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July 11, 2019

TO: Land Conservation and Development Commission
Metro Council
Parties of Record

FROM: Jim Rue, Director
Gordon Howard, Community Services Division Manager

SUBJECT: **Agenda Item 11, July 25-26, 2019 LCDC Meeting**



**DEPARTMENT'S REPORT AND RESPONSE TO OBJECTIONS TO
PORTLAND METRO URBAN GROWTH BOUNDARY AMENDMENT**

The report prepared by the Department of Land Conservation and Development (DLCD) responding to Metro's submittal of an amended urban growth boundary (UGB), on referral to the Land Conservation and Development Commission (LCDC) pursuant to OAR 660-025-0150(1)(c), is attached.

The director of DLCD's recommendation to LCDC is to approve Metro's UGB decision, as summarized in this report. Metro has submitted a considerable amount of data and analysis and coordinated extensively with the cities and counties within and outside the Metro boundary. DLCD staff have reviewed all submitted objections in relation to applicable criteria for the UGB decision and have found no basis for remand of the Metro Council's UGB expansion decision.

The record submitted by Metro ("record") is attached electronically as appendices E-H.

If you have questions about this report, please contact Jennifer Donnelly, DLCD Regional Representative, at (503) 725-2183, or jennifer.donnelly@state.or.us.

DEPARTMENT REPORT AND RESPONSE TO OBJECTIONS TO PORTLAND METRO URBAN GROWTH BOUNDARY AMENDMENT

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ABBREVIATIONS AND TERMS

Commission	Land Conservation and Development Commission
Department	Department of Land Conservation and Development
HNA	Housing Needs Analysis
Metro	Portland Area Metropolitan Service District
MC	Metro Code
MHR	Metropolitan Housing Rule
OAR	Oregon Administrative Rule(s)
ORS	Oregon Revised Statutes
Record	Metro Submittal, January 10, 2019
RFP	Metro Regional Framework Plan
UGB	Urban growth boundary. As used in this report, the UGB refers to the boundary established by Metro
UGR	Urban Growth Report, exhibit E 2018

I. AGENDA ITEM SUMMARY

Type of Action and Commission Role

The matter before the Land Conservation and Development Commission (LCDC or “commission”) is Metro’s amendment to the Portland Metropolitan Area urban growth boundary (UGB) to accommodate a full range of urban land uses through 2038. Metro’s submittal includes (1) an amended UGB to add four areas with a total of approximately 2,181 acres to provide capacity for approximately 9,200 dwelling units, (2) an amended UGB to add 4.88 acres to alleviate a health hazard from a failing septic system, (3) conditions to be applied to the UGB expansion areas, (4) an amended Urban Growth Boundary and Urban and Rural Reserves Map in Title 14 of the Urban Growth Management Functional Plan, (5) the 2018 Urban Growth Report (UGR) that includes support for the housing capacity need, (6) findings of fact and conclusions of law to provide evidentiary support for the decision, and (7) concurrent annexation of lands added into the Metro UGB into the Metro jurisdictional boundary as provided by Oregon Revised Statutes (ORS) 268.390(3)(b).

Per ORS 197.626, UGB amendments are reviewed by LCDC “in the manner provided for periodic review.” This item is before the commission as a referral from the director of the Department of Land Conservation and Development (DLCD, or “department”). DLCD’s review is on the record submitted by Metro. The purpose of the hearing is to review the department’s report responding to the submittal, review the objections and the department’s report responding to those objections, hear argument from the parties, and decide what action to take in response to DLCD’s analysis and the objections.

The commission may do one or more of the following:

1. Approve the submittal;
2. Remand the submittal, or a portion of the submittal; or
3. Require specific plan or land use regulation revisions to be completed by a specific date.

Staff Contact Information

If you have questions about this report, please contact Jennifer Donnelly, DLCD Regional Representative, at (503) 725-2183, or jennifer.donnelly@state.or.us; or Anne Debbaut, DLCD Regional Representative, at (503) 725-2182, or anne.debbaut@state.or.us

II. SUMMARY OF RECOMMENDED ACTION

The department reviewed Metro’s Ordinance No.18-1427 and supporting materials for the Metro UGB expansion. Based on the department’s review and analysis of the record for the Metro UGB, the department found that Metro meets the review criteria. Section II is a summary of recommended action. Section III includes background information. Section IV of this report elaborates on the department’s analysis. Section V of this report is the

department's analysis and response to the objections received. After review and analysis of the record and the objections submitted, the department recommends, in Section VI, that the commission approve Metro Ordinance No. 18-1427 and the findings of fact and conclusions of law, rejecting the seven filed objections.

III. **BACKGROUND**

Metro's final decisions to provide capacity for housing and employment to the year 2038 were made on December 13, 2018 and December 18, 2018, Ordinance No. 18-1427. Metro submitted their decision to the department on January 2, 2019, as required by OAR 660-025-0175(1)(a). DLCD reviewed the submittal by Metro and found it incomplete. Metro resubmitted the Notice of Urban Growth Boundary Amendment and amended notice to participants on January 10, 2019.

Based on feedback from local jurisdictions, community organizations, and state agencies, Metro took a different approach to expanding the UGB, adopting an outcomes-based approach. This approach by Metro began back in 2010 with adoption of the urban and rural reserves¹. Metro now requires concept plans in an urban reserve be adopted by local governments planning to annex and provide public services to areas covered in the concept plan before potential addition to the Metro UGB. The Metro Council adopted six desired outcomes into the Regional Framework Plan (RFP).² Finally, Metro adopted an expedited process for considering UGB expansion proposals for employment uses.

When Metro adopted its growth management decision in 2015, Metro Ordinance No. 15-1361, the Metro Council determined that Metro did not need to expand the UGB. However, the Council determined that it would:

- Produce a new urban growth report within three years, earlier than the required six years,
- Continue working with Clackamas and Multnomah County to finalize the urban and rural reserves designations, and

¹ The urban and rural reserves adoption has had a complicated subsequent history. After remand by the Court of Appeals (*Barkers Five, LLC v. LCDC*, 261 Or App. 259 (2014)), legislation to resolve urban and rural reserve issues in Washington County (codified at ORS 195.144), and commission approval of Metro's urban and rural reserves resubmittal in 2017 for Clackamas and Multnomah Counties, the matter remains before the Oregon Court of Appeals at this time.

² The desired outcomes as adopted:

1. People live, work and play in vibrant communities where their everyday needs are easily accessible.
2. Current and future residents benefit from the region's sustained economic competitiveness and prosperity.
3. People have safe and reliable transportation choices that enhance their quality of life.
4. The region is a leader on climate change, on minimizing contributions to global warming.
5. Current and future generations enjoy clean air, clean water and healthy ecosystems.
6. Equity exists relative to the benefits and burdens of growth and change to the region's communities.

- Work with regional partners to explore possible improvements to the region's growth management process.

This UGB expansion is a product of those efforts described above. In preparation for this work, Metro established an Urban Growth Readiness Task Force.³ The Task Force's recommendations were incorporated into Metro Ordinance No. 17-4764, which is intended to balance certainty and flexibility into the UGB process and develop requirements that provide expectations for cities proposing residential UGB expansions. In 2017, Metro was successful in getting legislation adopted that enables a "mid-cycle" residential UGB process under the provisions of ORS 197.299 for 1,000 acres or less without an Urban Growth Report. Thus, if Metro Council chooses, it may look at a UGB expansion again in 2021.

Based on the changes described above, four cities submitted UGB expansion proposals; Beaverton, Hillsboro, King City and Wilsonville. The total area of the requested expansions was 2,181 acres. These four proposals constitute Metro's proposal for its UGB expansion based on housing needs identified in the Urban Growth Report.

In June 2018, Metro established a City Readiness Advisory Group (CRAG) to review the four cities' proposals. The CRAG consisted of private and public sector experts in affordable housing, parks planning, residential and mixed-use development, multimodal transportation and equity. The CRAG presented its findings to various Metro advisory bodies and the Metro Council. All of these meeting summaries are in the record.

On August 28, 2018, Metro's Chief Operating Officer (COO) made an UGB recommendation to the Metro Council. The COO recommendation was to expand the UGB in the four proposed concept plan areas. The recommendation included adding conditions of approval that encouraged a mix of housing types. The COO recommendation also included that Metro staff study changes in the economy and "refresh the 2040 Growth Concept" in 2019. The COO also recommended an expansion of the Metro Urban Growth Boundary by 4.88 acres in North Hillsboro to alleviate a public health hazard related to a failing septic system. On December 13, 2018, Metro Council adopted Ordinance No. 18-1427 to expand the Urban Growth Boundary for the purpose of providing capacity for housing for the next 20 years. Ordinance No. 18-1427 included additional conditions of approval on land added to the UGB, see Exhibit C of Ordinance No. 18-1427, Record at 0018-21, for the specific conditions. The Metro Council conditions reinforce comprehensive planning in the four UGB expansion areas and specific city wide requirements for the individual cities. Metro Council amended condition A (2)⁴ of Exhibit C to Ordinance No. 18-1427 on December 18, 2018 to clarify the variety of housing types allowed outright in the expansion areas.

³ The task force consisted of mayors, county commissioners, DLCD, 1000 Friends of Oregon and the Home Builders Association of Metropolitan Portland.

⁴ The four cities shall allow, at a minimum, single family attached housing, including townhomes, duplexes, triplexes, and fourplexes, in all zones that permit single family housing in the expansion areas.

The final UGR is included as Exhibit E to Ordinance No. 18-1427, Record at 0023-1046. The UGR analysis includes the buildable land inventory, reporting on residential development trends, housing needs analysis, and other components intended for Metro to meet their legal requirements. This staff report will analyze the legal requirements for a decision by the department to acknowledge Metro's Urban Growth Boundary expansion with the findings and conditions detailed in Ordinance No. 18-1427.

IV. REVIEW CRITERIA, PROCESS & RECORD

A. Review

OAR 660-025-0150(1) provides that, in response to Metro's submittal, the director may take action as follows:

- (a) Issue an order approving the submittal;
- (b) Issue an order remanding the submittal to the local government including a date for resubmittal;
- (c) Refer the submittal to LCDC for review and action; or
- (d) The director may issue an order approving portions of the submittal provided these portions are not affected by an order remanding or referring the submittal.

The Director referred the Metro submittal to LCDC on May 10, 2019.

OAR 660-025-0160 governs commission review of referrals from the director regarding UGB expansions. It reads as follows:

- (1) The commission shall hear appeals and referrals of work tasks or other plan amendments according to the applicable procedures in OAR 660-025-0085 and 660-025-0150.
- (2) The commission's standard of review, as provided in ORS 197.633(3), is:
 - (a) For evidentiary issues, whether there is substantial evidence in the record as a whole to support the local government's decision.
 - (b) For procedural issues, whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding.
 - (c) For issues concerning compliance with applicable laws, whether the local government's decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the RFP, the functional plan and land use regulations. The commission shall defer to a local government's interpretation of its comprehensive plan or land use regulation in the manner provided in ORS 197.829 or to Metro's interpretation of its RFP or

functional plans. For purposes of this subsection, “complies” has the meaning given the term “compliance” in the phrase “compliance with the goals” in ORS 197.747.

(3) In response to a referral or appeal, the director may prepare and submit a report to the commission.

(4) The department must send a copy of the report to the local government, all persons who submitted objections, and other persons who appealed the director's decision. The department must send the report at least 21 days before the commission meeting to consider the referral or appeal.

(5) The persons specified in OAR 660-025-0085(5)(c) may file written exceptions to the director's report within 10 days of the date the report is sent. Objectors may refer to or append to their exceptions any document from the local record, whether or not the local government submitted it to the department under OAR 660-025-0130. The director may issue a response to exceptions and may make revisions to the director's report in response to exceptions. The department may provide the commission a response or revised report at or prior to its hearing on the referral or appeal. A revised director's report is not required to be sent at least 21 days prior to the commission hearing.

(6) The commission shall hear appeals based on the local record. The written record shall consist of the submittal, timely objections, the director's report, timely exceptions to the director's report including materials described in section (5) of this rule, the director's response to exceptions and revised report if any, and the appeal if one was filed.

(7) Following its hearing, the commission must issue an order that does one or more of the following:

(a) Approves the work task or plan amendment or a portion of the task or plan amendment;

(b) Remands the work task or plan amendment or a portion of the task or plan amendment to the local government, including, for a work task only, a date for resubmittal;

(c) Requires specific plan or land use regulation revisions to be completed by a specific date. Where specific revisions are required, the order shall specify that no further review is necessary. These changes are final when adopted by the local government. The failure to adopt the required revisions by the date established in the order shall constitute failure to complete a work task or plan amendment by the specified deadline requiring the director to initiate a hearing before the commission according to the procedures in OAR 660-025-0170(3);

(d) Amends the work program to add a task authorized under OAR 660-025-0170(1)(b); or

(e) Modifies the schedule for the approved work program in order to accommodate additional work on a remanded work task.

(8) If the commission approves the work task or plan amendment or portion of a work task or plan amendment under subsection (7)(a) of this rule and no appeal to the Court of Appeals is filed within the time provided in ORS 197.651, the work task or plan amendment or portion of a work task or plan amendment shall be deemed acknowledged. If the commission decision on a work task or plan amendment is under subsection (7)(b) through (e) of this rule and no appeal to the Court of Appeals is filed within the time provided in ORS 197.651, the decision is final.

B. Decision-making Criteria

The criteria applicable to the amendment of a UGB are found in a number of statutes, goals, and rules which are discussed in more detail below. These provisions provide the basis for the department's review.

1. Goals.⁵

Goal 14 - Urbanization

Statewide Planning Goal 14 is: "To provide for an orderly and efficient transition from rural to urban land use." This goal requires local jurisdictions, including Metro, to have a UGB to separate urban and urbanizable land from rural land. For cities within the Portland metropolitan service district, Metro adopts a regional UGB under ORS 268.390(3)(a). Amendment of a UGB is based on consideration of the following criteria for land need under Goal 14:

1. Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments, or for cities applying the simplified process under ORS chapter 197A, a 14-year forecast; and
2. Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2). In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need. Prior to expanding an urban growth boundary, local governments shall demonstrate that

⁵ OAR 660-0015.

needs cannot reasonably be accommodated on land already inside the urban growth boundary.

Compliance with these criteria is clarified by administrative rules regarding metropolitan housing (OAR chapter 660, division 7), economic development (OAR chapter 660, division 9), and urban growth boundaries (OAR chapter 660, division 24). Subsequent to an expansion, relevant considerations for planning expanded UGBs are also found in the administrative rules regarding public facilities planning (OAR chapter 660, division 11), transportation (OAR chapter 660, division 12), and natural resources (OAR chapter 660, division 23).

Four boundary location factors in Goal 14 are used in considering which land is included in the urban growth boundary in conjunction with ORS 197.298:

1. Efficient accommodation of identified land needs;
2. Orderly and economic provision of public facilities and services;
3. Comparative environmental, energy, economic and social consequences; and
4. Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.

