

Senate Bill 1011
Section-by-Section Explanation
(As amended by the –A8 amendments)
May 29, 2007

Overall Summary

Senate Bill 1011 is intended to address deficiencies in the current growth management and urban growth boundary (UGB) expansion process in the Portland metropolitan area. Existing state law governing both UGB expansion and long-term planning tends to push urbanization onto lands that are not necessarily the most suitable for efficient, cost-effective urbanization, and does not provide long-term protection for the region's most important farm and forest land.

SB 1011 addresses these problems by establishing a system under which the region can designate lands outside its UGB on which urban expansion will and will not occur over a 40-50-year period. The bill has three main elements:

- Section 3 authorizes the establishment of rural reserves that will be off-limits to urban expansion during a 40-50-year planning period. These lands would be selected based upon their importance to the agriculture and forestry industries and to the protection of natural systems and landscape features.
- Section 6 provides a new pathway for the creation of urban reserves – areas that would be first in line for addition to the UGB – in the Portland metropolitan area. This new pathway would authorize the designation of urban reserves that, in conjunction with land already in the UGB, would provide 40-50 years of capacity for urban growth. Designation of these areas would be based upon a set of factors that emphasizes suitability for urban development.
- Because it is important that urban and rural reserves be addressed as part of an integrated planning process, Section 4 stipulates that they must be considered concurrently and may be designated only through agreements between Metro and counties.

Section 1

This section defines “rural reserve” and “urban reserve.” The definition of rural reserve contemplates three kinds of rural reserves: those intended to protect agriculture; those intended to protect forestry, and those intended to protect landscape features that can or should limit the expansion of urban development. It is understood, however, that a rural reserve could have more than one of these functions. The definition of “urban reserve” is taken from existing law and simply relocated.

Section 2

This section sets forth the findings of the Legislature about the benefits of long-range planning for growth.

Section 3

Subsection (1): authorizes counties and Metro to establish urban and rural reserves. An agreement among Metro and *all* counties a portion of which lies within the Metro UGB is not a prerequisite to an agreement between Metro and one county. The subsection cites the statutes that authorize intergovernmental agreements in general, leaving the parties to choose the appropriate type of agreement.

Subsection (2): provides that rural reserves must be outside any UGB. The subsection also prescribes a period of time during which a county may not re-designate rural reserves as urban reserves: the UGB planning period *plus* the urban reserve planning period. The urban reserve planning period will be determined in the intergovernmental agreement in accordance with subsection (4) of section 6 or section 10 (see below). But it must be at least 20 years, and no longer than 30 years, beyond the UGB planning period. Assuming passage of House Bill 2051 – which extends the time for Metro’s next UGB capacity analysis (currently due December, 2007) to December, 2009 – Metro will use the 20-year planning period of that next analysis (2009-2029) to determine the total period described by this subsection. This means the total period will be at least 40 years, and not more than 50 years, from 2009. This subsection also provides that land designated rural reserves cannot be included within any UGB for the same period (40-50 years).

Subsection (3): specifies factors that must be considered by counties establishing rural reserves for protection of agricultural land. These factors derive from the work done for the region by the Oregon Department of Agriculture entitled “Identification of Metro Region Agricultural Lands and Assessing Their Long-Term Commercial Viability.” The factors were written into the bill to provide more detailed guidance to LCDC, which requested the guidance to aid and speed the rulemaking required by subsection (4) of this section. The list of factors is not intended to be exclusive; LCDC remains free to require consideration of other factors in rulemaking.

Subsection (4): requires LCDC to adopt or revise a goal or a rule to establish a process and criteria for establishment of rural reserves consistent with the bill. The subsection requires LCDC to consult with the Oregon Department of Agriculture during its rulemaking. The deadline for the rulemaking – January 31, 2008 – is found in section 11 of the bill.

Section 4

Subsection (1): directs the counties and Metro to consider the establishment of rural and urban reserves simultaneously. The purpose is to ensure coordination of the planning of both types of reserves and consideration of the relationships between them.

Subsection (2): requires coordination and concurrency of the planning and designation of urban and rural reserves, including the adoption of county comprehensive plan provisions that designate and protect rural reserves, and county comprehensive plan provisions and Regional Framework Plan policies that designate and protect urban reserves. The subsection expressly prohibits the designation by Metro of urban reserves in a county until Metro and the county have signed an intergovernmental agreement that identifies the land that will be designated by the county as rural reserves under the agreement. Conversely, the subsection expressly prohibits the designation by a county of rural reserves until Metro and the county have signed an intergovernmental agreement that identifies the land in the county, if any, that will be designated

by Metro as urban reserves under the agreement. It is anticipated that the agreement between Metro and a county would, at the time of signing, include a map or maps of rural and urban reserves in the county, as agreed, and would set a schedule for adoption by each of implementation actions to occur as simultaneously as possible.

Subsection (3): provides that Metro and a county cannot agree to designate urban reserves in the county under this new process unless they also agree to designate rural reserves in that county.

Subsection (4): provides that the designation of rural or urban reserves under SB 1011 does not give rise to a Measure 37 claim so long as neither the county nor Metro imposes new restrictions on the use of private real property. Comprehensive plan amendments and Regional Framework Plan policies adopted pursuant to subsection (2) of this section do not, in and of themselves, constitute restrictions on the use of private real property. The subsection also protects existing rights and immunities provided by Oregon's "right to farm" law.

Section 5

This section makes only conforming amendments.

Section 6

This section amends the statute that currently authorizes local governments to establish "urban reserves."

Subsection (1): paragraph (b) makes clear that the authorization in this bill to establish urban reserves by intergovernmental agreement is an alternative to designation under existing statutes on urban reserves. The paragraph is intended to ensure that LCDC will adopt a new and independent rule to implement this bill. It is not intended to limit the authority of any local government to designate urban reserves pursuant to paragraph (a) of this subsection.

Subsection (2): makes conforming amendments to confirm that the bill establishes a new and independent method for designation of urban reserves by Metro and counties of the region.

Subsection (3): makes only conforming amendments.

Subsection (4): specifies that urban reserves designated pursuant to this bill must be for a period no less than 20 years, and no more than 30 years, beyond the UGB planning period. The UGB planning period of the most recent capacity analysis under ORS 197.296 at the time of designation would be used to determine the total planning period. This general provision, however, does not apply to any urban reserve designation prior to December 31, 2009. Section 10 requires a specific UGB planning period for urban reserves designated before this date.

Subsection (5): specifies factors that must be considered by local governments establishing urban reserves under the bill. These factors derive from the work done by local governments in the region entitled "Great Communities" (see the eight "Great Community Characteristics" in "Great Communities: Executive Summary, January, 2007). The factors were written into the bill to provide more detailed guidance to LCDC, which requested the guidance to aid and speed the rulemaking required by subsection (6) of this section. The list of factors is not intended to be exclusive; LCDC remains free to require consideration of other factors in

rulemaking. The objective of including these factors is to create an avenue for the designation of urban reserves that is based principally on the suitability of land for eventual urban development.

Subsection (6): requires LCDC to adopt a rule to establish a process and criteria for the new method of establishing urban reserves in the Metro area under the bill. The deadline for the rulemaking – January 31, 2008 – is found in section 11 of the bill.

Section 7

This section makes the designation of rural reserves a matter for periodic review. The reason is that state law already makes any designation by Metro of urban reserves a matter for periodic review. It is essential that the designation of urban reserves and rural reserves be closely coordinated and as close to simultaneous as possible. If Metro designation of urban reserves goes to LCDC, with appeal to the Court of Appeals, and county designation of rural reserves is appealed to LUBA – as would be the normal route without this section – it would be nearly impossible to ensure a coordinated result. This amendment would allow simultaneous review by LCDC of both the urban and the rural reserves.

Section 8

This section makes only conforming amendments.

Section 9

This section directs that any appeal of an LCDC order following review of the designation of urban and rural reserves by Metro and the counties would go to the Court of Appeals. The section also provides that the court will follow the same timelines for such appeals as the court currently follows when reviewing appeals of LUBA decisions. This is to prevent the appeals process from delaying the use by Metro of urban reserves in any UGB expansion needed after the 2009 UGB capacity analysis (required by passage of House Bill 2051).

Section 10

This section provides that any urban reserve designation prior to December 31, 2009 will use the UGB planning period of the *next* UGB capacity analysis required by ORS 197.299 when calculating the total planning period under the Act. Given passage of HB 2051, this means that the UGB planning period will be 2009 –2029 and the total planning period will be at least 20 years beyond 2029.

Section 11

This section sets a January 31, 2008, deadline for rulemaking on rural and urban reserves pursuant to the bill. The deadline is intended to ensure completion of LCDC rulemaking prior to completion of long-range planning by Metro and the local governments of the region, which is expected to result in agreements to establish rural reserves and urban reserves prior to Metro's next UGB capacity analysis.

Section 12

An "emergency clause" makes the bill effective upon passage. This is necessary because of the January 31, 2008, deadline for completion of reserves rulemaking. The rulemaking deadline, in turn, is necessary in order to allow Metro to fulfill its responsibilities under ORS 197.299 and ORS 197.296, as amended by HB 2051.

