



# Oregon

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**TO:** Land Conservation and Development Commission

**FROM:** Bob Rindy, Policy Analyst

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



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

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

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

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

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

### **Advisory Rulemaking Workgroup**

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

### **Background**

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

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

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

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<sup>1</sup> LCDC's 1992 urban reserve rules authorized LCDC to require some local governments to adopt urban reserves. After modification of the rules by subsequent legislation, only the cities of Sandy and Newberg were required to designate reserves.

<sup>2</sup> Rather than a 10-30 year horizon, SB 1011 specifies a 20-30 year urban reserve horizon.

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

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

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

### **Senate Bill 1011**

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

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

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

<sup>5</sup> Redmond officials have praised this process and suggest that other local governments take this step.

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

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

The "Shape of the Region" report, "symposium" and related studies are available on Metro's website at the following link:

<http://www.metro-region.org/index.cfm/go/by.web/id=25147>

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

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

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

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

SB 1011 provides “factors”<sup>6</sup> for determining urban reserves as follows:

“... a county and a metropolitan service district shall base the designation on consideration of factors, including, but not limited to, whether land proposed for designation as urban reserves, alone or in conjunction with land inside the urban growth boundary:

- (a) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments;
- (a) Includes sufficient development capacity to support a healthy urban economy;
- (b) Can be served by public schools and other urban-level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers;
- (c) Can be designed to be walkable and served by a well-connected system of streets by appropriate service providers;
- (d) Can be designed to preserve and enhance natural ecological systems; and
- (e) Includes sufficient land suitable for a range of housing types.”

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

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

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<sup>6</sup> See pages 15 and 16 of this report for a detailed discussion of factors.

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

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

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

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

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

“...whether land proposed for rural reserves is:

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

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

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

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

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

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

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

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

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

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

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

### **Summary and Explanation of Proposed Rules**

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

“housekeeping amendments” to several existing rules (Attachment B).<sup>7</sup>

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

### **660-027-0005 Purpose**

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

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

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

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

<sup>8</sup> It has been suggested that the grammar of this provision could be improved if changed to “The objective of this division is a balanced designation ...”

## 660-027-0010 Definitions

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

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

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

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

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

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

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

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

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

<sup>10</sup> According to an October 30 email from Jim Labbe to the Department, forwarded to workgroup members.

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

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

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

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

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

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

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

### **660-027-0030 Urban and Rural Reserve Intergovernmental Agreements**

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

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

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

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

#### **660-027-0040 Designation of Urban and Rural Reserves**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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<sup>13</sup> These examples are cited in a paper provided to LCDC’s 2006 UGB workgroup titled: “Urban Growth Boundary Amendments and Goal 14 – A Legal Perspective”, by Corinne C. Sherton, Johnson & Sherton PC.

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

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

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

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

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

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

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

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

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

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

While the rules under 0040 provide a set of general rules for designation of both urban and rural reserves, the rules under 0050 provide the factors for determining which land to designate as urban reserves. According to Metro, these factors are derived from the "great communities" factors developed as part of Metro's agriculture/urban study (that study is linked to DLCD's website on this rulemaking, at <http://www.metro-region.org/index.cfm/go/by.web/id=25147>).

Metro's "*ad hoc*" group that met in the summer of 2007 recommended some modifications to these factors, and the Commission's workgroup also agreed to some modifications. In general, these modifications are minor edits to statute factors and additional factors not in the statute, such as factors (g) and (h).

The term "walkable" was not defined by the statute; as noted above, the department has proposed a definition. Also, "a well-connected system of streets" is not defined currently by Goal 12 or related rules. A definition of this phrase has not been provided for these rules. Metro's *ad hoc* group suggested the language referring to "pedestrian and bicycle facilities," and suggested that it be phrased consistent with the Transportation Planning rule.

Again, SB 1011 provided that the factors for urban reserves listed in that bill were "not limited to" those listed. As discussed previously, the workgroup agreed that this provision should be interpreted to mean that LCDC may add additional factors, through this rule, but that this language does not authorize Metro to add factors to those listed in the rule.

#### **660-027-0060 Identification, Selection and Designation of Lands for Rural Reserves**

These proposed rules provide factors that would be applied to designate rural reserves in order to protect farm land, forest land, and natural landscape features. The statute (SB 1011) provided only one set of factors – for farm land. However, the statute is also clear that "rural reserve" means "land reserved to provide long-term protection for

agriculture, forestry or important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes and floodplains.”

As such, the workgroup agreed to add additional factors for those rural reserves that are designated to protect forest land and natural landscape features. The factors proposed to determine whether rural reserves should be designated to protect natural features are significantly different than those in the statute for farm land, and therefore the rules provide these factors as a separate rule section (section 3). The factors for forest land are woven into the factors for farm land.

Because rural reserves are likely to be designated for all three of the purposes described above, section (1) indicates that metro shall specify which areas designated for rural reserves are intended for which purpose. This will determine which factors to apply. However, it is conceivable that some areas will be included in rural reserves for a combination of “purposes,” rather than for farm, forest or natural features alone. We also note that the factors do not specifically describe how to treat land that is both farm and forest land. The workgroup had noted this, but did not provide further discussion or recommendation.

As was noted in the November report, subsection (2)(a) changes the word “and” in the statute to “or”. The workgroup believes the intent of this requirement in the statute is to consider proximity to a UGB or proximity to land with fair market values that significantly exceed agricultural values – but it is not necessary that a particular property must be considered with regard to both.

Finally, subsequent to LCDC’s November hearing on the proposed rules, the workgroup agreed to modify 0060(3) as follows:

(3) When identifying and selecting land for designation as rural reserves intended to protect important natural landscape features, a county must **consider those areas identified in Metro’s February 2007 “Natural Landscape Features Inventory,” and other pertinent information, and shall** base its decision on ... [the factors for natural landscape features].”

This wording was added in recognition that, similar to agricultural lands discussed above, Metro had also mapped natural landscape features, and the rules should reference those maps to ensure attention to this mapping. The department also notes that the Department of Forestry has completed mapping of significant forest lands. However, this mapping was not provided to the workgroup until its final meeting, and the Department of Forestry did not suggest that the rules reference the mapping.

### **660-027-0070 Planning of Urban and Rural Reserves**

This set of rules begins by describing one of the most significant planning ramifications in designating urban reserves: such areas are the highest priority for inclusion in the urban

growth boundary when the boundary is expanded, as specified in Goal 14, OAR 660, division 24, and ORS 197.298. That fact is not mentioned in SB 1011, but was certainly well-understood by the various interests that drafted the legislation. It should be noted that urban reserves calculated to provide a 20-30 year supply of land in the Metro area are likely to include farmland, forest land, exception areas, and other features. There are no rules or statutes that require Metro to indicate **which** land in urban reserves might be the first or highest priority land considered when the UGB is expanded. However, ORS 197.298 may bear on this question.

The second section of the 0070 rules ensures that land in urban reserves is maintained in larger parcel sizes (unless it was previously parcelized), so as to preserve opportunities for orderly and efficient development of urban uses and provision of urban services when urban reserves are added to the UGB.

The proposed rules also direct counties to maintain the zoning for uses on rural reserves allowed at the time they were designated, and to not allow smaller lots or parcels on land designated as rural reserves. This provision was recommended by Metro's *ad hoc* group that met in the Summer of 2007 prior to LCDC's workgroup meetings, but was embraced by the workgroup. It provides a powerful protection for rural reserves that is in addition to other protection already provided in statute and in 660-027-0040 (4) and (5). These provisions together carry out the primary directive of SB 1011, that rural reserves are intended to "provide long-term protection for agriculture, forestry or important natural landscape features." (Emphasis added).

Finally, the proposed urban reserve "planning" rules provide that "counties, cities and Metro may adopt conceptual plans for the eventual urbanization of urban reserves designated under this division, including plans for eventual provision of public facilities and services for these lands, and may enter into urban service agreements among cities, counties and special districts serving or projected to serve the designated urban reserve area." Part of this provision was recommended by Metro's *ad hoc* group, but was embraced by the workgroup, and augmented by the department, to include some of the provisions currently in rules for urban reserves under OAR 660, division 21, that clarify the ability to plan for services in urban reserves.

#### **660-027-0080 Adoption and LCDC Review of Urban and Rural Reserves**

While these proposed rules repeat statutory requirements for LCDC review of reserves, it is important to note that those requirements have been augmented. Furthermore, this section has been further amended since the Commission's November hearing, at the recommendation of the workgroup and on advice of legal counsel (Section (4) is the additional language added since the November 8 draft).

Section (1) makes it clear that plan amendments and other land use actions to implement the designation of urban reserves must be in accordance with current laws for plan amendments (ORS 197.610 to 197.650). This assures public notice requirements, among other things, and makes sure that statewide planning goals apply.

Section (3) was suggested by DOJ rather than the workgroup. This provision anticipates that the submittal to LCDC will very likely be large and complex, and will be subject to multiple comments based on LCDC's previous experience with UGB decisions in the Metro area. Furthermore, while appeals may not necessarily occur, they are a possibility, and section (3) will facilitate the department's required "records" work in responding to an appeal.

The new section (4) is intended to specify the Commission's scope and standard of review, specifically referencing the rule's purpose statement and designation standards.

### **Suggested Amendments to Current Rules in Other Divisions under OAR 660**

The department has proposed "conforming amendments" and other "housekeeping amendments" to other LCDC rules related to urban reserves, including the repeal of some existing rules. The proposed amendments are Attachment B to this report.

#### **Amendments to OAR 660, division 4**

Only some sections of rules under OAR 660-004-0040 are proposed for amendment. These are rules adopted by LCDC in 2000 in response to the 1986 Supreme Court decision regarding 1000 Friends of Oregon v. LCDC et al. 301 Or. 447 (1986). Those rules established minimum lot sizes in rural areas that ensured rural lands did not authorize "urban uses" outside UGBs.