Goal 10 - Housing

Statewide Planning Goal 10 requires local governments: “[t]o provide for the housing needs of citizens of the state.” Furthermore, Goal 10 states that, “[b]uildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.” Oregon Administrative Rules provide more specificity regarding the requirements for housing planning within the Metro UGB in OAR 660, division 7 (discussed below).

2. Administrative Rules.

OAR chapter 660, division 24 interprets and clarifies application of Goal 14. This rule explains requirements for population forecasting, determining land need, conducting an inventory of available land, responding to a deficiency of land in the existing UGB, and boundary location analysis (specific standards for Metro’s location analysis may be found at OAR 660-024-0060). Division 24 incorporates or recognizes other administrative rules by reference, including these relevant to Metro:

- OAR chapter 660, division 7, Metropolitan Housing, regarding residential land need.
- OAR chapter 660, division 12, Transportation Planning, regarding need for land for transportation facilities.

OAR 660, division 7 applies Goal 10 specifically to Metro and the local governments within the Portland Metropolitan Area UGB. This rule contains definitions of the terms “buildable land” and “needed housing,” includes the requirement for clear and objective standards as they relate to residential development, includes requirements for a mix of housing types for new construction, includes minimum residential density standards, and explains the process for the computation of buildable lands, among other standards.

OAR 660-032-0030 requires Metro to coordinate with local governments within the Metro boundary and to issue a coordinated population forecast for the area, allocating population growth to the cities and portions of counties within the Metro boundary.

3. Statutes.

ORS 197.296 provides requirements for demonstrating that the UGB contains a 20-year supply of buildable residential land. These requirements address buildable lands inventories, housing needs analyses, and planning and zoning of residential lands. This statute directs, along with the need factors of Goal 14, how Metro is to calculate its residential land needs.

Once Metro has established its land need, determining where Metro looks to expand the UGB is directed by the priority of lands in ORS 197.298, along with boundary location factors in Goal 14, discussed in subsection 1 of this section. The priorities, in order, are:

1. Lands designated as an urban reserve;
2. “Nonresource” lands or “exception” lands which have rural residential or other development;
3. “Marginal lands” designated pursuant to ORS 197.247;
4. Lower quality farmlands; and
5. Higher quality farmlands.

Metro considered only lands designated as an urban reserve for inclusion in the UGB.

ORS 197.299 requires Metro to, not later than once every six years, inventory existing residential lands, forecast future residential needs, and address anticipated residential land needs over the planning period. Per the statute, Metro is required to accommodate at least one-half of that need within one year of completing the analysis, and accommodate the remainder of the need within two years of completing the analysis.

An analysis of compliance with these applicable requirements is provided below, in Section V. of this staff report.

Procedural Requirements and Validity of Objections

OAR 660-025-0140(1) governs Metro's submittal of its adopted action to the department for review.⁶ Metro submitted the final decision in compliance with the provisions of this rule on January 10, 2019.

OAR 660-025-0140(2) governs the requirements for objections to Metro's submittal.⁷ OAR 660-025-0140(3) provides that objections not meeting the requirements set forth in OAR 660-025-0140(2) will not be considered by the director or commission.

The department received seven letters of objection to the Metro Urban Growth Boundary ordinance submittal. The department has analyzed the validity of each objection. The objection letters are available at: [Objections to Metro UGB](#). Pursuant to OAR 660-025-0140(6), the department is issuing this report, which addresses the issues raised in the valid objections.⁸

⁶ OAR 660-025-0140(1) provides:

- (1) After the local government makes a final decision on a work task or comprehensive plan amendment listed in ORS 197.626(1) and OAR 660-025-0175, the local government must notify the department and persons who participated at the local level orally or in writing during the local process or who requested notice in writing. The local government notice must contain the following information:
- (a) Where a person can review a copy of the local government's final decision, and how a person may obtain a copy of the final decision;
 - (b) The requirements listed in section (2) of this rule for filing a valid objection to the work task or comprehensive plan amendment listed in OAR 660-025-0175; and
 - (c) That objectors must give a copy of the objection to the local government.

⁷ OAR 660-025-0140(2) provides:

- (2) Persons who participated orally or in writing in the local process leading to the final decision may object to the local government's submittal. To be valid, objections must:
- (a) Be in writing and filed with the department's Salem office no later than 21 days from the date the local government sent the notice;
 - (b) Clearly identify an alleged deficiency in the work task or adopted comprehensive plan amendment sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the submittal is alleged to have violated;
 - (c) Suggest specific revisions that would resolve the objection; and
 - (d) Demonstrate that the objecting party participated orally or in writing in the local process leading to the final decision.

⁸ OAR 660-025-0140(6) provides:

If valid objections are received or the department conducts its own review, the department must issue a report. The report shall address the issues raised in valid objections. The report shall identify specific work tasks or measures to resolve valid objections or department concerns. A valid objection shall either be sustained or rejected by the department or commission based on the statewide planning goals, or applicable statutes or administrative rules.

While OAR 660-025-0150(2) applies to a director's order, not a referral to the commission, the director has nonetheless sent the referral to the local government, persons who filed objections and persons who, in writing, requested a copy of the action. OAR 660-025-0150(3) requires the director to act within 120 days of the local government submittal unless the local government grants a waiver of the 120-day deadline; for Metro's submittal the 120-day deadline was May 10, 2019. The commission procedures for considering a referral from the director are governed by OAR 660-025-0160, quoted in Section IV.A. of this report, above.

The Written Record for This Proceeding

1. This DLCD staff report, including responses to objections.
2. Metro correspondence, pursuant to OAR 660-025-0130(4)(a), identifying material in the record responsive to objections, dated March 12, 2019.
3. Seven objections filed on or before January 31, 2019.
4. Metro Ordinance No. 18-1427, including attached exhibits, submitted January 10, 2019 listed as follows: [Metro Ordinance 18-1427](#)
 - Exhibit A – UGB Expansion Areas Map, Record at 16
 - Exhibit B – Administrative Amendment Map, Record at 17
 - Exhibit C – Conditions of Approval on Land Added to the UGB, Record at 18
 - Exhibit D – Title 14 Urban Growth Boundary Map, Record at 22
 - Exhibit E – 2018 Urban Growth Report, Record at 23
 - Exhibit F – Finding of Fact and Conclusions of Law, Record at 1047-1066
5. Metro Staff Report dated November 28, 2018 regarding Metro Ordinance No. 18-1427, Record at 1067
 - Attachment 1 – Map of proposed Advance Road UGB expansion, Record at 1074
 - Attachment 2 – Map of proposed Beef Bend South UGB expansion, Record at 1075
 - Attachment 3 – Map of proposed Cooper Mountain UGB expansion, Record at 1076
 - Attachment 4 – Map of proposed Witch Hazel Mountain UGB expansion, Record at 1077
 - Attachment 5 – Map of proposed UGB expansion to address health hazard from failing septic system, Record at 1078
 - Attachment 6 – Washington County Department of Health and Human Services letter, Record at 1079
 - Attachment 7 – DEQ Existing System Evaluation Report, Record at 1080

V. DEPARTMENT REVIEW AND RESPONSE TO OBJECTIONS

A. **Department Review**

This section contains the department's review of Metro's UGB submittal and provides the department's responses to objections received from local governments, individuals and organizations. The department's review is confined to the submittal, valid objections, and evidence in the local record. The department's standard of review is provided in ORS 197.633(3) as stated above. Applicable criteria are identified sequentially and by topic, in the following order:

- Metro Requirements for Satisfaction of 20-year Residential Land Need
- Population Projections
- Residential Buildable Lands Inventory
- Housing Needs Analysis
- Reconciliation of Residential Buildable Lands Inventory and Housing Needs Analysis
- Metropolitan Housing Rule
- Employment Land Analysis
- Metro Boundary Location Alternatives Analysis

On referral, the director makes a recommendation regarding whether the submittal complies with applicable goals, statutes and administrative rules regarding all applicable requirements, including those that no objections addressed.

Metro Requirements for Satisfaction of 20-year Residential Land Need

ORS 197.299(1) - "A metropolitan service district organized under ORS chapter 268 shall complete the inventory, determination and analysis required under ORS 197.296(3) not later than six years after completion of the previous inventory, determination and analysis."

Department Evaluation of Criteria Not Raised in Objections: In November 2015, the Metro Council adopted the 2014 Urban Growth Report, which found sufficient capacity within the existing UGB to provide for the region's housing and employment needs for the 20-year planning period. Metro notes that "As part of that ordinance [Metro Ordinance No. 15-1361], the Council directed Metro planning staff to work with regional partners to explore possible improvements to the growth management process and to produce a new UGR within three years, rather than six." Record at 1047. The 2018 UGR, including the buildable land inventory, was completed within the statutorily required six year period from the previous inventory.

The UGB expansion process begins with determination of the planning period and projected population and employment at the end of the planning period. In this case, Metro has conducted analysis for the 20-year planning period from 2018 to 2038. Record at 28 and 35.

Population Projections

Goal 14 identifies the required considerations for a change to urban growth boundaries, as follows:

“Establishment and change of urban growth boundaries shall be based on the following:

(1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments ...”

OAR 660-032-0030 requires Metro to issue a coordinated population forecast for the region as follows:

“(1) Metro, in coordination with local governments within its boundary, shall issue a coordinated population forecast for the entire area within its boundary, to be applied by Metro and local governments within the boundary as the basis for a change to a regional framework plan, comprehensive plan or land use regulation, when such change must be based on or requires the use of a population forecast.

(2) Metro shall allocate the forecast to the cities and portions of counties within the Metro boundary for land use planning purposes.

(3) In adopting its coordinated forecast, Metro must follow applicable procedures and requirements in this rule and ORS 197.610 to 197.650, and must provide notice to state agencies and all local governments in the Metro area. The forecast must be adopted as part of the applicable regional or local plan.

(4) The Metro forecast must be developed using commonly accepted practices and standards for population forecasting used by professional practitioners in the field of demography or economics. The forecast must be based on current, reliable and objective sources and verifiable factual information, and must take into account documented long-term demographic trends as well as recent events that have a reasonable likelihood of changing historical trends. Metro must coordinate with the PRC in the development and allocation of its forecast.

(5) The population forecast developed under the provisions of (1) through (4) of this rule is a prediction which, although based on the best available information and methodology, should not be held to an unreasonably high level of precision. For a forecast used as a basis for a decision adopting or amending the Metro regional urban growth boundary submitted to the Department of Land Conservation and Development (DLCD) under ORS 197.626, the director of DLCD or the Land Conservation and Development Commission may approve the forecast provided it

finds that any failure to meet a particular requirement of this rule is insignificant and is unlikely to have a significant effect on the determination of long term needs for the Metro urban area under OAR 660-024-0040.”

Included within the record is Metro’s 2018 Regional Economic Forecast, which includes forecast estimates of the future total population, employment, and employment by sector for the seven-county Metropolitan Statistical Area (MSA). Record at 70. The Metro Council decided to utilize the mid-point values of the projected range for population and employment over the planning period, settling on anticipated population growth of about 524,000 people and 209,000 additional jobs in the MSA by 2038. The forecast work is also summarized in the 2018 UGR as well as in Metro’s adopted findings. Record at 23 and 1053. These materials demonstrate that Metro has completed a coordinated population forecast for the entire area within its boundary using commonly accepted practices and standards for population forecasting, consistent with the requirements of OAR 660-032-0030. As a component of the 2018 UGR, Metro is following applicable procedures and requirements in OAR 660-032-0030 and ORS 197.610 to 197.650 in the adoption of the forecast, and utilizes the results of the forecast to allocate population to the cities and portions of counties within the Metro boundary, consistent with the requirements of OAR 660-032-0030. In conclusion, staff finds that the population and employment forecast has been completed consistent with the requirements of Goal 14 and OAR 660-032-0030.

Residential Buildable Land Inventory

ORS 197.296(3) - “In performing the duties under subsection (2) of this section, a local government shall:

(a) Inventory the supply of buildable lands within the urban growth boundary and determine the housing capacity of the buildable lands; and

(b) Conduct an analysis of housing need by type and density range, in accordance with ORS 197.303 and statewide planning goals and rules relating to housing, to determine the number of units and amount of land needed for each needed housing type for the next 20 years.

(4)(a) For the purpose of the inventory described in subsection (3)(a) of this section, “buildable lands” includes:

(A) Vacant lands planned or zoned for residential use;

(B) Partially vacant lands planned or zoned for residential use;

(C) Lands that may be used for a mix of residential and employment uses under the existing planning or zoning; and

(D) Lands that may be used for residential infill or redevelopment.

(b) For the purpose of the inventory and determination of housing capacity described in subsection (3)(a) of this section, the local government must demonstrate consideration of:

(A) The extent that residential development is prohibited or restricted by local regulation and ordinance, state law and rule or federal statute and regulation;

(B) A written long term contract or easement for radio, telecommunications or electrical facilities, if the written contract or easement is provided to the local government; and

(C) The presence of a single family dwelling or other structure on a lot or parcel.

(c) Except for land that may be used for residential infill or redevelopment, a local government shall create a map or document that may be used to verify and identify specific lots or parcels that have been determined to be buildable lands.”

OAR 660-024-0050(1) - “When evaluating or amending a UGB, a local government must inventory land inside the UGB to determine whether there is adequate development capacity to accommodate 20-year needs determined in OAR 660-024-0040. For residential land, the buildable land inventory must include vacant and redevelopable land, and be conducted in accordance with OAR 660-007-0045 or 660-008-0010, whichever is applicable, and ORS 197.296 for local governments subject to that statute....”

Included within the record is Metro’s 2018 Buildable Lands Inventory (BLI), which provides an explanation of the methodology used to determine lands likely to be redeveloped, as well as development and land data from the 24 cities and portions of three counties that are located within the Metro UGB. The BLI also includes a summary of vacant and redevelopable land within the Metro UGB. Record at 122. Appendix 3: Growth Forecast Findings includes results from Metro’s land use and transportation computer model, MetroScope. Record at 202. The model analyzed 14 future scenarios with a combination of three key inputs: growth rate, capacity within existing UGB, and inclusion or non-inclusion of UGB expansion areas. As summarized in Metro’s findings , the analysis concludes that the existing UGB contains the capacity for 92,300 additional single family dwelling units, while vacant lands and land likely to be redeveloped to accommodate multifamily dwelling units are sufficient to accommodate between 136,000 and 271,000 additional multifamily units. Record at 1052. The tables provided within the BLI show a comprehensive summary of vacant and redevelopable land remaining within the Metro UGB for all local governments within the Metro area consistent with the requirements of ORS 197.296(3). Record at 125. In conclusion, staff finds that the buildable land inventory has been completed consistent with the requirements of ORS 197.296(3) and OAR 660-024-0050(1).