D. Appointed rulemaking advisory workgroup

Metro Area Urban and Rural Reserves Rulemaking Workgroup

1. Marilyn Worrix, LCDC (Workgroup Chair)
2. Randy Tucker, Metro
3. Brent Curtis, Washington County
4. Doug McLain, Clackamas County
5. Karen Schilling, Multnomah County
6. Pat Ribellia, City of Hillsboro
7. Jonathan Harker, City of Gresham
8. Gil Kelley, City of Portland
9. John Williams, City of Canby
10. Jim Johnson, Oregon Dept of Agriculture
11. Mary Kyle McCurdy, 1000 Friends of Oregon
12. Jim McCauley, Metro Homebuilders
13. Dave Van Asche, Washington County Farm Bureau
14. Bev Bookin, CREEC (Commercial Real Estate Economic Coalition)
15. Jim Labbe, Audubon Society of Portland
16. Ann Glaze, State CIAC (Citizen Involvement Advisory Committee)
17. Jeff Stone, OAN (Oregon Association of Nurseries)
18. Elaine Smith, ODOT Region 1 (Oregon Dept of Transportation)
19. Jeff Hepler, Oregon Dept of Forestry
20. Mike Salsgiver, OECDD (Dept of Economic and Community Development)

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E. The “Shape of the Region” summary report

The Shape of the Region

Supporting Agriculture, Protecting Natural Areas,
Creating Great Communities

The Shape of the Region work program encompassed three elements to address the balancing of urban, agricultural and natural landscape needs. The project yielded three major products: an analysis of the components necessary for development of great communities completed by a consultant team led by Cogan Owens Cogan, an agricultural land inventory and analysis completed by the Oregon Department of Agriculture, and a natural landscape features inventory completed by Metro staff.



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PEOPLE. PLACES
OPEN SPACES

In recent years, few participants in the growth management process in the Portland metropolitan region have been happy with the longstanding system for managing the region's urban growth boundary (UGB). The system has long been dominated by arbitrary timelines and land supply requirements rather than by rules that are more responsive to the aspirations of the region. The existing rules have offered the region no way to protect critical farmland or natural resources over the long term, yet they have also failed to adequately consider factors related to efficient and effective urbanization when deciding where to expand the UGB.

As a result, the rules governing regional growth management have increasingly led to UGB expansions where they are not wanted and prevented expansions where they might be appropriate and desirable. For this reason and others, these rules have led to conflict, uncertainty, and frustration for local governments, farmers, businesses, and individual citizens.

Moreover, new forecasts show that within 25 years about one million more people will live in the Portland metropolitan region. This rapid growth brings jobs and opportunity, but it also creates new challenges. The region's long-range plan, the 2040 Growth Concept, calls for efficient development within the existing urban area, but it is inevitable that over time the region will need to bring new land into the UGB.

The Shape of the Region Project

In order to better inform the region's approach to growth management and future urban expansion, Metro joined Washington, Multnomah, and Clackamas counties, as well as the Oregon Department of Land Conservation and Development (DLCD) and the Oregon Department of Agriculture (ODA), to conduct the "Shape of the Region" project (known colloquially as the "ag-urban study"). This project examined land outside Metro's UGB and asked three broad questions:

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

The answers to these questions highlighted the disconnect between existing land use laws governing regional growth management and the region's goals, both for efficient urbanization and for protection of areas that should not be urbanized. However, the study's findings have also helped pave the way for the development of new and better ways to manage the region's growth.

The successful completion of the Shape of the Region project in early 2007 provided the impetus for a remarkable regional coalition to come together to support a common legislative agenda. The result was the passage of House Bill 2051 (providing a one-time, two-year extension of the five-year UGB cycle) and Senate Bill 1011 (creating new rules for the designation of urban reserves and rural reserves). The findings of this project will underlie the designation of reserves pursuant to this legislation.

What follows is a summary of each of the study's elements.

Great Communities Analysis



The purpose of the Great Communities study was to identify and define community characteristics that should be considered in urbanization decisions to create great communities in the region. The study focused on characteristics related to land use, governance, urban services infrastructure, and finance.

The study was composed of two parts. Phase one was devoted to research aimed at defining the characteristics of "great communities," both domestic and international. Phase two applied a refined set of these characteristics to three test areas in the region in order to identify attributes that are most important to effective urbanization.

Results

The final report identified eight characteristics of great communities that should be considered when the region creates urban reserves and adds lands to the urban growth boundary. The successful application of these characteristics increases the likelihood that expansion areas (as well as existing communities) can develop into great communities.

Below are definitions for each of the eight characteristics.

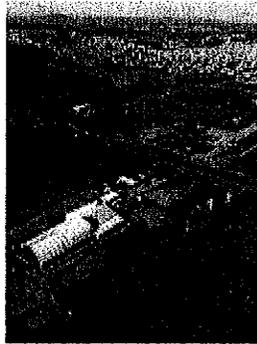
- 1. Community Design:** Consider urban reserve and UGB additions where there will be good community design, as defined by specific levels of density, walkability, connectivity and legibility. For example, an area should feature sufficient density and diversity of uses within a quarter-mile radius of centers of activity. Areas that have rich, distinctive, and site-specific characteristics, such as views or significant landmarks, should be capitalized upon to emphasize a community's unique features.
- 2. "Complete Communities":** Consider urban reserve and UGB additions that fill a recognized need to help existing communities become (or create new communities that can be) complete and sustainable urban communities.
- 3. Ecological Systems:** Consider urban reserve and UGB additions that can be designed to preserve and enhance natural ecological systems within urban communities. Opportunities to utilize sustainable infrastructure and integrate natural ecological services should be maximized.

- 4. Public Investments:** Consider urban reserve and UGB additions that optimize existing and planned future infrastructure investments in transportation, sewers, water systems, utility infrastructure, parks, and open spaces.
- 5. Governance:** Consider urban reserve and UGB additions in areas that have a vision in place and service providers and local governments willing and able to provide urban-level services.
- 6. Finance:** Consider urban reserve and UGB additions where financially capable local government(s) exists; where the costs of providing needed infrastructure services are known and reasonable; and where a plan to finance infrastructure capital costs has been prepared.
- 7. Economy:** Consider market-responsive urban reserve and UGB additions where realistic and reasonable market demand already exists or will develop in the foreseeable future.
- 8. Education and Workforce Development:** Consider urban reserve and UGB additions that address land needs for school facilities (including post-secondary schools) that can serve as building blocks of the local community.

Conclusions and Recommendations

- Urbanization decisions will involve as much art as science; it is impossible to know with any level of certainty whether a given area will develop into a "great community." Regional partners will need to reconcile the theoretical (i.e., the characteristics listed above) with the practical (the on-the-ground realities of the region's urbanization decision-making process).
- Many of the costs of creating great communities must be borne up front, while benefits are spread out over a longer time frame compared to other types of development. A regional financing strategy may be needed to provide the infrastructure necessary to accommodate growth in an efficient and cost-effective manner.
- A greater level of planning is needed prior to all urbanization decisions, from the designation of urban reserves to the inclusion of areas in the UGB.

Agricultural Land Inventory and Analysis



The purpose of the agricultural land assessment conducted by the Oregon Department of Agriculture (ODA) was to consider factors that affect the ability of an area to successfully conduct commercial agricultural operations over an extended period of time and to develop an inventory of lands surrounding Metro's UGB based on their long-term agricultural viability.

The key factors that ODA employed to evaluate agricultural lands can be separated into two categories: "capability" and "suitability."

- **Capability** refers to the physical ability of land to produce an agricultural product, based primarily upon quantity and quality of soils and availability of water.
- **Suitability** refers to the ability of any given tract of land to be utilized for farm use over the long term based on other factors, including whether the land is part of a large block of agricultural land, the potential of surrounding uses to create conflicts, availability of agricultural infrastructure, etc.

Results

Based upon these factors, ODA's inventory and analysis led to the development of a hierarchy of three levels of agricultural lands: "Foundation," "Important," and "Conflicted."

- **Foundation agricultural lands** are highly productive lands that provide the core support to the region's agricultural base. These lands have the attributes necessary to sustain current agricultural operations and to adapt to changing technologies and consumer demands. They incubate and support the larger agricultural industry and are vital to its long-term viability.
- **Important agricultural lands** are suited to agricultural production and contribute to or have the capacity to contribute to the commercial agricultural economy over the long term. They have the potential to be foundation lands, but tend not to be utilized to their full potential. Trends in regional agriculture could lead to greater development of the agricultural capacity of these areas.
- **Conflicted agricultural lands** are lands whose agricultural capability (soils/water) may be excellent but whose suitability is questionable. These lands are influenced by external factors (i.e., adjacent land use patterns) that raise questions about their long-term viability. The resulting uncertainty, in turn, tends to discourage investment in agricultural operations by area farmers. However, these lands could become Important agricultural lands with changes

in circumstances and industry trends. There may be individual or multiple operations within these areas that are conducting efficient and viable operations.

The ODA assessment identified some areas as Foundation lands that would normally be considered to have low capability and questionable suitability. One example is the Clackanomah area southeast of Gresham, where numerous small parcels zoned for rural residential use are mixed in with large parcels zoned for exclusive farm use (EFU) to create a formidable block of high-value nursery operations.

On the other hand, some areas may have high capability but be less suitable for agricultural use due to external factors. For example, a 640-acre tract of high-value EFU-zoned land south of Hillsboro is almost completely surrounded by urbanization and isolated from a large block of agricultural land to the southwest. Despite its excellent soil, this land is identified as Conflicted in the ODA assessment.