First, the version of the rules currently on file with the Secretary of State italicizes the words "minimum lot size" under section (7)(e)(F). This may emphasize these words, but there appears to be no reason to emphasize these words, and as such, this is probably a formatting error in the filing of a previous amendment of this rule. The amended rule would eliminate the italics.

The proposed amendment to Section (8)(b)(B) is also non-substantive; it is suggested that the word "reserve" be preceded by the word "urban", since the intent here is to refer to an urban reserve. A correction to sentence structure (adding the word "or") at the end of that paragraph is for grammatical purposes and for clarity.

Proposed amendments to subsection (8)(d) and (e) are both for clarity and substance. First, Metro's legal counsel suggested that "Metro" should be substituted for "the Portland metropolitan service district" because "Metro is a term that is defined and is more widely understood in the region." Substantively, this subsection should be amended to also reference the new division 27 urban reserve process, in addition to the division 21 process. Also, section (d) refers to a Metro "urban reserve ordinance." Metro's regional framework plan (RFP) does not apply outside the UGB, so this section should instead refer to county comprehensive plan and zoning provisions adopted to implement the reserves. The remaining proposed amendments to that subsection are for clarity and to recognize the new

statutory term “urban reserve” rather than “urban reserve area”.

Proposed amendments to subsection (7)(f) are at the suggestion of Metro’s legal counsel, Dick Benner, who indicated to the department that “there is no such thing as ‘the Metro 2040 Plan’ – there is a ‘2040 Growth Concept’ which is not regulatory. It recommends densities for specific land use designations, but they have no legal effect. I recommend that the rule say **10 units per net developable acre** because Metro’s code says that is the lowest density that can be assigned to any land inside the UGB zoned to allow residential use. It is a good minimum criterion for determining whether an area is suitable for urbanization.”

Finally, amendments to paragraph (G) of subsection (7)(g) would ensure that, on land designated as urban reserve under the new division 27 rules, new parcels less than the minimums established by these rules cannot be created without a goal exception. As noted above in describing the purpose for urban reserves, parcelization of these lands would impede efficient provision of urban services and urban scale development.

#### Amendments to OAR 660, division 11

The department is recommending changes to rules under OAR 660-011-0060, specifically paragraph (C) of subsection (4)(b). These amendments are non-substantive and pertain to conditions under which sewer systems may be provided outside UGBs without an exception, for health hazard areas. This rule currently references urban reserves under division 21 – the proposed amendment would reference urban reserves established under the new rules in division 27 as well. The proposed amendments also intend to clarify what is meant by the current provision of that rule in limiting the “capacity” of a sewer system designed for a health hazard area. The clarifying language does not change the current intent; it clarifies that in urban reserve areas, the capacity of a sewer system could be designed to provide for the projected future level of service planned for an area within the boundaries of an urban reserve.

#### Amendments to OAR 660, division 21

These amendments conform division 21 urban reserve rules to the statutes for urban reserves (ORS 195,) amended by SB 1011, including:

- An amended definition to conform to the amended statutory definition
- Authorization for Metro to designate urban reserves for the Portland Metropolitan area urban growth boundary under OAR 660, division 027.
- Removal of the word “area” after “urban reserve” throughout the division.
- Correction of the word “rule” in 0020(1): this should refer to the “division” rather than the “rule.”
- Elimination of “applicability provisions” that refer to previous urban reserve designations by Metro which were remanded by the courts and were not re-adopted by Metro.

Finally, as described at the beginning of this report, urban reserve rules under division 21

initially mandated that certain jurisdictions adopt urban reserves. These cities long ago completed this requirement. As such, it is suggested that the Commission repeal rules under OAR 660-021-0090 and OAR 660-021-0100 that establish specific urban reserve requirements and deadlines for these local governments to follow in meeting this mandate.

Amendments to OAR 660, division 25

The proposed amendments to the rules under OAR 660-025-0040 are in recognition of the Commission's exclusive authority to review urban reserves designated under OAR 660, division 27, in addition to reserves designated under OAR 660, division 21.

**Required LCDC Rulemaking Criteria and Procedures**

The Commission's procedures for rulemaking derive from ORS Chapter 183 and are specified in LCDC's procedural rules at OAR 660-001-0000. In general, prior to adoption of a rule, the Commission must hold a public hearing and provide an opportunity for interested parties to testify on the proposed rule. The Commission must deliberate in public and, if the commission makes a decision to adopt any or all of the proposals, a majority of the commission must affirm the motion to adopt.

The Commission is also guided by ORS 197.040, as follows:

***"197.040 Duties of commission; rules.***

*(1) The Land Conservation and Development Commission shall:*

....  
*(b) In accordance with the provisions of ORS 183.310 to 183.550, adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197. Except as provided in subsection (3) of this section, in designing its administrative requirements, the commission shall:*

*(A) Allow for the diverse administrative and planning capabilities of local governments;*

*(B) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;*

*(C) Assess the likely degree of economic impact on identified property and economic interests; and*

*(D) Assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.*

*(c)(A) Adopt by rule in accordance with ORS 183.310 to 183.550 or by goal under ORS chapters 195, 196 and 197 any statewide land use policies that it considers necessary to carry out ORS chapters 195, 196 and 19, [and]*

*(B) Adopt by rule in accordance with ORS 183.310 to 183.550 any procedures necessary to carry out ORS 215.402 (4)(b) and 227.160 (2)(b). . .*

...

*(3) The requirements of subsection (1)(b) of this section shall not be interpreted as requiring an assessment for each lot or parcel that could be affected by the proposed rule."*

The department issued formal rulemaking notice for publication in the November 2007 Secretary of State's Bulletin, and again in the January 2008 Secretary of State's Bulletin and has mailed notices to interested parties, including legislators (See Attachment G).

The Commission has also adopted "Citizen Involvement Guidelines for Policy Development" (the "CIG") in order "... to provide and promote clear procedures for public involvement in the development of Commission policy on land use," which LCDC has committed to follow "to the extent practicable in the development of new or amended statewide planning goals and related administrative rules." CIAC member Ann Glaze was appointed as a member of the Metro Reserves workgroup.

The CIG recommends that the Commission "consult with the CIAC on the scope of the proposed process or procedure to be followed in the development of any new or amended goal, rule or policy." On October 11, 2007, workgroup member Ann Glaze gave the CIAC a general overview of the process and progress of, and handed out a paragraph of the draft rule that spoke to citizen involvement. According to the minutes of that meeting, "CIAC was pleased with the inclusion of 'citizen involvement' requirements in the rules."

The CIG recommends that, as part of a rulemaking process, the department "shall, to the extent practicable:

- *Prepare a schedule that clearly indicates opportunities for citizen involvement and comment, including tentative dates of meetings, public hearings and other time-related information;*
- *Post the schedule, and any subsequent meeting or notice announcements of public participation opportunities on the Department's website, and provide copies via paper mail upon request; and*
- *Send notice of the website posting via an e-mail list of interested or potentially affected parties and media outlets statewide, and via paper mail upon request;*
- *Provide background information on the policy issues under discussion via posting on the Department's website and, upon request, via paper mail. Such information may, as appropriate, include staff reports, an issue summary, statutory references, administrative rules, case law, or articles of interest relevant to the policy issue."*

The department has followed these guidelines with regard to this rulemaking. The workgroup determined its schedule at its first meeting, and announced revisions to the schedule, and the department established a website and a list of interested parties to receive notices of this workgroup, in the manner outlined by the CIG. The website includes agendas and minutes for each workgroup meeting, background information, draft rules under consideration by the workgroup, and copies of formal notices. The department has sent notice of meetings to the public and interested parties, including notice of the LCDC hearings, by electronic and regular mail.

