
11 regional needs, as “specific types of identified land needs” for purposes of the exception to  
12 the statutory priority scheme at ORS 197.298(3)(a). As discussed earlier, redressing a  
13 subregional jobs/housing imbalance is a matter of increasing the *quantity* of residential lands  
14 within the subregion, as is meeting the subregional share of regional residential needs.  
15 Increasing the supply of residential land is a common if not paradigmatic justification for  
16 expanding an urban growth boundary that is more easily understood as need identified under  
17 Goal 14, factors 1 and 2. Using that Goal 14, factor 1 and 2 need as a “specific type of  
18 identified land need” under ORS 197.298(3)(a) is anomalous, because there is nothing about  
19 that need, other than perhaps its subregional focus, that is a “specific type.”<sup>32</sup> In an  
20 analogous context, we stated in *Parklane I* the jobs/housing exception at OAR 660-021-  
21 0030(4)(a) allows Metro to skew the distribution of urban reserves around the Metro region  
22 to help redress subregional jobs/housing imbalances that would occur or fail to be  
23 ameliorated under a straight application of the OAR 660-021-0030(3) priorities. 35 Or  
24 LUBA at 553. Thus, the jobs/housing exception is a narrow and limited one that as a

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<sup>32</sup>In our view, the phrase “specific types of identified land needs” is more readily understood to refer to specific categories of needed development that require land with particular site or locational characteristics.

1 practical matter can operate only in the context of an amendment to the entire UGB. In the  
2 context of a limited amendment to a subregion of the UGB, where the relevant need is for an  
3 additional *quantity* of residential land, as in this case, both types of need identified here  
4 operate only to limit the geographic focus to suitable residential lands within the subregion.  
5 The relevant inquiry becomes whether any suitable higher priority lands can reasonably  
6 accommodate, *i.e.*, are sufficient in quantity to satisfy, that identified need. That inquiry is  
7 addressed under the priority scheme at ORS 197.298(1), not the exception to that scheme at  
8 ORS 197.298(3)(a).

9 That fundamental problem aside, Metro’s findings regarding ORS 197.298(3)(a)  
10 simply refer to its alternative sites analysis as Metro’s demonstration that higher priority  
11 lands cannot reasonably accommodate the proposed use.<sup>33</sup> As discussed above, that  
12 alternative sites analysis fails to analyze or discuss resource lands within URSA 65, and  
13 whether those lands, if higher in priority, can reasonably accommodate the proposed use.  
14 For the foregoing reasons, we agree with petitioners that Metro erred in including Site 65  
15 within the UGB under ORS 197.298(3)(a).

16 This subassignment of error is sustained.

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<sup>33</sup>Metro’s findings regarding ORS 197.298(3)(a) state:

“As discussed above in response to factors 1 and 2 of the Metro Code, there is an identified need to add more residential land in the Beaverton Regional Center area in order to address the jobs-housing imbalance in that subregional area and also to provide an adequate supply of residential land to be able to accommodate the projected growth for that subregional area during the next approximately 20 years. The same evidence and findings that support the determination that a factor 2 need exists also support the conclusion that bringing in Site 65 is consistent with ORS 197.298(3)(a). Because ‘specific types of \* \* \* land needs’ have been adequately identified, the second requirement under ORS 197.298(3)(a) is to then demonstrate that this specific land need (for more residential land in the Beaverton Regional Center area) ‘cannot be reasonably accommodated on higher priority lands.’ The findings regarding the alternative site analysis set out below \* \* \* explain why there are no higher priority sites or any other alternative sites that can reasonably accommodate the particular need being addressed by including Site 65 in the UGB. \* \* \* Therefore, the evidence regarding need and higher priority alternative sites is sufficient to support this UGB amendment under ORS 197.298(3)(a).” Record 50.