Housing Needs Analysis

ORS 197.296(5)(a) - "Except as provided in paragraphs (b) and (c) of this subsection, the determination of housing capacity and need pursuant to subsection (3) of this section must be based on data relating to land within the urban growth boundary that has been collected since the last periodic review or five years, whichever is greater. The data shall include:

(A) The number, density and average mix of housing types of urban residential development that have actually occurred;

(B) Trends in density and average mix of housing types of urban residential development;

(C) Demographic and population trends;

(D) Economic trends and cycles; and

(E) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

(b) A local government shall make the determination described in paragraph (a) of this subsection using a shorter time period than the time period described in paragraph (a) of this subsection if the local government finds that the shorter time period will provide more accurate and reliable data related to housing capacity and need. The shorter time period may not be less than three years.

(c) A local government shall use data from a wider geographic area or use a time period for economic cycles and trends longer than the time period described in paragraph (a) of this subsection if the analysis of a wider geographic area or the use of a longer time period will provide more accurate, complete and reliable data relating to trends affecting housing need than an analysis performed pursuant to paragraph (a) of this subsection. The local government must clearly describe the geographic area, time frame and source of data used in a determination performed under this paragraph."

Appendix 5: Residential Development Trends includes the data required by ORS 197.296(5) (as well as the performance measures required by ORS 197.301 – which are not directly related to this decision). Record at 245. The Housing Needs Analysis (HNA) provides a complete analysis of land available within the existing UGB for housing and a projection of housing needs over the planning period, including analysis of income level and housing affordability data. Record at 287. As summarized in the November 28, 2018 Metro staff report (record at 1071) projected housing needs, expressed in the number of needed new dwelling units, over the 2018-2038 planning period are as follows:

7-county MSA new households, 2018 to 2038 (midpoint of range):	279,000
7-county MSA new dwelling units (apply 5% vacancy rate):	293,000
Metro UGB new dwelling units (capture rate range = 67.2%):	196,900
Metro UGB new multifamily dwelling units (MF rate = 50%):	98,400
Metro UGB existing multifamily capacity (midpoint of range):	203,500
Metro UGB new single family dwelling units (SF rate = 50%):	98,400
Metro UGB existing single family capacity (attached & detached):	92,300
Unmet single family dwelling unit (attached and detached) need:	6,100

In summary, the HNA concludes that the existing Metro UGB includes “ample land planned for multifamily housing” to satisfy the 20-year need for such land, but a deficit of land needed to accommodate the 6,100 needed single family homes identified above. Record at 1071. The November 28, 2018 Metro staff report notes that “the proposed 2,181 gross acres of UGB expansions will provide a total of approximately 6,100 single family housing units along with approximately 3,100 multifamily units, for a total of approximately 9,200 homes.” Record at 1071. It should be noted that Metro identifies a need for 6,100 attached or detached single family dwellings as part of this analysis, and that for purposes of compliance with the “50-50 Rule” (OAR 660-007-0030) addressed later in this staff report, single family attached units or multifamily units qualify as meeting the 50 percent requirement of the Metropolitan Housing Rule (OAR 660-007-0030). Consequently, the planned number of single family and multifamily units are not equal in this analysis, but would not be out of compliance with the “50-50 Rule.” DLCD staff has reviewed the HNA, including consideration of anticipated housing tenure, housing type needs, anticipated densities, projections of household income in relation to housing costs, and consideration of multiple potential future scenarios through use of the MetroScope growth scenarios, and finds that the anticipated housing demand over the planning period has been reasonably derived with the consideration of available data and use of a sound methodology, consistent with the requirements of ORS 197.296(5)(a).

Reconciliation of Residential Buildable Lands Inventory and Housing Needs Analysis

ORS 197.296(6) - “If the housing need determined pursuant to subsection (3)(b) of this section is greater than the housing capacity determined pursuant to subsection (3)(a) of this section, the local government shall take one or more of the following actions to accommodate the additional housing need:

(a) Amend its urban growth boundary to include sufficient buildable lands to accommodate housing needs for the next 20 years. As part of this process, the local government shall consider the effects of measures taken pursuant to paragraph (b) of this subsection. The amendment shall include sufficient land reasonably necessary to accommodate the siting of new public school facilities. The need and inclusion of lands for new public school facilities shall be a coordinated process between the affected public school districts and the local government that has the authority to approve the urban growth boundary;

(b) Amend its comprehensive plan, regional framework plan, functional plan or land use regulations to include new measures that demonstrably increase the likelihood that residential development will occur at densities sufficient to accommodate housing needs for the next 20 years without expansion of the urban growth boundary. A local government or metropolitan service district that takes this action shall monitor and record the level of development activity and development density by housing type following the date of the adoption of the new measures; or

(c) Adopt a combination of the actions described in paragraphs (a) and (b) of this subsection.”

Statewide Planning Goal 14 - Land Need:

“Establishment and change of urban growth boundaries shall be based on the following:

(1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments, or for cities applying the simplified process under ORS chapter 197A, a 14-year forecast; and

(2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2). In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need. Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.”

OAR 660-024-0050 - Land Inventory and Response to Deficiency -

“(4) If the inventory demonstrates that the development capacity of land inside the UGB is inadequate to accommodate the estimated 20-year needs determined under OAR 660-024-0040, the local government must amend the plan to satisfy the need

deficiency, either by increasing the development capacity of land already inside the city or by expanding the UGB, or both, and in accordance with ORS 197.296 where applicable. Prior to expanding the UGB, a local government must demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB. If the local government determines there is a need to expand the UGB, changes to the UGB must be determined by evaluating alternative boundary locations consistent with Goal 14 and applicable rules at OAR 660-024-0060 or 660-024-0065 and 660-024-0067.”

Metro has determined that most of the projected housing need over the planning period, including 98,400 multifamily housing units and 92,300 single family housing units, may be accommodated within the existing UGB. Record at 1071. However, Metro determined that there is an anticipated gap of 6,100 single family units that cannot be accommodated within the current UGB. Based on this analysis, Metro concludes that the selected UGB expansion areas are needed to meet the need for additional land for single family housing. Staff finds this conclusion is reasonable, based on the provided information and analysis, and consistent with the direction provided in ORS 197.296(6), Goal 14, and OAR 660-024-0050(4) regarding the accommodation of projected housing needs. Additional analysis and findings regarding consideration of reasonable accommodation measures per OAR 660-024-0050(4) are included later in the portion of this report responding to objections filed.

Metro also has determined that a 4.88 acre parcel in North Hillsboro has a failing septic system, and that addition to the UGB will allow the City of Hillsboro to provide sewer service to the property. Metro has included a condition of approval for this UGB expansion that prohibits intensification of existing rural commercial uses on the site until a concept plan is completed for the surrounding area within the urban reserve. Record at 1063. Metro relied on information regarding options for providing relief for the failing septic system from Washington County. Record at 1078.

Metropolitan Housing Rule

The Metropolitan Housing Rule (MHR) is located in OAR chapter 660, division 007. Because a number of the objections were related to these regulations, a detailed discussion of compliance with the Metropolitan Housing Rule is located in the Objections section of this staff report. To summarize conclusions from that analysis, staff finds that Metro has adequately addressed compliance with the MHR through adoption of Condition #5, which requires the four cities to coordinate comprehensive planning for the expansion areas with Metro staff to ensure compliance with MHR requirements. Record at 6. Although the condition of approval is not written in mandatory terms regarding compliance with the MHR, the department finds that DLCD and LCDC are ultimately responsible for determining compliance with the provisions of the MHR. The department anticipates that review to occur through the comprehensive planning process for the four expansion areas, culminating with individual adoption of development regulations that will implement the MHR by each of the cities. Cities will submit these comprehensive plan and land use

regulation amendments through the post-acknowledgment plan amendment process required by ORS 197.610 to ORS 197.625 and elaborated upon in OAR chapter 660, division 18. At that time the department will review the submittals for compliance with the MHR, provide comments to the cities on their preliminary submittals and, if the final adopted products do not comply with the MHR, recommend that the commission appeal the adoption to the Land Use Board of Appeals (LUBA). Based on this analysis, the department finds that the applicable provisions of the MHR will be met.

Employment Land Analysis

As noted above, in OAR 660-024-0050(1), an inventory and analysis of employment land, including suitable and vacant and developed land, is required when evaluating or amending a UGB. Requirements for that analysis are provided in OAR 660-009-0015, as follows:

OAR 660-024-0050(1) - "When evaluating or amending a UGB, a local government must inventory land inside the UGB to determine whether there is adequate development capacity to accommodate 20-year needs determined in OAR 660-024-0040. ... For employment land, the inventory must include suitable vacant and developed land designated for industrial or other employment use, and must be conducted in accordance with OAR 660-009-0015."

OAR 660-009-0015 - Economic Opportunities Analysis -

"Cities and counties must review and, as necessary, amend their comprehensive plans to provide economic opportunities analyses containing the information described in sections (1) to (4) of this rule. This analysis will compare the demand for land for industrial and other employment uses to the existing supply of such land.

(1) Review of National, State, Regional, County and Local Trends. The economic opportunities analysis must identify the major categories of industrial or other employment uses that could reasonably be expected to locate or expand in the planning area based on information about national, state, regional, county or local trends. This review of trends is the principal basis for estimating future industrial and other employment uses as described in section (4) of this rule. A use or category of use could reasonably be expected to expand or locate in the planning area if the area possesses the appropriate locational factors for the use or category of use. Cities and counties are strongly encouraged to analyze trends and establish employment projections in a geographic area larger than the planning area and to determine the percentage of employment growth reasonably expected to be captured for the planning area based on the assessment of community economic development potential pursuant to section (4) of this rule.

(2) Identification of Required Site Types. The economic opportunities analysis must identify the number of sites by type reasonably expected to be needed to accommodate the expected employment growth based on the site characteristics typical of expected uses. Cities and counties are encouraged to examine existing firms in the planning area to identify the types of sites that may be needed for expansion. Industrial or other employment uses with compatible site characteristics may be grouped together into common site categories.

(3) Inventory of Industrial and Other Employment Lands. Comprehensive plans for all areas within urban growth boundaries must include an inventory of vacant and developed lands within the planning area designated for industrial or other employment use.

(a) For sites inventoried under this section, plans must provide the following information:

(A) The description, including site characteristics, of vacant or developed sites within each plan or zoning district;

(B) A description of any development constraints or infrastructure needs that affect the buildable area of sites in the inventory; and

(C) For cities and counties within a Metropolitan Planning Organization, the inventory must also include the approximate total acreage and percentage of sites within each plan or zoning district that comprise the short-term supply of land.

(b) When comparing current land supply to the projected demand, cities and counties may inventory contiguous lots or parcels together that are within a discrete plan or zoning district.

(c) Cities and counties that adopt objectives or policies providing for prime industrial land pursuant to OAR 660-009-0020(6) and 660-009-0025(8) must identify and inventory any vacant or developed prime industrial land according to section (3)(a) of this rule.

(4) Assessment of Community Economic Development Potential. The economic opportunities analysis must estimate the types and amounts of industrial and other employment uses likely to occur in the planning area. The estimate must be based on information generated in response to sections (1) to (3) of this rule and must consider the planning area's economic advantages and disadvantages. Relevant economic advantages and disadvantages to be considered may include but are not limited to:

(a) Location, size and buying power of markets;

- (b) Availability of transportation facilities for access and freight mobility;
 - (c) Public facilities and public services;
 - (d) Labor market factors;
 - (e) Access to suppliers and utilities;
 - (f) Necessary support services;
 - (g) Limits on development due to federal and state environmental protection laws;
and
 - (h) Educational and technical training programs.
- (5) Cities and counties are strongly encouraged to assess community economic development potential through a visioning or some other public input based process in conjunction with state agencies. Cities and counties are strongly encouraged to use the assessment of community economic development potential to form the community economic development objectives pursuant to OAR 660-009-0020(1)(a)."

While OAR 660-009-0015 applies only to "cities and counties," OAR 660-024-0050 requires Metro, prior to expanding its UGB, to address provisions within OAR 660-009-0015 through its inventory. Metro has provided the required review of national, state, regional, county, and local trends. Record at 232. Analysis of employment land site characteristics is provided in Appendix 6. Record at 304. This analysis includes the required identification of needed site types, inventory of industrial and other employment lands, and assessment of community economic development potential. Metro compared the employment forecast to the buildable land inventory in detail in the UGR, they concluded that there is no regional need to expand the UGB for employment needs. Record at 35-37. Metro asserts in Exhibit F to Ordinance No. 18-1427 Findings of Fact and Conclusions of Law, Record at 1066, that Goal 9 does not apply to Metro specifically. Based on its analysis of economic opportunities under OAR 660-009-0015, Metro determined that sufficient employment lands exist within the current UGB to meet employment land needs over the 20-year planning period.

Health Hazard Area

Metro has included within the UGB a 4.88 acre parcel in North Hillsboro that is currently zoned and occupied by rural commercial uses, as part of the UGB expansion decision. The property is within an urban reserve area. Metro and Hillsboro are proposing this addition to resolve a public health issue with a failing septic system. Record at 1072. Per condition of

approval G.1 from Metro Ordinance No. 18-1427, no additional employment development will be allowed on the property until urban reserve planning for the area north of Hillsboro is completed by the City of Hillsboro in the future. Record at 21.

Metro Boundary Location Alternatives Analysis

Specific direction is provided to Metro in ORS 197.298 and OAR 660-024-0060 when considering a Metro UGB amendment, as follows:

ORS 197.298(1) - "In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary of Metro except under the following priorities:

(a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.

660-024-0060 - Metro Boundary Location Alternatives Analysis -

"(1) When considering a Metro UGB amendment, Metro must determine which land to add by evaluating alternative urban growth boundary locations. For Metro, this determination must be consistent with the priority of land specified in ORS 197.298 and the boundary location factors of Goal 14, as follows:

(a) Beginning with the highest priority of land available, Metro must determine which land in that priority is suitable to accommodate the need deficiency determined under OAR 660-024-0050.

(b) If the amount of suitable land in the first priority category exceeds the amount necessary to satisfy the need deficiency, Metro must apply the location factors of Goal 14 to choose which land in that priority to include in the Metro UGB.

(c) If the amount of suitable land in the first priority category is not adequate to satisfy the identified need deficiency, Metro must determine which land in the next priority is suitable to accommodate the remaining need, and proceed using the same method specified in subsections (a) and (b) of this section until the land need is accommodated.

(d) Notwithstanding subsection (a) to (c) of this section, Metro may consider land of lower priority as specified in ORS 197.298(3).

(e) For purposes of this section, the determination of suitable land to accommodate land needs must include consideration of any suitability characteristics specified under section (5) of this rule, as well as other provisions of law applicable in determining whether land is buildable or suitable.

(3) 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 Metro UGB location, Metro must show that all the factors were considered and balanced.

(4) In determining alternative land for evaluation under ORS 197.298, "land adjacent to the UGB" is not limited to those lots or parcels that abut the UGB, but also includes land in the vicinity of the UGB that has a reasonable potential to satisfy the identified need deficiency.