### **Conclusion and Recommendation**

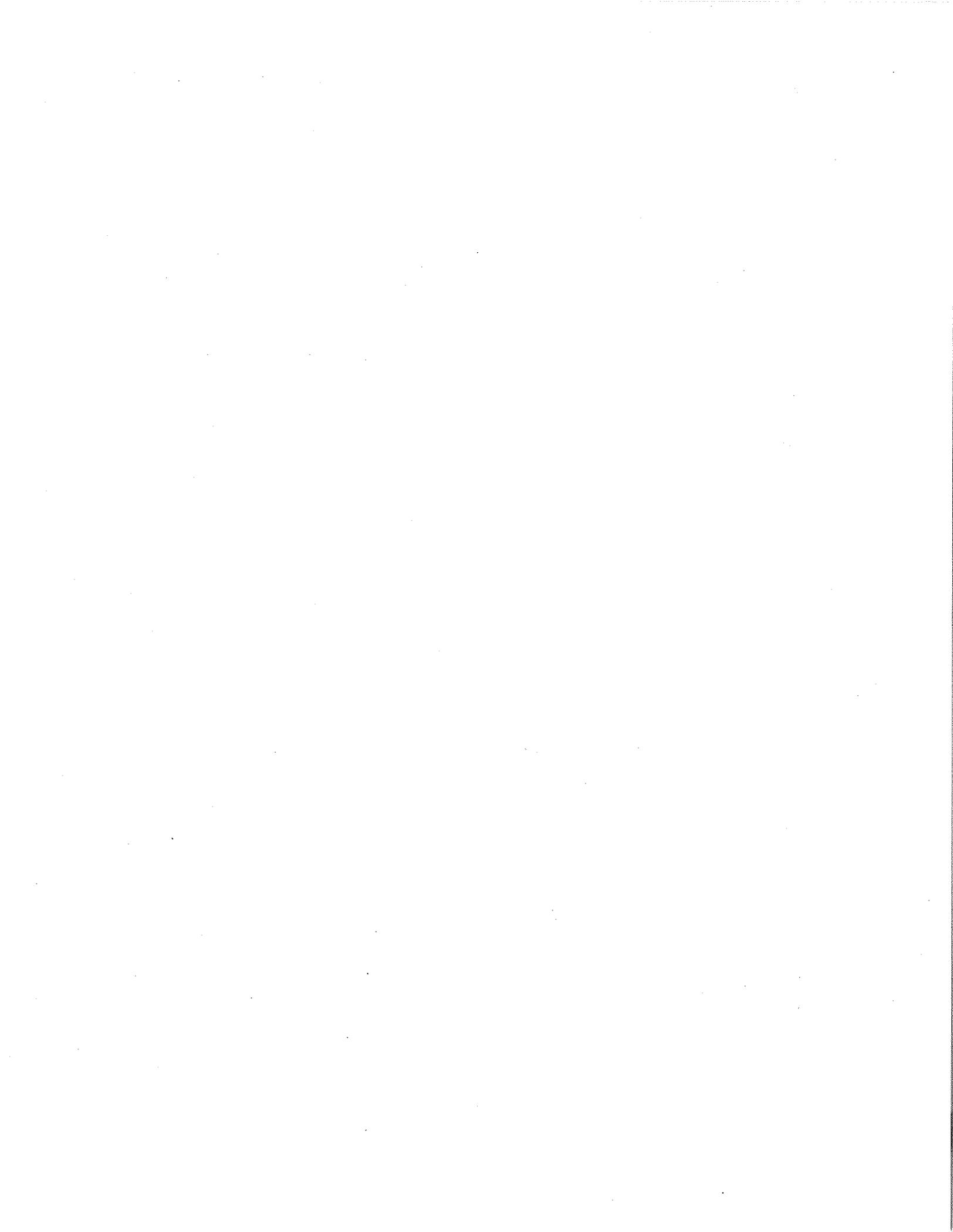
The department recommends that the Commission receive public testimony on the proposed new and amended rules. Following testimony, the department recommends that the commission close the public hearing, consider the testimony and other information provided, and adopt the proposed new and amended rules.

### **Attachments**

- A. Proposed new rules for Urban and Rural Reserves
- B. Proposed conforming amendments to other existing LCDC rules
  - OAR 660, division 4
  - OAR 660, division 11
  - OAR 660, division 21
  - OAR 660, division 25
- C. Senate Bill 1011, including legislative history
- D. Appointed rulemaking advisory workgroup
- E. The "Shape of the Region" summary report
- F. Urban Reserve Rules under OAR 660, division 21
- G. Rulemaking notices
- H. Written Comments received by DLCD prior to mailing of this report



A. Proposed new rules for Urban and Rural Reserves



**LAND CONSERVATION AND DEVELOPMENT DEPARTMENT**  
**PROPOSED NEW OAR 660, DIVISION 27**  
**URBAN AND RURAL RESERVES IN THE PORTLAND METROPOLITAN AREA**

January 8, 2008

*Draft Rules for LCDC Public Hearing January 23, 2008*

1 **660-027-0005**

2 **Purpose**

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

11  
12 (2) Urban reserves designated under this division are intended to facilitate long-term planning  
13 for urbanization in the Portland metropolitan area and to provide greater certainty to the  
14 agricultural and forest industries, to other industries and commerce, to private landowners and to  
15 public and private service providers, about the locations of future expansion of the Metro Urban  
16 Growth Boundary. Rural reserves under this division are intended to provide long-term  
17 protection for large blocks of agricultural land and forest land, and for important natural  
18 landscape features that limit urban development or define natural boundaries of urbanization.  
19 The objective of this division is a balance in the designation of urban and rural reserves that, in  
20 its entirety, best achieves livable communities, the viability and vitality of the agricultural and  
21 forest industries and protection of the important natural landscape features that define the region  
22 for its residents.

23  
24 **660-027-0010**

25 **Definitions**

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

29  
30 (1) "Foundation Agricultural Lands" means those lands mapped as Foundation Agricultural  
31 Lands in the January 2007 Oregon Department of Agriculture report to Metro entitled  
32 *"Identification and Assessment of the Long-Term Commercial Viability of Metro Region*  
33 *Agricultural Lands."*

34  
35 (2) "Important Agricultural Lands" means those lands mapped as Important Agricultural Lands  
36 in the January 2007 Oregon Department of Agriculture report to Metro entitled *"Identification*  
37 *and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands."*

38  
39 (3) "Intergovernmental agreement" means an agreement between Metro and a county pursuant to  
40 applicable requirements for such agreements in ORS 190.003 to 190.130, 195.025 or 197.652 to  
41 197.658, and in accordance with the requirements in this division regarding the designation of

1 urban and rural reserves and the performance of related land use planning and other activities  
2 pursuant to such designation.

3  
4 (4) “Livable communities” means communities with development patterns, public services and  
5 infrastructure that make them safe, healthy, affordable, sustainable and attractive places to live  
6 and work.

7  
8 (5) “Metro” means a metropolitan service district organized under ORS chapter 268.

9  
10 (6) “Important natural landscape features” means landscape features that limit urban  
11 development or help define appropriate natural boundaries of urbanization, and that thereby  
12 provide for the long-term protection and enhancement of the region's natural resources, public  
13 health and safety, and unique sense of place. These features include, but are not limited to, plant,  
14 fish and wildlife habitat; corridors important for ecological, scenic and recreational connectivity;  
15 steep slopes, floodplains and other natural hazard lands; areas critical to the region's air and  
16 water quality; historic and cultural areas; and other geographic features that define and  
17 distinguish the region.

18  
19 (7) “Public facilities and services” means sanitary sewer, water, transportation, storm water  
20 management facilities and public parks.

21  
22 (8) “Regional framework plan” means the plan adopted by Metro pursuant to ORS 197.015(17).

23  
24 (9) “Rural reserve” means lands outside the Metro UGB, and outside any other UGB in a county  
25 with which Metro has an agreement pursuant to this division, reserved to provide long-term  
26 protection for agriculture, forestry or important natural landscape features.

27  
28 (10) “UGB” means an acknowledged urban growth boundary established under Goal 14 and as  
29 defined in ORS 195.060(2).

30  
31 (11) “Urban reserve” means land outside an urban growth boundary designated to provide for  
32 future expansion of the UGB over a long-term period and to facilitate planning for the cost-  
33 effective provision of public facilities and services when the lands are included within the urban  
34 growth boundary.

35  
36 (13) “Walkable” means a community in which land uses are mixed, built compactly, and  
37 designed to provide residents and employees with safe and convenient pedestrian access to  
38 schools, offices, businesses and other places that provide goods and services needed on a regular  
39 basis.

40  
41 **660-027-0020**

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

43 (1) As an alternative to the authority to designate urban reserve areas granted by OAR chapter  
44 660, division 21, Metro may designate urban reserves through intergovernmental agreements  
45 with counties and by amendment of the regional framework plan to implement such agreements

1 in accordance with the requirements of this division. If Metro designates urban reserves under  
2 this division, it may not simultaneously designate reserves under OAR chapter 660, division 21.  
3

4 (2) A county may designate rural reserves through intergovernmental agreement with Metro and  
5 by amendment of its comprehensive plan to implement such agreement in accordance with the  
6 requirements of this division.  
7

8 (3) A county and Metro may not enter into an intergovernmental agreement under this division to  
9 designate urban reserves in the county unless the county and Metro simultaneously enter into an  
10 agreement to designate rural reserves in the county.  
11

### 12 **660-027-0030**

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

14 (1) An intergovernmental agreement between Metro and a county to establish urban reserves and  
15 rural reserves under this division shall provide for a coordinated and concurrent process for  
16 Metro to adopt regional framework plan provisions, and for the county to adopt comprehensive  
17 plan and zoning provisions, to implement the agreement. The agreement shall provide for Metro  
18 and the county to concurrently designate urban reserves and rural reserves, as specified in OAR  
19 660-027-0040.  
20

21 (2) In the development of an intergovernmental agreement described in this division, Metro and  
22 a county shall follow a coordinated citizen involvement process that provides for broad public  
23 notice and opportunities for public comment regarding lands proposed for designation as urban  
24 and rural reserves under the agreement. Metro and the county shall provide the State Citizen  
25 Involvement Advisory Committee an opportunity to review and comment on the proposed  
26 citizen involvement process.  
27

28 (3) An intergovernmental agreement made under this division shall be deemed a preliminary  
29 decision that is a prerequisite to the designation of reserves by amendments to Metro's regional  
30 framework plan and amendments to a county's comprehensive plan pursuant to OAR 660-027-  
31 0040. Any intergovernmental agreement made under this division shall be submitted to LCDC  
32 with amendments to the regional framework plan and county comprehensive plans as provided in  
33 OAR 660-027-0080(2) through (4).  
34

### 35 **660-027-0040**

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

37 (1) Metro may not designate urban reserves under this division in a county until Metro and  
38 applicable counties have entered into an intergovernmental agreement that identifies the land to  
39 be designated by Metro as urban reserves. A county may not designate rural reserves under this  
40 division until the county and Metro have entered into an agreement that identifies the land to be  
41 designated by the county as rural reserves.  
42

43 (2) Urban reserves designated under this division shall be planned to accommodate estimated  
44 urban population and employment growth in the Metro area for at least 20 years, and not more  
45 than 30 years, beyond the 20-year period for which Metro has demonstrated a buildable land  
46 supply inside the UGB in the most recent inventory, determination and analysis performed under

1 ORS 197.296. Metro shall specify the particular number of years for which the urban reserves  
2 are intended to provide a supply of land, based on the estimated land supply necessary for urban  
3 population and employment growth in the Metro area for that number of years. The 20 to 30-year  
4 supply of land specified in this rule shall consist of the combined total supply provided by all  
5 lands designated for urban reserves in all counties that have executed an intergovernmental  
6 agreement with Metro in accordance with OAR 660-027-0030.

