



# Oregon

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TO: Land Conservation and Development Commission  
FROM: Bob Rindy, Senior Policy Analyst  
SUBJECT: **Agenda Item 10, July 22-23, 2010, LCDC Meeting**

## **BRIEFING REGARDING ONGOING WORK GROUP DISCUSSION OF POSSIBLE AMENDMENTS TO METRO AREA URBAN AND RURAL RESERVES RULES**

### **I. AGENDA ITEM SUMMARY**

This agenda item is an informational briefing regarding the ongoing work group discussion of administrative rule provisions pertaining to urban and rural reserves in the Portland Metro area. These rules under OAR 660-027-0070 prohibit future amendments to local plans and land use regulations in areas designated as urban or rural reserves, except certain amendments which were authorized by rule amendments adopted by the Land Conservation and Development Commission (LCDC) at its April 2010 meeting.

Metro and the three Metro area counties submitted their urban and rural reserve decisions to the department on June 23, 2010. Metro also recently adopted the Regional Transportation System Plan (RTSP), which is scheduled to be considered by LCDC at its December meeting.

The rules amended by LCDC at its April 22 meeting became effective April 30. DLCD's website has a link to the current work group effort and to the previous rule change effort, including the DLCD staff report describing the reasons for the previous rule changes.

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

### **II. OVERVIEW**

#### **A. Recent Action on Metro Reserve Rules.**

On April 22<sup>nd</sup>, LCDC amended administrative rules that pertain to Urban and Rural Reserves in the Portland metro area. These rules had previously prohibited future amendments to local land use plans and regulations in areas designated as reserves, as follows: "counties shall not amend land use regulations for [lands designated as urban or rural reserves] ... to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as urban [or rural] reserves." In April, LCDC adopted minor amendments to this restriction so that counties may now consider future plan or land use regulation amendments in reserves provided the

amendments concern a narrow range of uses typically allowed in other rural areas not designated as reserves. Specifically, the April rule changes authorize uses pertaining to the following, provided no Goal Exception is required in authorizing the use:

1. Transportation systems and other public facilities,
2. Inventoried “Goal 5” natural resources, and
3. Public parks, and
4. Uses allowed by law

In the course of LCDC’s consideration of these rule changes, concerns were raised about continued restrictions in reserves with respect to future amendments to county plans and regulations that may pertain to other uses not addressed by LCDC’s April 22 amendments. These other uses are typically allowed only by amendments to local comprehensive plan or zoning regulations in reserves. In response, LCDC asked the department (DLCD) to convene a work group to consider whether to allow amendments for additional uses and provide a recommendation to LCDC at its July 22-23 meeting.

In response, the department decided to reconvene the work group that originally met to propose the metro-area urban and rural reserve rules. This meant replacing some previous work group members representing a particular organization or local government with a new member representing that organization. The chair of the original work group, LCDC Commissioner Marilyn Worrix, agreed to chair this effort. The new work group is listed in Attachment A.

The issues that the advisory work group will consider include:

1. Transportation improvement exceptions, in rural or urban reserves, or both (possibly also discuss other exceptions needed for rural sewer facilities);
2. Requests for new exceptions to a statewide planning goal required in order to allow new uses besides transportation/facilities (such as residential, commercial, industrial) on EFU, Forest, and other rural land.
3. Requests to amend the county plan from one resource designation to another, such as EFU to Forest or vice versa.
4. Amendments to county codes and plans necessary to address new statutes, rules or judicial interpretations.
5. Should there be different standards for amendments to plans and ordinances in urban reserves distinct from rural reserves? (We agreed we would discuss this in context with each issue above).
6. Clarification of OAR 660-004-0040 once urban reserves are designated (see below for explanation).

The work group has held four meetings, and is expected to meet one more time in order to complete its work in time to provide rulemaking notice by approximately August 1 (if the commission is to consider rule amendments at its September 1-2 meeting).

## B. History of Metro Reserves

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

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

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

Designation of urban and rural reserves is not mandatory - Metro and metro area county governments may choose whether or not to declare these reserves. However, if reserves are designated (which recently occurred), Metro and counties must consider and establish rural **and** urban reserves simultaneously. Reserves must be designated by "an agreement," and such agreement "must provide for a coordinated and concurrent process" for adoption of comprehensive plan provisions by the counties, and regional framework plan provisions to implement the agreement adopted by Metro. The stated objective "is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries, and protection of the important natural landscape features that define the region for its residents."

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

As indicated above, Metro and Metro area counties have designated urban and rural reserves. The reserves map, intergovernmental agreements, and joint set of findings have been submitted to the department for review.

### **C. Legislative History of OAR 660, Division 27**

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

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

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

*“... [T]he proposed urban reserve ‘planning’ rules provide that ‘counties, cities and Metro may adopt conceptual plans for the eventual urbanization of urban reserves designated under this division, including plans for eventual provision of public facilities and services for these lands, and may enter into urban service agreements among cities, counties and special districts serving or projected to serve the designated urban reserve area.’ Part of this provision was recommended by Metro’s ad hoc [work] group, but was embraced by the [LCDC appointed] work group, and augmented by the department, to include some of the provisions currently in rules for urban reserves under OAR 660, division 21, that clarify the ability to plan for services in urban reserves.”*

## **ATTACHMENT**

A. Membership of Urban and Rural Reserves Rulemaking Work Group (Based on 2007 work group appointed by LCDC)



## Metro Urban and Rural Reserves Rules Advisory Committee

### 2010 Participants

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

Committee

Jeff Stone	Oregon Association of Nurseries
Elaine Smith	Oregon Department of Transportation Region 1
David Morman	Oregon Department of Forestry
Michael Williams	Business Oregon

**Staff**

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