(5) If Metro has specified characteristics such as parcel size, topography, or proximity that are necessary for land to be suitable for an identified need, Metro may limit its consideration to land that has the specified characteristics when it conducts the boundary location alternatives analysis and applies ORS 197.298.

(6) The adopted findings for a Metro UGB adoption or amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis. If the analysis involves more than one parcel or area within a particular priority category in ORS 197.298 for which circumstances are the same, these parcels or areas may be considered and evaluated as a single group.

(7) For purposes of Goal 14 Boundary Location Factor 2, "public facilities and services" means water, sanitary sewer, storm water management, and transportation facilities.

(8) The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative Metro UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation (ODOT) with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:

(a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the Metro UGB;

(b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the Metro UGB; and

(c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major

improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.”

Metro’s location alternatives analysis follows the prioritization required in OAR 660-024-0060. Specifically, all areas considered for inclusion within the Metro UGB are urban reserve lands, which are identified as the top priority for inclusion within an UGB. Record at 352. The Preliminary UGB Alternatives Analysis includes consideration of the Goal 14 locational factors, as well as detailed summary reports for each of the 32 identified urban reserve areas. Record at 334. It is important to reiterate the provisions of subsection (3) above, which states that “[t]he boundary location factors of Goal 14 are not independent criteria.” In fact, the Metro Council is charged with consideration of each factor and balancing of the factors in reaching a decision. This issue is discussed in more detail in response to objections later in this report. As part of the detailed summary reports for the urban reserve areas, Metro has provided a complete analysis of public facilities and services needed to serve each area, along with consideration of the boundary location factors of Goal 14 for each area. The department has reviewed the information provided and finds that the analysis complies with the requirements of ORS 197.298 and OAR 660-024-0060.

Metro Review Criteria: Review of compliance with Metro review criteria is a necessary component of this review, per ORS 197.633(3)(c).⁹

Metro Regional Framework Plan, Title 11: [Planning for New Urban Areas](#)

Metro’s Title 11 requires concept plans for new urban areas with housing be adopted prior to inclusion into the UGB. The concept plans are required to include the following:

3.07.1110(b) – “A local government, in creating a concept plan to comply with this section, shall consider actions necessary to achieve the following outcomes:

(1) If the plan proposes a mix of residential and employment uses:

⁹ 197.633(3) provides, in part:

(3) The rules adopted by the commission under this section may include, but are not limited to, provisions concerning standing, requirements to raise issues before local government as a precondition to commission review and other provisions concerning the scope and standard for commission review to simplify or speed the review. The commission shall confine its review of evidence to the local record. The commission’s standard of review: ...

(c) For issues concerning compliance with applicable laws, is whether the local government’s decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the regional framework plan, the functional plan and land use regulations. The commission shall defer to a local government’s interpretation of the comprehensive plan or land use regulations in the manner provided in ORS 197.829. For purposes of this paragraph, “complies” has the meaning given the term “compliance” in the phrase “compliance with the goals” in ORS 197.747.

(A) A mix and intensity of uses that will make efficient use of the public systems and facilities described in subsection (c);

(B) A development pattern that supports pedestrian and bicycle travel to retail, professional and civic services;

(C) A range of housing of different types, tenure and prices addressing the housing needs in the prospective UGB expansion area in the context of the housing needs of the governing city, the county, and the region if data on regional housing needs are available, in order to help create economically and socially vital and complete neighborhoods and cities and avoiding the concentration of poverty and the isolation of families and people of modest means;

(D) Sufficient employment opportunities to support a healthy economy, including, for proposed employment areas, lands with characteristics, such as proximity to transportation facilities, needed by employers;

(E) Well-connected systems of streets, bikeways, parks, recreational trails and public transit that link to needed housing so as to reduce the combined cost of housing and transportation;

(F) A well-connected system of parks, natural areas and other public open spaces;

(G) Protection of natural ecological systems and important natural landscape features; and

(H) Avoidance or minimization of adverse effects on farm and forest practices and important natural landscape features on nearby rural lands.”

Each of the four cities with proposed areas for expansion in the Metro UGB have adopted concept plans that comply with Title 11. The cities concept plans went through a rigorous review by Metro staff, various policy and technical advisory committees, and the Metro Council. Metro Council found that all four proposed concept plans complied with Title 11. Based on the feedback the Council received, additional conditions were added to each concept plan, Record at 18-21. The concept plans include findings regarding compliance with Metro Title 11 and can be found in the record: Beaverton at Record 2830, Hillsboro at Record 2844, King City at Record 2865, and Wilsonville at Record 2876. Since Title 11 is a Metro requirement, the department has determined that Metro’s findings, with the additional conditions added by the Metro Council in its final decision, demonstrate compliance with Title 11.

Metro Regional Framework Plan, Title 14: Urban Growth Boundaries

Metro Title 14 outlines procedures for legislative amendment to the UGB (3.07.1420) as well as the criteria (3.07.1425). The purpose of Title 14 is to create a clear transition from rural to urban development, an adequate supply of urban land to accommodate long-term population and employment, and a compact urban form. Title 14 describes criteria and procedures for amendments to the UGB to achieve these objectives.

The Metro Council reviewed the 25¹⁰ urban reserves areas as a 2-step process. This entailed a review of the Goal 14 locational factors, see Record at 334-865, and then a review of 25 urban reserve areas using locational factors in Title 14. The Title 14 factors that were used are listed below:

- Clear transition between urban and rural lands using natural and built features to mark the transition;
- Protection of farmland that is important for the continuation of commercial agriculture in the region;
- Avoidance of conflict with regionally significant fish and wildlife habitat;
- Contribution to the purposes of Centers and Corridors; and
- Equitable and efficient distribution of housing and employment opportunities throughout the region.

Metro staff considered the 25 urban reserve areas for Title 14 and the Metro Council's six desired outcomes. The methodology and the analysis of each of the 25 urban reserve areas are meticulously detailed in Exhibit E of the UGR attachment 7a UGB Alternative Analysis Metro Code Factors. Record at 875-990. Under the "equitable and efficient distribution of housing and employment opportunities throughout the region" factor, Metro found that the four selected areas for the Metro UGB have the highest ranking for distribution of housing. The four areas selected were found to be the most efficient because they were the most likely to be developed with housing in the 20 year time frame compared to the other reserve areas that were studied that lacked governance, development and urban services.

B. Objections Received

The department's analysis includes, but is not limited to, consideration of the merits of valid objections. The commission must sustain or deny each objection. The analysis in this subsection addresses those legal and policy issues identified by objectors.

The department received objections from the following parties. The department's responses to objections uses the numbering displayed for identification only; the numbers have no other significance.

¹⁰ Metro evaluated all 32 urban reserves areas in the Goal 14 locational factors analysis. Based on the results of the Goal 14 analysis, Metro used a smaller set of urban reserve areas, 25, in the 2nd step for the Title 14 alternative locational factors analysis.

<u>Ref. No.</u>	<u>Objector</u>
1	Marion County Board of County Commissioners
2	1000 Friends of Oregon
3	Housing Land Advocates
4	Johnson
5	Swanson
6	Warren
7	Donoghue

The full content of the objections are available on the department website at: [Metro 2018 UGB Objections.](#)

C. Validity of Objections

OAR 660-025-0140(2) quoted in footnote 6 above, governs determination of the validity of objections.

All of the letters of objection received were filed within the required 21-day period. All of the letters of objection were timely and demonstrated that the objectors participated during the Metro's hearings process. Therefore, OAR 660-025-0140(2)(a) and (d) have been met. The department found that portions of Objection 6 (Fran Warren) did not satisfy OAR 660-025-0140(2)(b) because it did not clearly identify an alleged deficiency in the submittal either by providing adequate detail regarding the portion of submittal alleged to be deficient or identifying what relevant law, goal, or rule was violated.

D. Objections and Department Responses

1. Objection – Marion County Board of Commissioners

Marion County Board of Commissioners submitted an objection letter with two primary issues of concern: Goal 2 and Goal 11. The county's objection regarding Goal 2: Land Use Planning is that there is not enough information in the record for a decision, particularly with regard to a United States Army Corps of Engineers' proposal to reallocate water storage and free-flow river water resources in the Willamette River system. The Goal 11: Public Facilities issue relates specifically to water and the water rights for the Willamette River. The county has concerns that, since all of the Metro expansion areas would be supplied water from the Willamette River watershed, Marion County may lose some of its existing water rights, which will have a negative effect on agriculture and food processing aspects of its local economy. The county's letter also references Goal 3, 10, 12 and 14; however, only Goal 2 and Goal 11 have sufficient explanations and suggested remedies in

the objection. The letter concludes with a suggestion that Marion County is amenable to alternative resolution of this dispute.¹¹

Department Response:

The department recommends rejection of this objection. The county did not submit evidence into the record, beyond its letter to the Council in December 2018, regarding water rights for the Willamette River. Without such evidence, it is unclear whether water rights for Marion County, which is upstream from the Portland Metro Area, would be compromised or diminished by increased use of water in the Willamette River watershed for Portland Metro area jurisdictions.

The department does recommend alternative dispute resolution between Marion County and Metro on this issue, and is willing to work with both parties to facilitate such a dispute resolution process. However, that process should occur independent of this urban growth boundary action.

2. Objection – 1000 Friends of Oregon

1000 Friends of Oregon (“1000 Friends”) asserts that Metro’s decision fails to demonstrate compliance with the Metropolitan Housing Rule (OAR chapter 660, division 7), specifically OAR 660-007-0030 and 660-007-0035. These provisions are commonly referred to as the “50% Rule” and the “6-8-10 Rule.” 1000 Friends states that compliance with the Metropolitan Housing Rule must be demonstrated concurrent with the UGB expansion decision and argues that Metro has failed to satisfactorily demonstrate that each of the four cities have met the applicable rules citywide, or that the rules will be met within the subject expansion areas. 1000 Friends asserts that the submitted concept plans are not sufficiently detailed to demonstrate compliance with the Metropolitan Housing Rule

¹¹ ORS 197.010(3) provides:

(3) The equitable balance between state and local government interests can best be achieved by resolution of conflicts using alternative dispute resolution techniques such as mediation, collaborative planning and arbitration. Such dispute resolution techniques are particularly suitable for conflicts arising over periodic review, comprehensive plan and land use regulations, amendments, enforcement issues and local interpretation of state land use policy.

OAR 660-025-0085 provides, in part:

(2) The commission shall take final action on an appeal or referral of a completed work task within 90 days of the date the appeal was filed or the director issued notice of the referral unless:

(a) At the request of a local government and a person who files a valid objection or appeals the director’s decision, the department may provide mediation services to resolve disputes related to the appeal. Where mediation is underway, the commission shall delay its hearing until the mediation process is concluded or the director, after consultation with the mediator, determines that mediation is of no further use in resolution of the work program or work task disagreements;

requirements and the conditions of approval adopted by Metro are not sufficient to ensure compliance, “either in the expansion areas or citywide.”

1000 Friends also asserts that Metro’s decision fails to comply with multiple provisions of the RFP related to housing, including failure to comply with RFP Title 7, Housing Choice; failure to comply with RFP Title 11, Planning for New Urban Areas; and failure to comply with RFP Title 14, Urban Growth Boundary. Because the RFP implements statute, goals, and administrative rules, review of compliance with the requirements of the RFP is appropriately within the purview of the LCDC.

The objector’s remedies are: 1) require Metro to either demonstrate that its decision meets the Metropolitan Housing Rule or adopt a different UGB decision demonstrating compliance; and 2) direct Metro to require all cities and counties in the region to address applicable requirements for accessory dwelling units (ADUs) within one month and then reassess the contribution of ADUs to the housing supply during the planning period; and to adopt findings with substantive, enforceable conditions to meet applicable Metro Code provisions, including Titles 7, 11, and 14.

The department addresses the objections individually below.

Objection 2a. 1000 Friends objects that Metro’s decision fails to demonstrate compliance with the Metropolitan Housing Rule, specifically OAR 660-007-0030¹² and 660-007-0035¹³.

¹² OAR 660-007-0030 provides, in part:

(1) Jurisdictions other than small developed cities must either designate sufficient buildable land to provide the opportunity for at least 50 percent of new residential units to be attached single family housing or multiple family housing or justify an alternative percentage based on changing circumstances....

¹³ OAR 660-007-0035 provides in part:

The following standards shall apply to those jurisdictions which provide the opportunity for at least 50 percent of new residential units to be attached single family housing or multiple family housing:

(1) The Cities of Cornelius, Durham, Fairview, Happy Valley and Sherwood must provide for an overall density of six or more dwelling units per net buildable acre. These are relatively small cities with some growth potential (i.e. with a regionally coordinated population projection of less than 8,000 persons for the active planning area).

(2) Clackamas and Washington Counties, and the cities of Forest Grove, Gladstone, Milwaukie, Oregon City, Troutdale, Tualatin, West Linn and Wilsonville must provide for an overall density of eight or more dwelling units per net buildable acre.

(3) Multnomah County and the cities of Portland, Gresham, Beaverton, Hillsboro, Lake Oswego and Tigard must provide for an overall density of ten or more dwelling units per net buildable acre. These are larger urbanized jurisdictions with regionally coordinated population projections of 50,000 or more for their active

1000 Friends states that compliance with the Metropolitan Housing Rule must be demonstrated concurrently with Metro's decision to expand the UGB and argues that Metro has failed to satisfactorily demonstrate that each of the four cities have met the applicable rules citywide, or that the rules will be met within the subject expansion areas. 1000 Friends argues that the submitted concept plans are not sufficiently detailed to demonstrate compliance with the Metropolitan Housing Rule requirements and the conditions of approval adopted by Metro are not sufficient to ensure compliance, "either in the expansion areas or citywide."

Department Response: The department disagrees with 1000 Friends that compliance with the Metropolitan Housing Rule must be demonstrated concurrently with Metro's decision to expand the UGB. In fact, the "50-50 Rule" (OAR 660-007-0030) and the "6-8-10 Rule" (OAR 660-007-0035) apply specifically to jurisdictions within Metro. OAR 660-007-0050 and OAR 660-007-0060¹⁴ differentiate between the obligations of Metro and those of local governments within Metro regarding implementation of the requirements of the MHR. Specifically, OAR 660-007-0050 requires Metro to engage in regional coordination to "ensure that needed housing is provided for on a regional basis through coordinated comprehensive plans." Conversely, OAR 660-007-0060 requires local governments to demonstrate compliance with the new construction mix and minimum density requirements of the MHR at each periodic review. Consequently, the question for the

planning areas, which encompass or are near major employment centers, and which are situated along regional transportation corridors.

(4) Regional housing density and mix standards as stated in OAR 660-007-0030 and sections (1), (2), and (3) of this rule do not apply to small developed cities which had less than 50 acres of buildable land in 1977 as determined by criteria used in Metro's UGB Findings. These cities include King City, Rivergrove, Maywood Park, Johnson City and Wood Village.