7  
8 (3) If Metro designates urban reserves under this division prior to December 31, 2009, it shall  
9 plan the reserves to accommodate population and employment growth for at least 20 years, and  
10 not more than 30 years, beyond 2029. Metro shall specify the particular number of years for  
11 which the urban reserves are intended to provide a supply of land.

12  
13 (4) Neither Metro nor a local government may amend a UGB to include land designated as rural  
14 reserves during the period described in section (2) or (3) of this rule, whichever is applicable.

15  
16 (5) Metro shall not re-designate rural reserves as urban reserves, and a county shall not re-  
17 designate land in rural reserves to another use, during the period described in section (2) or (3) of  
18 this rule, whichever is applicable.

19  
20 (6) If Metro designates urban reserves under this division it shall adopt policies to implement the  
21 reserves and must show the reserves on its regional framework plan map. A county in which  
22 urban reserves are designated shall adopt policies to implement the reserves and must show the  
23 reserves on its comprehensive plan and zone maps.

24  
25 (7) If a county designates rural reserves under this division it shall adopt policies to implement  
26 the reserves and must show the reserves on its comprehensive plan and zone maps. Metro shall  
27 adopt policies to implement the rural reserves and show the reserves on its regional framework  
28 plan maps.

29  
30 (8) Designation of urban reserves and rural reserves under this division shall be coordinated  
31 with the cities in any county where such reserves are considered, and shall be coordinated with  
32 local governments, state agencies, special districts and school districts that may provide services  
33 to the urban reserves when they are added to the UGB.

34  
35 (9) When identifying and selecting land for designation as urban and rural reserves under this  
36 division, Metro and the counties shall base their decision on consideration of the factors  
37 specified in OAR 660-027-0050 or 660-027-0060, whichever are applicable.

38  
39 (10) Metro and those counties with which Metro has an agreement under this division shall  
40 identify, consider, evaluate and designate proposed urban and rural reserves concurrently and in  
41 coordination with one another. These local governments shall adopt a single, joint set of findings  
42 and statement of reasons that demonstrates how they applied the factors in OAR 660-027-0050  
43 and OAR 660-027-0060 when identifying, considering, evaluating and comparing areas for  
44 designation. The findings and statement of reasons shall explain why the local governments  
45 selected the areas designated as urban and rural reserves and how the designated reserves achieve  
46 the objective set forth in OAR 660-027-0005(2).

1  
2 (11) Because the January 2007 Oregon Department of Agriculture report entitled "*Identification*  
3 *and Assessment of the Long-Term Commercial viability of Metro Region Agricultural Lands*"  
4 indicates that Foundation Agricultural Land is the most important land for the viability and  
5 vitality of the agricultural industry, if Metro designates such land as urban reserves, the findings  
6 and statement of reasons shall explain, by reference to the factors in OAR 660-027-0050 and  
7 660-027-0060(2), why Metro chose the Foundation Agricultural Land for designation as urban  
8 reserves rather than other land considered under this rule.  
9

10 **660-027-0050**

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

12 (1) Urban Reserve Factors: When identifying and selecting land for designation as urban  
13 reserves under this division, Metro shall base its decision on consideration of whether land  
14 proposed for designation as urban reserves, alone or in conjunction with land inside the UGB:  
15

16 (a) Can be developed at urban densities in a way that makes efficient use of existing and future  
17 public and private infrastructure investments;  
18

19 (b) Includes sufficient development capacity to support a healthy economy;  
20

21 (c) Can be efficiently and cost-effectively served with public schools and other urban-level  
22 public facilities and services by appropriate and financially capable service providers;  
23

24 (d) Can be designed to be walkable and served with a well-connected system of streets,  
25 bikeways, recreation trails and public transit by appropriate service providers;  
26

27 (e) Can be designed to preserve and enhance natural ecological systems;  
28

29 (f) Includes sufficient land suitable for a range of needed housing types;  
30

31 (g) Can be developed in a way that preserves important natural landscape features included in  
32 urban reserves; and  
33

34 (h) Can be designed to avoid or minimize adverse effects on farm and forest practices and on  
35 important natural landscape features on nearby resource land, including land designated as rural  
36 reserves.  
37

38 **660-027-0060**

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

40 (1) When identifying and selecting land for designation as rural reserves under this division, a  
41 county shall indicate which land was considered and designated in order to provide long-term  
42 protection to the agriculture and forest industries and which land was considered and designated  
43 to provide long-term protection of important natural landscape features, or both. Based on this  
44 choice, the county shall apply the appropriate factors in either section (2) or (3) of this rule, or  
45 both.  
46

1 (2) Rural Reserve Factors: When identifying and selecting land for designation as rural reserves  
2 intended to provide long-term protection to the agricultural industry or forest industry, or both, a  
3 county shall base its decision on consideration of whether the land proposed for designation  
4

5 (a) Are situated in an area that is otherwise potentially subject to urbanization during the  
6 applicable period described in OAR 660-027-0040(2) or (3) as indicated by proximity to a UGB  
7 or proximity to properties with fair market values that significantly exceed agricultural values for  
8 farmland, or forestry values for forest land;  
9

10 (b) Are capable of sustaining long-term agricultural operations for agricultural land, or are  
11 capable of sustaining long-term forestry operations for forest land;  
12

13 (c) Have suitable soils where needed to sustain long-term agricultural or forestry operations and,  
14 for agricultural land, have available water where needed to sustain long-term agricultural  
15 operations;  
16

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

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

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

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

26 (D) The sufficiency of agricultural or forestry infrastructure in the area, whichever is applicable.  
27

28 (3) Rural Reserve Factors: When identifying and selecting land for designation as rural reserves  
29 intended to protect important natural landscape features, a county must consider those areas  
30 identified in Metro's February 2007 "*Natural Landscape Features Inventory*" and other pertinent  
31 information, and shall base its decision on consideration of whether the lands proposed for  
32 designation:  
33

34 (a) Are situated in an area that is otherwise potentially subject to urbanization during the  
35 applicable period described OAR 660-027-0040(2) or (3);  
36

37 (b) Are subject to natural disasters or hazards, such as floodplains, steep slopes and areas subject  
38 to landslides;  
39

40 (c) Are important fish, plant or wildlife habitat;  
41

42 (d) Are necessary to protect water quality or water quantity, such as streams, wetlands and  
43 riparian areas;  
44

45 (e) Provide a sense of place for the region, such as buttes, bluffs, islands and extensive wetlands;  
46

1 (f) Can serve as a boundary or buffer, such as rivers, cliffs and floodplains, to reduce conflicts  
2 between urban uses and rural uses, or conflicts between urban uses and natural resource uses;  
3

4 (g) Provide for separation between cities; and  
5

6 (h) Provide easy access to recreational opportunities in rural areas, such as rural trails and parks.  
7

8 (4) Notwithstanding 660-027-0040 (9) and section (2) of this rule, a county may deem that  
9 Foundation Agricultural Lands or Important Agricultural Lands within three miles of a UGB  
10 qualify for designation as rural reserves under section (2) without further explanation under OAR  
11 660-027-0040(10).  
12

### 13 **660-027-0070**

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

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

19 (2) In order to maintain opportunities for orderly and efficient development of urban uses and  
20 provision of urban services when urban reserves are added to the UGB, counties shall not amend  
21 land use regulations for urban reserves designated under this division to allow uses that were not  
22 allowed, or smaller lots or parcels than were allowed, at the time of designation as urban reserves  
23 until the reserves are added to the UGB.  
24

25 (3) Counties that designate rural reserves under this division shall not amend their land use  
26 regulations to allow uses that were not allowed, or smaller lots or parcels than were allowed, at  
27 the time of designation as rural reserves unless and until the reserves are re-designated,  
28 consistent with this division, as land other than rural reserves.  
29

30 (4) Counties, cities and Metro may adopt conceptual plans for the eventual urbanization of urban  
31 reserves designated under this division, including plans for eventual provision of public facilities  
32 and services for these lands, and may enter into urban service agreements among cities, counties  
33 and special districts serving or projected to serve the designated urban reserve area.  
34

35 (5) Metro shall ensure that lands designated as urban reserves, considered alone or in conjunction  
36 with lands already inside the UGB, are ultimately planned to be developed in a manner that is  
37 consistent with the factors in OAR 660-027-0050.  
38

### 39 **660-027-0080**

#### 40 **Local Adoption and LCDC Review of Urban and Rural Reserves**

41 (1) Metro and county adoption or amendment of plans, policies and other implementing  
42 measures to designate urban and rural reserves shall be in accordance with the applicable  
43 procedures and requirements of ORS 197.610 to 197.650.  
44

45 (2) After designation of urban and rural reserves, Metro and applicable counties shall jointly and  
46 concurrently submit their adopted or amended plans, policies and land use regulations

1 implementing the designation to the Land Conservation and Development Commission for  
2 review and action in the manner provided for periodic review under ORS 197.628 to 197.650.  
3

4 (3) Metro and applicable counties shall:  
5

6 (a) Transmit the intergovernmental agreements and the submittal described in section (2) in one  
7 or more suitable binders showing on the outside a title indicating the nature of the submittal and  
8 identifying the submitting jurisdictions.  
9

10 (b) Prepare and include an index of the contents of the submittal. Each document comprising the  
11 submittal shall be separately indexed, and  
12

13 (c) Consecutively number pages of the submittal at the bottom of the page, commencing with the  
14 first page of the submittal.  
15

