

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3 ELIZABETH GRASER-LINDSEY,

4 *Petitioner,*

5 vs.

6 CITY OF OREGON CITY,

7 *Respondent,*

8 and

9 OREGON CITY GOLF CLUB,

10 *Intervenor-Respondent.*

11 LUBA No. 2008-170

12 FINAL OPINION

13 AND ORDER

14 Appeal from City of Oregon City.

15 Elizabeth Graser-Lindsey, Beavercreek, filed the petition for review and argued on
16 her own behalf.

17 Carrie A. Richter, Portland, filed the response brief. Carrie A. Richter and Jennifer
18 M. Bragar argued on behalf of respondent. With her on the brief were Edward J. Sullivan
19 and Garvey Schubert Barer, PC.

20 Kelly S. Hossaini, Portland, represented intervenor-respondent.

21 HOLSTUN, Board Member; RYAN, Board Member, participated in the decision.

22 BASSHAM, Board Chair, did not participate in the decision.

23 REMANDED

24 08/20/2009

25 You are entitled to judicial review of this Order. Judicial review is governed by the
26 provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioner appeals a city ordinance that amends the city’s comprehensive plan to adopt a concept plan for an area that was recently included within the Metro urban growth boundary (UGB).¹ The city has not yet amended its comprehensive plan and zoning maps to make them consistent with the concept plan. The city proposes to adopt those amendments separately.

MOTION TO FILE AN OVERLENGTH PETITION FOR REVIEW

Petitioner filed a petition for review that is 50 pages long. Under OAR 661-010-0030(2)(b), a petition for review may not exceed 50 pages unless LUBA gives permission to file a petition for review with more than 50 pages. Petitioner included five more pages of argument at the end of the petition for review, and requests permission to include those additional five pages in her petition for review.

If petitioner had focused her arguments and written more concisely she could easily have included the five pages of argument and her other arguments in a petition for review with fewer than 50 pages. Petitioner’s request to include the additional five pages of argument in her petition for review is denied.

In opposing petitioner’s request to file an overlength petition for review, the city moves to strike three appendicies (Appendicies C, F and G). According to the city those appendicies include calculations made by petitioner, and they should have been included in the 50-page petition for review rather than attached as an appendix to the petition for review.

¹ The Oregon City Comprehensive Plan (OCCP) explains:

“Concept plans are land-use plans for areas of the city that have just been included in the Urban Growth Area. Before these areas can be zoned or subdivided, a concept plan must be completed and adopted by the City Commission and accepted by Metro. Concept plans require a detailed assessment of the area to determine the most appropriate intensity and type of land use, and when completed, are adopted as part of the comprehensive plan.” OCCP 4.

1 Appendix F is simply a copy of a zoning map, and the city does not explain what is
2 objectionable about that map. The city is correct, with regard to Appendix C and Appendix G
3 that those appendices include material that is best viewed as additional argument that should
4 have been included in the 50-page petition for review. However, Appendices C and G assist
5 us in understanding the parties' arguments, and we therefore deny the city's motion to strike
6 the three appendices.

7 **MOTION TO FILE A REPLY BRIEF**

8 Petitioner moves for permission to file a reply brief. The first part of the reply brief
9 quibbles with some of the city's statement of facts. That part of the reply brief is not
10 allowed. The balance of the reply brief is captioned "New Arguments." But that part of the
11 reply brief is most fairly characterized as a mixture of responses to alleged new matters in the
12 city's brief and embellishments of arguments that were already presented in the petition for
13 review. Under OAR 661-010-0039, reply briefs are permitted to respond to new issues in the
14 respondent's brief; reply briefs are not permitted to embellish upon arguments that were
15 presented in the petition for review. *Wissusik v. Yamhill County*, 20 Or LUBA 246, 250
16 (1990). However, given the nature of the petition for review, it would be difficult to sort out
17 embellishment arguments from responses to new matters in the respondent's brief. We
18 decline to do so, and elect simply to allow the "New Arguments" portion of the reply brief.

19 **FACTS**

20 Metro amended the Metro UGB in 2002 to include 245 acres of land next to Oregon
21 City. Metro amended the UGB again in 2004 to include 63 additional adjoining acres, for a
22 total of 308 acres. Those 308 acres have been included on Metro's Employment and
23 Industrial Lands Map, and have been designated for Industrial use. Sometime before those
24 UGB amendments, Metro applied Employment or Outer Neighborhood map designations to

1 another 145 acres in the same general area.² Altogether, this area includes 453 acres
2 designated Industrial, Employment or Outer Neighborhood. The city concept plan that is
3 before us in this appeal applies to this 453-acre area. That concept plan calls for a 175-acre
4 North Employment Campus to satisfy the city’s planning obligations for the 308-acre
5 Industrial area. The balance of the concept plan calls for a variety of mixed employment,
6 commercial and residential development. According to petitioner, the concept plan is
7 inconsistent with Metro’s designation of the 308 acres for Industrial use, and is also
8 inconsistent with city comprehensive plan policies that encourage industrial development.

9 **INTRODUCTION**

10 The primary issue in this appeal is whether the challenged concept plan is consistent
11 with Metro’s regional planning for the subject property. Specifically, the dispute centers on
12 the legal effect of Metro’s decision to include 308 acres of property in the urban growth
13 boundary and to designate those acres for industrial use. As briefed, this appeal is
14 exceedingly complicated. Resolution of this appeal, in large part, requires us to resolve the
15 parties’ differing views regarding the correct interpretation of Titles 4 and 11 of Metro’s
16 Urban Growth Management Functional Plan (UGMFP), which is codified at Metro Code
17 (MC) Chapter 3.07. Our review and resolution of those arguments has been difficult,
18 because those Titles of MC Chapter 3.07 are ambiguous, and Metro is not a party to this
19 appeal and has not filed a brief.

20 A basic understanding of the relevant Metro regional planning framework is
21 necessary to sort out the parties’ arguments. We discuss key sections of the MC before
22 turning to the parties’ arguments.

² We discuss these Metro map designations further later in this opinion.

1 **A. Metro 2040 Growth Concept Design Types**

2 The UGMFP (Metro Code Chapter 3.07) sets out how cities and counties are to
3 incorporate regional planning into their local comprehensive planning. The UGMFP
4 explains:

5 “The regional policies which are adopted by this [UGMFP] recommend and
6 require changes to city and county comprehensive plans and implementing
7 ordinances. The purpose of this functional plan is to implement regional goals
8 and objectives adopted by the Metro Council as the Regional Urban Growth
9 Goals and Objectives (RUGGO), including the Metro 2040 Growth Concept
10 and the Regional Framework Plan. The comprehensive plan changes and
11 related actions, including implementing regulations, required by this
12 functional plan as a component of the Regional Framework Plan, shall be
13 complied with by cities and counties as required by Section 5(e)(2) of the
14 Metro Charter.” MC 3.07.010.