These two examples highlight the need for a process that goes beyond traditional soil-based zoning of resource and non-resource land to assess the on-the-ground nature of agricultural activities and the outside influences that make an area more or less viable for long-term farm use.

Conclusions and Recommendations

- The use of rural reserves to protect lands that are functionally critical to the agricultural economy could go a long way toward providing stability to agriculture in the region.
- Consideration should be given to identifying "hard edges" and buffers between agricultural and urban areas, either through designation of land as rural reserves or through other tools such as conservation easements and setbacks.
- Better analysis is needed during the UGB expansion process to account for the impact of urban development on agriculture. For example, UGB expansions should not create protrusions of urban land into agricultural lands or situations where urban lands have multiple edges with agricultural lands.
- While the current focus of the region's agricultural industry is on production for export markets, certain current trends (e.g., uncertainty about long-term energy supplies) suggest the lands not always considered to be important to the region's agricultural base may in the future merit greater consideration. In making today's decisions we should be careful not to foreclose tomorrow's opportunities or needs.

Natural Landscape Features Inventory



Environmental quality and access to nature play key roles in how the citizens of the region define livability. The purpose of the natural features inventory was to identify features of the landscape that are important in terms of ecological function or that influence the sense of place for the greater region, and that should thus help to define the region's future urban form. The inventory was based on two key questions:

- What natural resources are essential to the health and welfare of the region?
- What landscape features define the sense of place for residents of the region?

To answer these questions, Metro staff compiled various maps and data sets in a Geographic Information System database; consulted with a team of ecology and park professionals; and conducted a natural landscape features charrette with participants selected for their intimate knowledge of the regional landscape, their grounding in ecological principles, and their familiarity with Metro's regional growth management and greenspaces programs.

Factors considered in identifying key natural landscape features included:

- A variety of habitats needed to protect the region's biological diversity
- Opportunities to consolidate and connect existing or potential natural areas
- Critical river and stream corridors
- Natural connections between watersheds at their headwaters
- Geographic features that define and distinguish the region.

Results

The final product was a map identifying 26 landscape features that affect the region's sense of place, embody resource values at a larger

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People places + open spaces

Metro, the regional government that serves 1.3 million people who live in Clackamas, Multnomah and Washington counties and the 25 cities in the Portland metropolitan area, provides planning and services that protect the nature of our region.

landscape and ecosystem scale, and should inform discussions over where future growth should and should not occur. Common themes in the area descriptions were floodplains, wetlands, drinking water, habitat corridors, canyons/topographic features, healthy fish and wildlife populations, and habitat for rare/threatened species.

Features linked to the "health and welfare of the region" included healthy stream corridors and forested areas as well as natural hazard areas such as floodplains, wetlands, and steep slopes. Examples include the East Buttes, Clear Creek Canyon, the Sandy River Gorge, the Clackamas River watershed, and the floodplain of the Willamette River.

Features linked to defining a regional sense of place included views to mountains and hills, natural areas that are easily accessible to the public, and large parks and open spaces in public ownership. Examples include the Columbia River Gorge and the Columbia River islands, the Cascade foothills and the Chehalis Mountains, Sauvie Island and Forest Park as well as Willamette Narrows to Canemah Bluffs and the Clackamas River Bluffs and Greenway.

Conclusions and Recommendations

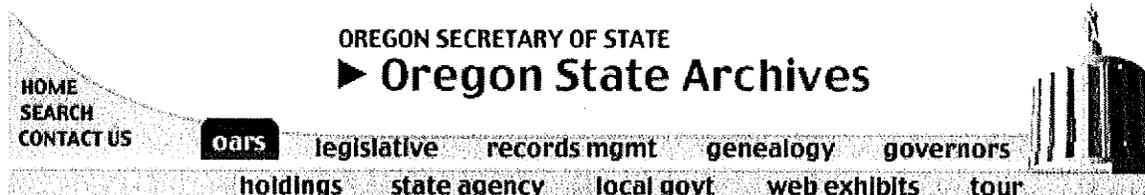
- Establishing rural reserves can be a useful strategy for the protection of important natural features.
- Further research is needed to determine which types of natural features make good boundaries or edges; to address the relationship between agricultural lands and natural landscape features; and to consider the relationship between rural reserves and other tools such as willing-seller land acquisition programs (e.g., Metro's Natural Areas acquisition program).

Metro representatives

Metro Council President – David Bragdon
Metro Councilors – Rex Burkholder, Kathryn Harrington, Carl Hosticka, Robert Liberty, Rod Park
Auditor – Suzanne Flynn

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F. Urban Reserve Rules under OAR 660, division 21



The Oregon Administrative Rules contain OARs filed through December 14, 2007

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 21

URBAN RESERVE AREAS

660-021-0000

Purpose

This division authorizes planning for areas outside urban growth boundaries to be reserved for eventual inclusion in an urban growth boundary and to be protected from patterns of development that would impede urbanization.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.145 & ORS 197.040

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00

660-021-0010

Definitions

For purposes of this division, the definitions contained in ORS 197.015 and the Statewide Planning Goals (OAR Chapter 660, Division 015) apply. In addition, the following definitions apply:

- (1) "Urban Reserve Area": Lands outside of an urban growth boundary identified as highest priority for inclusion in the urban growth boundary when the boundary is expanded in accordance with Goal 14.
- (2) "Resource Land": Land subject to the Statewide Planning Goals listed in OAR 660-004-0010(1)(a) through (f), except subsection (c).
- (3) "Nonresource Land": Land not subject to the Statewide Planning Goals listed in OAR 660-004-0010(1)(a) through (f) except subsection (c). Nothing in this definition is meant to imply that other goals do not apply to nonresource land.
- (4) "Exception Areas": Rural lands for which an exception to Statewide Planning Goals 3 and 4, as

defined in OAR 660-004-0005(1), have been acknowledged.

(5) "Developable Land": Land that is not severely constrained by natural hazards, nor designated or zoned to protect natural resources, and that is either entirely vacant or has a portion of its area unoccupied by structures or roads.

(6) "Adjacent Land": Abutting land.

(7) "Nearby Land": Land that lies wholly or partially within a quarter mile of an urban growth boundary.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.145 & ORS 197.040

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00

660-021-0020

Authority to Establish Urban Reserve Areas

Cities and counties cooperatively, and the Metropolitan Service District for the Portland Metropolitan area urban growth boundary, may designate urban reserve areas under the requirements of this rule, in coordination with special districts listed in OAR 660-021-0050(2) and other affected local governments, including neighboring cities within two miles of the urban growth boundary. Where urban reserve areas are adopted or amended, they shall be shown on all applicable comprehensive plan and zoning maps, and plan policies and land use regulations shall be adopted to guide the management of these areas in accordance with the requirements of this division.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.145 & ORS 197.040

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00

660-021-0030

Determination of Urban Reserve Areas

(1) Urban reserve areas shall include an amount of land estimated to be at least a 10-year supply and no more than a 30-year supply of developable land beyond the 20-year time frame used to establish the urban growth boundary. Local governments designating urban reserves shall adopt findings specifying the particular number of years over which designated urban reserves are intended to provide a supply of land.

(2) Inclusion of land within an urban reserve area shall be based upon the locational factors of Goal 14 and a demonstration that there are no reasonable alternatives that will require less, or have less effect upon, resource land. Cities and counties cooperatively, and the Metropolitan Service District for the Portland Metropolitan Area Urban Growth Boundary, shall first study lands adjacent to, or nearby, the urban growth boundary for suitability for inclusion within urban reserve areas, as measured by the factors and criteria set forth in this section. Local governments shall then designate for inclusion within urban reserve areas that suitable lands which satisfies the priorities in section (3) of this rule.

(3) Land found suitable for an urban reserve may be included within an urban reserve area only according to the following priorities:

- (a) First priority goes to land adjacent to, or nearby, an urban growth boundary and identified in an acknowledged comprehensive plan as an exception area or nonresource land. First priority may include resource land that is completely surrounded by exception areas unless these are high value crop areas as defined in Goal 8 or prime or unique agricultural lands as defined by the United States Department of Agriculture;
- (b) If land of higher priority is inadequate to accommodate the amount of land estimated in section (1) of this rule, second priority goes to land designated as marginal land pursuant to ORS 197.247;
- (c) If land of higher priority is inadequate to accommodate the amount of land estimated in section (1) of this rule, third priority goes to land designated in an acknowledged comprehensive plan for agriculture or forestry, or both. 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.
- (4) Land of lower priority under section (3) of this rule may be included if land of higher priority is found to be inadequate to accommodate the amount of land estimated in section (1) of this rule for one or more of the following reasons:
- (a) Future urban services could not reasonably be provided to the higher priority area due to topographical or other physical constraints; or
- (b) 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.
- (5) Findings and conclusions concerning the results of the above consideration shall be adopted by the affected jurisdictions

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 7-1996, f. & cert. ef. 12-31-96; LCDD 4-2000, f. & cert. ef. 3-22-00