¹⁴ [660-007-0050](#)

Regional Coordination

(1) At each periodic review of the Metro UGB, Metro shall review the findings for the UGB. They shall determine whether the buildable land within the UGB satisfies housing needs by type and density for the region's long-range population and housing projections.

(2) Metro shall ensure that needed housing is provided for on a regional basis through coordinated comprehensive plans.

[660-007-0060](#)

Applicability

(1) The new construction mix and minimum residential density standards of OAR 660-007-0030 through 660-007-0037 shall be applicable at each periodic review. During each periodic review local government shall prepare findings regarding the cumulative effects of all plan and zone changes affecting residential use. The jurisdiction's buildable lands inventory (updated pursuant to 660-007-0045) shall be a supporting document to the local jurisdiction's periodic review order.

(2) For plan and land use regulation amendments which are subject to OAR 660, Division 18, the local jurisdiction shall either:

(a) Demonstrate through findings that the mix and density standards in this Division are met by the amendment; or

(b) Make a commitment through the findings associated with the amendment that the jurisdiction will comply with provisions of this Division for mix or density through subsequent plan amendments.

commission is whether Metro has sufficiently addressed the requirements of the MHR as part of the regional coordination required by OAR 660-007-0050.

Metro's UGB expansion decision incorporates the requirement for compliance with the MHR in Condition #5, which, in part, requires the four cities to coordinate comprehensive planning for the expansion areas with Metro staff to ensure compliance with the MHR. Record at 6. Additionally, Metro's UGB decision Condition A.2 requires allowance for single family attached housing, including townhomes, duplexes, triplexes, and fourplexes, on all zones on which single family housing will be allowed in the expansion areas. This requirement alone will ensure compliance with the new construction mix opportunity requirement of the MHR. Based on these requirements, and information within the record, the department finds that Metro has met the obligation for regional coordination to implement the requirements of the MHR.

1000 Friends argues that the submitted concept plans are not sufficiently detailed to demonstrate compliance with the Metropolitan Housing Rule requirements, and the conditions of approval adopted by Metro are not sufficient to ensure compliance, "either in the expansion areas or citywide." The department concurs that the concept plans are conceptual and not sufficient to ensure compliance with the applicable Metropolitan Housing Rule requirements. However, Metro has sufficient authority to impose and enforce the conditions of approval on the UGB expansion decision, per Sections 3.07.1455 and 3.07.850 of Title 14 of Metro's RFP. Two available avenues for enforcement are: 1) a LUBA appeal challenging a city's adoption of plan and code provisions that are inconsistent with Metro conditions, and 2) utilization of Title 8 of the Metro Functional Plan to conduct a hearing of the Metro Council to determine if a city is in violation of a condition of approval, and to establish an appropriate remedy if found in violation. Appropriate remedies include adopting an order directing the city to change its decision, withholding discretionary funds, or seeking an enforcement order from DLCD.

The department notes that a number of conditions of approval on land to be added to the UGB address compliance with the Metropolitan Housing Rule, including Metro's UGB decision Conditions A.2, A.5, C.1, D.1, E.3, and F.1. Record at 6. Condition A.5 in particular specifically addresses compliance with the Metropolitan Housing Rule:

"A.5. As the four cities conduct comprehensive planning for the expansion areas, they shall regularly consult with Metro Planning and Development staff regarding compliance with these conditions, compliance with the Urban Growth Management Functional Plan, compliance with the state Metropolitan Planning Rule, and use of best practices in planning and development, and community engagement. To those ends, cities shall include Metro staff in advisory groups as appropriate."

Condition A.5 in particular provides assurance that Metro staff will continue to be engaged with the four cities as they conduct comprehensive planning for the expansion areas, to ensure compliance with the MHR.

In addition, as noted earlier, the department and the commission will have the ability to monitor and enforce compliance with the Metropolitan Housing Rule by the four cities that are responsible for individual components of the UGB expansion. The department will review city submittals of amendments of comprehensive plans and land use regulations through the post-acknowledgment plan amendment process, will provide comments on those submittals and, if the adopted plans and regulations do not comply with the Metropolitan Housing Rule, will recommend that the commission appeal these final decisions to LUBA.

In addition to the requirement for coordinated planning, the department notes that Condition A.2 requires all four cities to allow “single family attached housing, including townhomes, duplex, triplexes, and fourplexes, in all zones that permit single family housing in the expansion areas.” Record at 6. This condition is sufficient to ensure compliance with the residential housing mix requirement of OAR 660-007-0030. The department notes that the rule requires local governments to “designate sufficient buildable land to provide the opportunity for at least 50 percent of new residential units to be attached single family housing or multiple family housing...” Through the requirement to accommodate attached single family housing on all lots “on which single family housing is allowed,” the condition will ensure that the “50-50 Rule” is met by requiring all single family lots to allow attached dwellings.

Lastly, the department notes that Condition E.3 establishes rather vague housing production numbers for the Beef Bend South expansion area. Although Condition E.3 calls for at least 3,300 homes within the Beef Bend South area, the condition goes on to say that the actual number of units to be provided will be determined, “pending the results of the market analysis of a new town center...” (required per Condition E.2). Record at 8. Additionally, Condition E.3 notes that, “If the market analysis indicates that this housing target is infeasible, King City shall work with Metro to determine the appropriate housing target for the expansion area.” However, given that the number of dwelling units to be produced in this expansion area, in addition to housing required in the other expansion areas by Conditions C.1, D.1, and F.1 is 165 dwelling units ($6,100 - 5,935 = 165$), the department is confident that the 528-acre site will be capable of accommodating at least 165 dwelling units. In this context, the following guidance from OAR 660-024-0040(1) is particularly relevant:

“The 20-year need determinations are estimates which, although based on the best available information and methodologies, should not be held to an unreasonably high level of precision.”

It should also be noted that the department will expect residential development within the Beef Bend South expansion area to comply with a minimum density of eight units per acre, per the requirements of OAR 660-007-0035. Although not currently subject to the “6-8-10 Rule” because King City is classified, based upon the fact that it was small and fully developed in the 1981 when the Metropolitan Housing Rule was originally adopted, as a small developed city with less than 50 acres of buildable land (OAR 660-007-0035(1)), the

addition of the 528-acre expansion area, with as many as 3,300 additional dwelling units, would increase King City's population from its 2016 population of 3,817 to more than 8,000. Given this anticipated population, King City would fall within the category of Metro cities required to meet the eight unit per acre minimum density requirement, per OAR 660-007-0035(2). Compliance with this requirement, along with necessary housing production from Beef Bend South, will be evaluated with department review of King City's post-acknowledgement plan amendment to adopt zoning and other land use regulations for development within the expansion area.

Based on the analysis above, the department recommends rejection of this sub-objection from 1000 Friends.

Objection 2b: 1000 Friends asserts that Metro's decision fails to comply with multiple provisions of the Metro Code related to housing, specifically affordable housing. 1000 Friends also asserts that Metro must demonstrate compliance with Metro Code (MC) Title 7, Housing Choices, Title 11, Planning for New Urban Areas and Title 14, Urban Growth Boundaries, in approving this UGB expansion. 1000 Friends further argues that, by not complying with the above MC sections, Metro is not in compliance with Statewide Planning Goals 10: Housing and 14: Urbanization.

Compliance with Titles 7, 11, and 14 are addressed individually below:

Title 7: Housing Choice:

3.07.710 Intent

The Regional Framework Plan calls for establishment of voluntary affordable housing production goals to be adopted by local governments and assistance from local governments on reports on progress towards increasing the supply of affordable housing. It is the intent of Title 7 to implement these policies of the Regional Framework Plan.

3.07.720 Voluntary Affordable Housing Production Goals

Each city and county within the Metro region should adopt the Affordable Housing Production Goal indicated in Table 3.07-7, as amended over time, as a guide to measure progress toward increasing housing choices and meeting the affordable housing needs of households with incomes between 0 percent and 50 percent of the regional median family income."

Department Response: As stated above, Title 7: Housing Choice is a voluntary program which sets affordable housing targets for local governments within Metro. Compliance with this voluntary program is not a standard or approval criteria. Similarly, compliance with the inventory and progress reports, as discussed in Metro Code Section 3.07.740 is not a standard or approval criteria for a UGB expansion. No other standards within Title 7 are

applicable to this UGB expansion decision. The Department finds no basis for remand in this sub-objection.

Title 11: Planning for New Urban Areas:

“3.07.1105 Purpose and Intent

The Regional Framework Plan calls for long-range planning to ensure that areas brought into the UGB are urbanized efficiently and become or contribute to mixed-use, walkable, transit-friendly communities. It is the purpose of Title 11 to guide such long range planning for urban reserves and areas added to the UGB. It is also the purpose of Title 11 to provide interim protection for areas added to the UGB until city or county amendments to land use regulations to allow urbanization become applicable to the areas.

3.07.1110 (c) A concept plan shall:

(4) If the area subject to the concept plan calls for designation of land for residential use, the concept plan will describe the goals for meeting the housing needs for the concept planning area in the context of the housing needs of the governing city, the county, and the region if data on regional housing needs are available. As part of this statement of objectives, the concept plan shall identify the general number, price and type of market and nonmarket-provided housing. The concept plan shall also identify preliminary strategies, including fee waivers, subsidies, zoning incentives and private and nonprofit partnerships, that will support the likelihood of achieving the outcomes described in subsection (b) of this section;”

Department Response: Metro Code Sections 3.07.1105 and 3.07.1110 speak to the purposes and the process for the development of concept plans for designated urban reserve areas. Concept plans for the four urban reserve areas under consideration were prepared and Metro evaluated the concept plans in light of the considerations listed in Section 3.07.1110. Concept plan information is included in the record. Metro Code 3.07.1110 housing needs is met by each cities proposed concept area, the need is based on each cities adopted HNA;

Beaverton (Record at 2830) describes how the city’s concept plan provides the needs and housing capacity for the city. The needed housing was determined through the city’s adopted HNA; while much of the needed housing is for single family residential, the city’s concept plan will provide for a wider range of housing in the concept plan area. The city has a comprehensive affordable housing strategy, Record at 2835, to address the city’s need throughout the city.

Hillsboro (Record at 2842), addressed compliance with Title 11 in attachment D and E of their submittal to Metro. Their concept plan address funding, transportation and needed housing capacity based on the city’s adopted HNA. The city describes their affordable housing program at Record 2848. The city council has appointed a Housing Affordability

Team to help inform city staff on affordability programs and incentives throughout the entire city.

King City (Record at 2859) is built out, without an expansion, there are no growth options during the 20-year planning period for the city. The city’s proposed concept plan allows for housing expansion consistent with their adopted HNA and Metro’s Title 11.

Wilsonville (Record at 2880) describes the city’s best practices for affordable housing. The City received an Equitable Housing Strategic Plan grant in 2016 from Metro to assess affordability of the housing market and city demographics to help determine the gaps between housing and needed supply. The outcomes from this grant will be folded into the adopted master plan for this area.

Findings are provided regarding evaluation of the concept plans consistent with the provisions of Title 11. Record at 1060. In summary, the Metro Council finds the concept plan provisions in Title 11 have been met. Per ORS 197.829,¹⁵ Metro’s interpretation of its own code is given deference. The department finds no clear error or inconsistency with the determination of compliance with Title 11. The record demonstrates that Metro is clear in their meaning of factors to be weighted, balanced and considered vis a vis specific approval criteria. The record also demonstrates that Metro, as well as the four cities, have balanced and considered the factors as demonstrated above in the record. The department recommends rejection of this sub-objection.

Title 14: Urban Growth Boundary:

3.07.1425(4)(d) – “If the Council determines that there is a need to amend the UGB for housing, in addition to consideration of the factors listed in subsection (c) of this section, the Council shall also consider the following factors in determining which urban reserve areas better meet the housing need:

(4) Whether the city responsible for preparing the concept plan has implemented best practices for preserving and increasing the supply and diversity of affordable housing in its existing urban areas;”

Department Response: The objection from 1000 Friends seems to assume that each of the factors to be weighed in determining which of the urban reserve areas will best meet the

¹⁵ ORS 197.829 states, in part:

(1) The Land Use Board of Appeals shall affirm a local government’s interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government’s interpretation:

- (a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
- (b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
- (c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
- (d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.

identified needs is an independent decision criterion. These factors are identified in MC 3.07.1425(c) and (d) as considerations, not absolute standards that must each be met independently. In this context, it is important to note that concept planning is required for urban reserve areas that are to be considered for addition to the UGB, per MC 3.07.1110(a). Of the 32 Identified Urban Reserve areas, concept plans were submitted for four areas. The residential land needs identified by Metro require inclusion of all four of these areas within the UGB.

In addition, sufficient findings are available within the record to demonstrate consideration of the identified factors. The Metro Council's decision on this matter is summarized within the adopted Findings of Fact. Record at 1060. Notably, within this section is the statement, "The Metro Council finds that because the purpose of this new code section (*MC 3.07.1425*) is to choose between urban reserve areas being proposed for addition to the UGB by cities, only the four areas being proposed for expansions may be considered." It is also important to note the work of the City Readiness Advisory Group, which Metro convened to evaluate the proposals received from the four cities. Record at 1075 and 1151. The following related information is available within the record to support Metro Council decision-making regarding MC 3.07.1110 (c) and (d):

- CRAG comments on city proposals provided by Metro staff memorandum dated July 11, 2018. Record at 1545.
- Beaverton's Cooper Mountain concept plan materials, including responses to criteria (d)(2), (d)(4), and (d)(5). Record at 2824. Beaverton's concept plan is specifically addressed in Record at 2030 where the housing capacity, transportation, natural resources, infrastructure and funding for the concept plan is addressed.
- Hillsboro's Witch Hazel Village South concept plan materials, including responses to criteria (d)(2), (d)(4), and (d)(5). Record at 2842. Hillsboro's concept plan is addressed in Record at 2844 where housing capacity and transportation are described. Record at 2850. Metro's six desired outcomes are described; while not an approval criteria, they provide more information on how this will be a complete community that addresses a range of issues from climate smart communities, equitable neighborhoods, and greater transit options.
- King City's URA 6D concept plan materials, including responses to criteria (d)(2), (d)(4), and (d)(5). Record at 2859. King City's concept plan is addressed at Record 2864; the City recently adopted its HNA in March 2018. The City has long been providing affordable housing to the region which is demonstrated in their acknowledged HNA.
- Wilsonville's Frog Pond concept plan materials, including responses to criteria (d)(2), (d)(4), and (d)(5). Record at 2873. Wilsonville's concept plan is development ready, there is a variety of housing types, and an infrastructure funding plan.

Metro’s Title 14 has been sufficiently addressed according to Metro. While this is not a criteria for DLCD, it does help inform how both Goal 10 and 14 are met.

The department has reviewed the subject materials, as well as applicable decision criteria, and finds no basis for remand in this sub-objection. The Metro Council’s decision in relation to MC Titles 7, 11, and 14 was made based on sufficient information in the record, and in relation to the appropriate decision criteria. Therefore, the department recommends rejection of this sub-objection.