15 Metro’s 2040 Growth Concept is made up of a number of components, called “design types,”
16 which are applied to properties within the Metro region. The UGMFP requires that City and
17 County comprehensive planning for property within the city or county must be amended to
18 make that planning consistent with the Metro 2040 Growth Concept design types (hereafter
19 design types) that have been applied to that property. MC 3.07.130.³

³ MC 3.07.130 provides:

“For each of the following 2040 Growth Concept design types, city and county comprehensive plans shall be amended to include the boundaries of each area, determined by the city or county consistent with the general locations shown on the 2040 Growth Concept Map or on maps adopted by ordinances adding territory to the UGB:

“Central City--Downtown Portland is the Central City which serves as the major regional center, an employment and cultural center for the metropolitan area.

“Regional Centers--Seven regional centers will become the focus of compact development, redevelopment and high-quality transit service and multimodal street networks.

“Station Communities--Nodes of development centered approximately one-half mile around a light rail or high capacity transit station that feature a high-quality pedestrian environment.

“Town Centers--Local retail and services will be provided in town centers with compact development and transit service.

“Main Streets--Neighborhoods will be served by main streets with retail and service developments served by transit.

1 **B. UGMFP Title 11—Planning for New Urban Areas**

2 When Metro amends the UGB to bring rural land into the urban area, additional local
3 planning must be done because the formerly rural land becomes urbanizable land that is
4 available for urban development. UGMFP Title 11 (MC 3.07.1105 through MC 3.07.1140)
5 sets out local government planning requirements for new urban areas. In this opinion we
6 refer to this planning as Title 11 planning. MC 3.07.1120 sets out specific requirements for
7 planning for areas that Metro brings within the UGB. Under MC 3.07.1120, that planning
8 must, among other things, be “consistent with the requirements of all applicable titles of the
9 Metro Urban Growth Management Functional Plan” and be in “compliance with * * * the
10 Metro Council adopted 2040 Growth Concept design types.”⁴ Under MC 3.07.1120(A), a

“Corridors--Along good quality transit lines, corridors feature a high-quality pedestrian environment, convenient access to transit, and somewhat higher than current densities.

“Employment Areas--Various types of employment and some residential development are encouraged in employment areas with limited commercial uses.

“Industrial Areas--Industrial areas are set aside primarily for industrial activities with limited supporting uses.

“Regionally Significant Industrial Areas--Industrial areas with site characteristics that are relatively rare in the region that render them especially suitable for industrial use.

“Inner Neighborhoods--Residential areas accessible to jobs and neighborhood businesses with smaller lot sizes are inner neighborhoods.

“Outer Neighborhoods--Residential neighborhoods farther away from large employment centers with larger lot sizes and lower densities are outer neighborhoods.”

⁴ As relevant, MC 3.07.1120 provides:

“All territory added to the UGB as either a major amendment or a legislative amendment pursuant to Metro Code Chapter 3.01 shall be subject to adopted comprehensive plan provisions *consistent with the requirements of all applicable titles of the Metro Urban Growth Management Functional Plan* and in particular this Title 11. The comprehensive plan provisions shall be fully coordinated with all other applicable plans. The comprehensive plan provisions shall contain an urban growth plan diagram and policies that demonstrate compliance with the RUGGO, *including the Metro Council adopted 2040 Growth Concept design types*. Comprehensive plan amendments shall include:

1 local government’s comprehensive plan map designations must be consistent with the
2 “general boundaries of design type designations.” Under MC 3.07.1120(F), local government
3 comprehensive plans must provide “for sufficient commercial and industrial development for
4 the needs of the area to be developed consistent with 2040 Growth Concept design types.”⁵

5 **C. UGMFP Title 4—Planning for Industrial and Employment Areas**

6 For areas that are subject to the Regionally Significant Industrial, Industrial or
7 Employment design types, UGMFP Title 4 (MC 3.07.410 through MC 3.07.450) imposes
8 additional planning requirements to protect these areas and encourage industrial development
9 that benefits from clustering and freedom from potentially incompatible non-industrial uses.⁶
10 In this opinion we sometimes refer to these planning requirements as Title 4 requirements or
11 Title 4 planning. Within areas subject to the Industrial design type, non-industrial

“A. Specific plan designation boundaries derived from the general boundaries of design type designations assigned by the Council in the ordinance adding the territory to the UGB.

“* * * * *

“F. Provision for sufficient commercial and industrial development for the needs of the area to be developed consistent with 2040 Growth Concept design types. Commercial and industrial designations in nearby areas inside the Urban Growth Boundary shall be considered in comprehensive plans to maintain design type consistency.

“* * * * *.” (Emphasis added.)

⁵ Other subsections of MC 3.07.1120 impose requirements to plan for housing, transportation, areas to be protected from development, public facilities, and schools. MC 3.07.1120 requires that local governments adopt an urban growth diagram that displays the general location of “streets,” “unbuildable lands,” “Habitat Conservation Areas,” “mixed use areas, commercial and industrial lands,” “single and multi-family housing,” “public open space, plazas and neighborhood centers,” and “needed school, park or fire hall sites.”

⁶ MC 3.07.410 describes the purpose and intent of Title 4:

“The Regional Framework Plan calls for a strong economic climate. To improve the region’s economic climate, Title 4 seeks to provide and protect a supply of sites for employment by limiting the types and scale of non-industrial uses in Regionally Significant Industrial Areas (RSIAs), Industrial and Employment Areas. Title 4 also seeks to provide the benefits of ‘clustering’ to those industries that operate more productively and efficiently in proximity to one another than in dispersed locations. * * *”

1 development must be limited to commercial uses that “serve primarily the needs of workers
2 in the [industrial] area.” MC 3.07.430.⁷ Non-industrial development is also strictly limited
3 in areas subject to the Employment design type. MC 3.07.440.⁸

4 For purposes of this appeal, the UGMFP Title 4 requirements that are set out in the
5 subsections of MC 3.07.450 supply important context. Those subsections explain how Metro
6 allows local governments to deviate from the Employment and Industrial Areas Map and
7 maintains consistency between the Employment and Industrial Areas Map and local
8 comprehensive planning. We have attached the complete text of MC 3.07.450 as an
9 appendix to this opinion. We discuss the key subsections of MC 3.07.450 below.

10 **1. MC 3.07.450(A) Employment and Industrial Areas Map**

11 MC 3.07.450(A) provides that the Employment and Industrial Areas Map (the E&IAs
12 Map) “is the official depiction of the boundaries of Regionally Significant Industrial Areas,
13 Industrial Areas, and Employment Areas.”

14 **2. MC 3.07.450(B) – Conforming E&IAs Map Changes After Title 11**
15 **Planning**

16 After initial Title 11 planning has been completed, MC 3.07.450(B) requires the
17 Metro Chief Operating Officer to conform the E&IAs Map to the comprehensive plan map

⁷ MC 3.07.430 provides in part:

“Cities and counties shall review their land use regulations and revise them, if necessary, to include measures to limit new buildings for retail commercial uses - such as stores and restaurants - and retail and professional services that cater to daily customers – such as financial, insurance, real estate, legal, medical and dental offices – in order to ensure that they serve primarily the needs of workers in the area. * * *”

⁸ None of the subject property is designated Regionally Significant Industrial Area, but as we have already noted, the 308 acres that were added to the UGB in 2002 and 2004 carry the Industrial design type and the Employment design type was applied to other property in the concept plan area sometime before 2002. The limits imposed on commercial uses on lands subject to the Industrial and Employment design types by MC 3.07.430 and 3.07.440 are fairly detailed and are more stringent for the Industrial design type than for the Employment design type. For purposes of this appeal the precise details of these limits on commercial uses are not important. In both cases, the limits are designed to ensure that any commercial development is appropriate for serving employees in the Industrial and Employment areas, rather than the general public.