16 (4) The joint and concurrent submittal to the Commission shall include findings of fact and  
17 conclusions of law that demonstrate that the adopted or amended plans, policies and other  
18 implementing measures to designate urban and rural reserves comply with this division, the  
19 applicable statewide planning goals, and other applicable administrative rules. The Commission  
20 shall review the submittal for:  
21

22 (a) Compliance with the applicable statewide planning goals. Under ORS 197.747 “compliance  
23 with the goals” means the submittal on the whole conforms with the purposes of the goals and  
24 any failure to meet individual goal requirements is technical or minor in nature. To determine  
25 compliance with the Goal 2 requirement for an adequate factual base, the Commission shall  
26 consider whether the submittal is supported by substantial evidence. Under ORS 183.482(8)(c),  
27 substantial evidence exists to support a finding of fact when the record, viewed as a whole,  
28 would permit a reasonable person to make that finding;  
29

30 (b) Compliance with applicable administrative rules, including but not limited to the objective  
31 provided in OAR 660-027-0005(2) and the urban and rural reserve designation standards  
32 provided in OAR 660-027-0040; and  
33

34 (c) Consideration of the factors in OAR 660-027-0050 or 660-027-0060, whichever are  
35 applicable.  
36

B. Proposed conforming amendments to other existing LCDC rules

- OAR 660, division 4
- OAR 660, division 11
- OAR 660, division 21
- OAR 660, division 25



**LAND CONSERVATION AND DEVELOPMENT DEPARTMENT**

**DIVISION 4  
INTERPRETATION OF GOAL 2 EXCEPTION PROCESS**

January 8, 2008

*Proposed Amendments for consideration at LCDC Public Hearing January 23, 2008*

*(Note: no other rules in this division are proposed to be amended under this proposal)*

1 **660-004-0040**

2 **Application of Goal 14 (Urbanization) to Rural Residential Areas**

3  
4 *(NOTE: no amendments proposed to sections (1) through (6) of this rule.)*

5  
6 (7)(a) The creation of any new lot or parcel smaller than two acres in a rural residential  
7 area shall be considered an urban use. Such a lot or parcel may be created only if an  
8 exception to Goal 14 is taken. This subsection shall not be construed to imply that  
9 creation of new lots or parcels two acres or larger always complies with Goal 14. The  
10 question of whether the creation of such lots or parcels complies with Goal 14 depends  
11 upon compliance with all provisions of this rule.

12 (b) Each local government must specify a minimum area for any new lot or parcel that is  
13 to be created in a rural residential area. For the purposes of this rule, that minimum area  
14 shall be referred to as the minimum lot size.

15 (c) If, on the effective date of this rule, a local government's land use regulations specify  
16 a minimum lot size of two acres or more, the area of any new lot or parcel shall equal or  
17 exceed that minimum lot size which is already in effect.

18 (d) If, on the effective date of this rule, a local government's land use regulations specify  
19 a minimum lot size smaller than two acres, the area of any new lot or parcel created shall  
20 equal or exceed two acres.

21 (e) A local government may authorize a planned unit development (PUD), specify the  
22 size of lots or parcels by averaging density across a parent parcel, or allow clustering of  
23 new dwellings in a rural residential area only if all conditions set forth in paragraphs  
24 (7)(e)(A) through (7)(e)(H) are met:

25 (A) The number of new dwelling units to be clustered or developed as a PUD does not  
26 exceed 10.

27 (B) The number of new lots or parcels to be created does not exceed 10.

28 (C) None of the new lots or parcels will be smaller than two acres.

29 (D) The development is not to be served by a new community sewer system.

- 1 (E) The development is not to be served by any new extension of a sewer system from  
2 within an urban growth boundary or from within an unincorporated community.
- 3 (F) The overall density of the development will not exceed one dwelling for each unit of  
4 acreage specified in the local government's land use regulations on the effective date of  
5 this rule as the *minimum lot size* **minimum lot size** for the area.
- 6 (G) Any group or cluster of two or more dwelling units will not force a significant change  
7 in accepted farm or forest practices on nearby lands devoted to farm or forest use and will  
8 not significantly increase the cost of accepted farm or forest practices there.
- 9 (H) For any open space or common area provided as a part of the cluster or planned unit  
10 development under this subsection, the owner shall submit proof of nonrevocable deed  
11 restrictions recorded in the deed records. The deed restrictions shall preclude all future  
12 rights to construct a dwelling on the lot, parcel, or tract designated as open space or  
13 common area for as long as the lot, parcel, or tract remains outside an urban growth  
14 boundary.
- 15 (f) Except as provided in subsection (e) of this section, a local government shall not allow  
16 more than one permanent single-family dwelling to be placed on a lot or parcel in a rural  
17 residential area. Where a medical hardship creates a need for a second household to  
18 reside temporarily on a lot or parcel where one dwelling already exists, a local  
19 government may authorize the temporary placement of a manufactured dwelling or  
20 recreational vehicle.
- 21 (g) In rural residential areas, the establishment of a new mobile home park or  
22 manufactured dwelling park as defined in ORS 446.003(32) shall be considered an urban  
23 use if the density of manufactured dwellings in the park exceeds the density for  
24 residential development set by this rule's requirements for minimum lot and parcel sizes.  
25 Such a park may be established only if an exception to Goal 14 is taken.
- 26 (h) A local government may allow the creation of a new parcel or parcels smaller than a  
27 minimum lot size required under subsections (a) through (d) of this section without an  
28 exception to Goal 14 only if the conditions described in paragraphs (A) through (D) of  
29 this subsection exist:
- 30 (A) The parcel to be divided has two or more permanent habitable dwellings on it;
- 31 (B) The permanent habitable dwellings on the parcel to be divided were established there  
32 before the effective date of this rule;
- 33 (C) Each new parcel created by the partition would have at least one of those permanent  
34 habitable dwellings on it; and
- 35 (D) The partition would not create any vacant parcels on which a new dwelling could be  
36 established.

- 1 (E) For purposes of this rule, "habitable dwelling" means a dwelling that meets the  
2 criteria set forth in ORS 215.283(t)(A)-(t)(D).
- 3 (i) For rural residential areas designated after the effective date of this rule, the affected  
4 county shall either:
- 5 (A) Require that any new lot or parcel have an area of at least ten acres, or
- 6 (B) Establish a minimum size of at least two acres for new lots or parcels in accordance  
7 with the requirements for an exception to Goal 14 in OAR 660, Division 014. The  
8 minimum lot size adopted by the county shall be consistent with OAR 660-004-0018,  
9 "Planning and Zoning for Exception Areas."
- 10 (8)(a) Notwithstanding the provisions of Section 7 of this rule, divisions of rural  
11 residential land within one mile of an urban growth boundary for any city or urban area  
12 listed in paragraphs (A) through (E) of this subsection shall be subject to the provisions  
13 of subsections (8)(b) and (8)(c).
- 14 (A) Ashland;  
15 (B) Central Point;  
16 (C) Medford;  
17 (D) Newberg;  
18 (E) Sandy.
- 19
- 20 (b) If a city or urban area listed in Subsection (8)(a):  
21 (A) has an urban reserve area that contains at least a twenty-year reserve of land and that  
22 has been acknowledged to comply with OAR 660, Division 021; or  
23 (B) is part of a regional growth plan that contains at least a twenty-year regional **urban**  
24 reserve of land beyond the land contained within the collective urban growth boundaries  
25 of the participating cities, and that has been acknowledged through the process prescribed  
26 for Regional Problem Solving in ORS 197.652 through 197.658; then any division of  
27 rural residential land in that reserve area shall be done in accordance with the  
28 acknowledged urban reserve ordinances or acknowledged regional growth plan.
- 29
- 30 (c) Notwithstanding the provisions of Section 7 of this rule, if any part of a lot or parcel  
31 to be divided is less than one mile from an urban growth boundary for a city or urban area  
32 listed in Subsection (8)(a), and if that city or urban area does not have an urban reserve  
33 area acknowledged to comply with OAR 660, Division 021, or is not part of an  
34 acknowledged regional growth plan as described in Subsection (b), Paragraph (B), of this  
35 section, the minimum area of any new lot or parcel there shall be ten acres.
- 36
- 37 (d) Notwithstanding the provisions of Section 7, if [~~the Portland metropolitan service~~  
38 ~~district~~] **Metro** has an urban reserve area that contains at least a twenty-year reserve of  
39 land and that has been acknowledged to comply with OAR 660, Division 021 or OAR  
40 660, division 27, any **land** division of rural residential land in that **urban** reserve [~~area~~]  
41 shall be done in accordance with the applicable acknowledged [~~urban reserve ordinance~~]  
42 comprehensive plan and zoning provisions adopted to implement the urban reserve.

1  
2 (e) Notwithstanding the provisions of Section 7, if any part of a lot or parcel to be divided  
3 is less than one mile from the urban growth boundary for the Portland metropolitan area  
4 and is in a rural residential area, and if the [~~Portland metropolitan area does not have~~ ]  
5 **Metro has not designated** an urban reserve [~~area~~] that contains at least a twenty-year  
6 reserve of land [~~and that has been~~] acknowledged to comply with **either** OAR 660,  
7 ~~D~~**division 021 or OAR 660, division 27**, the minimum area of any new lot or parcel  
8 there shall be twenty acres. If the lot or parcel to be divided also lies within the area  
9 governed by the Columbia River Gorge National Scenic Area Act, the division shall be  
10 done in accordance with the provisions of that act.

11  
12 (f) Notwithstanding the provisions of Section 7 and Subsection (8)(e), a local government  
13 may establish minimum area requirements smaller than twenty acres for some of the  
14 lands described in Subsection (8)(e). The selection of those lands and the minimum  
15 established for them shall be based on an analysis of the likelihood that such lands will  
16 urbanize, of their current parcel and lot sizes, and of the capacity of local governments to  
17 serve such lands efficiently with urban services at [~~the~~] densities **of at least 10 units per**  
18 **net developable acre** [~~set forth in the Metro 2040 plan~~]. In no case shall the minimum  
19 **parcel** area requirement set for such lands be smaller than 10 acres.