660-021-0040

Urban Reserve Area Planning and Zoning

- (1) Until included in the urban growth boundary, lands in the urban reserve area shall continue to be planned and zoned for rural uses in accordance with the requirements of this section, but in a manner that ensures a range of opportunities for the orderly, economic and efficient provision of urban services when these lands are included in the urban growth boundary.
- (2) Urban reserve area land use regulations shall ensure that development and land divisions in exception areas and nonresource lands will not hinder the efficient transition to urban land uses and the orderly and efficient provision of urban services. These measures shall be adopted by the time the urban reserve area is designated, or in the case of those local governments with planning and zoning responsibility for lands in the vicinity of the Portland Metropolitan Area Urban Growth Boundary, by the time such local governments amend their comprehensive plan and zoning maps to implement urban reserve area designations made by the Portland Metropolitan Service District. The measures may include:

- (a) Prohibition on the creation of new parcels less than ten acres;
 - (b) Requirements for clustering as a condition of approval of new parcels;
 - (c) Requirements for preplanning of future lots or parcels;
 - (d) Requirements for written waivers of remonstrance against annexation to a provider of sewer, water or streets;
 - (e) Regulation of the siting of new development on existing lots for the purpose of ensuring the potential for future urban development and public facilities.
- (3) For exception areas and nonresource land in urban reserve areas, land use regulations shall prohibit zone amendments allowing more intensive uses, including higher residential density, than permitted by acknowledged zoning in effect as of the date of establishment of the urban reserve area. Such regulations shall remain in effect until such time as the land is included in the urban growth boundary.
- (4) Resource land that is included in urban reserve areas shall continue to be planned and zoned under the requirements of applicable Statewide Planning Goals.
- (5) Urban reserve area agreements consistent with applicable comprehensive plans and meeting the requirements of OAR 660-021-0050 shall be adopted for urban reserve areas.
- (6) Cities and counties are authorized to plan for the eventual provision of urban public facilities and services to urban reserve areas. However, this division is not intended to authorize urban levels of development or services in urban reserve areas prior to their inclusion in the urban growth boundary. This division is not intended to prevent any planning for, installation of, or connection to public facilities or services in urban reserve areas consistent with the statewide planning goals and with acknowledged comprehensive plans and land use regulations in effect on the applicable date of this division.
- (7) A local government shall not prohibit the siting of a single family dwelling on a legal parcel pursuant to urban reserve planning requirements if the single family dwelling would otherwise have been allowed under law existing prior to the designation of the parcel as part of an urban reserve area.

Stat. Auth.: ORS 183, ORS 197.040, ORS 197.050 & ORS 197.145

Stats. Implemented: ORS 197.145

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 5-1994, f. & cert. ef. 4-20-94; LCDD 2-1997(Temp), f. & cert. ef. 5-21-97; LCDD 3-1997, f. & cert. ef. 8-1-97; LCDD 4-2000, f. & cert. ef. 3-22-00

660-021-0050

Urban Reserve Area Agreements

Urban reserve area planning shall include the adoption and maintenance of urban reserve agreements among cities, counties and special districts serving or projected to serve the designated urban reserve area. These agreements shall be adopted by each applicable jurisdiction and shall contain:

- (1) Designation of the local government responsible for building code administration and land use regulation in the urban reserve area, both at the time of reserve designation and upon inclusion of these

areas within the urban growth boundary.

(2) Designation of the local government or special district responsible for the following services: sewer, water, fire protection, parks, transportation and storm water. The agreement shall include maps indicating areas and levels of current rural service responsibility and areas projected for future urban service responsibility when included in the urban growth boundary.

(3) Terms and conditions under which service responsibility will be transferred or expanded for areas where the provider of the service is expected to change over time.

(4) Procedures for notification and review of land use actions to ensure involvement by all affected local governments and special districts.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.145 & ORS 197.040

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00

660-021-0060

Urban Growth Boundary Expansion

All lands within urban reserve areas established pursuant to this division shall be included within an urban growth boundary before inclusion of other lands, except where an identified need for a particular type of land cannot be met by lands within an established urban reserve area.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.145 & ORS 197.040

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00

660-021-0070

Adoption and Review of Urban Reserve Areas

(1) Designation and amendment of urban reserve areas shall follow the procedures in ORS 197.610 through 197.650.

(2) Disputes between jurisdictions regarding urban reserve area boundaries, planning and regulation, or urban reserve agreements may be mediated by the Department or Commission upon request by an affected local government or special district.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.145

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 2-1997(Temp), f. & cert. ef. 5-21-97; LCDD 3-1997, f. & cert. ef. 8-1-97; LCDD 4-2000, f. & cert. ef. 3-22-00

660-021-0080

Applicability

The provisions of this rule are effective upon filing with the Secretary of State. The amendments to

OAR 660-021-0030 adopted by the commission on January 27, 2000, do not apply to the urban reserve designations made by the Portland Metropolitan Service District on March 6, 1997, or to any decision by the District on remand of those designations from the Land Use Board of Appeals or a court of competent jurisdiction, and the version of that rule effective on December 31, 1996, shall continue to apply to those designations.

Stat. Auth.: ORS 183, ORS 195 & ORS 197

Stats. Implemented: ORS 195.145

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 5-1994, f. & cert. ef. 4-20-94; LCDD 2-1997(Temp), f. & cert. ef. 5-21-97; LCDD 3-1997, f. & cert. ef. 8-1-97; LCDD 4-1997, f. & cert. ef. 12-23-97; LCDD 4-2000, f. & cert. ef. 3-22-00

660-021-0090

Implementation Schedule

(1) Local governments listed in OAR 660-021-0080(3) shall complete urban reserve area planning under the following schedule:

(a) Adopt final urban reserve area boundaries, including all mapping, planning, and land use regulation requirements specified in OAR 660-021-0040 within 24 months from the effective date of this rule; and

(b) Adopt urban reserve area agreements meeting OAR 660-021-0050 within one year from adoption of urban reserve areas.

(2) The Director may grant an extension to time lines under subsections (1)(a) or (b) of this rule if the Director determines that the local government has provided proof of good cause for failing to complete urban reserve requirements on time.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.145 & ORS 197.040

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92

660-021-0100

Interim Protection of Potential Reserve Areas

(1) The following interim protection measures apply to all land use decisions concerning exception areas and nonresource lands within two miles of the urban growth boundary of Medford, and to those areas designated as an urban reserve by Metro (for the Portland area urban growth boundary) on March 6, 1997:

(a) Amendments of comprehensive plans or land use regulations are prohibited if they would allow an increase in the density of residential development relative to existing acknowledged plan and land use regulation provisions;

(b) Amendments of comprehensive plans or land use regulations are prohibited if they would allow additional commercial or industrial uses relative to existing acknowledged plan and land use regulation provisions, except that mineral and aggregate sites inventoried in an acknowledged plan may be rezoned to authorize mining activities;

(c) No subdivision or partition shall be permitted within two miles of the urban growth boundary of Medford; and

(d) No subdivision or partition creating a lot or parcel of less than 20 acres shall be permitted within those areas designated as urban reserves by Metro on March 6, 1997.

(2) Any local government reviewing a proposed land use decision that includes a decision under (1)(a)-(d) of this rule shall notify the department in writing of the proposal at least ten days prior to the close of the record on the decision.

(3) The provisions of this section are effective until the earlier of the following:

(a) December 31, 2000;

(b) When the commission adopts a rule under Goal 14 limiting the circumstances in which land divisions are allowed on rural exceptions lands; or

(c) For the Portland area urban growth boundary, when Metro's urban reserve designations are acknowledged, and all affected local governments have adopted the measures required under OAR 660-021-0040 and 0050 and those measures are acknowledged.

Stat. Auth.: ORS 183, ORS 195 & ORS 197

Stats. Implemented: ORS 195.145

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-1997, f. & cert. ef. 12-23-97; LCDD 4-2000, f. & cert. ef. 3-22-00

The official copy of an Oregon Administrative Rule is contained in the Administrative Order filed at the Archives Division, 800 Summer St. NE, Salem, Oregon 97310. Any discrepancies with the published version are satisfied in favor of the Administrative Order. The Oregon Administrative Rules and the Oregon Bulletin are copyrighted by the Oregon Secretary of State. [Terms and Conditions of Use](#)

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G. Rulemaking notices



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

RULEMAKING NOTICE

December 28, 2007

TO: Interested Persons
FROM: The Department of Land Conservation and Development
RE: **Proposed New Administrative Rules Establishing a Process and Criteria for Designation of Urban and Rural Reserves in the Portland Metro Area**

The Land Conservation and Development Commission (LCDC) is considering new administrative rules and amendment and repeal of some current rules regarding the process and criteria for establishing urban and rural reserves in the Portland Metro region. LCDC will hold a public hearing to consider public testimony regarding these rules at its **January 23, 2008**, meeting at **Gresham City Hall, 1333 NW Eastman Parkway, in Gresham**. This hearing is scheduled to begin at 1:30 PM. After completion of public testimony, LCDC will consider the rules during its January 23-25 meeting and may formally adopt the rules.

The proposed new Urban and Rural Reserve rules, to be codified under division 27 of OAR Chapter 660, will specify a process and criteria for Metro and counties in the Metro area to designate urban and rural reserves. Adoption of rules is required under a new state law enacted by the 2007 legislature (Senate Bill 1011, codified as Chapter 723, Oregon Laws 2007). SB 1011 authorizes a new process for designation of urban and rural reserves in the Portland area and requires LCDC to adopt implementing rules no later than January 31, 2008.