1 boundaries that are established by local governments in their Title 11 planning. *See*
2 Appendix.

3 **3. MC 3.07.450(C) – Small Changes in Local Government Planning**
4 **for Industrial and Employment Areas to Allow Non-Title 4 Uses**

5 MC 3.07.450(C) authorizes cities and counties to change their comprehensive
6 planning for areas that are subject to Title 4, to allow non-industrial uses that would not
7 otherwise be allowed by Title 4. However, for land that is subject to the Industrial design
8 type, the area affected may not exceed 20 acres and additional restrictions apply to such
9 amendments. *See* Appendix. We will refer to these changes as “small changes,” to
10 distinguish them from the “large changes,” authorized by MC 3.07.450(H), which is
11 discussed below.

12 The decision that is before us in this appeal is the city’s initial Title 11 planning for
13 the 453-acre concept plan area. We note here that a key question is whether the requirements
14 of MC 3.07.450(C) and the other subsections of MC 3.07.450 that follow MC 3.07.450(C)
15 apply to the city’s initial Title 11 planning or only apply to comprehensive plan amendments
16 that may be adopted after the initial Title 11 planning has been completed. If they do apply
17 to Title 11 planning, they significantly constrain a local government’s authority to deviate
18 from the requirements of Metro’s design types when conducting Title 11 planning. If they
19 do not apply to initial Title 11 planning, they do not constrain Title 11 planning and only
20 severely constrain a local government’s authority to deviate from Metro’s design types *after*
21 Title 11 planning has been completed. We return to that question after we summarize the
22 remaining key MC 3.07.450 subsections.

23 **4. MC 3.07.450(D) – Unbuildable and Previously Developed Lands**

24 MC 3.07.450(D) authorizes local governments to amend their comprehensive plans
25 and land use regulations to allow land that is subject to Title 4 to be put to uses that are not
26 allowed by Title 4, if the “entire property is not buildable.” Additionally, under MC

1 3.07.450(D), land may be put to uses that are not allowed by Title 4 if the property was
2 previously developed and the property as developed meets a specified improvement value to
3 land value ratio.

4 **5. MC 3.07.450(E) – Conforming E&IA Map Changes After Small**
5 **Changes in Local Planning for Title 4 Land Under MC**
6 **3.07.450(C)**

7 If a local government takes advantage of MC 3.07.450(C) to make one of the
8 permitted small changes in planning for Title 4 lands, MC 3.07.450(E) directs the Metro
9 Chief Operating Officer to conform the Metro E&IAs Map to the changed local planning
10 after the deadline for appealing the small change amendment to LUBA expires or after the
11 small change amendment is upheld if appealed to LUBA. We do not know why MC
12 3.07.450(E) does not also require conforming changes to the E&IAs Map following local
13 mapping changes under subsection D of MC 3.07.450. Our guess is that omission was
14 simply an oversight.

15 **6. MC 3.07.450(F) – Suspension of MC 3.07.450(C) “Small”**
16 **Amendments**

17 MC 3.07.450(F) provides that the Metro Council may suspend operation of MC
18 3.07.450(C), if the cumulative local government small changes authorized by that subsection
19 have exhausted the 20-year industrial land surplus. MC 3.07.450(F) appears to have been
20 adopted to allow the Metro Council to suspend the authority for small changes under MC
21 3.07.450(C), if those changes would cause the regional vacant industrial land supply to fall
22 below a 20-year supply.

23 **7. MC 3.07.450(G) Metro Council May Amend the E&IAs Map At**
24 **Any Time**

25 The Metro Council may amend the E&IAs Map at any time “to better achieve the
26 policies of the Regional Framework Plan.”

1 **8. MC 3.07.450(H) – Large Changes in Local Government Planning**
2 **for Industrial and Employment Areas to Allow Non-Title 4 Uses**

3 MC 3.07.450(H) authorizes the Metro Council to amend the E&IAs Map to permit
4 local governments to adopt “large changes” that exceed the size limit imposed by MC
5 3.07.450(C), if certain criteria that are designed to ensure the continued adequacy of the
6 industrial and employment land supply are satisfied.

7 **D. Summary**

8 Title 4 is not ambiguous in how it applies to comprehensive plan amendments after
9 Title 11 planning is complete. As to post-Title 11 planning, Title 4 clearly grants local
10 governments very limited authority to amend their comprehensive plans to allow non-
11 industrial and non-employment uses on lands that carry the Industrial and Employment
12 design type. Small changes (up to 20 acres) are authorized by MC 3.07.450(C) for property
13 subject to the Industrial design type, provided that the criteria in MC 3.07.450(C) are met.
14 MC 3.07.450(D) provides another limited exception for unbuildable land and land that is
15 already developed. Finally, for larger properties that exceed the 20-acre size limit in MC
16 3.07.450(C)(6), MC 3.07.450(H) authorizes the Metro Council to amend the E&IA Map to
17 allow non-industrial development if the criteria in MC 3.07.450(H) are met. Those criteria
18 include standards designed to protect the quantity and quality of industrially designated
19 lands. Beyond MC 3.07.450(C), MC 3.07.450(D) and MC 3.07.450(H), after a local
20 government’s Title 11 planning is complete, it appears that the only way a local government
21 would be permitted to amend its comprehensive plan and land use regulations to authorize
22 non-industrial use of lands that carry the Industrial design type, would be to request that the
23 Metro Council first exercise its authority under MC 3.07.450(G) to apply a different design
24 type that would allow planning and zoning such lands for non-industrial uses.

25 One of the questions that we must answer in resolving petitioner’s first assignment of
26 error, is whether MC 3.07.450(C) through (G) also apply during Title 11 planning when a

1 local government first applies its comprehensive planning to land that has been added to the
2 UGB and designated Industrial and Employment by Metro.

3 **FIRST ASSIGNMENT OF ERROR**

4 Petitioner’s first assignment of error is 29 pages long and very difficult to follow in
5 places. A recurring theme under the first assignment of error is that the city is obligated
6 under MC 3.07.1120 and other laws to ensure that its Title 11 planning for the entire 308
7 acres that carry the Industrial design type complies with MC 3.07.430.⁹ Many of the
8 authorities petitioner cites in her argument under the first assignment of error appear to have
9 little or nothing to do with petitioner’s central theme. We have simplified petitioner’s
10 arguments under the first assignment of error and delve no more deeply into the facts than is
11 necessary to resolve this assignment of error.