20  
21 (g) A local government may allow the creation of a new parcel, or parcels, smaller than a  
22 minimum lot size required under subsections (a) through (f) of this section without an  
23 exception to Goal 14 only if the conditions described in paragraphs (A) through (~~E~~) of  
24 this subsection exist:

25 (A) The parcel to be divided has two or more permanent, habitable dwellings on it;  
26 (B) The permanent, habitable dwellings on the parcel to be divided were established there  
27 before the effective date of OAR 660-004-0040;

28 (C) Each new parcel created by the partition would have at least one of those permanent,  
29 habitable dwellings on it;

30 (D) The partition would not create any vacant parcels on which new dwellings could be  
31 established; and

32 (E) The resulting parcels shall be sized to promote efficient future urban development by  
33 ensuring that one of the parcels is the minimum size necessary to accommodate the  
34 residential use of the parcel.

35 (F) For purposes of this rule, habitable dwelling means a dwelling that meets the criteria  
36 set forth in ORS 215.283(1)(t)(A) - (D), **and**,

37 **(G) The parcel is not in an area designated as rural reserve under OAR 660, div. 27.**

38  
39 (9) The development, placement, or use of one single-family dwelling on a lot or parcel  
40 lawfully created in an acknowledged rural residential area is allowed under this rule and  
41 Goal 14, subject to all other applicable laws.

42  
43 Stat. Auth.: ORS 183 & 197

44 Stats. Implemented: ORS 197.175 & 197.732

45 Hist.: LCDD 7-2000, f. 6-30-00, cert. ef. 10-4-00; LCDD 3-2001, f. & cert. ef. 4-3-01;

46 LCDD 3-2004, f. & cert. ef. 5-7-04

**LAND CONSERVATION AND DEVELOPMENT DEPARTMENT**

**DIVISION 11  
PUBLIC FACILITIES PLANNING**

January 8, 2008

*Proposed Amendments for consideration at LCDC Public Hearing January 23, 2008*

*(No changes proposed to other rules in this division)*

1 **660-011-0060**

2 **Sewer Service to Rural Lands**

3

4 *... (NOTE: no changes are proposed to sections other than section (4) of this rule)*

5 (4) A local government may allow the establishment of a new sewer system, or the  
6 extension of an existing sewer system, to serve land outside urban growth boundaries and  
7 unincorporated community boundaries in order to mitigate a public health hazard,  
8 provided that the conditions in subsections (a) and (b) of this section are met, as follows:

9 (a) The DEQ or the Oregon Health Division initially:

10 (A) Determines that a public health hazard exists in the area;

11 (B) Determines that the health hazard is caused by sewage from development that existed  
12 in the area on July 28, 1998;

13 (C) Describes the physical location of the identified sources of the sewage contributing to  
14 the health hazard; and

15 (D) Determines that there is no practicable alternative to a sewer system in order to abate  
16 the public health hazard; and

17 (b) The local government, in response to the determination in subsection (a) of this  
18 section, and based on recommendations by DEQ and the Oregon Health Division where  
19 appropriate:

20 (A) Determines the type of sewer system and service to be provided, pursuant to section  
21 (5) of this rule;

22 (B) Determines the boundaries of the sewer system service area, pursuant to section (6)  
23 of this rule;

24 (C) Adopts land use regulations that ensure the sewer system is designed and constructed  
25 so that its capacity does not exceed the minimum necessary to serve the area within the  
26 boundaries described under paragraph (B) of this subsection, except **the capacity may be**  
27 **designed and constructed to provide for future service planned for an area within**  
28 **the boundaries of an** urban reserve [areas] as provided under OAR 660-021-0040(6) **or**  
29 **OAR 660-27-0070(4).**

1 (D) Adopts land use regulations to prohibit the sewer system from serving any uses other  
2 than those existing or allowed in the identified service area on the date the sewer system  
3 is approved;

4 (E) Adopts plan and zone amendments to ensure that only rural land uses are allowed on  
5 rural lands in the area to be served by the sewer system, consistent with Goal 14 and  
6 OAR 660-004-0018, unless a Goal 14 exception has been acknowledged;

7 (F) Ensures that land use regulations do not authorize a higher density of residential  
8 development than would be authorized without the presence of the sewer system; and

9 (G) Determines that the system satisfies ORS 215.296(1) or (2) to protect farm and forest  
10 practices, except for systems located in the subsurface of public roads and highways  
11 along the public right of way.

12 Stat. Auth.: ORS 183 & ORS 197

13 Stats. Implemented: ORS 197.712

14 Hist.: LCDD 4-1998, f. & cert. ef. 7-28-98; LCDD 1-2005, f. 2-11-05, cert. ef. 2-14-05

15

# LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

## DIVISION 21 URBAN RESERVE AREAS

January 8, 2008

*Proposed Amendments for consideration at LCDC Public Hearing January 23, 2008*

1 **660-021-0000**

2 **Purpose**

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

6 Stat. Auth.: ORS 183 & ORS 197

7 Stats. Implemented: ORS 197.145 & ORS 197.040

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

9 **660-021-0010**

10 **Definitions**

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

14 (1) "Urban Reserve Area": Lands outside of an urban growth boundary ~~identified as~~  
15 ~~highest priority for inclusion in the urban growth boundary when the boundary is~~  
16 ~~expanded in accordance with Goal 14.~~ **that will provide for:**

17 **(a) Future expansion over a long-term period; and**

18 **(b) The cost-effective provision of public facilities and services within the area when**  
19 **the lands are included within the urban growth boundary.**

20 (2) "Resource Land": Land subject to the Statewide Planning Goals listed in OAR 660-  
21 004-0010(1)(a) through (f), except subsection (c).

22 (3) "Nonresource Land": Land not subject to the Statewide Planning Goals listed in OAR  
23 660-004-0010(1)(a) through (f) except subsection (c). Nothing in this definition is meant  
24 to imply that other goals do not apply to nonresource land.

25 (4) "Exception Areas": Rural lands for which an exception to Statewide Planning Goals 3  
26 and 4, as defined in OAR 660-004-0005(1), have been acknowledged.

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

30 (6) "Adjacent Land": Abutting land.

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

3 Stat. Auth.: ORS 183 & ORS 197

4 Stats. Implemented: ORS 197.145 & ORS 197.040

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

6 **660-021-0020**

7 **Authority to Establish Urban Reserve Areas**

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

17 **(2) As an alternative to designation of urban reserves under the requirements of this**  
18 **division, Metro may designate urban reserves for the Portland Metropolitan area**  
19 **urban growth boundary under OAR 660, division 027.**

20 Stat. Auth.: ORS 183 & ORS 197

21 Stats. Implemented: ORS 197.145 & ORS 197.040

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

23 **660-021-0030**

24 **Determination of Urban Reserves Areas**

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

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

- 1 (3) Land found suitable for an urban reserve may be included within an urban reserve  
2 [~~area~~] only according to the following priorities:
- 3 (a) First priority goes to land adjacent to, or nearby, an urban growth boundary and  
4 identified in an acknowledged comprehensive plan as an exception area or nonresource  
5 land. First priority may include resource land that is completely surrounded by exception  
6 areas unless these are high value crop areas as defined in Goal 8 or prime or unique  
7 agricultural lands as defined by the United States Department of Agriculture;
- 8 (b) If land of higher priority is inadequate to accommodate the amount of land estimated  
9 in section (1) of this rule, second priority goes to land designated as marginal land  
10 pursuant to ORS 197.247;
- 11 (c) If land of higher priority is inadequate to accommodate the amount of land estimated  
12 in section (1) of this rule, third priority goes to land designated in an acknowledged  
13 comprehensive plan for agriculture or forestry, or both. Higher priority shall be given to  
14 land of lower capability as measured by the capability classification system or by cubic  
15 foot site class, whichever is appropriate for the current use.
- 16 (4) Land of lower priority under section (3) of this rule may be included if land of higher  
17 priority is found to be inadequate to accommodate the amount of land estimated in  
18 section (1) of this rule for one or more of the following reasons:
- 19 (a) Future urban services could not reasonably be provided to the higher priority area due  
20 to topographical or other physical constraints; or
- 21 (b) Maximum efficiency of land uses within a proposed urban reserve ~~area~~ requires  
22 inclusion of lower priority lands in order to include or to provide services to higher  
23 priority lands.
- 24 (5) Findings and conclusions concerning the results of the above consideration shall be  
25 adopted by the affected jurisdictions

26 Stat. Auth.: ORS 183 & ORS 197

27 Stats. Implemented: ORS 197.040

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

29 4-2000, f. & cert. ef. 3-22-00

1 **660-021-0040**  
2 **Urban Reserve [Area] Planning and Zoning**

3 (1) Until included in the urban growth boundary, lands in the urban reserves area shall  
4 continue to be planned and zoned for rural uses in accordance with the requirements of  
5 this section, but in a manner that ensures a range of opportunities for the orderly,  
6 economic and efficient provision of urban services when these lands are included in the  
7 urban growth boundary.