1                   **2.       ORS 197.298(3)(c)**

2                   Finally, petitioners contend that Metro erred in including Site 65 under  
3                   ORS 197.298(3)(c). Petitioners argue that the gist of Metro’s findings is that including Site  
4                   65 would “minimize the cost burden” to develop the remainder of URSA 65. Record 58.  
5                   However, petitioners argue, in *Parklane I* we rejected a similar argument that the identical  
6                   provisions of OAR 660-021-0030(4)(c) are satisfied where including lower priority lands is  
7                   found to be the least costly or most efficient means to provide urban services to higher  
8                   priority lands. 35 Or LUBA at 620-21, 627. Petitioners argue that, like the urban reserve  
9                   rule, ORS 197.298(3)(c) is satisfied only where inclusion of lower priority lands is necessary  
10                  to maximize the efficiency of *land uses* on higher priority lands, either because higher  
11                  priority lands cannot be included absent inclusion of lower priority lands, or because urban  
12                  services cannot be provided to higher priority lands absent inclusion of lower priority lands.  
13                  *Id.* at 617.

14                  Metro’s findings with respect to ORS 197.298(3)(c) state:

15                  “\* \* \* The development of Site 65 is necessary in order to reasonably provide  
16                  urban services to the higher priority exception lands within [URSA] 65. \* \* \*  
17                  The basis for Metro’s initial urban reserve determination was that achieving  
18                  the maximum efficiency of land uses of the exception land in [URSA] 65  
19                  required the inclusion of both the exception land and the adjoining resource  
20                  land (including Site 65) because the latter was necessary to efficiently serve  
21                  and develop the former. LUBA concluded [in *Parklane I*] that Metro’s  
22                  findings regarding the urban reserve designation for [URSA] 65 did not  
23                  adequately explain why there were not alternative ways to provide urban  
24                  services to the exception areas within [URSA] 65 without going through or  
25                  developing the resource lands. LUBA said it was a close call as to whether or  
26                  not the findings were adequate, but LUBA concluded that they were not, in  
27                  part, because the findings did ‘not explain why services cannot be provided  
28                  through the urban area directly to the south of the higher priority lands.’  
29                  [*Parklane I*, 35 Or LUBA at 627]. The record for this UGB expansion  
30                  provides more detailed evidence and findings to justify the inclusion of Site  
31                  65 within the UGB pursuant to the ‘maximum efficiency’ test set out at  
32                  ORS 197.298(3)(c). \* \* \*

33                  “The utility feasibility information provided by Consulting Engineering  
34                  Services, Inc., in particular its correspondence of October 1998 and

1           September 17, 1999 and the attachments thereto, provide persuasive expert  
2 evidence that it would not be practical to extend sewer, water and storm  
3 drainage facilities and services to the exception areas within [URSA] 65  
4 without bringing all of those services through and/or utilizing the resource  
5 lands within the middle of [URSA] 65. The evidence and analysis in those  
6 two documents are incorporated herein as part of these findings. It is not  
7 realistic from a financial and urban-planning perspective to attempt to  
8 urbanize the exception areas by extending urban facilities to those areas  
9 without utilizing Site 65. In particular, the evidence demonstrated that it  
10 would not be economically reasonable to extend sewer service without  
11 extending the trunk line through Site 65. On balance, the case has been made  
12 that it is unreasonable to expect any type of efficient urbanization of the  
13 exception areas without including and first developing Site 65. \* \* \* The  
14 record includes a ‘shadow’ plan and supporting testimony that demonstrate  
15 that it will be feasible to develop the remainder of [URSA] 65 based on and  
16 following up on the Site 65 concept plan. \* \* \* The efficient utilization of  
17 the exception lands will not occur without first allowing the development of  
18 Site 65.” Record 50-52.