12 MC 3.07.1120 requires that the city’s Title 11 planning must “demonstrate
13 compliance with * * * the Metro Council adopted 2040 Growth Concept design types.” *See*
14 n 4. MC 3.07.1120 also requires that such local planning must be “consistent with the
15 requirements of all applicable titles of the [UGMFP].” *Id.* We do not understand the city to
16 dispute that MC 3.07.430 requires that its Title 11 planning for the 453-acre concept plan
17 area must protect the parts of that area that will ultimately retain the Industrial design type.
18 We understand the city to concede that for those parts of the 453-acre concept planning area,
19 the city must limit non-industrial uses to commercial uses that “serve primarily the needs of
20 workers in the [industrial] area.” *See* n 7.

21 On the other hand, we do not understand petitioner to dispute that the 175 acres that
22 make up the North Employment Campus have been planned for industrial uses, in
23 accordance with MC 3.07.430.¹⁰ Petition for Review 6. Petitioner’s dispute is with the

⁹ As we have already explained, MC 3.07.430 only allows very limited non-industrial use of land that carries Metro’s Industrial design type.

¹⁰ As we explain later, those 175 acres include approximately 120 acres that are buildable.

1 Industrially designated lands to the south of the North Employment Campus. Petitioner
2 contends that those Industrially designated lands have been planned for uses that do not
3 comply with MC 3.07.430.¹¹ We understand the city to concede that those lands have not
4 been planned for industrial uses in accordance with MC 3.07.430. Respondent’s Brief 6.
5 But the city contends that it was not obligated by MC 3.07.1120 or 3.07.430 or any of the
6 many other laws cited by petitioner, to plan all 308 acres that carry the Industrial design type
7 in accordance with 3.07.430.¹²

8 **A. The City’s Preliminary Arguments**

9 The city offers two arguments that, if meritorious, would require that we deny the
10 first assignment of error. We address those arguments first.

11 **1. MC 3.07.430 Applies Exclusively to Land Use Regulations**

12 As we noted earlier in this opinion, the challenged ordinance amends the city’s
13 comprehensive plan to adopt the concept plan. The city chose not to adopt contemporaneous
14 amendments to its land use regulations that will be needed to implement the concept plan.
15 Because the city’s land use regulations will not be amended until a future date, we
16 understand the city to argue that MC 3.07.430 does not apply.

17 We reject the argument. It is true that MC 3.07.430 directs that local governments
18 must “review their land use regulations and revise them, if necessary, to include measures to
19 limit new buildings for retail commercial uses * * *.” See n 7. But the direction in MC
20 3.07.430 is broad enough to require that local governments also adopt any conforming
21 comprehensive plan amendments that might be necessary to allow the local government to
22 adopt revised land use regulations that are consistent with Title 4 and remain consistent with

¹¹ Determining the precise number of acres is not easy, but it appears clear that more than half of the 308 acres that carry the Industrial design type have not been planned in accordance with MC 3.07.430.

¹² The city states “the mixed use and employment areas are not required (and were never intended) to qualify as industrial areas protected by MC 3.07.430.” Respondent’s Brief 9.

1 the local government’s comprehensive plan. We conclude that the city may not adopt a
2 concept plan for lands that are subject to MC 3.07.430, as part of its comprehensive plan, if
3 that concept plan would allow uses that are inconsistent with MC 3.07.430.

4 **2. Petitioner’s Failure to Appeal Metro’s Decision**

5 MC 3.07.1130 requires that a local government give Metro 60 days prior notice
6 before it adopts a comprehensive plan amendment. In addition, Title 8 of the UGMFP (MC
7 3.07.810 through MC 3.07.890) sets out a process by which Metro can review city and
8 county comprehensive plans and land use regulations to determine whether they are
9 consistent with the requirements of the UGMFP. Respondent suggests that Metro issued a
10 decision that approved the city’s proposal to plan many of the 308 acres for non-industrial
11 uses. We understand respondent to argue that decision is final, and that LUBA must defer to
12 that decision. Respondent’s Brief 12-13.

13 We reject this argument as well. The process that Metro has adopted in Title 8 has
14 some similarities to LCDC acknowledgment review under ORS 197.251, but it also has some
15 differences. An important difference is that compliance review under Title 8 is initiated by
16 the Metro Chief Operating Officer. MC 3.07.820. If the Metro Chief Operating Officer
17 believes a proposed comprehensive plan amendment complies with Metro’s functional plan,
18 the Chief Operating Officer does nothing. Only if the Chief Operating Officer believes the
19 proposed amendment “does not comply with the functional plan,” is the Chief Operating
20 Officer required to advise the local government of any revisions that may be necessary. MC
21 3.07.820(B).¹³ If the Chief Operating Officer takes the position that the proposed

¹³ MC 3.07.820(B) provides:

“If the Chief Operating Officer concludes that the proposed amendment does not comply with the functional plan, the Chief Operating Officer shall advise the city or county that it may (1) revise the proposed amendment as recommended in the Chief Operating Officer’s analysis; (2) seek an extension of time, pursuant to Section 3.07.850, to bring the proposed amendment into compliance with the functional plan; or (3) seek review of the noncompliance by MPAC and the Metro Council, pursuant to Sections 3.07.830 and 3.07.840.”

1 amendment “does not comply with the functional plan,” that decision is appealable and could
2 ultimately result in a decision by the Metro Council regarding “compliance or
3 noncompliance.” MC 3.07.840(C). Such a Metro Council order is appealable to LUBA.
4 MC 3.07.840(E). The Chief Operating Officer is also authorized to seek review of a
5 proposed comprehensive plan amendment by the Metropolitan Policy Advisory Committee.
6 MC 3.07.830(B). Such a review might also result in an appealable final order by the Metro
7 Council under MC 3.07.840(C).

8 In this case, it appears that Metro never had any objections to the city’s proposal.
9 The city cites no evidence that any review that Metro may have conducted under MC
10 3.07.1130 or MC Chapter 3.07 Title 8 resulted in an appealable decision by the Metro
11 Council under MC 3.07.840(C). The letter signed by the Metro President and the statements
12 of a Metro planner that the city cites are certainly not appealable Metro Council orders under
13 MC 3.07.840(C) and (D). Record 566, 691.

14 **B. The City’s Planning Obligation Concerning the 308 Industrially**
15 **Designated Acres**

16 In support of its position that it need not plan all 308 Industrially designated acres in
17 accordance with MC 3.07.430, the city relies on (1) MC language that it believes gives the
18 city the flexibility to plan those acres for non-industrial uses, (2) its findings that Metro only
19 planned for the 308 acres to result in 120 buildable acres and (3) a city study that determines
20 that Oregon City only needs approximately 150 buildable acres of land for industrial
21 development in the concept plan area in the next 20 years. Although those arguments are
22 interrelated, we discuss them separately below.

23 **1. MC Text**

24 The city contends that the text of the MC supports its view that the city has flexibility
25 under the MC to designate some of the 308 Industrially designated acres for uses that are not
26 allowed under Title 4. The city points out that MC 3.07.1120(A) only requires that the city’s

1 comprehensive plan designation be “derived from the *general* boundaries of design type
2 designations assigned by the Council in the ordinance adding the territory to the UGB.”
3 (Emphasis added.) *See* n 4.¹⁴ We do not believe that any *flexibility* that the city has under
4 the “general boundaries” language allows the city to designate a substantial portion of the
5 308 Industrially designated acres for non-industrial use, as the city has done here.