8 (2) Urban reserve [area] land use regulations shall ensure that development and land  
9 divisions in exception areas and nonresource lands will not hinder the efficient transition  
10 to urban land uses and the orderly and efficient provision of urban services. These  
11 measures shall be adopted by the time the urban reserves [area-is] **are** designated, or in  
12 the case of those local governments with planning and zoning responsibility for lands in  
13 the vicinity of the Portland Metropolitan Area Urban Growth Boundary, by the time such  
14 local governments amend their comprehensive plan and zoning maps to implement urban  
15 reserve [area] designations made by the Portland Metropolitan Service District. The  
16 measures may include:

17 (a) Prohibition on the creation of new parcels less than ten acres;

18 (b) Requirements for clustering as a condition of approval of new parcels;

19 (c) Requirements for preplatting of future lots or parcels;

20 (d) Requirements for written waivers of remonstrance against annexation to a provider of  
21 sewer, water or streets;

22 (e) Regulation of the siting of new development on existing lots for the purpose of  
23 ensuring the potential for future urban development and public facilities.

24 (3) For exception areas and nonresource land in urban reserves [areas], land use  
25 regulations shall prohibit zone amendments allowing more intensive uses, including  
26 higher residential density, than permitted by acknowledged zoning in effect as of the date  
27 of establishment of the urban reserves [area]. Such regulations shall remain in effect until  
28 such time as the land is included in the urban growth boundary.

29 (4) Resource land that is included in urban reserves [areas] shall continue to be planned  
30 and zoned under the requirements of applicable Statewide Planning Goals.

31 (5) Urban reserves [area] agreements consistent with applicable comprehensive plans and  
32 meeting the requirements of OAR 660-021-0050 shall be adopted for urban reserves  
33 [areas].

34 (6) Cities and counties are authorized to plan for the eventual provision of urban public  
35 facilities and services to urban reserves [areas]. However, this division is not intended to

1 authorize urban levels of development or services in urban reserves [areass] prior to their  
2 inclusion in the urban growth boundary. This division is not intended to prevent any  
3 planning for, installation of, or connection to public facilities or services in urban  
4 reserves [areass] consistent with the statewide planning goals and with acknowledged  
5 comprehensive plans and land use regulations in effect on the applicable date of this  
6 division.

7 (7) A local government shall not prohibit the siting of a single family dwelling on a legal  
8 parcel pursuant to urban reserve planning requirements if the single family dwelling  
9 would otherwise have been allowed under law existing prior to the designation of the  
10 parcel as part of an urban reserve [areaa].

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

12 Stats. Implemented: ORS 197.145

13 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 5-1994, f. & cert. ef. 4-20-94; LCDD  
14 2-1997(Temp), f. & cert. ef. 5-21-97; LCDD 3-1997, f. & cert. ef. 8-1-97; LCDD 4-2000,  
15 f. & cert. ef. 3-22-00

16 **660-021-0050**

17 **Urban Reserve Area Agreements**

18 Urban reserve [areaa] planning shall include the adoption and maintenance of urban  
19 reserve agreements among cities, counties and special districts serving or projected to  
20 serve the designated urban reserves [areaa]. These agreements shall be adopted by each  
21 applicable jurisdiction and shall contain:

22 (1) Designation of the local government responsible for building code administration and  
23 land use regulation in the urban reserves [areaa], both at the time of reserve designation  
24 and upon inclusion of these [areass] **reserves** within the urban growth boundary.

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

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

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

34 Stat. Auth.: ORS 183 & ORS 197

35 Stats. Implemented: ORS 197.145 & ORS 197.040

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

1 **660-021-0060**  
2 **Urban Growth Boundary Expansion**

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

7 Stat. Auth.: ORS 183 & ORS 197  
8 Stats. Implemented: ORS 197.145 & ORS 197.040  
9 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00

10 **660-021-0070**  
11 **Adoption and Review of Urban Reserves Areas**

12 (1) Designation and amendment of urban reserves [areas] shall follow the procedures in  
13 ORS 197.610 through 197.650.

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

17 Stat. Auth.: ORS 183 & ORS 197  
18 Stats. Implemented: ORS 197.145  
19 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 2-1997(Temp), f. & cert. ef. 5-21-97;  
20 LCDD 3-1997, f. & cert. ef. 8-1-97; LCDD 4-2000, f. & cert. ef. 3-22-00

21 **660-021-0080**  
22 **Applicability**

23 The provisions of this rule are effective upon filing with the Secretary of State. ~~The~~  
24 ~~amendments to OAR 660-021-0030 adopted by the commission on January 27, 2000, do~~  
25 ~~not apply to the urban reserve designations made by the Portland Metropolitan Service~~  
26 ~~District on March 6, 1997, or to any decision by the District on remand of those~~  
27 ~~designations from the Land Use Board of Appeals or a court of competent jurisdiction,~~  
28 ~~and the version of that rule effective on December 31, 1996, shall continue to apply to~~  
29 ~~those designations.~~

30 Stat. Auth.: ORS 183, ORS 195 & ORS 197  
31 Stats. Implemented: ORS 195.145  
32 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 5-1994, f. & cert. ef. 4-20-94; LCDD  
33 2-1997(Temp), f. & cert. ef. 5-21-97; LCDD 3-1997, f. & cert. ef. 8-1-97; LCDD 4-1997,  
34 f. & cert. ef. 12-23-97; LCDD 4-2000, f. & cert. ef. 3-22-00

1 *(Repeal the following rules)*

2 **660-021-0090**

3 **Implementation Schedule**

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

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

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

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

14 Stat. Auth.: ORS 183 & ORS 197

15 Stats. Implemented: ORS 197.145 & ORS 197.040

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

17 **660-021-0100**

18 **Interim Protection of Potential Reserve Areas**

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

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

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

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

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

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

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

5 ~~(a) December 31, 2000;~~

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

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

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

13 Stats. Implemented: ORS 195.145

14 Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-1997, f. & cert. ef. 12-23-97; LCDD  
15 4-2000, f. & cert. ef. 3-22-00

16

17

# LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

## DIVISION 25 PERIODIC REVIEW

January 8, 2008

*Proposed Amendments for consideration at LCDC Public Hearing January 23, 2008*

*(Note: no changes proposed to other rules in this division)*

1 **660-025-0040**

2 **Exclusive Jurisdiction of LCDC**

3 (1) The commission, pursuant to ORS 197.644(2), has exclusive jurisdiction to review  
4 the evaluation, work program, and all work tasks for compliance with the statewide  
5 planning goals and applicable statutes and administrative rules. Pursuant to ORS 197.626,  
6 the commission has exclusive jurisdiction to review the following land use decisions for  
7 compliance with the statewide planning goals:

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

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

12 (c) Plan and land use regulations that designate urban reserves under OAR 660,  
13 division 21; and

14 (d) Plan and land use regulations that designate urban or rural reserves under OAR  
15 660, division 27.

16 (2) The director may transfer one or more matters arising from review of a work task,  
17 urban growth boundary amendment or designation or amendment of an urban reserve  
18 area or rural reserve to the Land Use Board of Appeals pursuant to ORS  
19 197.825(2)(c)(A) and OAR 660-025-0250.

20 Stat. Auth.: ORS 197.040

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

22 Hist.: LCDC 1-1992, f. & cert. ef. 1-28-92; LCDC 6-1995, f. & cert. ef. 6-16-95; LCDD  
23 3-2000, f. & cert. ef. 2-14-00; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 4-2006, f. &  
24 cert. ef. 5-15-06



**C. Senate Bill 1011**  
**(Including legislative history Prepared by Metro**  
**and Distributed to House Committee prior to passage)**



**Enrolled**  
**Senate Bill 1011**

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER .....

AN ACT

Relating to land reserves; creating new provisions; amending ORS 195.145, 197.626 and 221.034; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** As used in sections 1 to 4 of this 2007 Act:

(1) "Rural reserve" means land reserved to provide long-term protection for agriculture, forestry or important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes and floodplains.

(2) "Urban reserve" means lands outside an urban growth boundary that will provide for:

(a) Future expansion over a long-term period; and

(b) The cost-effective provision of public facilities and services within the area when the lands are included within the urban growth boundary.

**SECTION 2.** The Legislative Assembly finds that:

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

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

(b) Commerce, other industries, other private landowners and providers of public services, by determining the more and less likely locations of future expansion of urban growth boundaries and urban development.

(2) State planning laws must support and facilitate long-range planning to provide this greater certainty.

**SECTION 3.** (1) A county and a metropolitan service district established under ORS chapter 268 may enter into an intergovernmental agreement pursuant to ORS 190.003 to 190.130, 195.025 or 197.652 to 197.658 to designate rural reserves pursuant to this section and urban reserves pursuant to ORS 195.145 (1)(b).

(2) Land designated as a rural reserve:

(a) Must be outside an urban growth boundary.

(b) May not be designated as an urban reserve during the urban reserve planning period described in ORS 195.145 (4).

(c) May not be included within an urban growth boundary during the period of time described in paragraph (b) of this subsection.

(3) When designating a rural reserve under this section to provide long-term protection to the agricultural industry, a county and a metropolitan service district shall base the des-

ignation on consideration of factors including, but not limited to, whether land proposed for designation as a rural reserve:

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

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

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

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

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

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

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

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

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

**SECTION 4.** (1) A county and a metropolitan service district must consider simultaneously the designation and establishment of:

(a) Rural reserves pursuant to section 3 of this 2007 Act; and

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

(2) An agreement between a county and a metropolitan service district to establish rural reserves pursuant to section 3 of this 2007 Act and urban reserves pursuant to ORS 195.145 (1)(b) must provide for a coordinated and concurrent process for adoption by the county of comprehensive plan provisions and by the district of regional framework plan provisions to implement the agreement. A district may not designate urban reserves pursuant to ORS 195.145 (1)(b) in a county until the county and the district have entered into an agreement pursuant to ORS 195.145 (1)(b) that identifies the land to be designated by the district in the district's regional framework plan as urban reserves. A county may not designate rural reserves pursuant to section 3 of this 2007 Act until the county and the district have entered into an agreement pursuant to section 3 of this 2007 Act that identifies the land to be designated as rural reserves by the county in the county's comprehensive plan.