A draft of the proposed new and amended rules and related information is posted on DLCD's website: http://www.lcd.state.or.us/LCD/metro_urban_and_rural_reserves.shtml. **Note:** a new version of the proposed rules, and proposed amendments or repeal of related rules, will be posted on this site on January 8, 2008. To obtain copies of the proposed new and amended rules and related information by mail, email or fax, please contact Jody Haury at 503-373-0050 Ext. 230, or email jody.haury@state.or.us. The agenda for LCDC's January 23-25 meeting agenda will be posted by (date?) on DLCD's website at: <http://www.lcd.state.or.us/>

Interested persons may address the Commission concerning the proposed new or amended rules at the January 23rd public hearing described above, or may provide written comments. The department also requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing any economic impacts on businesses. Written comments (including comments by email) are encouraged and will be accepted until the close of the January 23, 2008, hearing. However, it is recommended that written comments be sent to the department by January 9, 2008, so they can be included with staff reports and other information mailed to LCDC on that date. Address written comments to the Chair of the Land Conservation and Development Commission, care of Jody Haury, at the department's address above. Email comments to jody.haury@state.or.us, or fax comments to 503-378-6033. If you have questions about the proposed rules, contact Bob Rindy at (503) 373-0050 Ext. 229; or email bob.rindy@state.or.us.



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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

December 21, 2007

TO: The Honorable Peter Courtney, President of the Senate
The Honorable Jeff Merkley, Speaker of the House

FROM: Cora Parker, Director
Department of Land Conservation and Development (DLCD)

SUBJECT: Notice of Rulemaking Required by 2007 Legislation

Enclosed is a notice indicating that the Land Conservation and Development Commission (LCDC) is considering new administrative rules regarding the process and criteria for establishing urban and rural reserves in the Portland Metro region. LCDC will also consider amendment or repeal of other rules related to this topic. Adoption of the proposed new administrative rules is required under Senate Bill 1011 (codified as Chapter 723, Oregon Laws 2007), enacted by the 2007 legislature. SB 1011 authorizes a new process for designation of urban and rural reserves in the Portland area and requires LCDC to adopt implementing rules by January 31, 2008.

LCDC will hold a public hearing to consider public testimony regarding the proposed new and amended rules at its **January 23, 2008**, meeting at **Gresham City Hall, 1333 NW Eastman Parkway, in Gresham**. This hearing is scheduled to begin at 1:30 PM. After completion of public testimony, LCDC will consider these rules during its January 23-25 meeting and is scheduled to formally adopt the rules. Interested persons may address the Commission concerning the proposed rules at the January 23rd public hearing, and may provide written comments in advance or until the close of the hearing. Address written comments to the Chair of the Land Conservation and Development Commission, care of Jody Haury, at the department's address above. Email comments to jody.haury@state.or.us, or fax comments to 503-378-6033. If you have questions about the proposed rules, contact Bob Rindy at (503) 373-0050 Ext. 229; or email bob.rindy@state.or.us.

The most recent draft of the proposed rules is attached. The draft rules, proposed amendment or repeal of current rules, and related information about this topic, may be obtained from the DLCD website at: http://www.lcd.state.or.us/LCD/metro_urban_and_rural_reserves.shtml. **Note:** a new version of the proposed rules, proposed amendments (or repeal) of related rules, and other new information will be posted on this site on January 8, 2008.

This notice is provided because these proposed rules are the result of legislation: HB 1011. As required by ORS 183.335, this rulemaking notice is also being provided to the chair of the committee that sponsored the bill, as well as the chair and co-chairs of committees that reported the bill out.

Cc: Senator Burdick Representative Dingfelder
 Senator Avakian Representative Burley
 Senator Atkinson Representative Cannon

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form.

Department of Land Conservation and Development	OAR 660	
Agency and Division	Administrative Rules Chapter Number	
Sarah Watson	635 Capitol St. NE, Suite 150, Salem, OR 97301-2540	503.373.0050 x271
Rules Coordinator	Address	Telephone

RULE CAPTION

Process and criteria for establishing urban and rural reserves in the Portland Metro region.

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

January 23, 2008	1:30 p.m.	1333 NW Eastman Parkway, Gresham, OR 97030	LCDC
Hearing Date	Time	Location	Hearings Officer

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

RULEMAKING ACTION

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

ADOPT: New Rules regarding Urban and Rural Reserves in the Portland Metro Area: OAR 660-027-0005, 660-027-0010; 660-027-0020; 660-027-0030; 660-027-0040; 660-027-0050; 660-027-0060; 660-027-0070; and 660-027-0080.

AMEND: Current rules regarding urban reserves at OAR 660-004-0040; OAR 660-011-0060; OAR 660-021-0010 to 660-021-0080; and OAR 660-025-040.

REPEAL: Current rules regarding urban reserves at OAR 660-021-0090 and 660-021-0100

Stat. Auth. : ORS 197.040; Section 6(6); Chapter 723 Or Laws 2007, Section 11 (2007 Senate Bill 1011)

Other Auth.: Statewide planning goals (OAR 660, div 15), especially Goals 2, 3, 4, 11 and 14

Stats. Implemented: ORS 195.145; Chapter 723 Or Laws 2007

RULE SUMMARY

Note: This is a revision of a rulemaking notice issued previously. The proposed new rules, to be codified under a proposed new division 27 of OAR 660, will specify a process and criteria for the designation of urban and rural reserves in the Portland Metropolitan area. These rules are required in order to conform to new state laws enacted by the 2007 Oregon Legislature (SB 1011, which is codified as Chapter 723, Oregon Laws 2007). Under Section 11 of this legislation, the Land Conservation and Development Commission (LCDC) is required to adopt, by goal or by rule, a process and criteria for designating rural reserves pursuant to section 3 of that 2007 Act, and a process and criteria for designating urban reserves pursuant to amendments to ORS 195.145 enacted by section 6 of that 2007 Act. SB 1011 requires that LCDC adopt these new rules no later than January 31, 2008. The Commission will also consider amendments or repeal of related rules that concern urban reserves. LCDC may amend other related rules based on testimony received.

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

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

January 23, 2008

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

	Cora R. Parker	12.14.07
Signature	Printed name	Date

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

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Agency and Division: Department of Land Conservation and Development

Administrative Rules Chapter Number: OAR 660

In the Matter of: Proposed new rules under a new division 27 of OAR 660 providing a process and criteria for the designation of urban and rural reserves in the Portland Metropolitan area, in order to conform to new and amended state laws enacted by SB 1011 (2007) which is codified as Chapter 723, Oregon Laws 2007. Proposed amendments and repeals of current rules related to urban reserves.

Statutory Authority: ORS 197.040; Chapter 723 Or Laws 2007 (SB 1011)

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

Statutes Implemented: ORS 195.145; SB 1011 (2007; codified as Chapter 723 Or Laws 2007)

Need for the Rule(s): Senate Bill 1011 (Chapter 723, 2007 Laws), enacted in the 2007 legislative session and effective June 28, 2007, requires the Land Conservation and Development Commission (LCDC) to adopt, by goal or by rule, a process and criteria for designating rural reserves pursuant to section 3 of that 2007 Act, and to adopt, by goal or rule, a process and criteria for designating urban reserves pursuant to amendments to ORS 195.145 enacted by section 6 of that 2007 Act. LCDC must adopt these new rules no later than January 31, 2008. As part of this action, LCDC must amend or repeal current rules related to urban reserves. LCDC may amend additional rules concerning these topics based on testimony received at the rulemaking hearing.

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

Documents Relied Upon: SB 1011 (Chapter 723, 2007 Laws); Statewide Planning Goals (OSR 660, division 15); current LCDC rules related to urban reserves at OAR 660, divisions 4, 11, 21 and 25; Oregon Dept of Agriculture Report to Metro, January 2007: Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands; Metro Great Communities, Final Report, Cogan Owens Cogan, December 2006; and Metro Natural Features Inventory, February 2007.

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

The proposed amendments will have a positive economic impact on business. As provided in SB 1011 (2007), these rules will offer greater certainty for the agricultural and forest industries, by offering long-term protection of large blocks of land with the characteristics necessary to maintain their viability. The rules will offer greater certainty for commerce, other industries, other private landowners and providers of public services, by determining the more and less likely locations of future expansion of urban growth boundaries and urban development.

Statutory provisions (ORS 197.040) also require the agency to "Assess what economic and property interests will be, or are likely to be, affected by the proposed rule; ... assess the likely degree of economic impact on identified property and economic interests; [and] assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact." These

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

requirements "shall not be interpreted as requiring an assessment for each lot or parcel that could be affected by the proposed rule."

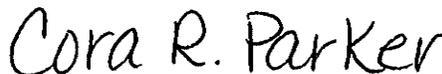
Most economic and property interests in the Portland Metro region will be affected by the new rules, but the degree of such effect will vary widely among these different interests and cannot be precisely determined. These interests will most likely be affected in a positive way by these new rules, because the new rules will encourage long-range planning for population and employment growth by local governments, which in turn will lead to greater certainty – for commerce, other industries including agricultural and forest industries, private landowners and providers of public services – by determining the more and less likely locations of future expansion of urban growth boundaries and urban development. Since new statutes specifically require the proposed rules and specify many detailed requirements for the new rules, the department has little leeway to propose alternatives that would achieve the underlying lawful governmental objective and would have a lesser economic impact.