6 The city next cites MC 3.07.1120(F), which the city contends establishes that the
7 quantity of land that must be planned in accordance with Title 4 is to be based on the “needs
8 of the area.” *See* n 4. The city contends there is evidence in the record that the needs of the
9 area can be accommodated on approximately 150 acres.¹⁵ The problem with that argument is
10 that MC 3.07.1120(F) does not say the city need only consider the needs of the concept plan
11 area or the needs of the city. The 308 acres are part of Metro’s inventory of Industrial land to
12 meet regional needs. We conclude below that there is not substantial evidence in the record
13 to support a conclusion that the portions of the 308 acres that the city has planned for non-
14 industrial development are not needed to meet the region’s 20-year needs for industrial land.

15 The city also cites and relies on MC 3.07.030, which expressly provides that local
16 governments are to have “flexibility” in how they go about meeting UGMFP requirements.¹⁶

¹⁴ Similarly, MC 3.07.130 directs that comprehensive plans must be “consistent with the *general* locations shown on the 2040 Growth Concept Map or on maps adopted by ordinance adding territory to the UGB.” (Emphasis added.) *See* n 3.

¹⁵ We address the city’s reliance on that study to conclude that only 150 acres are needed for Industrial Development later in this opinion.

¹⁶ MC 3.07.030 provides:

“The Urban Growth Management Functional Plan is a regional functional plan which contains ‘requirements’ that are binding on cities and counties of the region as well as recommendations that are not binding. ‘Shall’ or other directive words are used with requirements. The words ‘should’ or ‘may’ are used with recommendations. In general, the plan is structured so that local jurisdictions may choose either performance standard requirements or prescriptive requirements. The intent of the requirements is to assure that cities and counties have a significant amount of flexibility as to how they meet requirements. Performance standards are included in most titles. If local jurisdictions demonstrate to Metro that they meet the performance standard, they have met that requirement of the title. Standard methods of compliance are also included in the plan to establish one very specific way that

1 But that flexibility is the flexibility to use performance standards rather than prescriptive
2 requirements. MC 3.07.030 does not give the city the flexibility to simply plan Industrially
3 designated land for non-industrial uses.

4 Perhaps the MC text that potentially lends the most support to the city’s position is
5 MC 3.07.450(B), which requires that “after completion of Title 11 planning by the
6 responsible city or county, the Chief Operating Officer shall issue an order to conform the
7 map to the boundaries established by the responsible city or county.” *See* Appendix. MC
8 3.07.450(B) would not be necessary, unless local governments have some authority to
9 deviate from the planning that is required by Metro’s design types.

10 Petitioner suggests that MC 3.07.450(B) only envisions minor changes that may be
11 necessitated by the small scale of Metro’s mapping (less detailed mapping) and the larger
12 scale of local government planning maps (more detailed mapping). It is hard to imagine
13 what purpose would be served by those kinds of scale-reconciling amendments and we reject
14 the argument. We do not believe the changes envisioned by MC 3.07.450(B) are limited to
15 reconciling differences that can be attributed to the different scales of Metro and local
16 government mapping. But our conclusion that the city has some authority to plan the 308
17 acres of Industrially designated lands for uses that are not allowed by Title 4 does not
18 necessarily mean the city is free to plan significant portions of the land that carries the
19 Industrial design type for whatever uses the city wishes or for whatever uses the city may
20 determine there is a market.

21 As we indicated earlier in this opinion, there is a significant question in our mind
22 whether MC 3.07.450(C) through (H), which under limited circumstances allow a city or
23 county to amend its comprehensive plan and land use regulations to allow use of lands that
24 are on the E&IAs map that would otherwise be prohibited by Title 4, also apply to the city’s

jurisdictions may meet a title requirement, but these standard methods are not the only way a city or county may show compliance. In addition, certain mandatory requirements that apply to all cities and counties are established by this functional plan.”

1 initial Title 11 planning. It could be that the limited deviations authorized by those
2 subsections of MC 3.07.450 are the same changes to which the Metro Chief Operating
3 Officer is to conform Metro's mapping under MC 3.07.450(B). We understand the city to
4 take the position that those subsections of MC 3.07.450 only apply *after* initial Title 11
5 planning has been completed and that those subsections of MC 3.07.450 do not apply to
6 constrain the city's initial Title 11 planning.

7 MC 3.07.450(C) through (H) clearly apply to post-Title 11 plan and land use
8 regulations amendments. It is much less clear whether they also apply to adoption of the
9 city's initial Title 11 planning. Although we cannot think of a principled reason why MC
10 3.07.450(C) through (H) should *not* apply to Title 11 planning, based on the text and
11 structure of MC 3.07.450 viewed as a whole we conclude that MC 3.07.450(C) through (H)
12 do not apply to limit initial Title 11 planning. Those subsections of MC 3.07.450 appear
13 immediately after 3.07.450(B), which requires the Metro Chief Operating Officer to conform
14 Metro's mapping to local government initial Title 11 mapping. The language of MC
15 3.07.450(C) through (H) seems to be directed at post-Title 11 comprehensive plan
16 amendments, and those subsections have their own separate subsection for conforming
17 Metro's mapping to the plan amendments authorized by these subsections of MC 3.07.450.
18 MC 3.07.450(E). *See* Appendix. To conclude that MC 3.07.450(C) through (H) apply to
19 initial Title 11 planning would require us to overlook this text and structure. If Metro
20 intended the limits in subsections (C), (D) and (H) of MC 3.07.450 to apply to initial Title 11
21 planning, Metro will need to amend the MC to more clearly state that intent.

22 In conclusion, we agree with the city that nothing cited by petitioner necessarily
23 obligates a local government, in its Title 11 planning, to in all cases plan every Industrially
24 designated acre in accordance with MC 3.07.430. MC 3.07.450(B) seems to anticipate that
25 the city has some authority to plan at least some part of those 308 acres for uses that are not
26 allowed by Title 4. But that does not mean the city is necessarily free to plan a substantial

1 number of those 308 acres for uses that are not permitted under MC 3.07.430, which is what
2 the city has done here. We consider that question next.

3 **2. Metro’s Intent in Adding the 308 Acres and Designating Them for**
4 **Industrial Uses**

5 The North Employment Campus apparently includes a total of 175 gross acres and of
6 those 175 gross acres 120 are net buildable acres. Those 120 acres have been planned in
7 accordance with MC 3.07.430. The city takes the position that when Metro amended the
8 UGB in 2002 and 2004 to add the disputed 308 acres to the UGB, and applied the Industrial
9 design type to those 308 acres, it only anticipated or intended that 120 of those 308 acres
10 would be put to industrial use in accordance with MC 3.07.430. If the record established that
11 such is the case, we likely would agree with the city that it need not plan all 308 acres for
12 Industrial use. But as we explain below, the record does not establish that such is the case.