3. Objection – Housing Land Advocates

Housing Land Advocates (HLA) objects to the Metro UGB expansion decision for a number of reasons. First, HLA’s objection asserts that Metro had obligations to affirmatively further fair housing and otherwise to meet the obligations of the federal Fair Housing Act, as Amended (FHAA). In its findings, HLA alleges that Metro denied any legal responsibility for its actions in this area. HLA Objection at 2. HLA notes that the FHAA has been interpreted, both by the federal Department of Housing and Urban Development and federal courts, as prohibiting not only intentional discriminatory actions based upon persons in a protected class, but also facially neutral actions that have a “disparate impact” on persons in a protected class. HLA offers that local government land use decisions are an example of such actions that can have a disparate impact on a protected class by excluding needed housing types and supply. HLA Objection at 5.

HLA argues that, when reviewing Metro’s submittal, the State of Oregon also has obligations to ensure all of its activities that affect housing affirmatively further fair housing because such obligations apply to recipients of federal housing and community development funds. HLA notes that the State of Oregon receives such funds and has acknowledged that it is obligated to comply with the FHAA in its State of Oregon Analysis of Impediments to Fair Housing 2016-2020, prepared jointly by three state agencies. HLA also cites ORS 659A.001(9)(b) and ORS 659A.421-.425 as directly applicable to this review.¹⁶

¹⁶ The HLA objection mistakenly references ORS 659A.001(9)(b) and .421-.425 as ORS Chapter 459A.

ORS 659A.001(9)(b) states, in part:

9) “Person” includes:

...

(b) A public body as defined in ORS 30.260.

....

659A.421 states, in part

(2) A person may not, because of the race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income of any person:

(a) Refuse to sell, lease or rent any real property to a purchaser. This paragraph does not prevent a person from refusing to lease or rent real property to a prospective renter or prospective lessee:

(A) Based upon the past conduct of a prospective renter or prospective lessee provided the refusal to lease or rent based on past conduct is consistent with local, state and federal law, including but not limited to fair housing laws; or

(B) Based upon the prospective renter's or prospective lessee's inability to pay rent, taking into account the value of the prospective renter's or prospective lessee's local, state and federal housing assistance, provided the refusal to lease or rent based on inability to pay rent is consistent with local, state and federal law, including but not limited to fair housing laws.

(b) Expel a purchaser from any real property.

(c) Make any distinction, discrimination or restriction against a purchaser in the price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or in the furnishing of any facilities or services in connection therewith.

(d) Attempt to discourage the sale, rental or lease of any real property to a purchaser.

(e) Publish, circulate, issue or display, or cause to be published, circulated, issued or displayed, any communication, notice, advertisement or sign of any kind relating to the sale, rental or leasing of real property that indicates any preference, limitation, specification or unlawful discrimination based on race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income.

(f) Assist, induce, incite or coerce another person to commit an act or engage in a practice that violates this section.

(g) Coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of the person having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this section.

(h) Deny access to, or membership or participation in, any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings, or discriminate against any person in the terms or conditions of the access, membership or participation.

(i) Represent to a person that a dwelling is not available for inspection, sale or rental when the dwelling in fact is available for inspection, sale or rental.

(j) Otherwise make unavailable or deny a dwelling to a person.

(3)(a) A person whose business includes engaging in residential real estate related transactions may not discriminate against any person in making a transaction available, or in the terms or conditions of the transaction, because of race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income.

...

(4) A real estate licensee may not accept or retain a listing of real property for sale, lease or rental with an understanding that a purchaser may be discriminated against with respect to the sale, rental or lease thereof because of race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income.

(5) A person may not, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, sexual orientation, national origin, marital status, familial status or source of income.

....

659A.425 states, in part:

(1) As used in this section:

(a) "Facially neutral housing policy" means a guideline, practice, rule or screening or admission criterion, regarding a real property transaction that applies equally to all persons.

(b) "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, familial status, source of income or disability.

(c) "Real property transaction" means an act described in ORS 659A.145 or 659A.421 involving the renting or leasing of residential real property subject to ORS chapter 90.

(2) A court or the Commissioner of the Bureau of Labor and Industries may find a person to have violated ORS 659A.145 or 659A.421 if:

HLA's second objection to the submittal is that Metro has failed to demonstrate that the UGB expansion complies with Goal 10, the needed housing statutes, and planning obligations under Metro Code Chapter 3. HLA cites LCDC's Bend UGB Remand Order, and argues that Metro has similarly failed to tie together how the types and amounts that it is planning for will be affordable for future residents of the area. Concerns addressed by HLA as part of this objection include lack of compliance with Metro Code 3.07.120(E), the new construction mix and minimum residential density standards of OAR 660-007-0030 through 660-007-0037, and the applicability provisions of OAR 660-007-0060.

HLA's third objection is that Metro has failed to justify the need to expand the Metro UGB. Issues cited include:

1. Failure to account for accessory dwelling unit (ADU) capacity.
2. Misinterpretation of Metro Charter Section 5(b).
3. Failure to adopt a comparative analysis of social consequences for housing affordability, suitability, and location required by the environmental, energy, social and economic (ESEE) factors of Goal 14.
4. Failure to implement Metro Code Section 3.07.740 regarding Inventory and Progress Reports on Housing Supply. That information is needed to determine adequacy of local government efforts to promote affordable housing.
5. Reliance on conditions of approval, which are "largely aspirational and unenforceable."
6. Approval of the "Beef Bend" expansion area near King City despite the fact that King City has no Transportation System Plan (TSP), which is necessary to evaluate the locational and public facilities factors for UGB expansion.

HLA Objection at 12.

The department addresses the objections individually below.

Objection 3a. HLA objects that Metro has failed to comply with obligations of the federal Fair Housing Act, as Amended (FFHA), along with related state statutes, specifically ORS 659A.001(9)(b), ORS 659A.421, and 659A.425.

Background:

(a) The person applies a facially neutral housing policy to a member of a protected class in a real property transaction involving a residential tenancy subject to ORS chapter 90; and

(b) Application of the policy adversely impacts members of the protected class to a greater extent than the policy impacts persons generally.

(3) In determining under subsection (2) of this section whether a violation has occurred and, if a violation has occurred, what relief should be granted, a court or the commissioner shall consider:

(a) The significance of the adverse impact on the protected class;

(b) The importance and necessity of any business purpose for the facially neutral housing policy; and

(c) The availability of less discriminatory alternatives for achieving the business purpose for the facially neutral housing policy.

The Fair Housing Act, as Amended, 42 U.S.C. §§ 3601-3619 became effective in 1989, amending provisions in the Civil Rights Act of 1968. The federal Fair Housing Act, 42 U.S.C. 3604 provides in material part:

"[I]t shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, sex, familial status, or national origin."

HLA argued to Metro as part of the local proceedings, that Metro was bound by its own code, state law, and the FHAA, to review the application of the FHAA to this UGB expansion decision. HLA asserted that federal case law applies the basic provisions quoted above to the impact of local planning and zoning decisions affecting the location of housing for classes of persons protected from discrimination by the FHAA, and that Metro's UGB action was such a local planning and zoning decision. HLA Objection at 2.

Metro disagreed, finding that: "HLA does not identify any basis on which Metro would have the type of authority that could result in a violation of the FHAA by Metro; nor does HLA identify any basis for its assertion that Metro has the authority to enforce FHAA requirements against local governments in the region." Record at 1062. Metro made no findings in its final decision related to compliance with the FHAA.

ORS 659A.421 through 659A.425, as cited by HLA, prohibit discrimination in selling, renting or leasing property, similar to the FHAA. ORS 659A.425 provides that a "facially neutral housing policy" may violate these provisions if it is found to have a greater adverse impact on members of a protected class than on persons generally. It should also be noted that under this section of Oregon law, protected classes are broader than under the FHAA and include, "persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, familial status, source of income or disability."

Department Response:

As stated earlier, ORS 197.633(3)(c) contains the department and commission standard of review for this submittal, and states, in part, "[f]or issues concerning compliance with applicable laws, is whether the local government's decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the RFP, the functional plan and land use regulations." The only item in this list that could plausibly include the FFHA is the term "applicable statutes." There is no history of the department or commission interpreting the term "applicable statutes" to include anything other than statutes adopted by Oregon State Legislature. There is also no

precedential case law that would include compliance with the FFHA as being a standard for a decision by the department or the commission on a local government plan amendment or periodic review submittal that is required by state law.

The department concludes that as a matter of law, compliance with the FFHA is not a basis for an objection under OAR 660-025-0140(2)(b) or subject to review as an applicable law under ORS 197.633(3)(c) and OAR 660-025-0160(2).

HLA is correct that ORS chapter 659A includes statutes that have impacts similar to provisions of the FFHA. In its objection letter, HLA provides a great deal of information regarding the Fair Housing Act and associated case law, but the objection does not establish that the submittal has resulted in discrimination against a protected class that might implicate any state statute, particularly ORS chapter 659A. HLA alleges that the decision creates a greater adverse impact on members of a protected class than on persons generally, but the letter provides no specificity as to what that effect is.

Metro has provided a robust record of the decision process, including documentation of their process for making population projections and determining future housing needs for all future residents, regardless of race, color, religion, sex, familial status, or national origin. The rationale for the UGB expansion areas is summarized on pages 1070 – 1072 of the Record, projecting a need for 196,900 new dwelling units in the region to accommodate population anticipated through 2038. The analysis notes that adequate capacity exists through infill and redevelopment within the existing UGB to accommodate projected multifamily housing needs (98,400 dwelling units). The analysis also notes that the capacity for additional attached and detached single family dwellings from infill and redevelopment within the existing UGB is 92,300 units, leaving an unmet need for 6,100 attached or detached single family dwellings that cannot be accommodated within the existing UGB.

Based on this analysis, 97 percent of the new dwellings anticipated within the planning period are anticipated to be accommodated within the existing UGB, at locations that will be dependent upon private and public housing market decisions that have yet to be made. There is no evidence that either these units or the remaining three percent of dwelling units to be accommodated within the expansion areas would not be made available to protected classes, in conflict with the FFHA or state statutes in ORS chapter 659A. Although market-rate new housing units within those areas may be less affordable than housing in other areas, as is typical of new housing units, no legal barriers exist that would prevent the development of subsidized housing in these areas for low income residents. If HLA is suggesting that other expansion areas would be likely to have greater equity benefits and should have been more favorably considered, evidence and information should have been included in the record in support of this claim.

HLA has not established a basis for remand in Objection 3a, and the department recommends the commission reject this sub-objection.

Objection 3b - HLA's second objection to the Metro UGB expansion decision is that Metro has failed to demonstrate that the UGB expansion complies with Goal 10, the Needed Housing Statutes, and planning obligations under Metro Code Chapter 3.

Goal 10 – HLA objects that Metro has not adequately considered implementing measures, affordability, and locational diversity in terms of potential yield over the planning period. HLA Objection at 2. Additionally, HLA cites a portion of LCDC's 2010 Bend UGB Remand Order, as follows: "The city's record contains much information on projected population and income levels, but neither its adopted plan policies nor its findings clearly tie together how the types and amounts of housing that is planned for will be affordable for future residents of the area." HLA Objection at 31. HLA asserts that Metro has similarly failed to consider affordability impacts as a part of the UGB expansion decision.

Metro's submittal includes a number of pertinent documents, including UGR Appendix 5, Residential Development Trends (Record at 245), and the Housing Needs Analysis (Record at 287), which provides the justification for the UGB expansion. The Residential Development Trends document provides information on cost burdened renters and owners within the Metro area; persons of color within the region; income, race, and ethnicity data; and single and multifamily housing production trends; high growth areas in the region; median home values; median rents; median household, family, and non-family income; and other information. Pertinent to this discussion is the data regarding single and multifamily housing production trends between 2007 and 2016. Record at 253. Figure 4 shows that the proportion of housing types constructed over the time span was 40 percent single family residential, 40 percent multifamily residential, and 20 percent mixed-use residential. Record at 253. The department understands the question posed by HLA, in part, to be whether the contemplated housing mix for the planning period will be aligned with the buying power of new residents in the region, for rental or ownership.

This question is discussed in detail in Metro's Housing Needs Analysis (Record at 290) and includes a rather bleak assessment of the future for both new homeowners and new renters within the region during the planning period. For example, for homeowners, the housing cost burden, as a percentage of income, is projected to increase between 11 and 16 percentage points between 2018 and 2038, despite rising income levels over the same period. Currently, new homeowners in the region spend an aggregate of 41 percent of household income on housing costs. Any household that spends more than 30 percent of its income on housing costs is considered cost burdened) New homeowners in 2038 are projected to spend on average 56 percent of their income on housing costs.

On the rental side, the HNA document notes that "the share of cost burdened renters by income level increases between two and seven percentage points from 2018 to 2038." This is less extreme than project increases for homeowners, but still significant. The study notes that "Median renters in 2018 spend about 53% of income and by 2038, they spend up to 58%." In other words, a current renter in the region who is currently making median income, is significantly cost burdened and will become more so over the planning period. It

should be noted that this analysis projects costs for new residents in the region. For “non-movers,” homeowners and renters who are currently in the region and do not move within the region over the planning period, housing prices will be lower, particularly for homeowners with fixed rate mortgages, but also to some degree for long-term renters.

Given this analysis, it is somewhat surprising to find the conclusion (Record at 295) that, “The analytical findings in particular point to the need for additional production of single family units (attached and detached) over the 20-year planning period.” In the context of a recent housing market that has produced a mix of only 40 percent single family units over the last ten years, and in which affordability will continue to decline, the need for 50 percent of the new housing produced to be single family units seems to run counter to the facts. It is in this context that the information in Appendix 3 – Growth Forecast Findings is particularly germane.

The Growth Forecast Findings describe the MetroScope model results for fourteen future scenarios for the Metro region. Independent variables for the model include rate of population and employment growth, capacity of existing land within the UGB to accommodate housing needs, and UGB expansion options. As reported by Metro, four of the scenarios define a tenable range of decision options for the Metro Council. In addition, Scenario Zero was also modeled, in which historical trends are carried forward into the future and no UGB expansion occurs. The results of the five scenarios in terms of housing land capacity, costs, and relative affordability are provided in Table 12 (Record at 214).

It is important to understand that the five scenarios are not intended to provide a menu of alternative futures from which the Metro Council has been asked to choose, but rather as a means with which to gauge the resilience of the Metro housing market to factors, other than the UGB expansion question, that are largely out of Metro’s control. For example, Scenario 4 provides a model for housing land supply and cost outcomes that are predicted to result if the Metro region sees a medium growth rate, realizes a medium housing yield from land within the current UGB, and decides to include the four expansion areas in the UGB. Alternatively, Scenario 2 shows the results if the Metro region sees a low growth rate, realizes a low housing yield from land within the current UGB, and decides not to include the expansion areas within the UGB. Based in part on this analysis, the Metro Council determined that it would be most prudent to include the four expansion areas in the UGB, concluding that this policy approach will provide the most resilience to the regional housing market. It is important to note that by the end of the planning period Scenario 0 would leave no remaining single-family land and only six percent of the multi-family land supply. Conversely, in Scenario 4, which the Metro Council has determined to be the future scenario most likely to occur, eight percent of single family capacity and 29 percent of the multifamily capacity would remain at the end of the planning period in 2038.