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

(4) Designation and protection of rural reserves pursuant to section 3 of this 2007 Act or urban reserves pursuant to ORS 195.145 (1)(b):

(a) Is not a basis for a claim for compensation under ORS 197.352 unless the designation and protection of rural reserves or urban reserves imposes a new restriction on the use of private real property.

(b) Does not impair the rights and immunities provided under ORS 30.930 to 30.947.

**SECTION 5.** (1) Sections 1 to 4 of this 2007 Act are added to and made a part of ORS chapter 195.

(2) ORS 195.145 is added to and made a part of sections 1 to 4 of this 2007 Act.

**SECTION 6.** ORS 195.145 is amended to read:

195.145. (1) To ensure that the supply of land available for urbanization is maintained[.];

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

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

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

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

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

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

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

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

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

*[(4) For purposes of this section, "urban reserve area" means lands outside an urban growth boundary that will provide for:]*

*[(a) Future expansion over a long-term period; and]*

*[(b) The cost-effective provision of public facilities and service within the area when the lands are included within the urban growth boundary].*

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

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

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

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

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

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

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

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

(6) The commission shall adopt by goal or by rule a process and criteria for designating urban reserves pursuant to subsection (1)(b) of this section.

**SECTION 7.** ORS 197.626 is amended to read:

197.626. A metropolitan service district that amends its urban growth boundary to include more than 100 acres, or that amends the district's regional framework plan or land use regulations implementing the plan to establish urban reserves designated under ORS 197.145 (1)(b), a city with a population of 2,500 or more within its urban growth boundary that amends the urban growth

boundary to include more than 50 acres or that designates urban reserve [areas] under ORS 195.145, or a county that amends the county's comprehensive plan or land use regulations implementing the plan to establish rural reserves designated under section 3 of this 2007 Act, shall submit the amendment or designation to the Land Conservation and Development Commission in the manner provided for periodic review under ORS 197.628 to 197.650.

**SECTION 8.** ORS 221.034 is amended to read:

221.034. (1) As used in this section:

(a) "Neighboring city" means a city that has any part of its territory situated within three miles of the area proposed to be incorporated.

(b) "Rural unincorporated community" means a settlement with a boundary identified in an acknowledged comprehensive plan of a county and that:

(A) Is made up primarily of lands subject to an exception to statewide planning goals related to agricultural lands or forestlands;

(B) Either was identified in the acknowledged comprehensive plan of a county as a "rural community," "service center," "rural center," "resort community" or similar term before October 28, 1994, or is listed in the Department of Land Conservation and Development's "Survey of Oregon Unincorporated Communities" (January 30, 1997);

(C) Lies outside the urban growth boundary of a city or a metropolitan service district; and

(D) Is not incorporated as a city.

(c) "Urban reserve [area]" has the meaning given that term in [ORS 195.145] section 1 of this 2007 Act.

(d) "Urban services" has the meaning given that term in ORS 195.065.

(2) When any of the area proposed to be incorporated as a city lies within an urbanized area, but outside the urban growth boundary of a city or a metropolitan service district:

(a) The area proposed to be incorporated must also be located entirely within a designated rural unincorporated community and contiguous lands subject to an exception to statewide planning goals related to agricultural lands or forestlands.

(b) The petition required by ORS 221.031 must be accompanied by an affidavit, signed by a chief petitioner, stating that:

(A) Ten percent of the electors registered within the area proposed for incorporation favor the incorporation; and

(B) The chief petitioners have engaged the neighboring cities in discussions concerning the effects of the proposed incorporation, including discussions specifically relating to how those cities and the proposed city will allow for expansion of urban growth boundaries and, where applicable, for creation or expansion of urban [reserve areas] reserves.

(c) The economic feasibility statement required by ORS 221.035 must:

(A) Indicate that the proposed city must plan for and provide urban services in a cost-effective manner at the minimum level adequate to meet current needs and projected growth;

(B) Contain a proposed permanent rate limit for operating taxes to provide revenues for urban services; and

(C) Indicate that the proposed city must plan for residential development at or above the same urban density planned for an existing city, within the county, that has a similar geographic area within the existing city's urban growth boundary or, for a proposed city within three miles of Metro's boundary, a minimum urban residential density in accordance with a statewide planning goal and rules pertaining to needed housing for cities within Metro's urban growth boundary.

(d) If the proposed city will be required to complete a public facility plan and a transportation systems plan, the proposed city must demonstrate the ability to provide urban services to meet current needs and projected growth. The proposed city may meet this requirement, in whole or in part, by establishing an agreement in principle with a city or a district, as defined in ORS 195.060, to provide the urban services.

(3) If the governing body of a neighboring city determines that the proposed incorporation adversely affects that city, the governing body may ask the county court with which the petition for

incorporation was filed to reject the petition and terminate the incorporation proceedings. The objections by the city to the incorporation shall be heard and considered by the county court at a public hearing held under ORS 221.040.

(4) If, at the hearing held under ORS 221.040, the county court finds that any of the requirements of subsection (2) of this section are not met or that the proposed incorporation will adversely affect a neighboring city, the county court shall provide by order for the termination of the incorporation proceedings. The order shall contain the findings of the county court relating to the proposed incorporation and the reasons for terminating the incorporation proceedings.

(5) In the manner provided in ORS 197.830 to 197.845, the Land Use Board of Appeals shall review, upon the petition of a party to the incorporation proceedings, the order of the county court under subsection (4) of this section.

**SECTION 9.** (1) Notwithstanding ORS 197.650, a Land Conservation and Development Commission order concerning the designation of urban reserves under ORS 195.145 (1)(b) or rural reserves under section 3 of this 2007 Act may be appealed to the Court of Appeals by the persons described in ORS 197.650.

(2) Judicial review of orders described in subsection (1) of this section is as provided in this section.

(3) Jurisdiction for judicial review is conferred upon the Court of Appeals. A proceeding for judicial review may be instituted by filing a petition in the Court of Appeals. The petition must be filed within 21 days after the date the commission delivered or mailed the order upon which the petition is based.

(4) The filing of the petition, as set forth in subsection (3) of this section, and service of a petition on the persons who submitted oral or written testimony in the proceeding before the commission are jurisdictional and may not be waived or extended.

(5) The petition must state the nature of the order the petitioner seeks to have reviewed. Copies of the petition must be served by registered or certified mail upon the commission and the persons who submitted oral or written testimony in the proceeding before the commission.

(6) Within 21 days after service of the petition, the commission shall transmit to the Court of Appeals the original or a certified copy of the entire record of the proceeding under review. However, by stipulation of the parties to the review proceeding, the record may be shortened. The Court of Appeals may tax a party that unreasonably refuses to stipulate to limit the record for the additional costs. The Court of Appeals may require or permit subsequent corrections or additions to the record. Except as specifically provided in this subsection, the Court of Appeals may not tax the cost of the record to the petitioner or an intervening party. However, the Court of Appeals may tax the costs to a party that files a frivolous petition for judicial review.

(7) Petitions and briefs must be filed within time periods and in a manner established by the Court of Appeals by rule.

(8) The Court of Appeals shall:

(a) Hear oral argument within 49 days of the date of transmittal of the record unless the Court of Appeals determines that the ends of justice served by holding oral argument on a later day outweigh the best interests of the public and the parties. However, the Court of Appeals may not hold oral argument more than 49 days after the date of transmittal of the record because of general congestion of the court calendar or lack of diligent preparation or attention to the case by a member of the court or a party.

(b) Set forth in writing and provide to the parties a determination to hear oral argument more than 49 days from the date the record is transmitted, together with the reasons for the determination. The Court of Appeals shall schedule oral argument as soon as is practicable.

(c) Consider, in making a determination under paragraph (b) of this subsection:

(A) Whether the case is so unusual or complex, due to the number of parties or the existence of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief the case and for the Court of Appeals to prepare for oral argument; and

(B) Whether the failure to hold oral argument at a later date likely would result in a miscarriage of justice.

(9) The court:

(a) Shall limit judicial review of an order reviewed under this section to the record.

(b) May not substitute its judgment for that of the Land Conservation and Development Commission as to an issue of fact.

(10) The Court of Appeals may affirm, reverse or remand an order reviewed under this section. The Court of Appeals shall reverse or remand the order only if the court finds the order is:

(a) Unlawful in substance or procedure. However, error in procedure is not cause for reversal or remand unless the Court of Appeals determines that substantial rights of the petitioner were prejudiced.

(b) Unconstitutional.

(c) Not supported by substantial evidence in the whole record as to facts found by the commission.

(11) The Court of Appeals shall issue a final order on the petition for judicial review with the greatest possible expediency.

(12) If the order of the commission is remanded by the Court of Appeals or the Supreme Court, the commission shall respond to the court's appellate judgment within 30 days.

**SECTION 10.** Notwithstanding ORS 195.145 (4), if urban reserves are designated by a metropolitan service district and a county pursuant to ORS 195.145 (1)(b) on or before December 31, 2009, the urban reserves must be planned to accommodate population and employment growth for at least 20 years, and not more than 30 years, after the 20-year period for which the district has demonstrated a buildable land supply in the next inventory, determination and analysis required under ORS 197.299 on or after the effective date of this 2007 Act.

**SECTION 11.** The Land Conservation and Development Commission shall adopt the goals or rules required by section 3 of this 2007 Act and by the amendments to ORS 195.145 by section 6 of this 2007 Act not later than January 31, 2008.

**SECTION 12.** This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.

**Passed by Senate May 9, 2007**

**Repassed by Senate June 13, 2007**

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Secretary of Senate

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President of Senate

**Passed by House June 11, 2007**

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Speaker of House

**Received by Governor:**

.....M.,....., 2007

**Approved:**

.....M.,....., 2007

.....  
Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2007

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Secretary of State