13 The city adopted the following findings to explain its decision to only plan 127 acres
14 in accordance with MC 3.07.430:

15 “Metro brought 245 gross acres in the UGB in 2002 and an additional 63
16 acres were added in 2004. The remaining acreage was in the UGB and/or
17 Oregon City limits prior to 2002. These areas (308 gross acres) are
18 designated as the Industrial Design Type on Metro’s 2040 Growth Concept
19 Map. Given the expected net acreage once non-buildable areas such as power
20 lines, natural areas, were removed from the buildable lands inventory, Metro
21 intended 120 net acres of the concept plan area would be used for employment
22 uses. Metro noted that it was important to fulfill the original intent for
23 providing industrial lands and that there was flexibility for the local process to
24 evaluate creative ways to meet the intent. See Metro’s vacant lands
25 methodology.¹⁷ This approach was blessed by [the] Metro Council
26 President, in a letter dated May 14, 2007 as well as [a] Metro planner * * * in
27 a letter dated March 19, 2008.

28 “The [Citizen Advisory Committee] created several alternatives and finally
29 chose a hybrid that included about 127 net acres of North Employment
30 Campus (NEC), which is consistent with Metro’s intent and similar to Oregon
31 City’s existing Campus Industrial designation, about 29 acres of Mixed

¹⁷ Apparently this is a reference to the Metro vacant lands methodology that we discuss below.

1 Employment Village and Main Street, which allows a variety of uses in a
2 village-oriented transit hub and mixed use neighborhoods to the south that
3 also provide jobs tailored to the neighborhood setting.

4 “The North Employment Campus is to provide for the needed family wage
5 employment that strengthens and diversifies the economy and will be
6 compliant with Metro’s Title 4 regulations. The NEC allows a mix of clean
7 industries, offices serving industrial needs, light industrial uses, research and
8 development and large corporate headquarters. The uses permitted are
9 intended to improve the region’s economic climate, promote sustainable and
10 traded sector businesses, and protect the supply of site for employment by
11 limiting incompatible uses.” Record 18.

12 The first serious problem with the above findings is that they suggest that the 127
13 buildable acres that are designated Industrial and included in the North Employment Campus
14 and planned consistently with MC 3.07.430 were derived from the 308 acres that Metro has
15 designated for Industrial use. That is not the case. Approximately 46 of the North
16 Employment Campus’s 127 buildable acres came from the part of the 453-acre concept plan
17 area that was previously designated Employment design type by Metro, before the 2002 and
18 2004 Industrial design type amendments. That means that only approximately 81 buildable
19 acres in the North Employment Campus were derived from the 308 acres that carry the
20 Industrial design concept.

21 Petitioner estimates that only 54.7 of the 127 acres mentioned in the city’s findings
22 coincide with the 308 acres that carry the Industrial design type. Petitioner may not have the
23 acreages exactly right, but she is correct that a substantial number of the 127 buildable acres
24 in the North Employment Campus come from Employment design type lands, not the 308
25 acres of Industrial design type land that were included in the UGB in 2002 and 2004.
26 Therefore, even if the record established that it was Metro’s intent that the 308 acres only
27 result in 120 acres of buildable land to be developed in accordance with MC 3.07.430, the
28 concept plan only plans about 81 of those 308 acres in accordance with MC 3.07.430.

29 A second and more serious problem with the above findings is that the record does
30 not include substantial evidence that Metro intended that only 120 acres of the 308 acres be

1 planned for Industrial use in accordance with MC 3.07.430. The record includes statements
2 made in 2007 and 2008 to that effect by the Metro Council President and a Metro planner.
3 Record 566; 691. The record also includes two staff reports, in which a city planner takes
4 the position that only 120 acres were intended for industrial use and that Metro intended that
5 the city have the flexibility to plan the other acres for non-industrial uses. Record 644-45;
6 842-43. Finally, the record includes an e-mail message from a Metro planner with an
7 attached five-step methodology that Metro uses for assessing buildable lands. Record 739-
8 42. This five-step methodology, or one like it, seems to be the basis for Metro's and the
9 city's position that Metro assumed at the time the UGB was amended in 2002 and 2004 that
10 only 120 acres of the 308 acres would actually be developed for Industrial use in accordance
11 with MC 3.07.430.

12 The statements by the Metro Council President and planner include no reference to
13 the ordinances that added the 308 acres to the UGB and applied the Industrial designation or
14 the findings in support of those ordinances that might support the statements. Those
15 statements make no attempt to explain how the 120-acre figure was computed. We do not
16 believe a reasonable person would rely on those undocumented statements to conclude that
17 Metro intended that only 120 of the 308 acres be planned and developed in accordance with
18 MC 3.07.430. *See Younger v. City of Portland*, 305 Or 346, 351-52, 752 P2d 262 (1988)
19 (substantial evidence exists to support a finding of fact when the record, viewed as a whole,
20 would permit a reasonable person to make that finding). For the same reason, the two city
21 planner staff reports that rely on those letters are not substantial evidence that Metro intended
22 that only 120 of the 308 acres it added to the UGB and designated for Industrial use be
23 planned and developed in accordance with MC 3.07.430.

24 Metro's and the city's apparent belief that the five-step methodology for assessing
25 vacant buildable lands supports a conclusion that only 120 acres of the 308 acres were
26 anticipated to be actually developed for industrial uses is particularly hard to understand.

1 Under that methodology, vacant lands are identified (Step 1), environmentally constrained
2 lands are eliminated (Step 2), steeply sloped areas are eliminated (Step 3), lands needed for
3 “streets, parks, schools and churches/fraternal organizations” are eliminated (Step 4) and
4 vacant lands on tax lots with higher value homes are eliminated (Step 5). If either Metro or
5 the city actually applied that five-step methodology to the 308 acres and determined that only
6 120 acres of buildable land remained after Step 5 was completed, no one has identified where
7 that exercise can be found in the record. Moreover, it seems highly unlikely to us that the
8 mixed use residential and commercial development that the concept plan proposes for the
9 large southern portion of the 308 acres is to be located on developed or constrained lands that
10 would be eliminated by Steps 1 through 5. Petitioner contends that many of the Industrially
11 designated acres in the southern part of the concept plan area that the concept plan designates
12 for mixed commercial and residential uses are actually the flattest and best land for industrial
13 development. The city’s economic consultant appears to agree: “the south half of the
14 property, flat and assembled, has no significant constraints on design and development.”
15 Record 1789-1790.