Administrative Rule Advisory Committee consulted?: Yes

If not, why?:



Signer and Date



Printed name

HOUSING COST IMPACT STATEMENT

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

AGENCY NAME:

Department of Land Conservation and Development

HEARING DATE:

January 23, 2008

ADDRESS: 635 Capitol Street NE

CITY/STATE: Salem, OR 97301

PHONE: (503) 373-0050

PERMANENT:

TEMPORARY:

EFFECTIVE DATE: Upon Filing

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

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

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

The new rules provide a process and criteria for designating urban and rural reserves in the Portland Metro Area, as required by 2007 legislation (SB 1011). LCDC may also amend related rules under OAR 660-004-0040; OAR 660-011-0060; OAR 660-021-0010 to 660-021-0080; and OAR 660-025-040, and may repeal related rules under OAR 660-021-0090 and 660-021-0100.

Description of the need for, and objectives of the rule:

The proposed new rules, to be codified under a proposed new division 27 of OAR 660, will specify a process and criteria for the designation of urban and rural reserves in the Portland Metropolitan area. These rules are required in order to conform to new state laws enacted by SB 1011 (2007), which is codified as Chapter 723, Oregon Laws 2007. Under Section 11 of SB 1011 (2007), the Land Conservation and Development Commission (LCDC) is required to adopt, by goal or by rule, a process and criteria for designating rural reserves pursuant to section 3 of that 2007 Act. Under Section 11 of SB 1011 LCDC is required to adopt, by goal or by rule, a process and criteria for designating urban reserves pursuant to amendments to ORS 195.145 enacted by section 6 of that 2007 Act. Urban reserves indicate land which is the highest priority for inclusion in the urban growth boundary (UGB) when that boundary is expanded in the future. Rural reserves preserve farm land, forest land and important natural landscape features from inclusion in urban reserves and in the urban growth boundary for the period of time during which the urban reserves are designated. Under Chapter 723, Oregon Laws 2007, LCDC is required to adopt these new rules no later than January 31, 2008. There is also a need to amend or repeal existing rules concerning urban reserve areas, in order to conform to the new statute and rules.

List of rules adopted: New Rules regarding Urban and Rural Reserves in the Portland Metro Area: OAR 660-027-0005, 660-027-0010; 660-027-0020; 660-027-0030; 660-027-0040; 660-027-0050; 660-027-0060; 660-027-0070; and 660-027-0080.

List of rules amended: OAR 660-004-0040; OAR 660-011-0060; OAR 660-021-0010 to 660-021-0080; and OAR 660-025-040.

List of rules repealed: OAR 660-021-0090 and 660-021-0100

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

Estimated administrative, construction or other costs increase or savings: The proposed rules will probably save administrative or other costs for housing providers because the rules will offer greater certainty for housing developers, and for agencies and businesses providing housing, by determining the more and less likely locations of future expansion of urban growth boundaries and urban development, especially the location of future urban growth boundary expansions to provide land planned and zoned for residential use.

Land costs increase or savings: In addition to the reasons described above, the proposed rules should provide for savings in land costs by encouraging long-range planning for housing growth by local governments, which in turn will lead to greater certainty to housing developers, private landowners, and public facilities and services providers, by determining the more and less likely locations of future expansion of urban growth boundaries, including expansion for urban residential development. In addition, the adoption of urban reserves under the proposed new rules will probably streamline the expansion of the Metro urban growth boundary in the future, therefore reducing land costs for housing by increasing the supply of land designated for housing in the Metro area.

Other costs increase or savings: None

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

H. Written Comments received by DLCD prior to January 11, 2008

**Testimony of Councilor Kathryn Harrington
SB 1011 Rulemaking
(Metro Urban and Rural Reserves)
Land Conservation and Development Commission
January 23, 2008**



Chair Van Landingham and Members of the Commission:

Thank you very much for the opportunity to testify in support of the proposed rules to implement Senate Bill 1011. As you know, Metro joined with numerous public and private partners from the Portland metropolitan region to pass SB 1011 last June as part of a broad-based, multi-pronged regional effort to improve the way we grow and develop while protecting our farms, forests, and natural areas.

SB 1011 provides both more flexibility and more predictability to the growth management process in the Portland region. The changes embodied in this bill support great communities, viable agricultural and forest industries, a strong urban economy, and a healthy environment.

On behalf of the Metro Council, I would like to congratulate the rulemaking work group led by Commissioner Worrix for developing a draft rule that could earn the committee's unanimous support. We know this agreement was hard-won and appreciate the spirit of compromise with which the group approached its task. Maintaining a broad base of support for this new approach to land use planning will be especially critical as we move from policy development into the actual designation of reserves.

Key provisions of draft rules

I am also pleased to convey to you the Metro Council's strong support for the rule before you today. As Randy Tucker noted when he testified before you in November, the Metro Council's overriding objective in this exercise has been the development of rules that provide a framework for the successful designation of urban and rural reserves through the agreement-based process established by SB 1011. We believe the proposed rules succeed in meeting that objective.

For the record, I would like to express our understanding of the meaning and intent of certain key provisions.

Designation standard: The question of how LCDC will determine when the designation of reserves complies with the rules proved to be one of the more challenging issues for the work group to resolve. The primary benchmark in the rules for evaluating the sufficiency of a designation is found in the "objective" that was added to the purpose statement by the work group (page 1, lines 19-22); Metro and the counties will be required to adopt findings to explain how their decision achieves the objective (page 4, lines 44-46).

As you will recall from Metro's testimony on November 29, we had concerns about creating a *de facto* standard that no one could define by saying that the designation of reserves must "best" achieve the objective. However, we noted that we could accept the inclusion of that word in the purpose statement (rather than in the findings section), as long as it is clear that it refers to the overall urban and rural reserve designation decision rather than being used to play off individual parcels against one another.

The negotiated compromise is consistent with this position. The work group has agreed to add "best achieves" to the purpose statement in the context of ensuring that the *overall* designation constitutes a *balanced* package that achieves the different goals of different types of reserves.

Foundation Agricultural Land: As you know, the treatment of “Foundation Agricultural Land” was the most contentious and difficult issue faced by the work group. One of the major concerns of the agricultural community was to ensure that some sort of alternatives analysis was conducted before Foundation land was included in urban reserves. The work group’s language (now incorporated in the draft on page 5, lines 2-8) addresses the issue of alternatives and holds Metro and the counties accountable while retaining the flexibility that was central to SB 1011.

The Metro Council supports this compromise language. We are satisfied that this language:

- specifies that Foundation land is the most important land for the viability and vitality of the agricultural industry, as requested by the agricultural community;
- references the Oregon Department of Agriculture’s land inventory to support that statement; and
- requires a specific explanation in the findings if Foundation lands are added to urban reserves. The findings will thus have to explain why Foundation land was chosen rather than other land, and so will have to discuss alternatives in the context of the overall decision.

Factors: Consistent with SB 1011, the rules provide “factors” to guide Metro and county decisions to designate urban or rural reserves. These factors reflect the land characteristics that were identified by the so-called “ag-urban study” as supporting the various uses and values addressed by SB 1011 (development of “great communities” and long-term protection of important farmland, forest land, and natural landscape features). The nature of these factors was extensively discussed by the work group. Our understanding of the work group’s position, which we support, is that these factors must be considered by the four local governments and addressed in findings, but are not “criteria” each of which must be satisfied with respect to each piece of land designated as a reserve.

The use of factors rather than criteria in the statute and the rules leaves the local governments with much discretion. But the rules, unlike the statute, provide detailed guidance on how the local governments must apply the factors in their decision-making. The work group developed language designed to ensure that the local governments must not only consider each factor, but explain in a written “statement of reasons,” with reference to the factors, why they designated certain lands as urban reserves and other lands as rural reserves.

Moving forward

The Metro Council is pleased to have reached this juncture where we can move from policy development to implementation. Not surprisingly, given the significance of what we are about to undertake, there is already a high level of interest in the designation of urban and rural reserves. We have been working closely with our colleagues at Clackamas, Multnomah, and Washington counties to develop a reserves designation process that involves clear communication of information and timely opportunities for meaningful involvement by local and state government, interested organizations, and the public. Pursuant to these rules, we look forward to working with the state’s Citizen Involvement Advisory Committee to develop a robust public involvement process. As Randy Tucker shared with you in November, we have also joined with our county partners to assemble a Reserves Steering Committee that will begin meeting on January 28. We look forward to being back in front of you late next year with a package that demonstrates the wisdom of the efforts to date and makes our region an even better place to live, work, and play.



CITY OF PORTLAND, OREGON
BUREAU OF
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January 10, 2008

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

Dear Commissioners:

RE: Portland Testimony on the Urban and Rural Reserves Rule

I am grateful for the opportunity to have served on your administrative rule workgroup, and support the adoption of the January 8 draft rule. I would, however, like to offer some clarifying language designed to improve the internal consistency of the rule.

The Objective is the Most Important Part of the Rule

The inclusion of a clearly stated objective resolved my last remaining difficulty with the rule. Unfortunately, the objective appears as the last sentence in the second paragraph of the Section 0005 of the draft (page 1, lines 19-22). I propose the objective be given its own paragraph, and that the section heading highlight the objective. The amended section would read as follows.