19           The documents from Consulting Engineering Services, Inc., explain that Site 65  
20 contains a natural drainage, Bronson Creek, that drains most of URSA 65. The October  
21 letter states that Site 65’s drainage basin is the “key to development of the entire area.”  
22 Record 4725. The September 17, 1999 letter discusses the feasibility of providing urban  
23 services to exception area 1, north of Site 65, and exception area 2, east of Site 65, without  
24 providing those services through or by means of first developing Site 65. The letter  
25 concludes that sewer and other utility lines cannot be provided to exception area 1 through  
26 the PCC campus within the UGB, and can feasibly be extended from the UGB only through  
27 Site 65. With respect to exception area 2, the September 17, 1999 letter states that providing  
28 sewer service to that area would require 4,000 new feet of sewer line extending from the  
29 existing 24-inch trunk line near Site 65 eastward, and then north to exception area 2. The  
30 letter explains that, because of topography, only the portion of exception area 2 east of  
31 Kaiser Road could be served by such a system, and that development of the western portion  
32 of exception area 2 could only be served by sewer lines extending from Site 65. The  
33 September 17, 1999 letter makes similar claims regarding storm drainage. Record 2042-44.

1 We agree with intervenors that the foregoing findings and evidence are adequate to  
2 demonstrate that “[m]aximum efficiency of land uses within a proposed urban growth  
3 boundary requires inclusion of lower priority lands in order to \* \* \* provide services to  
4 higher priority lands.” ORS 197.298(3)(c). Those findings and evidence demonstrate that  
5 exception areas 1 and 2 cannot be provided urban services without the inclusion and prior  
6 development of Site 65.

7 At oral argument petitioners advanced the additional argument that a proposed UGB  
8 amendment complies with ORS 197.298(3)(c) only if that amendment actually *includes* the  
9 higher priority lands that justify inclusion of lower priority lands. Because Metro does not  
10 propose at this time to include exception areas 1 and 2 within the UGB, petitioners argue,  
11 Metro cannot now include Site 65 pursuant to ORS 197.298(3)(c). That reading of  
12 ORS 197.298(3)(c) is compelled by the text of that provision, petitioners argue, which is  
13 focused on achieving maximum efficiency of land uses “within a proposed urban growth  
14 boundary,” for either of the two reasons provided. Without proposing to include exception  
15 areas 1 and 2 within the UGB, petitioners contend, the inclusion of Site 65 does nothing to  
16 maximize the efficiency of land uses within the proposed UGB for either of those two  
17 reasons. Further, petitioners argue, such a reading of ORS 197.298(3)(c) is necessary  
18 because otherwise local governments could include resource lands within the UGB on the  
19 grounds that it was necessary to provide services to exception lands that the local  
20 government has no intention or likelihood of ever urbanizing.

21 Intervenors objected to petitioners’ argument, claiming that petitioners’ allegation is a  
22 new issue not raised in the petition for review and, therefore, LUBA should not consider it.  
23 OAR 661-010-0040(1).<sup>34</sup> We agree. The contention that Metro violated ORS 197.298(3)(c)

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<sup>34</sup>OAR 661-010-0040(1) provides that:

“Only parties who have submitted briefs shall be allowed to present oral argument to the Board. The Board shall not consider issues raised for the first time at oral argument.”

1 by including Site 65 without at the same time including exception areas 1 and 2 is not raised  
2 or even fairly implied in the petition for review. However meritorious that argument may be,  
3 it was not raised in a manner that afforded other parties an adequate opportunity to respond  
4 to it, and we do not consider it.

5 We conclude that petitioners have not demonstrated that Metro erred in including Site  
6 65 under ORS 197.298(3)(c), for any reason stated in the petition for review.

7 This subassignment of error is denied.

8 The third assignment of error is sustained, in part.

9 **CONCLUSION**

10 We understand intervenors to suggest that if the Board rejects petitioners' challenges  
11 to Metro's inclusion of Site 65 under either ORS 197.298(3)(a) or (b) that Metro's decision  
12 should be affirmed, notwithstanding any errors in Metro's application of Goal 14, factors 3-  
13 7, its alternative sites analysis or ORS 197.298(1) and (2). We disagree. *See Parklane II*,  
14 165 Or App at 17, 20 (affirming LUBA's conclusion that application of the exceptions to the  
15 urban reserve rule's priorities requires sequential, proper and complete application of the  
16 priority scheme). Remand is necessary to address the errors sustained above in the second  
17 and third assignments of error.

18 Metro's decision is remanded.