16 **3. The ECONorthwest Market Analysis**

17 The record includes a market analysis that was prepared by ECONorthwest. Record
18 1781-1808. The city argues that study “concluded that 150 acres of industrial and
19 employment lands would be sufficient to meet the regional demand over a 20 year period. R.
20 1781 – 1808.” Respondent’s Brief 11. What the ECONorthwest market analysis actually
21 concludes is that “[u]nder the right conditions, it is not unreasonable to expect 150 acres of
22 industrial and business park development to build out on the site over a 20-year period.”
23 Record 1800. If the ECONorthwest market analysis concludes that only 150 of the 308 acres
24 are needed to meet regional demand for industrial and other employment development we
25 have been unable to find that conclusion in the market analysis. In fact, the ECONorthwest

1 analysis in several places states that the region currently does not have enough developable
2 industrial land:

3 “Metro’s employment land needs analysis reports that about 9,300 net acres of
4 industrial land is needed between 2002 and 2022. This includes about 3,000
5 acres of ‘*refill*’ or existing developed land for future reuse, business
6 intensification or relocation. Thus, about 6,300 net acres of *vacant* land is
7 needed for industrial development between 2002 and 2022. Metro’s analysis
8 concludes that the region has a shortage of large and small industrial lots and
9 has a significant shortfall of about 5,700 net acres of *both* refill and vacant
10 land through 2022.

11 “Considering the amount of immediately developable land industrial land—
12 2,100 net acres—the *vacant* shortfall is about 4,200 net acres through 2022.
13 With absorption at about 200 acres of industrial land per year, the existing
14 supply of immediately developable net acres could be exhausted between
15 2012 and 2015. Record 1791 (emphases in original; footnotes omitted).

16 Although the ECONorthwest study may be substantial evidence that market demand
17 for industrial land in Oregon City could be expected result in development of 150 of the 308
18 acres, it is not substantial evidence that there is not a regional demand for the 308 acres that
19 carry the Industrial design type.

20 **4. Conclusion**

21 On the one hand, MC 3.07.1120 commands that the city’s Title 11 planning must
22 “demonstrate compliance with * * * 2040 Growth Concept design types” and must be
23 “consistent with the requirements of all applicable titles of he Metro Urban Growth
24 Management Functional Plan.” On the other hand, MC 3.07.450(B) commands Metro to
25 conform its mapping to local government mapping that is adopted under Title 11. We have
26 had a great deal of difficulty reconciling those two commands. MC 3.07.450(B) seems to
27 envision that local governments may plan property in ways that are inconsistent with the
28 design types that Metro applied to those properties, whereas MC 3.07.1120 seems to
29 command that Title 11 planning be consistent with Metro’s design types. We can see three

1 possible explanations for this apparent inconsistency in the Metro Code, which give effect to
2 both commands. We discuss each of those explanations below.¹⁸

3 **a. Non-developable Lands**

4 MC 3.07.1120(F) directs local governments to identify unbuildable lands and other
5 lands that will be protected from development. *See* n 5. Presumably lands that are
6 unbuildable for industrial use and lands that will be protected from industrial development
7 pursuant to other Metro environmental protection mandates, need not be planned for
8 industrial development in accordance with MC 3.07.430, even if those lands carry Metro’s
9 Industrial design type. MC 3.07.450(B) could have been adopted in whole or in part to
10 permit the Metro Chief Operating Officer to amend Metro’s E&IAs map to conform to a
11 local government’s more detailed mapping that identifies non-developable lands.

12 However, even if this is a partial or complete explanation for MC 3.07.450(B), as we
13 have already noted, the city did not establish in the decision that is before us in this appeal
14 that the Industrially designated lands that have been planned for non-industrial uses cannot
15 be developed with industrial uses. Nor, based on this record, does it seem likely the city
16 could establish that those lands are not suitable for the uses permitted by Title 4 of UGMFP.

17 **b. The UGB Amendment and Industrial Designation**

18 If the Metro decisions that amended the UGB in 2002 and 2004 expressly envisioned
19 that the 308 acres that now carry the Industrial design concept would not all be planned in
20 accordance with MC 3.07.430, then we believe it would follow that the city would not have
21 to plan and develop all 308 acres in accordance with MC 3.07.430. In that circumstance, so
22 long as a concept plan that designated some of those 308 acres for uses that are not allowed
23 by MC 3.07.430 was consistent with any limits that were placed on such non-industrial
24 planning by the UGB amendment and Industrial designation decisions for the 308 acres, such

¹⁸ As we noted earlier, Metro is not a party to this appeal. We do not mean to foreclose the possibility that there are additional explanations for the apparent inconsistency.

1 non-industrial planning would not violate MC 3.07.1120. In that circumstance, MC
2 3.07.450(B) would direct the Metro Chief Operating Officer to conform Metro’s mapping to
3 the local government’s mapping at the end of the Title 11 planning process. But even if such
4 express language in the 2002 and 2004 decisions might have permitted what the city has
5 done here, no party has identified any such express language in those decisions, and we have
6 found none.

7 **c. Lack of Regional Need for Land with the Industrial Design**
8 **Type**

9 If the evidentiary record that supports the city’s Title 11 planning included substantial
10 evidence that the Metro region has a 20-year surplus of land with the Industrial design type,
11 such that all 308 acres are not needed to maintain a 20-year supply of developable industrial
12 land, we believe the city might be able in its Title 11 planning to plan the unneeded acres for
13 uses that are not allowed by MC 3.07.430. In that event, MC 3.07.450(B) would operate to
14 allow the Metro Operating Officer to conform Metro’s mapping to (1) the city’s Title 11
15 mapping and (2) Metro’s actual 20-year need for land with the Industrial design type.

16 But the evidentiary record does not establish that there is a surplus of industrial land
17 to meet Metro’s 20-year regional need for such lands. To the contrary, the ECONorthwest
18 market analysis seems to conclude that there is a shortage of Industrial land to meet Metro’s
19 20-year need for Industrial land. While the ECONorthwest market analysis concludes that
20 under assumed market conditions there will be a market demand for only 150 acres of land
21 for industrial development within the concept plan area, that does not show there is a
22 regional surplus of Industrial land to meet the regional 20-year need. At most the
23 ECONorthwest market analysis might support a conclusion that despite the existing shortage
24 of Industrial land to meet the region’s 20-year need for Industrial land, only 150 acres of land
25 within the concept plan area will likely be developed over the next 20 years under expected
26 market conditions. That market analysis, if accurate, might provide a reason for Metro to
27 reconsider whether the Industrial design concept should continue to apply to all 308 acres.

1 But the ECONorthwest market analysis is not a sufficient basis for the city to proceed with
2 its Title 11 planning to divert some of the 308 Industrially designated acres to allow non-
3 industrial development of those acres. If the city were permitted to do so, and Metro simply
4 conformed its mapping to the city's concept plan under MC 3.07.450(B), the regional
5 shortage of Industrially designated land would simply be exacerbated.

6 For the reasons explained above, we conclude above that the city's decision to
7 designate only approximately 74 acres out of the total 308 acres that carry the Industrial
8 design type for industrial use in accordance with MC 3.07.430 is not consistent with that
9 design type and is not consistent with the city's obligation under MC 3.07.1140 to conduct
10 its Title 11 planning consistently with Metro's design types. Remand is therefore required.

11 We have addressed some, but not all of petitioner's arguments under her first
12 assignment of error. The petition for review also includes two more assignments of error that
13 we have not addressed. The issues presented by those arguments may or may not arise if the
14 city on remand adopts a new concept plan that complies with MC 3.07.1120 and 3.07.430.