660-027-0005

Purpose and Objective

(3) The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of agriculture and forest industries and protection of the important natural landscape features that define the region for its residents.

Subsequent references to 660-027-0005(2) would need to be changed to 660-027-0005(3).

In a nutshell, the obligation under the rule is to apply a set of discretionary factors in a way that achieves this objective. The word "best" may be the most important part of this rule. Under earlier drafts, any plausible application of the factors would suffice, and alternative configurations of urban and rural reserves need not have been considered.

Any adopted rule should require Metro and the Counties to achieve the stated objective, and provide the Commission sufficient authority ensure the objective has been achieved. I think the draft rule may do this, but am offering some clarifying amendments designed to make sure.

Clarity for Criteria and Factors

The rule contains criteria, factors, and a standard for review, but employs a confusing variety of verbs describing how these provisions should to be employed. To avoid this confusion, I would suggest that each of the Section 0040 criteria be "met," that the 0050 and 0060 factors be "applied," and most importantly, that the Section 0005 objective be "achieved." The draft rule is also confusing because it does not clearly state which obligations apply to Metro, which to the counties, and which to both. The following are proposed revisions.

Section 0005(1); Strike lines 9 and 10 on page 1, and insert in their place:

This division also prescribes the criteria that a county and Metro must meet, and the factors that a county and Metro must apply when choosing lands for designation as urban or rural reserves.

Section 0040 Heading: Strike the existing heading on line 36 of page 3, and insert in its place:

Criteria for Designating Urban and Rural Reserves

Section 0040(8), (9) and (10); In the January 8 draft rule three sequential paragraphs all combine Metro and county obligations. The proposed language reorganizes and clarifies existing content so that Metro obligations are expressed in paragraph (8), county obligations in (9), and joint obligations in (10). The proposed amendments would strike existing lines 30-46 of page 4, and insert in their place:

(8) When identifying, considering, evaluating, comparing and designating land for urban reserves Metro shall apply the factors of OAR 660-27-0050 in coordination with any local government, state agency, special district, or school district that might be expected to provide urban services to these reserves after they are added to the urban growth boundary.

(9) When identifying, considering, evaluating, comparing and designating land for rural reserves a county shall apply the factors of OAR 660-27-0060 in coordination with any city adjoining or within three miles of a rural reserve.

(10) Metro and any county that has entered into agreement with Metro under this division shall apply the factors of OAR 660-27-0050 or OAR 660-27-0060 concurrently and in coordination with one another. These local governments shall jointly adopt a single set of findings of fact, statements of reasons, and conclusions explaining why areas were chosen as urban or rural reserves and how these designations achieve the objective stated in OAR 660-27-0005(3).

Section 0080(4); Add the word "and" to the end of line 28 of Page 8; strike existing lines 30-36 on page 8, and insert in their place.

(b) Compliance with applicable administrative rules; this includes, but is not limited to:

(i) Meeting the criteria for designating urban and rural reserves provided in OAR 660-027-0040;

(ii) Application of the factors provided in OAR 660-027-0050 and OAR 660-027-0060; and

(iii) Achievement of the objective stated in the objective stated in OAR 660-27-0005(3).

Selecting One Process or the Other

Should the Commission adopt the draft rule Metro would have two ways to designate urban reserves, the exiting way provided in Division 21 or the new way provided by Division 27.

Since urban reserves are, by definition, designed to meet urban needs beyond the twenty-year accommodation of jobs and housing provided by the regional urban growth boundary, it will not be necessary to designate them more than once anytime soon. The rule work group recognized this, and all earlier drafts of the rule contained the restriction, "If Metro designates urban reserves under this division, it may not designate reserves under OAR chapter 660, division 21."

A curious change has appeared in the January 8 draft. The word "simultaneously" has appeared between the words "not" and "designate" in the agreed-upon language (line 2, page 3 of the January 8 draft). This amendment was never discussed by the work group, and changes what was supposed to be a restriction to a *de facto* authorization.

For example, the Metro Council would be able to adopt Division 27 urban reserves as Item 1 of its agenda and Division 21 urban reserves as Item 2 on that same agenda.

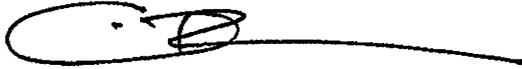
While the agreed-upon limitation may have been too sweeping, the January 8 proposal would eviscerate an important consensus of the work group. I offer the following alternative in the spirit of compromise:

If Metro designates urban reserves under this division, it may not also designate reserves under OAR chapter 660, division 21 within five years of the acknowledgement of any designation made under this division.

Joint designation of urban and rural reserves is arguably the most significant improvement ever made to Oregon's land use planning program. It is important that we do it, and do it right. We need to stay focused, and the opportunity to switch back and forth from one process to another provides an unneeded and potentially harmful distraction.

I thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Gil Kelley", with a long horizontal line extending to the right.

Gil Kelley, Planning Director

MARK J. GREENFIELD

Attorney at Law

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Portland, Oregon 97229

Telephone: (503) 227-2979
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January 9, 2008

DEPT OF

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**LAND CONSERVATION
AND DEVELOPMENT**

Mr. John Van Landingham, Chair
Land Conservation and Development Commission
635 Capitol Street NE, Suite 200
Salem, Oregon 97301-2540

Subject: Proposed New OAR 660, Division 27 (Urban and Rural Reserves
in the Portland Metropolitan Area)

Dear Chair Van Landingham and Commissioners:

Thank you for the opportunity to comment on the proposed new Division 27 rule. I offer this testimony on behalf of Jim Standring, who owns property just north of the US Highway 26/Helvetia Road Interchange in Washington County. The property lies immediately west of the planned Helvetia industrial area, outside of but adjacent to Metro's urban growth boundary.

In my previous letter to the Commission on this topic dated November 12, 2007, I raised a number of concerns regarding this proposed new rule. I am pleased to say that most of those concerns have been satisfactorily resolved. Still, there remain some issues of concern to my client, identified below, and I would also like to point out a provision that appears to be worded inappropriately.

A. Use of the Word "Best" in OAR 660-027-0005(2).

Proposed OAR 660-027-0005(2) states in part:

"The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents." (Emphasis added.)

As an objective, we understand and can agree with and support this.

The problem arises in the way this objective is applied under proposed OAR 660-027-0040(10), which states in part:

“The findings and statement of reasons shall explain why the local governments selected the areas designated as urban and rural reserves and how the designated reserves achieve the objectives set forth in OAR 660-027-0005(2).” (Emphasis added.)

Through this reference back to OAR 660-027-0005(2), the objective of “best” achieving livable communities, viable and vital agricultural and forest industries and protection of important natural landscape features becomes a *legal standard* with which Metro and the local governments must demonstrate compliance. Accordingly, they must adopt findings demonstrating that the specific combination of designation urban and rural reserves provides the balance that “best” achieves this objective. On judicial review, if the lawyers defending a decision designating urban and rural reserves cannot demonstrate that the selected areas adopted as reserves provides the balance that in fact “best” achieve these objectives, the matter will be remanded.

Based on previous urban reserve and UGB amendment proceedings before Metro, it is likely that Metro will be faced with a potentially limitless combination of alternative proposals for designating urban and rural lands. It is also likely that reasonable people will disagree over what the “best” balance among urban and rural reserve designations is to satisfy the rule. Further, it is likely that good lawyers will make persuasive arguments for their position in court, and I question whether the phrase “in its entirety” would be sufficient to overcome that. It would be unfortunate if inclusion of the word “best” in this rule had the effect of making the rule unworkable, but this is a real possibility.

While we do not recommend removing “best” from the purpose section (0005(2)), we think either it should not be made into a legal standard or the Commission needs to provide some detailed explanation as to what the term means in this context and how it is to be applied. If my understanding is correct, it is not the workgroup’s or Commission’s intent that “best” be applied in an unworkable or draconian way. But absent a clear explanation, a court easily could find otherwise.

At the January 7, 2008 worksession on the rule, comments were made to the effect that Metro and the counties, and later the Commission, should consider a range of “packages” of proposed urban and rural reserves and then select (and justify) the “best” one from that range of packages. While this approach might work as to what is “best”, it is not clear that this approach allows local governments or the Commission to combine elements of other alternative “packages” or to add or subtract from an alternative based on persuasive evidence presented to the Commission. Because these options should remain open, we don’t think this particular “package” explanation works.

In summary, the term “best” appears problematic as a legal standard. If there is an alternative way to achieve the objective in OAR 660-027-0005(2) without using this term as a legal standard, we recommend you go that way. If not, we recommend that you very

clearly define, as part of the legislative history, how the term "best" is intended to be applied by Metro and the counties and by the Commission on review. Absent clear legislative history on this issue that allows the term to function in a workable manner, we believe you are only inviting trouble when your decisions are reviewed in the courts.

B. Effect of OAR 660-027-0005(2).

As noted above, OAR 660-027-0005(2) states in part: "The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents." At the January 7 worksession, Department of Agriculture representative Jim Johnson opined that this language, together with the proposed new language in OAR 660-027-0040(11), place foundation agricultural lands in an elevated position such that they cannot be designated urban reserves if other "viable" land is available for urban uses.