As discussed previously in this report, Metro’s Housing Needs Analysis finds an ample supply of multifamily capacity within the existing UGB. Metro’s estimates of this housing capacity range between 136,000 and 271,100 multifamily units, which is well in excess of

the anticipated need for 98,400 such units over the 20 year planning period. Record at 296. The estimate of single family capacity within the existing UGB is much lower (92,300 units), with an estimated need for an additional 6,100 units that Metro determined cannot be accommodated within the current UGB. Record at 297. In the context of this complex analysis, it is important to keep in mind the provisions of OAR 660-032-0030(5), which provides in part, *“(5) The population forecast developed under the provisions of (1) through (4) of this rule is a prediction which, although based on the best available information and methodology, should not be held to an unreasonably high level of precision.....”* Given the variety of factors, including population and employment growth and infill and redevelopment decisions that will be dependent upon market conditions and individual investment decisions over the planning period, the department finds Metro’s decision to include additional residential land within the UGB to be in compliance with the requirement to address the region’s anticipated housing needs over the planning period. Consequently, the department recommends that the commission reject this sub-objection from Housing Land Advocates.

Needed Housing Statutes – HLA objects that the submittal does not comply with ORS 197.296(6), which requires the local government to accommodate a projected shortfall of residential lands by either putting in place measures to make more efficient use of land within the UGB to meet the need, expanding the UGB to meet the need, or meeting the need through some combination of the first two options.¹⁷ It should be noted that ORS 197.296(6) does not, by itself mandate that a local government accommodate all or even a portion of a projected shortfall through more efficient use of land within an existing UGB; a local government could solve a housing deficit entirely with a UGB expansion if it chose to do so. However, Goal 14 and OAR 660-024-0050(4) require that, “prior to expanding the UGB, a local government must demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB,” and thus Metro and other local governments must give serious consideration to “reasonably accommodating” the need through increasing residential capacity within the existing UGB (the alternative set forth in ORS 197.296(6)(b)). Although there is some discretion in the determination of what can be reasonably accommodated, as stated earlier, Metro anticipates accommodating approximately 97 percent of the anticipated 196,900 new dwelling units that will be needed in the region over the planning period within the existing UGB, including 100 percent of the anticipated demand for multifamily housing.

Additionally, it is important to remember that Metro’s HNA found that the Metro UGB contains more than a 20-year supply of multifamily units, and a deficit of single-family units. Record at 296. Thus, the question of compliance with ORS 197.296(6) rests on whether Metro has taken sufficient measures to provide new lands within the existing Metro UGB to meet the single-family housing deficit identified in the HNA, measures that show Metro has attempted to “reasonably accommodate” the single-family housing need

¹⁷ The HLA objection also raises issues regarding Metro Code Chapter 3.07, which HLA correctly characterizes as “meant to implement ORS 197.296.” HLA Objection, p. 8. Thus, this report will not separately discuss Metro’s compliance with Metro Code Chapter 3.07.

within the existing UGB as is required by Goal 14 and OAR 660-024-0050(4). Metro's submittal analyzes this issue, and includes a fairly "aggressive" calculation of new single-family infill residential development within the existing UGB, assuming that, unless an existing lot contained a very high-value home, all lots at least 2.5 times the minimum lot size of existing zoning (2.2 in the City of Portland) would be divided into additional single-family residential building lots (Record at 150). Metro has also found that the median single-family lot size in the Portland region has taken a major long-term decrease from 8,300 square feet in 1980 to 4,400 square feet in 2016. Record at 271. Metro's thorough methodology for making these assumptions, including peer review with department participation, described briefly at Record 143. HLA seems to argue that Metro has not taken sufficient measures to force local governments to accommodate additional single-family residential capacity, perhaps because of Metro Charter Section (5)(b) (prohibiting mandated density increases in existing low-density residential neighborhoods within Metro's boundaries). However, the department determines that Metro's own assumptions and evidence, as well as the fact that the preponderance of new single-family residential development within the Metro area is expected to occur within the existing Metro UGB (92,300 of 98,400 units, or 93 percent of the 20-year need for such units), shows Metro compliance with the provisions of Goal 14 and ORS 197.296(6). Record at 298. Therefore, the department recommends that the commission reject this sub-objection.

Objection 3c - HLA's third objection is that Metro has failed to justify the need to expand their UGB for a number of reasons. Specific issues raised and department response to each are provided below:

1. Failure to account for accessory dwelling unit (ADU) capacity in light of the passage of SB 1051 in 2017, which required most cities within Metro and unincorporated areas within the UGB that allow for single family dwelling to allow for the addition of ADUs. This requirement from SB 1051 was incorporated into statute at ORS 197.312(5). HLA Objection at 13.

Department Response: Metro staff notes that the effective date of this portion of SB 1051 was July 1, 2018, and the Buildable Lands Inventory was completed in June of 2018. Metro's Urban Growth Report was published on July 3, 2018. Consequently, it was not possible to factor in the potential for additional ADU development that may result from passage of SB 1051 because anticipation of the impact of the measure on ADU production would have been speculative, at best.

The department notes that ADU production was considered and included in the production of new housing as part of the Housing Needs Analysis. Specifically, data concerning ADU production in the larger Metro cities between 1995 and mid-2017 is provided, along with analysis and projections for future ADU development. Record at 184. Of note is the significant increase in ADU production within the City of Portland following the city's decision to waive systems development charges (SDCs) associated with ADUs. Based on this analysis, Metro projects that an additional 4,400 new ADUs (considered multifamily long

term rental housing units) will be produced within the Metro area over the planning period (Record at 186), which constitutes 2.2 percent of the anticipated housing need. Another factor cited in Metro's analysis is that some ADUs will be used as short-term rentals, meaning they would not be available to meet long-term housing needs in the region. Given the changing market and regulatory landscape for ADUs, the department finds the assumptions regarding anticipated ADU production in the region to be reasonable, based on past trends. It is unclear at this time what impacts the passage of SB 1051 in 2017 (which required most cities to allow for ADUs where single family homes are allowed) will have on accessory dwelling unit production numbers in the region. Consequently, assuming a significant increase in housing production from the passage of SB 1051 would be speculative.

In addition, Metro's identified housing need is for single-family dwelling units, either attached or detached. ADU units are classified as multi-family units in Metro's analysis, a determination the department determines is justified because of their general size and tenure (rental unit) status.

The department recommends that the commission reject this sub-objection.

2. Misapplication of Metro Charter Section 5(b), which prohibits Metro from requiring an increase in density in single family neighborhoods identified in the RFP solely as Inner or Outer Neighborhoods. HLA argues that "...Metro determined it must expand the boundary because it couldn't require additional efficiencies in single-family areas within the plans and land use regulations of cities and counties in the region and, consequently, didn't look for these efficiencies." HLA also notes that, "... as explicit de jure housing segregation by race or ethnicity is no longer allowed, local charters and land use regulations have been used to preserve and perpetuate segregated residential patterns by keeping existing single family neighborhoods intact against the threats of government-imposed densification." HLA Objection, Footnote 22.

Department Response: At issue is the requirement, found in Goal 14 and OAR section 660-024-0050(4) that, "Prior to expanding the UGB, a local government must demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB." This brings into consideration the question of whether requiring additional densities in the specified single family residential neighborhoods is a "reasonable accommodation" that should have been required, per OAR 660-024-0050(4). Without clear guidance as to what types of actions qualify as "reasonable accommodation" it is evident that making this determination is highly discretionary. In this context, citing current Metro Charter provisions that prohibit certain actions by Metro is a reasonable consideration of the Metro Council. The charge that abiding by this limitation constitutes a violation of the FFHA is addressed below.

Although the local governments within the Metro area utilize a variety of measures to make efficient use of the land within their UGBs, all are required to meet minimum density

standards and housing mix requirements per the Metropolitan Housing Rule discussed previously in this report. Beyond these minimum density requirements, additional measures utilized by at least some of the local governments within Metro include reduced parking requirements, allowance for ADUs (now mandatory, per passage of SB 1051 by the Oregon Legislature in 2017), SDC waivers for some types of development, and reduced street sizing standards. The fact that Metro anticipates meeting 97 percent of the projected housing need over the next 20 years within the existing UGB, as discussed previously, (and 93 percent of the projected single-family housing need) demonstrates that Metro continues to make efficient use of land within its UGB, consistent with OAR 660-024-0050(4).

As to the charge that the failure to require an increase in densities within Inner or Outer Neighborhoods results in de facto or de jure discrimination, HLA has not provided sufficient information to demonstrate such an impact to a protected class. Whether Metro choose not to require increases in density within Inner or Outer Neighborhoods due to Charter Section 5(b) is immaterial to this question, as Metro has satisfactorily demonstrated that they have made efficient use of the land within the UGB without need for additional measures.

Therefore, the department recommends that the commission reject this sub-objection.

3. Failure to do a comparative analysis of social consequences for housing affordability, suitability, and location required by the ESEE factors of Goal 14.

As noted in Goal 14, UGB boundary locational factors are to be considered as follows:

“Boundary Location

The location of the urban growth boundary and changes to the boundary shall be determined by evaluating alternative boundary locations consistent with ORS 197A.320 or, for the Metropolitan Service District, ORS 197.298, and with consideration of the following factors:

- (1) Efficient accommodation of identified land needs;
- (2) Orderly and economic provision of public facilities and services;
- (3) Comparative environmental, energy, economic and social consequences; and
- (4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.”

Department Response: HLA seems to misunderstand the purpose of the boundary location factors analysis required by Goal 14. HLA asserts that Metro must analyze the social consequences of UGB expansion upon residents of the existing UGB. As a matter of law, the social consequences required to be measured under Goal 14 as part of factor 3 cited above are a comparative analysis of different proposed UGB expansion areas – a local

government completes this analysis after it has determined the amount or capacity of the land need to be satisfied with a UGB expansion, not before. HLA’s concerns regarding locational preferences and potential displacement are addressed by Metro’s HNA and buildable lands inventory, completed in an earlier phase of the analysis.

As part of the required consideration of Goal 14 Boundary Locational Factors (Goal 14, Boundary Location) Metro completed a comparative analysis of the ESEE Factors identified in Goal 14. The complete analysis of locational factors may be found on pages 1985–1994 of the Record. Metro completed detailed analyses of the Goal 14 Locational Factors for all 32 of the urban reserve areas under consideration for expansion. Record at 1998. The department finds that Metro has adequately considered the boundary locational factors of Goal 14, and recommends that the commission reject this sub-objection.

4. Current residential designations within the region as a whole must comply with Metropolitan Housing Rule, most notably the “50-50” rule (OAR 660-007-0030) and the “6-8-10 rule” (OAR 660-007-0035). Also Metro has failed to implement Metro Code Section 3.07.740 regarding Inventory and Progress Reports on Housing Supply. That information is needed to determine the adequacy of local government efforts to promote affordable housing.

Department Response: The Metropolitan Housing Rule provisions cited above apply directly to specified cities within the Metro area, but do not apply directly to Metro.¹⁸ As discussed above under Objection 2a (1000 Friends), the department finds that Metro has met its obligation for coordinated regional planning consistent with the MHR, and recommends that the commission reject this sub-objection.

5. Metro has failed to implement Metro Code Section 3.07.740 regarding Inventory and Progress Reports on Housing Supply. As a result, Metro does not have information from local governments related to provision for and production of affordable housing needed to complete a regional HNA.

Department Response: Metro has identified housing affordability issues in its HNA (see discussion under Objection 3.b., above). Assuming for purposes of discussion that Metro is not collecting the information pursuant to its own code, the objection does not establish that Metro has not prepared a HNA that is compliant with Goal 10, ORS 197.296, the MHR,

¹⁸ OAR 660-007-0030 begins: “*Jurisdictions other than small developed cities* must either designate sufficient buildable land to provide the opportunity for at least 50 percent of new residential units to be attached single family housing or multiple family housing”

OAR 660-007-0035 begins: The following standards shall *apply to those jurisdictions* which provide the opportunity for at least 50 percent of new residential units to be attached single family housing or multiple family housing (the rule continues with a categorization of different cities and counties in the Portland Metro Area, listing their obligations under this rule).
(*emphasis added*)

and other relevant state statutes and rules. The department recommends the commission reject this sub-objection.

6. Metro may not rely on conditions of approval, which are “largely aspirational and unenforceable.” HLA Objection at 20.

Department Response: See response to 1000 Friends, Objection 2a. In summary, the department finds Metro’s conditions of approval to be sufficiently binding, but notes that ultimately, compliance with the MHR will be evaluated at the time post acknowledgment plan amendments are submitted by the four cities to apply zoning and land use regulations to the subject expansion areas.

7. King City has no Transportation System Plan (TSP), which is necessary to evaluate the locational and public facilities factors. HLA Objection at 21.

Department Response: There is no requirement in Goal 14 that a city proposing a UGB expansion area must have a TSP. Metro has provided a full evaluation of the boundary location factors for the Beef Bend South urban reserve area, including discussion of transportation system needs. Record at 2021. As with other expansion areas, it is anticipated that more specific infrastructure and area plans would be developed following inclusion of this area within the UGB. Metro has demonstrated the required balancing of locational factors in selection of this area for inclusion in the UGB. Therefore, the department recommends that the commission reject this sub-objection.

In summary, the department recommends that the commission reject the objections filed by Housing Land Advocates.

4. Objection – Ron Johnson (King City, Beef Bend South)

Mr. Johnson objects to specific areas being included in the proposed King City expansion of the Metro UGB that are not considered “buildable lands”, including those areas constrained by natural hazards, areas subject to natural resource protection measures, steep slopes, and areas within a 100 year floodplain. In addition, he asserts that a UGB expansion area must not include a conservation easement or allow a transportation plan or road construction that shows a road within an established conservation easement and ignoring environmental and community impacts. Johnson Objection at 1.

The objector’s stated remedy includes the following regarding the King City UGB expansion area: It must not include specific Washington County tax lots listed in the objection, as well as any other lands that are within an identified flood hazard area; it must not include any lands that are “...too steep to develop for urbanization”; it must not include any lands that are within an identified hazard area from a potential failure of Scoggins Dam; It must not include Washington County tax lots listed in the objection that have a conservation easement; and, it must not allow a transportation plan or road construction that violates

the intent of established conservation easements and/or ignores negative environmental and community impacts. Johnson Objection at 5.

The department addresses the objections individually below.

Objection 4a. Mr. Johnson asserts that the proposed King City UGB expansion area is flawed and violates Goals 5, 6, 7, and 12 as the expansion area inappropriately includes land that does not meet the definition of “Buildable Land” as described in OAR 660-007-0050(3) and included below (**emphasis added by the objector**).