15 ORS 197.835(11)(a) provides:

16 "Whenever the findings, order and record are sufficient to allow review, and
17 to the extent possible consistent with the time requirements of ORS 197.830
18 (14), the board shall decide all issues presented to it when reversing or
19 remanding a land use decision described in subsections (2) to (9) of this
20 section or limited land use decision described in ORS 197.828 and 197.195."

21 The statutory deadline established by ORS 197.830(14) for LUBA's final opinion in this
22 appeal expired some time ago. We therefore remand the decision without considering
23 petitioner's remaining arguments.

24 The city's decision is remanded.

Appendix
MC 3.07.450

3.07.450 Employment and Industrial Areas Map

- A. The Employment and Industrial Areas Map is the official depiction of the boundaries of Regionally Significant Industrial Areas, Industrial Areas and Employment Areas.
- B. If the Metro Council adds territory to the UGB and designates all or part of the territory Regionally Significant Industrial Area, Industrial Area or Employment Area, after completion of Title 11 planning by the responsible city or county, the Chief Operating Officer shall issue an order to conform the map to the boundaries established by the responsible city or county. The order shall also make necessary amendments to the Habitat Conservation Areas Map, described in Section 3.07.1320 of Title 13 of this chapter, to ensure implementation of Title 13.
- C. A city or county may amend its comprehensive plan or zoning regulations to change its designation of land on the Employment and Industrial Areas Map in order to allow uses not allowed by Title 4 upon a demonstration that:
1. The property is not surrounded by land designated on the map as Industrial Area, Regionally Significant Industrial Area or a combination of the two;
 2. The amendment will not reduce the jobs capacity of the city or county below the number shown on Table 3.07-1 of Title 1 of the Urban Growth Management Functional Plan, or the amount of the reduction is replaced by separate and concurrent action by the city or county;
 3. If the map designates the property as Regionally Significant Industrial Area, the subject property does not have access to specialized services, such as redundant electrical power or industrial gases, and is not proximate to freight loading and unloading facilities, such as trans-shipment facilities;
 4. The amendment would not allow uses that would reduce off-peak performance on Major Roadway Routes and Roadway Connectors shown on Metro's 2004 Regional Freight System Map below standards in the Regional Transportation Plan ("RTP"), or exceed volume-to capacity ratios on Table 7 of the 1999 Oregon Highway Plan for state highways, unless

- 1 mitigating action is taken that will restore performance to RTP
2 and OHP standards within two years after approval of uses;
- 3 5. The amendment would not diminish the intended function of
4 the Central City or Regional or Town Centers as the principal
5 locations of retail, cultural and civic services in their market
6 areas; and
- 7 6. If the map designates the property as Regionally Significant
8 Industrial Area, the property subject to the amendment is ten
9 acres or less; if designated Industrial Area, the property subject
10 to the amendment is 20 acres or less; if designated
11 Employment Area, the property subject to the amendment is 40
12 acres or less.
- 13 D. A city or county may also amend its comprehensive plan or zoning
14 regulations to change its designation of land on the Employment and
15 Industrial Areas Map in order to allow uses not allowed by Title 4
16 upon a demonstration that:
- 17 1. The entire property is not buildable due to environmental
18 constraints; or
- 19 2. The property borders land that is not designated on the map as
20 Industrial Area or Regionally Significant Industrial Area; and
- 21 3. The assessed value of a building or buildings on the property,
22 built prior to March 5, 2004, and historically occupied by uses
23 not allowed by Title 4, exceeds the assessed value of the land
24 by a ratio of 1.5 to 1.
- 25 E. The Chief Operating Officer shall revise the Employment and
26 Industrial Areas Map by order to conform to an amendment made by a
27 city or county pursuant to subsection C of this section within 30 days
28 after notification by the city or county that no appeal of the
29 amendment was filed pursuant to ORS 197.825 or, if an appeal was
30 filed, that the amendment was upheld in the final appeal process.
- 31 F. After consultation with Metropolitan Policy Advisory Committee, the
32 Council may issue an order suspending operation of subsection C in
33 any calendar year in which the cumulative amount of land for which
34 the Employment and Industrial Areas Map is changed during that year
35 from Regionally Significant Industrial Area or Industrial Area to
36 Employment Area or other 2040 Growth Concept design type
37 designation exceeds the industrial land surplus. The industrial land
38 surplus is the amount by which the current supply of vacant land
39 designated Regionally Significant Industrial Area and Industrial Area

1 exceeds the 20-year need for industrial land, as determined by the
2 most recent 'Urban Growth Report: An Employment Land Need
3 Analysis', reduced by an equal annual increment for the number of
4 years since the report.

5 G. The Metro Council may amend the Employment and Industrial Areas
6 Map by ordinance at any time to make corrections in order to better
7 achieve the policies of the Regional Framework Plan.

8 H. Upon request from a city or a county, the Metro Council may amend
9 the Employment and Industrial Areas Map by ordinance to consider
10 proposed amendments that exceed the size standards of paragraph 6 of
11 subsection C of the section. To approve an amendment, the Council
12 must conclude that the amendment:

- 13 1. Would not reduce the jobs capacity of the city or county below
14 the number shown on Table 3.07-1 of Title 1 of the Urban
15 Growth Management Functional Plan;
- 16 2. Would not allow uses that would reduce off-peak performance
17 on Major Roadway Routes and Roadway Connectors shown on
18 Metro's 2004 Regional Freight System Map below standards in
19 the Regional Transportation Plan ("RTP"), or exceed volume-
20 to capacity ratios on Table 7 of the 1999 Oregon Highway Plan
21 ("OHP") for state highways, unless mitigating action is taken
22 that will restore performance to RTP and OHP standards within
23 two years after approval of uses;
- 24 3. Would not diminish the intended function of the Central City
25 or Regional or Town Centers as the principal locations of
26 retail, cultural and civic services in their market areas;
- 27 4. Would not reduce the integrity or viability of a traded sector
28 cluster of industries;
- 29 5. Would not create or worsen a significant imbalance between
30 jobs and housing in a regional market area; and
- 31 6. If the subject property is designated Regionally Significant
32 Industrial Area, would not remove from that designation land
33 that is especially suitable for industrial use due to the
34 availability of specialized services, such as redundant electrical
35 power or industrial gases, or due to proximity to freight
36 transport facilities, such as trans-shipment facilities.

- 1 I. Amendments to the Employment and Industrial Areas Map made in
2 compliance with the process and criteria in this section shall be
3 deemed to comply with the Regional Framework Plan.
- 4 J. The Council may establish conditions upon approval of an amendment
5 to the Employment and Industrial Areas Map under subsection F to
6 ensure that the amendment complies with the Regional Framework
7 Plan and state land use planning laws.
- 8 K. By January 31 of each year, the Chief Operating Officer (COO) shall
9 submit a written report to the Council and the Metropolitan Policy
10 Advisory Committee on the cumulative effects on employment land in
11 the region of the amendments to the Employment and Industrial Areas
12 Map made pursuant to this section during the preceding year. The
13 report shall include any recommendations the COO deems appropriate
14 on measures the Council might take to address the effects.