We see nothing in the rule supporting Mr. Johnson's opinion either explicitly or implicitly, and we do not agree with his interpretation of the rule. Rather, we agree with the comments made in response to Mr. Johnson by, among others, representatives of Metro and Washington County, that where foundation lands are designated as urban reserves, this language merely requires a higher level of explanation for doing so. We think the plain language of the rule supports this interpretation. We further agree with these representatives that the rule was intended to make the achievement of livable ("great") communities, viable and vital farm and forest lands and protection of important natural landscape features equally important objectives. As such, to achieve livable communities, it may be necessary in some instances to use foundation agricultural lands.

In short, the rule expressly recognizes the importance of foundation agricultural lands to a viable and vital agricultural industry, but it does not make those lands off limits for urban development where Metro and the counties conclude that such lands are needed to attain the result that "best" achieves livable communities. We ask that you agree with Metro and the counties' interpretation of the rule.

C. Wording of 660-027-0050(1)(h).

Proposed OAR 660-027-0050(1)(h) provides:

"Can be designated to avoid or minimize adverse effects on farm and forest practices and on important natural landscape features on nearby resource land, including land designated as rural reserves."

We question whether this is worded accurately. In particular, are the words "and on important natural landscape features" properly located in this sentence.

Mr. John Van Landingham, Chair
January 9, 2008
Page 4

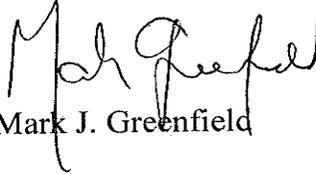
Two things lead us to this question. First, ORS 215.296 refers to farm and forest practices “on surrounding lands devoted to farm or forest use.” Hence, it appears that “on nearby resource land” may have been intended to refer back to “practices” as used in this sentence. Second, it is not readily apparent that all important natural landscape features are located on resource land. Some may, for instance, be located on exception land.

We suggest that this section be rewritten as follows:

“Can be designated to avoid or minimize adverse effects on farm and forest practices on nearby resource land and on important natural landscape features, including land designated as rural reserves.”

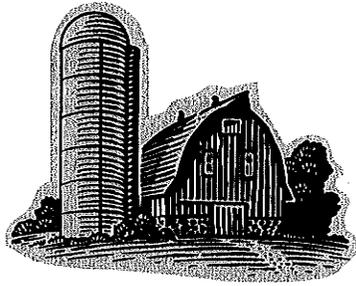
Thank you for your attention and consideration.

Very truly yours,



Mark J. Greenfield

cc: Bob Rindy
Jim Standring



Portland Area Community Supported Agriculture Coalition

www.pacsac.org

December 10th, 2007

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

Dear Commissioners:

The Portland Area Community Supported Agriculture Coalition (PACSAC) is a group of farmers growing fresh sustainable local food and selling it directly to families in the north Willamette Valley. The Community Supported Agriculture (CSA) model is a way for family farmers to produce a wide variety of high quality vegetables in a sustainable way. CSA's foster responsible relationships between the grower, the consumer, the food, and the land on which the food is grown.

Our coalition includes more than 40 local farms and hundreds of families who are CSA members. We share a desire to promote, support and strengthen a healthy regional food system. Protection of valuable and productive agricultural land is necessary to assure both a healthy regional food system and our vibrant agricultural economy. Agriculture has grown steadily over the past two decades and continues to be a major contributor to our economy – more than \$4 billion in sales with an economic impact of over \$12 billion annually. Agriculture is integral to the Oregon way of life and it provides 1 in every 12 jobs in the state. A poll conducted in the Portland Metro region indicated that 71% recognize agriculture as a key part of the economy. **In addition, by growing food now– and maintaining the land base necessary to grow food in the future - agriculture makes an invaluable contribution to the safety, security and livability of the region that no other industry does.**

To CSA farmers, the most important concept embodied in SB1011 is the potential long-term protection of agricultural land through the rural reserves program. We recognize that SB 1011 does not replace the existing urban reserve or urban growth boundary expansion criteria, but rather adds an additional option. The current planning process has resulted in a rolling urban growth boundary that is detrimental to agriculture. The appeal of this new path is its ability to offer the longer-term protection to resource lands that all agricultural operations need to be successful. Our coalition is extremely concerned that the land base – especially those identified

as Foundation and Important by Oregon Department of Agriculture¹ (ODA) – be afforded longer-term protection to enable the region to successfully address growing concerns about regional food security.

We are hopeful about the ability of SB 1011 to provide the longer-term protection necessary for the agricultural industry to remain successful. However we have concerns about the process, and will not continue to support the new statute if it allows significant urban reserves to be established on the regions most valuable and productive agricultural land. We agree with ODA's assertion that the bar for urbanization on Foundation Lands and Important Lands needs to be set significantly higher and allowed only when a special need is identified. **The best agricultural land should only be utilized for the most efficient and effective urban developments. To this end, we would like to see language included in the rule that establishes a presumption that Foundation Lands and Important Lands located within three miles of an urban growth boundary will be designated rural reserve and encourages counties to choose the ODA designations in place of doing their own analysis.**

We urge the commission to continue to consult with the Oregon Department of Agriculture. We feel that both LCDC and ODA will benefit from the collaboration and hope it will provide a reasoned pathway to rural and urban reserves. The state, by continuing to allow non-farm development to encroach into traditional agricultural areas, is eroding the industry's ability operate and threatening regional food security. Every day, farmers face increased transportation costs, rising labor costs and higher energy bills. However, these threats pale in comparison to the long-term disruption and displacement of farming that occurs when uncontrolled development is allowed on farmland. **We are hopeful that SB 1011 will offer the long-term protection to local agricultural lands so crucial to the agricultural industry and to regional food security.**

Finally, we would like to applaud the commission for clarifying and expanding the rule to include a coordinated citizen involvement and broad public notice throughout the process. Oregonians are passionate about fair and open public process especially as it relates to land use planning. We believe that more citizen involvement in the new SB1011 process will ultimately create a better plan that supports our vibrant agricultural economy and enhances regional food security.

Sincerely,

Laura Masterson

Past President, Portland Area CSA Coalition
Laura@47thAveFarm.com
503-777-4213

¹ Foundation, Important and Conflicted Lands are defined in the Oregon Department of Agriculture's report completed for Metro entitled *Identification and Assessment of Long-Term Commercial Viability of Metro Region Agricultural Lands, January 2007*.



OREGON CHAPTER - Society of Industrial and Office REALTORS®

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December 13, 2007

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

RE: Rule making for Rural Urban Reserves

Commission Members:

The Society of Industrial and Office Realtors offer the following comments on the proposed rules for implementation of SB1011. As commercial office and industrial real estate brokers in the Portland Metro region, we have been keenly observing progress of the rule making.

As a result of the last advisory committee meeting, we have some concerns about a couple of items that remain on the table. This issue comes down to conversation during the November 5th meeting where a conceptual proposal from Jim Johnson Representing Oregon Department of Agriculture was provided. The elements of the proposal include:

1. *Formal recognition of the Ag/Urban Study (Identification and Assessment of the Long-Term Viability of Metro Region Agriculture Lands) completed by the Department of Agriculture.*

- The advisory committee supported recognition of the mapping exercise as a shortcut to determine whether land satisfies the factors for rural reserves so no additional analysis is needed.
- From our perspective, this map has yet to be peer reviewed and we are concerned about its formal recognition in the rule. It may well be solid piece of work, but it is important to point out that several other studies from various sources also provide value, yet are not explicitly proposed in the rule.

Recommendation: The information in the Ag/Urban Study will be used as part of the record and it's not necessary or appropriate to add in the rule.

2. *Establishing a separate new standard for "foundation lands" contained in the Ag/Urban Study. Declare all foundation lands within the first 3 miles of a UGB shall be designated as rural reserves unless they are "appreciably better" for urban development than other lands available.*

- This recommendation has come late in the process and if included in the final rule, the premise for balance between (farmland, urban land, and natural features) would be in danger. Balance has been the driving force behind SB1011 in an attempt to reconcile competing interests among different stake holders at the table.
- SB1011 working group rejected similar proposals that were requested during the session including a request to name all lands within 2 miles of a major road intersection as urban reserves or special treatment for a specific property.
- SB1011 specifically included the criteria in the Ag/Urban Study to improve the selection of rural reserves.

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OREGON CHAPTER - Society of Industrial and Office REALTORS®

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Candidates:

Brandon Frank

Recommendation: The commission should reject any proposal that reduces the value of balancing different objectives and establishes special status for a specific category of lands.

3. Use the term "best" in 0040(10) to describe how the adopted reserves achieve the objectives in OAR 660-027-0005.

- We object to the use of "best" in either of the options described in the staff report. It is not necessary and goes without saying that in the end, the reserves selected will represent the best choice(s).
- By inserting "best" the Commission potentially sets the process up for a numerical standard of what "best" represents. We do not view this as helpful to the process envisioned with SB1011 due to possible legal interpretation that includes rating or ranking.

Recommendation: The Commission should reject any option that would insert the word "best" into the rule due to unintended consequences.

Thank you in advance for your consideration. We look for further opportunity to participate in the process of rule making and its implementation. This is very important for the future of our region! Please contact me if you have any questions.

Sincerely,

SOCIETY OF INDUSTRIAL AND OFFICE REALTORS

Jeffrey R. Brooks, SIOR, CCIM
President, Oregon Chapter