“3) “Buildable Land” means residentially designated land within the Metro urban growth boundary including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. Publicly owned land is generally not considered available and necessary for residential uses. Land is generally considered “suitable and available” unless it:

- (a) Is severely **constrained by natural hazards as determined under Statewide Planning Goal 7;***
- (b) **Is subject to natural resource protection measures determined under Statewide Planning Goals 5, 6 or 15;***
- (c) Has **slopes of 25 percent or greater;***
- (d) Is **within the 100-year floodplain;** or*
- (e) **Cannot be provided with public facilities.”***

Johnson Objection at 1.

Department Response: The department recommends rejection of this objection. The above definition of “Buildable Land” is located in OAR chapter 660, division 7, the Metropolitan Housing rule, and states that buildable land means “...residentially designated land within the Metro urban growth boundary...”. OAR chapter 660, division 24, is the applicable rule that clarifies the procedures and requirements of Goal 14 regarding Metro’s amendment of its UGB. The division 7 definition of buildable land in the context of residentially designated lands is used to approximate the amount of land available for residential use within an urban growth boundary and to comply with other aspects of the Metropolitan Housing Rule such as the provision of specific housing types and densities. The buildable land definition does not determine the location of an urban growth boundary, specific location or boundaries of natural resources and floodplains, or areas that will be developed as residential in the future. The proposed King City expansion area has not yet been zoned for residential use, nor any urban use as of yet, and this can only occur after the land is included in the Metro UGB and further land use planning in compliance with applicable Metro and state land use requirements is completed and adopted by the city. These requirements include provisions for complying with statewide planning goals relating to natural resource protection and hazards.

Objection 4b. The objector asserts that a road in the King City UGB expansion area is proposed to cross a conservation easement that protects critical drainages to the Tualatin River against the wishes of local residents (Goal 1 violation) and where it may be subject to the city using eminent domain and therefore violates the intent of Goals 5 and 6. In addition, he asserts that Goal 12 specifies that a transportation plan shall minimize environmental impacts, which cannot be achieved by constructing a road through a conservation easement. Johnson Objection at 4.

Department Response: The department recommends rejection of this objection. While Goal 1 (Citizen Involvement) calls for the opportunity for citizens to be involved in all phases of the planning process, the objector has not established that Metro may only adopt an urban growth boundary amendment that accords with all of the input received. The UGB expansion record documents the input provided by the objector. Establishing that there may have been support for a different submittal does not provide the department a basis for rejecting the submittal under review. Goal 1 requires a program for consideration of citizen input– it does not dictate a particular result.

In addition, Exhibit C to Metro Ordinance No. 18-1427, Conditions of Approval on Land Added to UGB, Section E, King City reads:

“The Columbia Land Trust holds a conservation easement over portions of the Bankston property, which King City’s concept plan identifies as the intended location for a key transportation facility serving the expansion area. King City shall work with the Columbia Land Trust to protect, to the maximum extent possible, the portion of the Bankston property covered by the conservation easement.”

Record at 20.

Metro has identified the issue raised by Mr. Johnson, and has included a condition of approval to address it.

5. Objection – Karl Swanson (King City, Beef Bend South)

Mr. Swanson asserts that Metro failed to adequately assess and preserve natural resources with respect to the King City UGB proposal. Further, he states that Metro failed to consider Goal 5, particularly with respect to the city’s proposed east-west road connection across what appear to be multiple water bodies in a “Title 13 Inventory of the Portland Metro Region” Map and described as: “Adopted by the Metro Council in September of 2005, the chief mapping data for the Metro Title 13 Resource Inventory combines Regionally Significant Riparian & Upland Wildlife habitat, Habitats of Concern, and impact areas into one integrated layer based on Metro’s GIS models for mapping riparian functions and wildlife values.” Mr. Swanson further asserts that north-south connections to Beef Bend Road are much less destructive to resources and more economical. Swanson Objection at 1.

Although not actually stated, the department understands the remedy to be to remand and have Metro assess and preserve Goal 5 natural resources in the King City UGB area.

Department Response: The department recommends rejection of this objection. Metro analyzed environmental issues related to the Beef Bend South urban reserve area (the area proposed for expansion adjacent to King City). Record at 2021. Metro discussed environmental consequences under Goal 14, Boundary Location Factor 3 in the record at 2026, noting five streams in the area and the impacts of these streams and associated riparian areas upon future development. Metro acknowledges that these environmental resources will limit and shape future urban development of this area. Record at 2028.

6. Objection – Fran Warren (Beaverton, Cooper Mountain)

The key focus of Ms. Warren’s objection is that the Metro decision inadequately addresses protection for the resources providing upland habitat in Beaverton’s Cooper Mountain urban growth boundary expansion area. Ms. Warren asserts that resources with insufficient protection include: trees, water sources, and wildlife corridors and connectivity. In addition, she asserts that there is “...no provision for protection of Non-Resource land until these areas are fully protected as [a] SNR” (Significant Natural Resource). She also asserts that inappropriate calculations are used to determine wetland mitigation requirements, that there is a lack of transportation infrastructure to support the Cooper Mountain Area, and that there are no criteria for slowing development in order to meet Oregon State mobility standards. In summary, the alleged deficiency is that Metro and Washington County have not taken sufficient steps to protect natural resources and to provide transportation infrastructure prior to bringing the area inside the Metro Urban Growth Boundary. Warren Objection at 1.

The proposed remedy is multi-fold: the county should identify Non-Resource lands on Cooper Mountain and future Metro decisions should have criteria and Non-Resource land information available; Metro urban growth boundary approvals should include enforceable conditions that protect natural resources; [future] community plans should also include enforceable conditions of approval that protect natural resources; revisit Metro Title 13 to identify and include the protection of headwaters; and, establish state policies for Metro to require transportation mobility standards be attained within a specific timeframe.; and establish state policy/criteria and conditions of approval that transportation mobility standards must be attainable within (x) years of development approvals.

The department will respond to the individual objections below;

Objection 6a. The Metro decision inadequately addressed protection of the natural resources providing upland habitat, including trees, water sources and wildlife corridors and connectivity. Warren Objection at 1.

Department Response: The department recommends rejection of this objection. Metro's analysis of environmental impacts under Goal 14, Boundary Location Factor 3 is found in the record at 2111. The analysis notes the presence of streams, riparian areas, wetlands, and associated upland habitat in the Cooper Mountain study area, and concludes that these resources will impact and shape future urban development in the area. It should be noted that since Metro Title 13 amendments were not submitted, it is not an option to suggest that such amendments could be a remedy. More detailed analysis of environmental resources and impacts is appropriate at subsequent planning stages for the Cooper Mountain study area.

Objection 6b. The Washington County GIS maps are inaccurate and outdated as they relate to water sources. Warren Objection at 1.

Department Response: The department determined that the objection is invalid. The objection does not clearly identify an alleged deficiency in the submittal that allows the department to identify the relevant statute, goal, or administrative rule the task submittal is alleged to have violated as required by OAR 660-025-0140(2)(b).

Objection 6c. The Metro decision does not require Non-Resource land protection and therefore areas will remain unprotected until they are fully protected as a Significant Natural Resource. Warren Objection at 1.

Department Response: The department determined that the objection is invalid. Ms. Warren states there is no provision for protection of Non-Resource Land and suggests a remedy, however the objection does not clearly identify an alleged deficiency in the submittal that allows the department to identify the relevant statute, goal, or administrative rule the task submittal is alleged to have violated as required by OAR 660-025-0140(2)(b). The definition of "non-resource land" found in state statutes and administrative rules is irrelevant to the Cooper Mountain area or the Metro UGB decision.

Objection 6d. The [wetland] mitigation calculations are inappropriately based on current values rather than on the amortized value of carbon storage over time. Warren Objection at 2.

Department Response: The department determined that the objection is invalid. Although Ms. Warren states that wetland mitigation requirements are not appropriately calculated and suggests a potential remedy, the objection does not clearly identify an alleged deficiency in the submittal that allows the department to identify the relevant statute, goal, or administrative rule the task submittal is alleged to have violated as required by OAR 660-025-0140(2)(b).

Objection 6e. The Beaverton Cooper Mountain area lacks adequate transportation infrastructure to support development. Warren Objection at 2.

Department Response: The department recommends rejection of this objection. Metro’s analysis of transportation issues as a public facility under Goal 14, Boundary Location Factor 2 is found in the record at 2108 and 2116. The analysis notes impacts to roads and various modes of transportation, and includes estimated costs for providing sufficient transportation infrastructure. More detailed analysis of transportation impacts and solutions is appropriate at subsequent planning stages for the Cooper Mountain study area.

7. Objection – Michael Donoghue (Beaverton, Cooper Mountain)

Mr. Donoghue objects to the expansion of the Metro UGB to include Cooper Mountain and the proposed development of approximately 3,700 homes. He has focused on two major areas of concern including natural area protection and transportation challenges. Mr. Donoghue asserts that although Beaverton and Metro have partially addressed natural areas and transportation issues, the significant natural areas have not been evaluated and designated by Washington County and that local transportation needs have not been integrated with the county’s regional transportation needs in mind. Donoghue Objection at 1.

Although unstated, the department understands the remedy to remand and to have Washington County or Metro further evaluate transportation impacts and to provide additional natural resource protections in the Cooper Mountain area prior to the Metro UGB expansion.

The department addresses the individual objections below.

Objection 7a. Mr. Donoghue asserts that Metro Ordinance No. 18-1427 does not take into consideration specific Washington County [comprehensive plan] policies to protect and enhance SNAs. In addition, he takes exception to the Metro ordinance finding: “Goal 5 (Natural Resources): The Metro Council finds that adoption of Ordinance No. 18-1427 does not impact any inventoried Goal 5 resources and is therefore consistent with Goal 5 and its implementing rules.” Record at 1065. (Item F. Statewide Housing Goals). He also asserts that Goal 5 resources were not inventoried as required by [OAR 660-015-0000\(5\)](#) and specifically refers to that portion of the goal included below (referencing a., b., c., f., and h. only, **emphasis added**):

The following resources shall be inventoried:

- a. Riparian corridors, including water and riparian areas and fish habitat;**
- b. Wetlands;**
- c. Wildlife Habitat;**
- d. Federal Wild and Scenic Rivers;*
- e. State Scenic Waterways;*
- f. Groundwater Resources;**
- g. Approved Oregon Recreation Trails;*
- h. Natural Areas;**

- i. Wilderness Areas;*
- j. Mineral and Aggregate Resources;*
- k. Energy sources;*
- l. Cultural areas.*

Donoghue Objection at 1.

Department Response: The Department recommends rejection of these objections. The objector has indicated a desire for better natural resource protection than currently exists in Washington County and essentially asserts that a Metro UGB expansion requires a new natural resource inventory of the Cooper Mountain area based on Washington County natural resource protection policies and Goal 5 inventory requirements. The relevant rules can be found in OAR chapter 660, division 24, Urban Growth Boundaries and OAR chapter 660, division 23, Procedures and Requirements for complying with Goal 5. Specifically OAR 660-024-0020(3)(c), Adoption of Amendment of a UGB, provides:

“(c) Goal 5 and related rules under OAR chapter 660, division 23, apply only in areas added to the UGB, except as required under OAR 660-023-0070 and 660-023-0250;”

Further, OAR 660-023-0250 (3)(c) provides:

“(3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if: ...

(c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.”

The resource inventory described in Goal 5, OAR chapter 660, division 15, does not apply directly to this UGB amendment as Washington County has an acknowledged comprehensive plan including natural resource protections. In addition, Metro’s analysis of environmental impacts under Goal 14, Boundary Location Factor 3 is found in the record at 2111. The analysis notes the presence of streams, riparian areas, wetlands, and associated upland habitat in the Cooper Mountain study area, and concludes that these resources will impact and shape future urban development in the area. More detailed analysis of environmental resources and impacts is appropriate at subsequent planning stages for the Cooper Mountain study area.

Objection 7b. The objector indicates that current development in the Cooper Mountain area has already created a significant increase in traffic on the county’s transportation system and that Metro has hardly considered the impacts of additional new development or incorporated those impacts into regional transportation plans. Donoghue Objection at 3.

Department Response: The department recommends rejection of this objection. Metro’s analysis of transportation issues as a public facility under Goal 14, Boundary Location Factor 2 is found in the record at 2108 and 2116. The analysis notes impacts to roads and various modes of transportation, and includes estimated costs for providing sufficient transportation infrastructure. More detailed analysis of transportation impacts and solutions is appropriate at subsequent planning stages for the Cooper Mountain study area.

VI. DEPARTMENT RECOMMENDATION AND DRAFT MOTIONS

A. Recommendation

For the reasons described in this report, the department recommends that the commission approve Metro Ordinance No. 18-1427 and the findings of fact and conclusions of law, rejecting the seven filed objections. None of the objections demonstrate that the Metro UGB decision fails to rely on an adequate factual base, fails to address all applicable criteria, or is unreasonable based on the evidence in the record as a whole.

B. Proposed Motion

Recommended Motion: I move that the commission approve Metro’s urban growth boundary amendment submittal, based on the findings and conclusions in the director’s report.

C. Optional Motions

For remand: I move that the commission remand Metro’s urban growth boundary amendment submittal, based on the commission’s findings that: _____.

ATTACHMENTS – Available on the DLCD’s website:

<https://www.oregon.gov/lcd/NN/Pages/PMUGB.aspx>

Attachment A: Objection Letter Links

https://www.oregon.gov/lcd/Commission/Documents/2019-07_Item_11_Attachment_A.pdf

Attachment B: Applicable Regulations

https://www.oregon.gov/lcd/Commission/Documents/2019-07_Item_11_Attachment_B.pdf

Attachment C: Urban and Rural Reserves Alternative Analysis Map

https://www.oregon.gov/lcd/Commission/Documents/2019-07_Item_11_Attachment_C.pdf

Attachment D: 2018 UGB Expansion Areas Map

https://www.oregon.gov/lcd/Commission/Documents/2019-07_Item_11_Attachment_D.pdf

Attachment E: Index for the Record

https://www.oregon.gov/lcd/Commission/Documents/2019-07_Item_11_Attachment_E_Index_to_Metro_UGB_Amendment_Record.pdf

Attachment F: Record of Metro UGB Decision Part I, as submitted to DLCD (January 10, 2019)

https://www.oregon.gov/lcd/Commission/Documents/2019-07_Item_11_Attachment_F_PART_1_of_3_METRO_submittal_record.pdf

Attachment G: Record of Metro UGB Decision Part II, as submitted to DLCD (January 10, 2019)

https://www.oregon.gov/lcd/Commission/Documents/2019-07_Item_11_Attachment_G_PART_2_of_3_METRO_record.pdf

Attachment H: Record of Metro UGB Decision Part III, as submitted to DLCD (January 10, 2019)

https://www.oregon.gov/lcd/Commission/Documents/2019-07_Item_11_Attachment_H_PART_3_of_3_METRO_submittal_record.pdf